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U.S. Department of State

Fiji Report on Human Rights Practices for 1996

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997.

FIJI

Fiji's system of parliamentary government, inherited when the country gained independence from Great Britain in 1970, was interrupted in 1987 with the installation of a military-led regime following two bloodless coups. Fiji returned to elected government in 1992, and Prime Minister Sitiveni Rabuka was re-elected in 1994.

An independent, multiethnic Constitutional Review Commission presented its long-awaited report to the President in September. The 1990 Constitution reflected the proindigenous Fijian bias of the two coups; the Constitutional Review Commission's report proposes a more representative system. The report aims to encourage multiethnic government through heterogeneous electoral districts and a preferential voting scheme, while preserving ethnic Fijian veto power over legislation affecting interest in land or customs. The proposal, if approved, would be a major step toward an improved political and business climate.

Ethnicity plays a major role in Fiji's politics, economy, and society. Fiji's more than 775,000 people constitute a multiracial society in which indigenous Fijians and ethnic Indians, in roughly equal numbers, account for 96 percent of the population. The rest are Asian and Caucasian. Indo-Fijians dominate the commercial sector and professions and are well represented in the lower and middle levels of the Government. Ethnic Fijians control the bureaucracies and dominate the military.

The small but professional Fiji Military Forces (FMF) and a separate police force report to and are under the control of the Minister for Home Affairs and, ultimately, the President. The Constitutional Review

Commission report recommends that the army's legal basis be legislative, not constitutional. In 1990 the Government established the Fiji Intelligence Service, with limited statutory powers to search people and property, monitor telephones, and access mail correspondence and financial records. There continue to be credible reports of human rights abuses by individual police officers.

Sugar and tourism constitute the mainstays of the economy, accounting for almost half of the nation's foreign exchange earnings. The Government is promoting light manufacturing for export. Due to political uncertainty, private investment as a percentage of gross domestic product dropped from 12 percent in 1987 and was 5 percent in early 1996.

The principal human rights problem remains constitutionally imposed and ethnically based political discrimination, which abridges the right of citizens to change their government. The Government and people are seeking to redress this problem through the constitutional review process. Other human rights

problems include overt bias in land tenure and government policies favoring ethnic Fijians, occasional police brutality, potential constraints on the exercise of freedom of the press, continued delays in bringing criminal and civil cases to trial, discrimination and cases of violence against women, and instances of abuse of children.

RESPECT FOR HUMAN RIGHTS

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

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

b. Disappearance

There were no reports of politically motivated disappearances.

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

Police sometimes physically abuse detainees; the authorities have punished some of the offending officers, but these punishments have not been sufficient to deter all police abuses. The Police Department's internal affairs unit investigates complaints of police brutality and is working with the Ombudsman's office to ensure impartial observers in the investigation of complaints about police conduct.

Prison authorities strive to meet minimum international standards, within the limits of local financial restraints. Prison conditions are Spartan and food and sanitation limited. The Government permits visits to prisons by church groups and family members.

The law permits corporal punishment as a penalty for criminal acts, but this provision is seldom invoked.

d. Arbitrary Arrest, Detention, or Exile

The Law of Arrest and Detention provides that a person may be arrested only if police believe that a breach of the criminal law has been or is about to be committed. Arrested persons must be brought

before a court without "undue delay." This is taken to mean within 24 hours, with 48 hours as the exception (such as when an arrest is made over the weekend). Rules governing detention are designed to ensure fair questioning of suspects. Defendants have the right to a judicial review of the grounds for arrest; in urgent cases defendants may apply to a judge at any time, whether he is sitting or not.

Incommunicado and arbitrary detention, both illegal, did not occur.

Exile is not practiced.

e. Denial of Fair Public Trial

The judiciary is independent under the Constitution and in practice. There were no credible reports in 1996 of courts having been influenced by the executive. The 1996 Constitutional Review Commission report recommended continuation of an independent judiciary.

The judicial structure is patterned on the British system. The principal courts are the magistrate courts, the High Court, the Court of Appeal, and the Supreme Court. There are no special courts; military courts try only members of the armed forces. Magistrate courts continue to try the large majority of cases. In addition to its jurisdiction in serious civil and criminal cases, the High Court is granted special interest jurisdiction on behalf of the public and is empowered to review alleged violations of individual rights provided by the Constitution.

