
A Study of Civil Liberties in Fiji

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Civil liberties are comprehensively protected in Fijian law by the Fijian Constitution. However, following the coup-d'etat of 2006, civil liberties in Fiji have been increasingly threatened by a belligerent interim government seeking to solidify its power.

Foreign reporters have had their visas cancelled and newspapers have been charged with contempt for robustly criticising judicial decisions. State of emergency regulations have been used to restrict free assembly and free speech.

This essay examines the current state of civil liberties in Fiji, Fiji's failure to engage with international rights bearing instruments and the threat that the interim government poses to the independence and proper functioning of Fijian institutions.

Abbreviations

CAT – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW – Convention on the Elimination of Discrimination Against Women
CERD – Committee on the Elimination of Racial Discrimination
CRC – Convention on the Rights of the Child
ICCPR – International Covenant on Civil and Political Rights
ICERD – International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICRMW – International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families

0.1 In a recent speech to the 63rd United Nations General Assembly, the Prime Minister of Fiji, Commodore Josaia Voreqe Bainimarama said that his government has, “done all within its power to adhere to the current Constitution,” and that his government recognises it as the supreme law of Fiji.¹ However, despite this rhetoric, the governments of Pacific nations, including Fiji, have long struggled to enforce civil liberties protected by their nation's Constitutions.

0.2 Civil liberties are individual rights imposing limitations upon the power of the state.² Civil liberties can be found within rights bearing instruments such as the Universal Declaration of Human Rights and the ICCPR.³ Civil liberties include rights associated with the protection of an individual's physical integrity, procedural fairness and freedoms of belief, speech and association.⁴ Civil liberties play a vital role in creating good governance.⁵ Rights which assure due process and

¹ Commodore Josaia Voreqe Bainimarama, 'Prime Minister's Statement at the United Nations' (Speech delivered at the United Nations, 63rd General Assembly, New York, 26 September 2008.

² Henry J. Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context* (3rd ed, 2008) 153.

³ Ibid.

⁴ Ibid 154.

⁵ P. Imrana Jalal, *Pacific Culture and Human Rights: Why Pacific Island Countries Should Ratify International*

protect against arbitrary detention serve to create a predictable system of justice and independent judiciary which holds the full confidence of citizens.⁶ Rights such as press freedom and freedom of expression operate to provide the framework for free and fair democratic elections.⁷ Consequently, civil liberties have an important role to play in the future development of Fiji.

0.3 The potential of recent political instability to interfere with Fiji's enforcement of civil liberties makes Fiji an interesting study in determining the resilience of institutions and the power of a Bill of Rights to control government action in violation of civil liberties. This essay aims to assess whether the level of enforcement of civil liberties in Fiji matches the requirements of Fiji's Bill of Rights. The essay will firstly examine the sources of civil liberties in Fiji and compare the quality of Fiji's Bill of Rights and participation in international human rights instruments against East Timor's. Secondly, the essay will consider the current quality of the enforcement of civil liberties in Fiji to determine whether Fiji is meeting the standards required by its Bill of Rights. Thirdly, the essay will discuss barriers to change that exist within Fiji. Lastly, the essay will conclude by considering whether Fiji has met the standard set by its Bill of Rights.

1. Sources of Rights

The Bill of Rights

1.1 The president of Fiji assented to the Fijian Constitution on 25 July 1997.⁸ The Constitution is the supreme law of Fiji and any law inconsistent with the Constitution is invalid.⁹ Interpretations of the Constitution must take into account the spirit of the Constitution as a whole and provide for

Human Rights Treaties (Pacific Rights Regional Resource Team, 2006) 16.

⁶ Ibid 22.

⁷ Ibid 22.

⁸ *Constitution (Amendment Act) 1997* (Fiji) preamble.

⁹ Ibid s 2.

developments in the promotion and understanding of particular human rights.¹⁰ Additionally, the preamble of the Constitution states that Fiji reaffirms its recognition of human rights and the fundamental freedoms of all groups.¹¹ Human rights are guaranteed by Chapter Four of the Constitution and are binding upon all persons performing the function of public office and all divisions of the legislative, executive and judicial branches of government.¹² Protected civil liberties include the right to personal liberty,¹³ the right to be treated humanely if detained, to be released promptly if not charged and be given the opportunity to communicate with a social worker, lawyer, spouse or religious counsellor,¹⁴ freedom from cruel or degrading treatment,¹⁵ freedom from unreasonable search and seizure,¹⁶ freedom of expression,¹⁷ freedom of movement,¹⁸ freedom of assembly,¹⁹ freedom of association²⁰ and the right to privacy.²¹

International Law

1.2 Of the seven main rights bearing treaties, Fiji has acceded to ICERD, CEDAW and CRC and has signed both of CRC's optional protocols. Fiji has made numerous reservations to ICERD including reservations towards articles 5(c)²² and 5(d)(v)²³ where Fiji effectively reserves the right not to change any law which is in conflict with equal participation in elections or amend the Fijian school system where it supports apartheid, racial segregation and racial discrimination.

