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U.S. Department of State

Fiji Country Report on Human Rights Practices for 1998

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FIJI

Fiji made continued progress toward restoration of a more representative and democratic government, as the amended Constitution approved in 1997 came into effect in July. The provisions that amend the 1990 Constitution encourage multiethnic government while protecting traditional Fijian values. Under the amended Constitution, the Prime Minister and the President can be of any race, and for the first time, in addition to the communally allocated seats, there will be open seats not allocated to any racial community in the lower house of Parliament. The judiciary is independent.

The Constitution also includes a strengthened bill of rights and a compact designed to protect the rights of all citizens. It alters the official name of the country to "Republic of the Fiji Islands" and designates all citizens "Fiji Islanders," avoiding designations specifying ethnicity. However, it preserves the paramountcy of indigenous Fijian interests, which cannot be subordinated to the interests of other communities. Elections must take place no later than 1999.

The new Constitution is expected to promote greater political stability. Nonetheless, ethnicity remains a dominant factor in Fijian life and affects the country's politics, economy, and society. The population is a multiracial, multicultural mix, with indigenous Fijians comprising 51 percent, Indo-Fijians (descendents of immigrants from the Indian subcontinent) around 42 percent, and Asians, Caucasians and other Pacific Islanders making up the rest of the population of over 775,000. The ethnic division is particularly evident in the private and public sectors, where business is largely controlled by Indo-Fijian families while government ministries and the military are largely led by indigenous Fijians.

The Fiji Military Forces (FMF), a small professional force, comes under the authority of the Ministry for Home Affairs, as do the police. A separate unit, the Fiji Intelligence Service, with limited statutory powers to search people and property, monitor communications, and access financial records, also comes under authority of the Ministry. 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 more than half the nation's foreign exchange earnings. The Government is seeking to develop the service and light manufacturing industries. Private investment increased after several stagnant years, but is still well below the 12 percent gross domestic product level achieved prior to the political disturbances in 1987.

The principal human rights problem, while significantly addressed in the revised Constitution, remains ethnically based discrimination. Although the new constitutional provisions reduce the factors that abridge the right of citizens to change their government, there is continuing protection for indigenous Fijian interests through government hiring practices, education policies, land tenure preferences, and constitutional safeguards. Other human rights problems include occasional police brutality, informal constraints on the freedom of the press, efforts to restrict public comments by the diplomatic corps, 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 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.

Prison authorities have struggled to meet minimum international standards within the limits of local financial restraints. Prison conditions are Spartan, and food and sanitation are 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 requirement 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 of courts having been influenced by the executive.

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 female defendant 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 persons and property, access private financial records, and monitor mail and telephones when a warrant is issued by the National Security Council. The Intelligence Service conducts surveillance of persons it believes represent a security threat.

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. There are credible reports of attempts by individual members of the Government to pressure editors or otherwise interfere with the independence of the press.

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 publish. 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 and occasionally 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 pressed for better training and the establishment of codes of ethics for journalists. In a show of tangible support for strengthening the media, the Government unconditionally provided housing for the Fiji Journalism Training Institute. The formerly dormant Fiji News Council has been reorganized and is active again. The Council strives to promote high journalistic standards, enhance the image of the media, safeguard its independence, and resolve complaints from the public.

Fiji's television news production is owned and operated by Fiji One, the only noncable television station. Fiji One in turn is owned by private individuals and interests, and 51 percent by a trust operating on behalf of Fiji's provincial governments. The Government's attempt to open the television market to new entrants is being challenged in court.

In August the Government sought to require foreign diplomatic representatives to submit all public address requests for approval by the Foreign Ministry and to provide advance copies of speech texts. The Government also stated that foreign diplomatic representatives are obliged not to comment on politically sensitive issues such as the Constitution, land issues, and relations between communities, citing the need to respect the sovereignty of the State and noninterference in internal matters.

While academic freedom is generally respected, government work permit stipulations and University of South Pacific (USP) contract regulations have effectively deterred university employees from participation in domestic politics. Reports indicate that the Government is investigating allegations that two foreign USP journalism lecturers violated the terms of their work permits by writing paid articles critical of the state of democracy in Fiji for Internet web pages and publications not associated with USP. Student groups organize freely.

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.

There were allegations in 1997 that police were slow to respond to incidents of desecration of Hindu temples (see Section 5).

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 over 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 and other humanitarian organizations in assisting refugees. In the past it has been reluctant to grant first asylum without assurances that the asylum seeker would be moved to a third country.

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

The constitutional amendments are a significant step toward the restoration of a more representative and democratic government. The amended Constitution reduces the ethnically based factors that abridge the right of citizens to change their government. Under its provisions the prime minister and president can be of any race. It establishes a 71-member lower house with 25 open seats and 46 seats allocated to different ethnic communities. The open seats, which are unprecedented, have been established by an electoral commission and apportioned into districts of approximately equal population. Of the 46 communal seats, 23 are allotted to indigenous Fijians, 19 to Indo-Fijians, 3 are "general voter" (for the most part Caucasians and East Asians) seats, and 1 is allotted to the Rotumans (an ethnically distinct Polynesian people), roughly proportional to the different communities' representation in the population. The amended Constitution also contains an alternate vote system for elections to the lower house, to replace the winner takes all system of the previous constitution. Although the Review Commission recommended a mostly elected Senate it remains an appointed body; the President appoints its 32 members with the Great Council of Chiefs nominating 14 members, the Prime Minister 9, the opposition leader 8, and the Council of Rotuma 1 member.