Defendants have the right to a public trial and to counsel. Trials in the High Court provide for the presence of assessors (citizens randomly selected to represent the community); cases in magistrate court do not. In litigation involving lesser complaints, a public legal advisor assists indigent persons in domestic or family law cases. The right of appeal exists but is hampered by continuing delays in the appeals process. Bail procedures mean that most defendants do not experience any pretrial detention.

The law sometimes treats women differently from men. In some instances there is a presumption of reduced competence and thus reduced responsibility. For example, only women can be charged with infanticide (if a man kills an infant the act is treated as murder, a more serious charge). A woman in an infanticide case is presumed to have diminished mental capacity, and sentences are reduced or suspended accordingly.

There were no reports of political prisoners.

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

In general, the Government respects the privacy of the home. However, the Intelligence Service has powers, within specific operational guidelines, to search people and property, access private financial records, and monitor mail and telephones when a warrant is issued by the National Security Council. The Intelligence Service does conduct surveillance of persons it believes represent a security threat. Some political

dissidents believe their telephones and mail are monitored, but they have not produced substantiating evidence.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Freedom of speech is generally respected. The Government at times criticizes the media for its coverage of sensitive issues, particularly if the Government perceives the coverage as resulting in a diminution of respect for authority.

Nevertheless, political figures and private citizens can and do speak out against the Government. Although the Public Order Act and other acts prohibit actions that are likely to incite racial antagonism, there were no reported arrests for such public statements.

Legislation pertaining to the press is contained in the Newspaper Registration Act (NRA) and the Press Correction Act (PCA). Under the NRA, all newspapers must be registered with the Government before they can begin publishing. Although the Government has never used the PCA, the act gives the Minister of Information sole discretionary power to order a newspaper to publish a "correcting statement" if, in the Minister's opinion, a false or distorted article has been published. Should the newspaper refuse to publish the Minister's correction, it can be taken to court, and if found guilty, fined approximately \$700 (individual persons convicted under the act may be fined approximately \$150 or imprisoned for 6 months or both). The PCA allows the Government to arrest anyone who publishes "malicious" material. This includes anything the Government considers false news that could create or foster public alarm or result in "detriment to the public."

The media operate without prior censorship but with considerable self-censorship. Newspapers occasionally print editorials critical of the Government but rarely do investigative reporting. They widely report statements about the political situation by opposition figures and foreign governments. The letters-to-the-editor columns of the two daily newspapers also frequently carry political statements from a wide cross section of society, including members of the deposed precoup government, which are highly critical of the Government, its programs, and the Constitution. Criticism, albeit muted, of the once sacrosanct traditional chiefly system is appearing more frequently. However, the Government still views comments about individual chiefs with disfavor.

An active local organization, the Fiji Islands Media Association (FIMA), is an affiliate of the regional Pacific Islands News Association (PINA). Both FIMA and PINA are pressing for better training and the establishment of codes of

ethics for journalists. In a show of tangible support for strengthening the media, the Government has unconditionally provided space for housing the Fiji Journalism Training Institute.

Fiji's television news production is owned and operated by Fiji One, the only noncable television station. Fiji One, in turn is owned by a variety of private individuals and interests, and 51 percent by a trust operating on behalf of Fiji's provincial governments.

While academic freedom is respected, the Government has effectively deterred university employees from participation in domestic politics. Since 1991 staff members of the Fiji-based University of the South Pacific must take leave if they run for public office and must resign from their university positions if elected. Senior staff cannot hold office in political parties. Student groups are free to organize and do so.

b. Freedom of Peaceful Assembly and Association

The Constitution provides the right to assemble for political purposes, subject to restrictions in the interest of public order. Permits for public gatherings must be obtained from the district officer. The Government does not always grant permits for large outdoor political meetings or demonstrations,

particularly if the police advise of difficulties with the anticipated crowd size or their ability to assure public safety.

The Government routinely issued permits for rallies organized by political parties, religious groups, and groups opposed to government policies.