¹⁰ Ibid s 3.

¹¹ Ibid.

¹² Ibid s 21.

¹³ Ibid s 23.

¹⁴ Ibid s 27.

¹⁵ Ibid s 25.

¹⁶ Ibid s 26.

¹⁷ Ibid s 32.

¹⁸ Ibid s 34.

¹⁹ Ibid s 31.

²⁰ Ibid s 32.

²¹ Ibid s 37.

²² *International Convention on the Elimination of all Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195, art 5(c) (entered into force 4 January 1969).

²³ Ibid art 5(d)(v).

As a new nation in the same region as Fiji and of comparable size, East Timor, with a strong record of participation in international human rights instruments, which has been encouraged under the guidance of the United Nations, presents an aspirational target to compare Fiji's Bill of Rights and participation in international human rights treaties against.

The East Timorese Bill of Rights

1.3 The East Timorese Constitution entered into force on 20 May 2002.²⁴ It provides that the state shall be subject to the Constitution and the law and that the validity of the laws and actions of the State and local government depend upon their compliance with the Constitution.²⁵ Human rights are guaranteed by Part 2 of the East Timorese Constitution. Part 2.2 (ss 29 – 49) lays out personal rights, liberties and guarantees. Protected civil liberties include the right to personal freedom, security and integrity,²⁶ the right to make an application of habeas corpus,²⁷ right to obtain any stored, personal computer data,²⁸ right to freedom of expression personally²⁹ and for the media³⁰ qualified by a right to protection of public image against defamation and privacy,³¹ freedom of assembly,³² freedom to demonstrate³³ and freedom of movement.³⁴

East Timor and International Law

1.4 Of the seven main rights bearing treaties, East Timor has acceded to the ICCPR and the

²⁴ Constitution of the Democratic Republic of Timor-Leste s 170.

²⁵ Ibid s 2.

²⁶ Ibid s 30.

²⁷ Ibid s 33.

²⁸ Ibid s 38.

²⁹ Ibid s 40.

³⁰ Ibid s 41.

³¹ Ibid s 36.

³² Ibid s 42.

³³ Ibid s 43.

³⁴ Ibid s 44.

ICCPR's second optional protocol on the elimination of the death penalty, ICERD, ICESCR, CEDAW and CEDAW's optional protocol, CAT and has signed CAT's optional protocols, CRC and CRC's optional protocols and ICRMW.

Conclusions

1.5 In the constitutions of both East Timor and Fiji, civil liberties such as freedom of expression are subject to restrictions which are endorsed by the ICCPR,³⁵ In East Timor freedom of expression is limited by a right to honour and reputation and a right to privacy.³⁶ In Fiji, a law may limit the right of freedom of expression with regard to public order, public safety, public morality, national security and reputation.³⁷ However, the Fijian Constitution places further qualifications upon the right to freedom of expression which aren't recognised by the ICCPR including restrictions placed upon freedom of expression to ensure the orderly conduct of national and municipal elections³⁸ and to prevent attacks on the dignity of respected offices and institutions that would promote ill will between races or communities or that would lead to the discrimination against any person.³⁹ The Constitution places similar restrictions upon the rights of freedom of association and assembly.⁴⁰ However, laws which restrict these freedoms must be reasonably justifiable in a democratic society.⁴¹ Additionally, all civil liberties and human rights enshrined by the Fijian Constitution must be interpreted in line with public international law where relevant and favour more restrictive interpretation of qualifications on rights where more than two constructions are possible.⁴²

³⁵ For example, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 1057 UNTS 407, art 19(3) (entered into force 23 March 1976).

³⁶ Constitution of the Democratic Republic of Timor-Leste s 36.

³⁷ *Constitution (Amendment Act) 1997* (Fiji) s 30(2).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid* s 31(2) and s 32(2).

⁴¹ *Ibid* s 30(2), s 31(2) and s 32(2).

⁴² *Ibid* s 43.