Included in the amended Constitution is a strengthened bill of rights and a compact among the people to protect their respective rights and interests, which, however, acknowledges that the paramountcy of

indigenous Fijian interests cannot be subordinated to the interests of other communities. In July Parliament passed a new emergency powers act that can be invoked if Parliament determines that there is a threat to the life of the nation. International media organizations criticized the new law due to concern that the Government could close or censor publications during times of crisis.

Fiji has an increasing number of active political parties. The ethnic Fijian SVT (or Fijian Political Party) forms the core of the Government's parliamentary majority. Two small parties representing primarily Caucasians, Asians, and other Pacific Islanders, also have members in the Cabinet. The Fijian Association Party formally left the government coalition during the year but its two cabinet members retained their positions. Two predominantly Indo-Fijian parties, the National Federation Party (NFP) the Fiji Labor Party (FLP) make up most of the opposition. The leader of the opposition is the parliamentary leader of the NFP. A number of new parties also have been formed to contest general elections, which are scheduled to be held in 1999. The new Constitution mandates that all parties that gain more than 10 percent of parliamentary seats in general elections are to be invited to participate in a government of national unity.

Women in both the Fijian and Indian communities have functioned primarily in traditional roles, although an increasing number of women are rising to prominent positions in politics and public service. Five women sit in Parliament. The two women in the lower house are members of the Cabinet, with one the Deputy Prime Minister. Women also play important roles in Fiji's chiefly system and can be chiefs in their own right. The President's wife is 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, 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 amended 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. In the compact included in the amended Constitution, there is specific provision for affirmative action and "social justice" programs to secure effective equality of access to opportunities, amenities, and services for the Fijian and Rotuman people, and for all disadvantaged citizens and groups.

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. 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. However, in at least one case, the police reportedly exhibited great reluctance to investigate and prosecute a policeman who had beaten his wife into a coma.

There is a small but active women's rights movement, which has pressed for more serious punishment for rape. 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, Labasa, and Lautoka 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.

Constitutional changes approved in 1997 are designed to redress the imbalance in spousal and offspring rights between male and female citizens. Under the amended Constitution, male and female citizens enjoy equal rights relating to the granting of residence for spouses, registration of children, and racial designation of children with regard to electoral rolls and ethnic communal property.

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 that is 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 evolution 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."

School is not mandatory.

Corporal punishment is administered in some schools and homes. The Ministry of Education has guidelines for the administration of such punishment by principals and head teachers. A number of incidents involving alleged beatings of children in religious schools were reported in the media. In at least one instance, a family initiated court action against a teacher who reportedly had beaten a child for lack of discipline. 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.

Religious Minorities

Police continued to investigate a small number of cases that involved desecration of Hindu temples in 1997.

National/Racial/Ethnic Minorities

The stated purpose of two military coups in 1987 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. 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. The amended Constitution seeks to redress this imbalance by specifically noting 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."

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 freehold land. 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. Most current leases are expected to expire by 2000. A parliamentary select committee has been established to review agricultural land tenure agreement issues.

Indo-Fijians are subject to occasional harassment based on race. 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 55 percent of the paid work 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. While certain unions remain ethnically based, both Indo-Fijians and ethnic Fijians hold leadership roles in the trade union movement. The FTUC participates, along with the employer's federation, in the Government's Tripartite Economic Strategies Committee.

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. A 1-day national labor protest occurred on April 23. The strike was initiated by the FTUC to protest against layoffs, a wage freeze, and the discontinuance of a checkoff system for union dues. Sporadic labor unrest occurred throughout the year in a number of workplaces.

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 of 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 still generally conducted on an individual company or enterprise basis, although negotiations on an industrywide basis are on the increase. 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 generally are 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. The FTUC, however, has been unsuccessful in obtaining collective bargaining agreements in EPZ's and claims that intimidation of workers by employers is widespread. The FTUC sees union recognition as the single labor/management issue that does not have effective legal recourse. The FTUC argues that because of alleged illegal and intimidatory practices in EPZ's, including threats of loss of work for those active in organizing workers, the FTUC is unfairly prevented from representing workers in EPZ's.

c. Prohibition of Forced or Compulsory Labor

The Constitution specifically prohibits forced labor, including forced and bonded labor by children, and there were no confirmed reports that it is practiced. However, there were media reports that a form of bonded labor may be practiced on a remote copra plantation on an outer island. Other media reports indicate that forced labor conditions may exist in certain garment manufacturing plants.

d. Status of Child Labor Practices and Minimum Age for Employment

Children under the age of 12 may not be employed in any capacity. "Children" (under age 15) may only be employed outside of school hours in family enterprises and not in the industrial sector. "Young persons" (ages 15 to 17) may be employed in certain occupations not involving heavy machinery and with specified hours and rest breaks. Enforcement by the Ministry for Labor and Industrial Relations generally is effective, except for family members working on family farms or businesses and "self-employed" homeless youths.

The Government prohibits forced and bonded labor by children and enforces this prohibition effectively (see Section 6.c.). 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 Labor 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. Workers in 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. Particularly in the garment industry, migrant workers, predominantly Chinese or Filipino, are increasing in number (presently estimated at around 1,000-2,000 persons) and are a largely unregulated work force.

There are workplace safety regulations, a Workmen's Compensation Act, and an accident compensation plan. A tribunal sets awards for workers injured on the job. Government enforcement of safety standards under the direction of the Labor 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. The Government, supported by the FTUC, passed occupational health and safety legislation, which came in to effect in 1997. The Government continues to work with the ILO to address working conditions.

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