All opposition party headquarters operate without government interference. Political organizations operate and issue public statements and did so repeatedly and openly throughout the year.

c. Freedom of Religion

The Constitutional provision of freedom of religion is honored in practice. The Government does not restrict foreign clergy and missionary activity or other typical activities of religious organizations.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Government does not restrict freedom of movement within the country or abroad. Occasional detentions at the airport occur, but the courts order redress where this is warranted. Citizens are free to emigrate, and an estimated 40,000 have done so since 1987. The Government does not restrict their return if

they choose to do so, and has, in fact, encouraged those who left after the coups to return.

The Government cooperates with the office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. However, authorities were reluctant to grant first asylum to two Iranian Christians who entered Fiji via Malaysia. Only after receiving assurances from the UNHCR that the two would ultimately be moved to a third country did the authorities permit them to remain.

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

The Constitution ensures political dominance by ethnic Fijians, primarily through race-based voting registration and representation in Parliament, thus abridging the right of citizens to change their government. The Constitutional Review Commission report recommends heterogeneous voting districts and a preferential voting scheme on the Australian model. The Government has respected scrupulously the independence of the Review Commission.

The Constitution provides ethnic Fijians with 37 of 70 seats in the elected lower house of Parliament, Indo-Fijians are accorded 27 seats, Rotumans (culturally distinct Polynesians) 1, and all others 5. In the Senate (an appointed body with essentially review powers), ethnic Fijians hold 24 of the 34 seats, Rotumans 1, and the other groups 9. The Review Commission report proposes that the House of Representatives still total 70, but with 45 seats (64 percent) distributed among 15 three-member districts of approximately equal population and multiethnic makeup. Voters would elect representatives from those districts based on a general registration; there would be no ethnic seats. For the short term, however, 25 seats would remain allocated on ethnic lines. The Review Commission report also proposes a mostly elected senate.

The Constitution requires that the Prime Minister be an ethnic Fijian; selection procedures virtually ensure that the President will also be an ethnic Fijian. The President chooses the Prime Minister (who, along with the Cabinet, holds most of the executive authority) from among the ethnic Fijian members of

the lower house on the basis of ability to command majority support within that body.

The Constitutional Review Commission strongly endorsed maintaining a bill of rights, providing for freedom of speech, assembly, religion, and other universally accepted rights and freedoms. The Commission recommended restricting Parliament's emergency powers, specifically repeal of a 1990 provision

permitting Parliament to legislate contrary to the Bill of Rights in an emergency.

Fiji has about 10 political parties. The ethnic Fijian SVT (or Fijian Political Party) forms the core of the parliamentary majority. Two predominantly Indo-Fijian parties, the National Federation Party (NFP) and the Fiji Labour Party (FLP) are joined on the opposition side of the legislature by an ethnic Fijian party (the Fijian Association). Two small parties representing primarily Caucasians and Asians, the General Electors and General Voters parties, are each represented by a minister in the Cabinet.

The Constitutional Review Commission's proposals will be studied by a select committee composed of the variety of parties. This committee will be charged with making recommendations for an "act to amend the Constitution," which is to be signed into law by July 1997.

Women in both the Fijian and Indian communities have functioned primarily in traditional roles, although some women achieve responsible positions in public service, politics, and business. Two women sit in Parliament; one is a cabinet minister. Women can also attain high status in Fiji's traditional chiefly system. The President's wife is, in her own right, one of Fiji's three highest ranking chiefs.

Section 4. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

There are no local groups that focus solely on human rights matters, but the women's rights movement, the labor movement, and various political groups (including organized political parties) are engaged in promoting human rights. There are also several small, not very active, foreign-based organizations that concentrate on human rights causes in Fiji, including the Coalition for Democracy in Fiji (with offices in New Zealand and Australia) and two United Kingdom-based groups, the International Fiji Movement and the Movement for Democracy in Fiji.

Section 5. Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution prohibits discrimination on the basis of race, sex, place of origin, political opinion, color, religion, or creed, and provides specific affirmative action provisions for those disadvantaged as a result of such discrimination. Enforcement of these constitutional provisions is attenuated by the Government's policy of using "affirmative action" to advance ethnic Fijians and by traditional mores as to the roles and rights of women and children.

Women

Women in Fiji are actively addressing the problem of domestic violence. Reliable estimates indicate that 10 percent of women have been abused in some way, and this abuse is a major focus of the women's movement. Over the last year, Fiji police have adopted a "no drop" rule, according to which they will prosecute cases of domestic violence even when the victim does not wish to press charges.