1.6 A comparison between East Timor's and Fiji's participation in international human rights treaties reveals further glaring differences between the two countries. Whilst East Timor has acceded to all of the seven major international human rights treaties and nearly all of their optional protocols, Fiji has only acceded to three. Additionally, Fiji's reservations to ICERD are so broad that CERD has suggested that the reservations are completely incompatible with the object and purpose of the convention.⁴³ Additionally, Fiji has very weak reporting practices and submitted 10 of its periodic reports, due from 10 February 1984 – 2002 to CERD in 2002⁴⁴ and then only following the threat of a review of Fiji's adherence to ICERD.⁴⁵ CERD stated that it was 'disturbed' by Fiji's lack of cooperation.⁴⁶

1.7 Fiji's reluctance to become a party to major human rights treaties coupled with its poor reporting practices has significantly reduced the influence of international law on the Fijian legal system. Fijians must rely on the Fijian Bill of Rights to enforce civil liberties. However, due to the numerous exemptions in that document, which go beyond exemptions allowed by the ICCPR, Fijians face an uphill battle in enforcing their civil liberties in Fijian courts. In comparison, East Timor has acceded to most international human rights instruments and has a strong bill of rights, guaranteeing a large variety of civil liberties subject only to minimal qualifications, all of which are provided for by the ICCPR.

2. Current Record

2.1 This chapter will examine Fiji's current human rights record and recent developments in both

⁴³ Committee on the Elimination of Racial Discrimination, Summary Record of CERD 1165 Meeting CERD/C/SR.1165 (9 August 1996) 9.

⁴⁴ Committee on the Elimination of Racial Discrimination, CERD/C/62/CO/3 (21 March 2003) para 1.

⁴⁵ Margot Salomon, 'Masking Inequality in the Name of Rights: The Examination of Fiji's State Report Under the International Convention on Racial Discrimination' (2003) 4(1) *Asia Pacific Journal on Human Rights and the Law* 52.

⁴⁶ Committee on the Elimination of Racial Discrimination, Summary Record of CERD 1165 Meeting CERD/C/SR.1165 (9 August 1996) 10.

case law and statute which further restrict the exercise of constitutionally protected civil liberties in Fiji.

Fiji

Suspension of Civil Liberties

2.2 The Emergency Powers Act allows for the declaration of a state of emergency by the President on the advice of Cabinet.⁴⁷ Cabinet may advise the President to declare such an emergency where an emergency has arisen as a result of imminent invasion, a natural disaster, where an action or threatened action of a person or group of people threatens the national economy, public safety or essential supplies or for some other reason a grave emergency exists which threatens the state's economic or social life.⁴⁸ Constitutionally, a state of emergency grants the President the power to enact regulations relating to the state of emergency which may violate a number of guaranteed rights, namely, the right to personal liberty, the right to be free from forced service or labour, freedom of expression, freedom of movement, freedom of association, freedom of assembly and the right to privacy.⁴⁹

2.3 Following the 2006 *coup-d'etat*, The Emergency Powers Act has been used to quell dissent by clamping down upon civil liberties. The Public Emergency Regulation, made under the Emergency Powers Act was published in the government gazette on 12 February 2007⁵⁰ and took effect from February 12⁵¹ to May 31 2007⁵² and from September 6⁵³ to 6 October 2007.⁵⁴ The Public

⁴⁷ *Emergency Powers Act* 1998 (Fiji) s 2.

⁴⁸ *Ibid.*

⁴⁹ *Constitution (Amendment Act) 1997* (Fiji) s 187.

⁵⁰ *Public Emergency Regulations 2007* (Fiji).

⁵¹ *Ibid.*

⁵² The Government of Fiji, *News Briefs* (2007) The Government of Fiji

Emergency regulations operated to allow people to be detained without charge, prohibit speech critical of the interim government and restrict public assembly.⁵⁵ During the state of emergency individuals suspected of 'inciting instability' were detained by the army and questioned.⁵⁶

Privacy

2.4 The right to privacy is guaranteed by the Fijian Constitution subject to restrictions prescribed by law which are necessary in a free and democratic society.⁵⁷ The respect shown towards this right has been mixed, with courts showing a willingness to award damages to plaintiffs whose privacy has been breached, but on the ground, the police and military show a blatant disregard for the privacy of citizens.

2.5 In *McCoskar v The State*⁵⁸ two men had been found by the police to have been engaging in a homosexual affair in violation of Fijian criminal laws prohibiting 'carnal knowledge against the order of nature' and 'gross indecency'. McCoskar claimed that criminal laws prohibiting consensual homosexual sex were in breach of the right to privacy. The court found that both provisions prohibiting consensual homosexual sex were an unconstitutional breach of McCoskar's right to privacy as they arbitrarily targeted homosexuals, weren't in the public interest and could in no way be described as necessary.⁵⁹ In *Yaya v Attorney General*⁶⁰ the court found that the police had violated Yaya's right to privacy after broadcasting his identity and photo in newspapers and on

<http://www.fiji.gov.fj/publish/page_9099.shtml> at 14 December 2008.

⁵³ Commodore Josai Voreqe Bainimarama, *Statement by PM Bainimarama on the Public Emergency Regulation* (2007) <http://www.fiji.gov.fj/publish/printer_9993.shtml> at 14 December 2008.

⁵⁴ The Government of Fiji, *News Briefs* (2007) The Government of Fiji <http://www.fiji.gov.fj/publish/page_10269.shtml> at 14 December 2008.

⁵⁵ *Public Emergency Regulations* 2007 (Fiji).

⁵⁶ The Fiji Times, *Emergency Decree Under Review* (2007) The Fiji Times <<http://www.fijitimes.com/story.aspx?ref=archive&id=59735>> accessed on December 14 2008.

⁵⁷ *Constitution (Amendment Act) 1997* (Fiji) s 37.

⁵⁸ *McCoskar v The State* (Unreported, FJHC, Winter J, 26 August 2005).

⁵⁹ *Ibid.*

⁶⁰ *Yaya v Attorney General* (Unreported, FJHC, Pathik J, 23 February 2007).

television in a 'most wanted' list without officially laying charges against him.

2.6 Both *McCoskar* and *Yaya* show the willingness of superior courts in Fiji to enforce constitutional rights and strike out legislation incompatible with constitutional rights. However, the actions of the military and police aren't as positive. During 2007, Fijian military forces searched the homes of those accused of corruption without warrant and soldiers entered private property to threaten those who had spoken out against the coup.⁶¹

Freedom of Assembly

2.7 The right to freedom of assembly is guaranteed by the Constitution, subject to a number of exceptions such as national security concerns, public safety, public order, public morality and public health.⁶² The Public Order Act is the instrument used to manage public assembly and gatherings. Under the Public Order Act, any person wishing to convene a meeting, with the exception of sporting, recreational, private and religious purposes, in a public place must first make an application for a permit to the appropriate authority.⁶³ In 2007 and 2008 alone, numerous applications for political meetings and demonstrations were denied including an application to hold the annual meeting of the National Federation Party in 2007.⁶⁴

Freedom of Expression

2.8 The right to freedom of expression is guaranteed by the Constitution and is subject to similar

⁶¹ Bureau of Democracy, Human Rights and Labor, United States, *Country Reports on Human Rights Practices (Fiji) 2007* (2008).

⁶² *Constitution (Amendment Act) 1997* (Fiji) s 31.

⁶³ *Public Order Act 1969* s 8.

⁶⁴ One National News, *NFP denied permit for Sunday meeting* (2007) Fiji TV <<http://www.fijitv.com.fj/index.cfm?si=main.resources&cmd=forumview&cbegin=4026&uid=newsnational&cid=4040>> accessed on 12 January 2009, Bureau of Democracy, Human Rights and Labor, United States, *Country Reports on Human Rights Practices (Fiji) 2007* (2008).

restrictions to the right of freedom of assembly.⁶⁵ In 2007 the interim government successfully blocked a number of internet 'blogs' from being displayed within Fiji.⁶⁶ A representative of the Fijian military claimed that the blogs were a matter of national security as they spread 'lies and disinformation' and therefore were subject to exemption clauses contained within the right of freedom of expression and were caught by provisions of the Public Emergency Regulation.⁶⁷

Press Freedom

2.9 The freedom of the press and other media is guaranteed by the Constitution and is subject to the same restrictions as freedom of expression.⁶⁸ As well as censoring internet 'blogs' (as discussed above) and deporting foreign and ex-patriot journalists (as discussed below) the interim government has consistently tried to stifle the Fijian media.

2.10 In late November 2008, the publishers and editors of the Fiji Times and Daily Post were charged with contempt of court over a published letter to the editor critical of the High Court's decision in *Qarase v Bainimarama*⁶⁹ (now on appeal) which held that the 2006 military coup instigated by Commodore Josia Voreqe Bainimarama was legal. In *re Application by the Attorney General of Fiji*⁷⁰ Netani Vakacegu Rika, the Editor in Chief of the Fiji Times and Rex Gardner, the publisher of the Fiji Times were found guilty of scandalising the High Court of Fiji in breach of 136(1)(m) of the Penal Code.⁷¹ Section 136(1)(m) provides that, 'any person who commits an act of intentional disrespect to any judicial proceeding or to any person whom before such proceeding is being taken is liable to imprisonment for three months.' Netani Rika was sentenced to three months

⁶⁵ *Constitution (Amendment Act) 1997* (Fiji) s 30.