There is a small but active women's rights movement, which has pressed for more serious punishment

for rape convictions. Courts have imposed sentences that vary widely but are generally lenient. Women have sought to have all rape cases heard in the High Court where sentencing limits are higher.

Suva, the capital, and Ba, the regional center, have privately funded women's crisis centers, which offer counseling and assistance to women in cases of rape, domestic violence, and other problems, such as child support payments. There is, overall, a growing awareness of the abuse of women's rights.

Despite constitutional provisions, the Government practiced a form of sexual discrimination in the recognition of spousal and offspring rights. For example, spouses of female citizens are not automatically granted residence, whereas spouses of male citizens are. Children of female ethnic Fijians married to nonethnic Fijians are not entitled to registry in the document governing which persons share in income from communal ownership of native lands, and which persons who have the right to vote as an ethnic Fijian and hold ethnic Fijian-designated seats in Parliament. Men, however, confer ethnic Fijian status on their offspring regardless of the mother's ethnic background. In a high-profile 1992 court challenge to the registration restrictions, the son of a Chinese father and ethnic Fijian mother won his appeal to be registered as an ethnic Fijian. The long-term effects of the decision on registration restrictions and, thus, a woman's right to pass on her ethnic status remain unclear.

In general, women in the Fijian community are more likely to rise to prominence in their own right than are women in the Indo-Fijian community. Women have full rights of property ownership and inheritance, and a number have become successful entrepreneurs. Women are generally paid less than men, a discrepancy that is especially notable in the garment industry. Garment workers, most of whom are female, are subject to a special minimum wage considerably lower than that in other sectors.

Children

The Government is committed to children's rights and welfare but has limited financial resources to carry out the commitment. In addition, the legal system is at times inadequate to protect the rights of children, as children's testimony is inadmissible unless corroborated by an adult. Societal changes have undermined the traditional village and extended family based social structures--an outgrowth of this has been a child abuse problem. The Government in 1993 created a Child Welfare Committee to address these problems, but it is likely to remain reluctant to become directly involved in what are generally perceived to be "family matters."

Corporal punishment is widely administered in schools and at home. The Ministry of Education has guidelines for the administration of such punishment by principals and head teachers. In 1993 one principal was fired for overstepping these guidelines. There is credible information that not all abuses are reported or punished.

People with Disabilities

Legal discrimination against physically disabled persons in employment, education, and the provision of other state services does not exist. However, there is no legislation or mandated provision for accessibility for the disabled. Several small voluntary organizations promote greater attention to the needs of the disabled.

National/Racial/Ethnic Minorities

The stated purpose of the 1987 military coups was to ensure the political supremacy of the indigenous Fijian people and to protect their traditional way of life and communal control of land. To this end, the

Government initiated a number of constitutional and other measures to ensure ethnic Fijian control of the executive and legislative branches (see Section 3). The Government also successfully raised the proportion of ethnic Fijians and Rotumans in the public service to 50 percent or higher at all levels, but most dramatically at the senior level: Indo-Fijians now represent only 10 percent of the highest levels of the civil service. As a result, some Indo-Fijians justifiably complain of a "glass ceiling" whereby, despite their experience and higher educational achievements, they are promoted only to middle management levels of the civil service.

Control of land is a highly sensitive issue. Ethnic Fijians currently hold, communally, about 83 percent of land, the State holds another 8 percent, and only the remaining 9 percent is in the hands of nonethnic Fijians. The British colonial administration instituted the present land ownership

arrangements to protect the interests of the indigenous Fijians whose traditional beliefs, cultural values, and self-identity are tied to the land. Most cash crop farmers are Indo-Fijians, who lease land from the ethnic Fijian landowners through the Native Land Trust Board. Many Indo-Fijians, particularly farmers, believe that the absence of secure land tenure discriminates against them. Between 1997 and 2000, most current leases will expire. A review of the current land tenure and leasing arrangements is under way, with all indications that the Government will make few changes to the existing system. Some landowners are likely to decline to renew leases; the Government has acknowledged its responsibility to help relocate displaced Indo-Fijian farmers, although it has few resources to offer.

Indo-Fijians are subject to occasional harassment and crime based on race, which is compounded by inadequate police protection. There have been no credible allegations of government involvement in such incidents, which the police have investigated, sometimes resulting in arrests.