⁶⁶ Fiji Times, *Blogs Drop off the Web* (2007) Fiji Times <<http://www.fijitimes.com/story.aspx?id=62827>> accessed on January 12 2009.

⁶⁷ Ibid.

⁶⁸ *Constitution (Amendment Act) 1997* (Fiji) s 31.

⁶⁹ *Qarase v Bainimarama* (Unreported, FJHC, Gates CJ, Byrne and Pathik JJ, 9 October 2008).

⁷⁰ *In re Application by the Attorney General of Fiji* (Unreported, FJHC, Hickie J, 22 January 2009).

⁷¹ Ibid [19] and [142].

in prison and Rex Gardner was made to enter into a 12 month good behaviour bond.⁷² The Fiji Times was fined \$100,000.⁷³ The charges against the Daily Post are still pending. Following the decision, Gardner was deported to Australia.⁷⁴ In *obiter* Hickie J stated that, 'No wonder some members of the public are confused and think that it is somehow "open season" on the Judiciary such that if some of "the leaders" can do it without any restraint, decorum or fear of subsequent penal sanctions, then any amount of bile can be thrown.'⁷⁵

Media 'Reform'

2.11 Media reform has become a vexed issue in post coup Fiji with the media arguing that a recent report on media freedom handed down by the Fijian Human Rights Commission and recent measures to adopt a Media Promulgation law are both attempts to stifle free press.

2.12 The ironically titled Freedom and Independence of the Media Report, commissioned by the Fijian Human Rights Commission made a number of extremely controversial recommendations. The report suggested that Fiji adopt legislation similar to the Singapore Sedition Act.⁷⁶ The Singapore Sedition Act⁷⁷ defines sedition as speech or a publication which brings the government into hatred, contempt or excites disaffection against the Government or the administration of justice or raises discontent and disaffection amongst the people of Singapore or promotes ill will between races or different classes.⁷⁸ The penalties for a first offence of sedition are a fine not exceeding \$5,000 or imprisonment for a term no longer than three years, or both.⁷⁹ Additionally a court may order that a newspaper distributing

⁷² Ibid [142].

⁷³ Ibid [142].

⁷⁴ Angus Hohenboken, *Fiji Times was Doing its Job: Deported Published Rex Gardner*, The Australian (2009) <http://www.theaustralian.news.com.au/story/0,,24970273-7582,00.html?from=public_rss> accessed on 1 February 2009.

⁷⁵ Ibid [139].

⁷⁶ J. M. Anthony, *Freedom and Independence of the Media: An Inquiry* (Fiji Human Rights Commission, 2007), 97.

⁷⁷ *Sedition Act 1985* (Singapore).

⁷⁸ Ibid s 3.

⁷⁹ Ibid s 4.

sedition content be banned from circulation for up to one year.⁸⁰ The report also recommends that all work permits distributed to foreign journalists cease being renewed.⁸¹

2.13 The Fijian media have claimed that the review was prejudiced from the beginning and rejected the Fijian Human Rights Commission's assertion that the review was independent.⁸² The implications of the Freedom and independence of the Media Report for press freedom in Fiji are far-reaching. Sedition laws, particular sedition laws as draconian as Singapore's would give rise to a culture of self censorship as journalists seek to avoid criminal and civil penalties by whitewashing or simply not reporting news relating to the government.

2.14 Of additional concern is the Media Promulgation law, which was formulated by and endorsed by cabinet on the 17 July 2008,⁸³ following the Freedom and independence of the Media Report. The law will establish a tribunal headed by an independent judge appointed by the Judicial Services Commission as well as codify all existing laws relating to the media such as professional standards regulations.⁸⁴ The Deputy Secretary of Information, Major Neumi Leweni said that the aim of the legislation was to encourage journalism, 'to be pro-Fiji... Journalists must strive to develop a more holistic understanding of issues and they also need to develop more pride in the country.'⁸⁵

2.15 Currently complaints relating to the media are heard by the independent Fiji Media Council, which was established in 1998. The council's membership is made up of both members of the public and stakeholders from the Fijian media.⁸⁶ The movement away from the British model of self regulation

⁸⁰ Ibid s 9.

⁸¹ J. M. Anthony, *Freedom and Independence of the Media: An Inquiry* (Fiji Human Rights Commission, 2007), 98 - 99.

⁸² David Robie, *Freedom of the Gatekeepers: A Free Media Study of NZ and Fiji – Self-regulation or State Intervention?* (Pacific Media Centre, 2008), 26.

⁸³ The Government of Fiji, *Government to Formulate Media Legislation*, The Government of Fiji <http://www.fiji.gov.fj/publish/page_12360.shtml> accessed January 12 2009.

⁸⁴ Ibid.

⁸⁵ Major Neumi Leweni, 'Address at the 10th Attorney General's Conference' (speech delivered at the 10th Attorney General's Conference, Yanuca Island, Sigatoka, 29 November 2008).

⁸⁶ Shailendra Singh, *Fiji's Resilient Media Again Face Government Censure* (2008) Pacific Islands Report

under the Fiji Media Council towards a centralised model establishes further government control over the media in Fiji and will be likely to give rise to increased self censorship as journalists start avoiding making critical statements on government action out of fear of receiving harsh civil penalties.⁸⁷

Freedom of Movement

2.16 The right to freedom of movement is guaranteed by the Fijian Constitution.⁸⁸ Every person who is not a Fijian citizen but is lawfully in Fiji may only be expelled from Fiji following the order of a court or following the decision of the relevant minister on a ground proscribed by law.⁸⁹ However, since the *coup-d'etat* a number of foreign journalists have been deported for no lawful reason, including Evan Hannah, the publisher of the Fiji Times in May 2008 for an unspecified reason,⁹⁰ Rex Gardner, the publisher of the Fiji Times after being found guilty of contempt of court (see above)⁹¹ and Barbara Dreaver, a TV journalist in December 2008 for 'not conveying the true situation in Fiji'.⁹²

The Rights of Detainees

2.17 The Pacific Office of the United Nations High Commissioner for Human Rights has identified ill-treatment in detention as being a pressing civil rights issues in the South Pacific which, in Fiji's case, has been compounded by a political crisis affecting key institutions.⁹³

<<http://archives.pireport.org/archive/2008/August/08-05-com.htm>> accessed January 20 2009.

⁸⁷ Ibid.

⁸⁸ *Constitution (Amendment Act) 1997* (Fiji) s 34.

⁸⁹ Ibid s 34(5).

⁹⁰ Australian Foreign Minister's Office, *Deportation of Evan Hannah from Fiji* (2008) Australian Foreign Minister's Office <www.foreignminister.gov.au/releases/2008/fa-s066_08.html> accessed January 12 2009.

⁹¹ Angus Hohenboken, *Fiji Times was Doing its Job: Deported Published Rex Gardner*, The Australian (2009) <http://www.theaustralian.news.com.au/story/0,,24970273-7582,00.html?from=public_rss> accessed on 1 February 2009.

⁹² IFJ Asia Pacific, *Alarm Bells Ring for Media Freedom in Fiji* (2008) IFJ Asia Pacific <asiapacific.ifj.org/en/articles/alarm-sounds-again-for-media-freedom-in-fiji> accessed January 13 2009.

⁹³ Pacific Regional Office *OHCR Programme for Asia-Pacific*, Office of the High Commissioner for Human Rights

2.18 An example of an extreme abuse of civil liberties which has reached the courts is *Proceedings Commissioner, Fiji Human Rights Commission v Commissioner of Police (Joti's Case)*.⁹⁴ In *Joti's Case* Joti was an employee at a cinema complex in Suva. She found an abandoned baby in a lavatory and contacted the police and informed her employer.⁹⁵ A number of days later an officer called in at the cinema complex and asked Joti to accompany him to the Central Police Station.⁹⁶ At the police station Joti was interrogated and asked whether her breasts were discharging.⁹⁷ She answered that they were, due to a medical condition, the records of which were available at the hospital.⁹⁸ Without officially placing her under arrest, Joti was placed in the back of a police wagon and forced to submit to an intrusive vaginal exam at a hospital to determine whether she had given birth.⁹⁹ The tests were negative.¹⁰⁰ The police did not attempt to retrieve her medical file while at the hospital or ask any of her co-workers, friends or family whether she had been pregnant.¹⁰¹ The court found that Joti's constitutional rights to be free from cruel and degrading treatment and to not be forced to undergo medical procedures were violated.¹⁰²

2.19 In addition to extreme cases such as *Joti's Case*, since the 2006 *coup-d'etat* human rights activists, lawyers, journalists and other citizens who've spoken out against the coup have been briefly detained by the military and subjected to cruel and degrading treatment.¹⁰³ Robert Wolfgramm, the editor of the Fiji Daily Post was detained by the military, slapped about the face

<<http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/PacificSummary0809.aspx>> at 4 January 2009.