Section 6. Worker Rights

a. The Right of Association

The law protects the right of workers to form and join unions, elect their own representatives, publicize their views on labor matters, and determine their own policies, and the authorities respect these rights in practice. However, the law permits restrictions to be applied in government employment and in the interests of defense, public safety, public order, public morality, or public health, or to protect the rights and freedoms of other persons. An estimated 20 percent of the labor force is unionized.

All unions must register with, but are not controlled by, the Government. The only central labor body is the Fiji Trade Union Congress (FTUC), which was closely associated with the opposition Fiji Labour Party until mid-1992. It currently takes a more independent political stance. The FTUC is free to associate internationally and does so. The labor movement is led largely by Indo-Fijians, with ethnic Fijians beginning to assume leadership roles. Persons with close ties to the Government have organized rival unions primarily for ethnic Fijians; these unions are more amenable to cooperation with the Government.

In 1994 Parliament completed a 2-year process of reforming labor legislation by amending several acts. The changes include the elimination of a ban on a person holding multiple union officer positions and the elimination of restrictions on seeking international support on labor issues. Although the FTUC thereafter returned to participate in the Government's Tripartite Economic Strategies Committee, it subsequently suspended its participation pending additional reforms.

Strikes are legal, except in connection with union recognition disputes. The Government remains

involved in certifying union strike balloting, which can be an elaborate process given the distance between some of the island locations. The failure of the National Bank of Fiji sparked labor unrest. Furloughed bank employees eventually won a settlement package that they, and their union, deemed fair.

b. The Right to Organize and Bargain Collectively

The law recognizes the right to organize and bargain collectively. Employers are required to recognize a union if more than half the employees in a workplace have joined it. Recognition is determined by union membership rather than by an election. The Government has the power to order recalcitrant employers to recognize unions and has done so. Key sectors of the economy, including sugar and tourism, are heavily organized. Following the May 1992 return to accountable government, the Government lifted wage guidelines, and unrestricted collective bargaining on wages is now the norm.

Wage negotiations are conducted on an individual company or enterprise basis rather than on an industrywide basis. A government proposal to introduce such negotiations has been supported by employers but opposed by unions.

The law specifically prohibits antiunion discrimination. In practice, the unions are generally successful in preventing discrimination against workers for union activities, but the law does not mandate that fired workers be reinstated.

Export processing zones (EPZ's) are subject to the same law as the rest of the country, and unions have negotiated collective bargaining agreements with many EPZ firms.

c. Prohibition of Forced or Compulsory Labor

The Constitution specifically prohibits forced labor, and there is no indication that it is practiced.

d. Minimum Age for Employment of Children

Children under the age of 12 may not be employed in any capacity. "Children" (under age 15) and "young persons" (ages 15 to 17) may not be employed in industry or work with machinery. Enforcement by the Ministry for Labour and Industrial Relations generally is effective, except for family members working on family farms or businesses and "self-employed" homeless youths. School is not mandatory.

e. Acceptable Conditions of Work

There is no national minimum wage. Certain sectors have minimum wages set by the Ministry for Labour and Industrial Relations, which effectively enforces them. Minimum wage levels will generally support a barely adequate standard of living for a worker and family in all sectors except for the garment industry, in which the starting hourly wage, \$0.50 (FJ\$0.72) for learners and \$0.65 (FJ\$0.94) for others, is based on the assumption that workers are young adults or married women living at home and not supporting a household.

There are no regulations specifying maximum hours of work for adult males. Women can do night work in factories and overtime but are prohibited from underground work in mines. Certain industries, notably transportation and shipping, have problems with excessive hours of work. Indo-Fijians, who generally require a cash income to survive, are more vulnerable to pressure to work long hours than are ethnic Fijians. Many ethnic Fijians can and do return to their villages rather than work what they consider

excessive hours.

There are workplace safety regulations, a Workmen's Compensation Act, and an accident compensation plan. Awards for workers injured on the job are set by a tribunal. Government enforcement of safety standards under the direction of the Labour Ministry suffers from a lack of trained enforcement personnel, but unions do a reasonable job of monitoring safety standards in organized workplaces. The International Labor Organization's (ILO) 1992 recommendations cited the need to improve working conditions, particularly in the garment industry. In June the Government passed legislation to address some of these shortcomings, and the ILO is assisting with implementation.

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