⁹⁴ *Proceedings Commissioner, Fiji Human Rights Commission v Commissioner of Police* (Unreported, FJCA, Ward P, Wood and McPherson JA, 24 November 2006).

⁹⁵ Ibid [8].

⁹⁶ Ibid [9].

⁹⁷ Ibid [10].

⁹⁸ Ibid.

⁹⁹ Ibid [15].

¹⁰⁰ Ibid.

¹⁰¹ Ibid [19].

¹⁰² Ibid [100].

¹⁰³ Bureau of Democracy, Human Rights and Labor, United States, *Country Reports on Human Rights Practices (Fiji) 2007* (2008).

and accused of writing editorial articles which were 'inciting people'.¹⁰⁴ Kenneth Zinck, a former member of Parliament and trade unionist was detained and forced to run laps of the army's rugby field.¹⁰⁵

2.20 Additionally, the prison system itself has deteriorating infrastructure, poor provision of services, inadequate beds and inadequate sanitation.¹⁰⁶ In *Aba v The State*¹⁰⁷ men who were still on trial for offences, and were presumed innocent, were placed in conditions the Court described as being below UN standards and inhumane and found that their right to not be inflicted with cruel and degrading treatment had been breached.

Conclusions

2.21 Since the 2006 coup, the interim government of Fiji has belligerently and persistently infringed upon the civil liberties of Fijians. The government has persistently sought to stifle dissent and has deported foreign journalists, blocked internet 'blogs' and detained and harassed members of non government organisations, lawyers and journalists who have criticised the military regime. In 2008 the military regime has sought to solidify its control over Fijian society, and has commissioned a report of questionable independence from the Fijian Human Rights Commission which recommended the implementation of sedition laws and the removal of foreign journalists. Furthermore, the regime has begun development of a new Media Promulgation Law which will remove the Fijian media's ability to self-monitor. The conditions of Fijian prisons remain deplorable and detainees are imprisoned in conditions that are degrading and inhumane.

¹⁰⁴ Shaista Shameem, *The Assumption of Executive Authority on December 5th 2006: Legal Constitutional and Human Rights Issues* (Fiji Human Rights Commission, 2007), 18.

¹⁰⁵ Ibid 17.

¹⁰⁶ Bureau of Democracy, Human Rights and Labor, United States, *Country Reports on Human Rights Practices (Fiji) 2007* (2008).

¹⁰⁷ *Aba v The State* (Unreported, FJHC, Prakash AJ, 4 July 2001).

2.22 Unfortunately based upon the current evidence, Fiji clearly isn't meeting the human rights targets set by its Bill of Rights.

3. Barriers to Reform

3.1 There are a number of factors within Fiji which have created resistance to the enforcement of human rights. These include relativist interpretations of human rights instruments, the lack of independence of key institutions, cultural tensions and perceived financial difficulties associated with compliance with international human rights instruments. Only once these barriers are overcome, can rights truly be enforced in practice as well as theory.

Universalism and Relativism

3.2 The declaratory statement of rights adopted by the Constitution of Fiji and international instruments such as the ICCPR and CEDAW apply the language of universalism.¹⁰⁸ Universalism puts forward the idea that human rights are 'universal, inter-dependant and inter-related' and that, 'while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'¹⁰⁹ The universalist approach faces an uphill battle in Fiji, as it assumes the existence of strong legal institutions to enforce human rights obligations and is imposed externally rather than internally.¹¹⁰ That foreign aid in Fiji is often tied to rule of law and human rights requirements only

¹⁰⁸ Sue Farran, 'Human Rights in the Pacific Region – Challenges and Solutions' (2005) 6 *Lawasia Journal* 39, 45.

¹⁰⁹ *Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights*, UN Doc A/CONF.157/23 (1993) pt 1 art 5.

¹¹⁰ Sue Farran, 'Human Rights in the Pacific Region – Challenges and Solutions' (2005) 6 *Lawasia Journal* 39, 51.

serves to reinforce the belief amongst Fijian leaders that universal human rights are a tool used to enforce Western hegemony.¹¹¹

3.3 Due to these difficulties associated with the universalist approach, a relativist approach to human rights has been gaining ground in Fiji. Relativists argue that human rights are grounded in moral values emanating from a particular culture, time and place.¹¹² In the case of the Pacific and Fiji, relativists argue that Pacific culture is largely group orientated whilst universal human rights focus on individual rather than group rights.¹¹³ They argue that where there is a conflict between human rights and culture, culture should ultimately prevail as it preserves identity and the good of the community at large.¹¹⁴ Ratu Joni Madraiwiwi, a former Fijian High Court Judge, Human Rights Commissioner and Vice President has stated that 'implementation of [human rights] without regard to context... would be arrogant, insensitive and counter-productive... the surrounding circumstances will always play a part in how rights are applied.'¹¹⁵

3.4 However, relativists base their arguments on the assumption that culture remains static.

However due to modern influence, Pacific culture no longer exists in its purest form in any of the Pacific islands.¹¹⁶ The language of relativism is often applied by elites and leaders who benefit the most from a static system, as it allows them to act with impunity on the basis of a perceived cultural respect for authority and stability.¹¹⁷ As a number of cases demonstrate, culture can be maintained

¹¹¹ For example, 8(4) of the Cotonou Agreement, "The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance." *The Cotonou Agreement*, opened for signature 23 June 2000, art 8(4) (entered into force 1 April 2003).

¹¹² Sue Farran, 'Human Rights in the Pacific Region – Challenges and Solutions' (2005) 6 *Lawasia Journal* 39, 48.

¹¹³ P. Imrana Jalal, *Pacific Culture and Human Rights: Why Pacific Island Countries Should Ratify International Human Rights Treaties* (Pacific Rights Regional Resource Team, 2006) 12.

¹¹⁴ *Ibid.*

¹¹⁵ Ratu Joni Madraiwiwi, 'Keynote Address' (Speech delivered at the 11th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Suva, 31 July 2006).

¹¹⁶ P. Imrana Jalal, *Pacific Culture and Human Rights: Why Pacific Island Countries Should Ratify International Human Rights Treaties* (Pacific Rights Regional Resource Team, 2006) 13.

¹¹⁷ *Ibid.*, 12.

without derogating from universal human rights norms. In *Leituala v Mauga*¹¹⁸ the plaintiff and his family were banished from his village by the village council under the authority of the Village Fonofono Act which gave village councils the power to exercise authority in line with village custom. The court found for the plaintiff on the basis that the banishment conflicted with the plaintiff's constitutional right of freedom of movement and that the council denied him natural justice by not allowing him to be present or call witnesses when they made the decision to banish him.¹¹⁹ This decision demonstrates that customary authority such as that of village councils can be maintained despite the application of universal human rights norms. However, universal human rights operate in these situations to set the limits of authority and prevent arbitrary decision making which would otherwise impact upon civil liberties.

Institutions

The Fijian Human Rights Commission

3.5 National human rights commissions play a vital role in enforcing civil liberties and protecting human rights. To function effectively, national human rights commissions need to be independent of direct government control.¹²⁰ However, recent controversies surrounding the Fijian Human Rights Commission have thrown into question the Commission's ability to discharge its functions impartially and independently.

3.6 The creation of a national human rights commission was required by the 1997 Fijian Constitution. The role of the commission was to educate the public about human rights and make

¹¹⁸ *Leituala v Mauga* [2004] WSSC 9 (Unreported, Vaai J, 13 August 2004).

¹¹⁹ *Ibid.*

¹²⁰ Asia Pacific Forum of National Human Rights Institutions, *The Kandy Program of Action* (Workshop on National Institutions and Non-Governmental Organisations, 1999) [4.1].

recommendations to the government about matters affecting compliance with rights.¹²¹ In 1999, the Commission was established and its functions were broadened by the Human Rights Commission Act to include the discretion to investigate complaints initiated by members of the public¹²² and the creation of the position of a proceedings commissioner¹²³ with the power to initiate civil proceedings in the Fijian High Court following the result of either an investigation following a complaint or an own motion investigation.¹²⁴

3.7 The Principles Relating to the Status of National Institutions (the Paris Principles) are United Nations guidelines designed to ensure the effectiveness of national human rights institutions.¹²⁵ Broadly, they require that national institutions be given as broad a mandate as possible which is to be enshrined either by a nation's constitution or by statute,¹²⁶ that they are free to investigate any question which falls within their competence,¹²⁷ that members are appointed under an official act which specifies the length of their appointment¹²⁸ and that the organisation has adequate funding to ensure its independence and smooth operation.¹²⁹

3.8 Upon the Commission's establishment, various United Nations committees applauded the creation of the Commission and noted that it was established in accordance with the Paris Principles.¹³⁰ However, following the release of a report supporting the military coup of 2006 on 4 January 2007, the independence of the Commission was thrown into question.

¹²¹ *Constitution (Amendment Act) 1997* (Fiji) s 42.

¹²² *Human Rights Commission Act 1999* (Fiji) s 27.

¹²³ *Ibid* s 12.

¹²⁴ *Ibid* ss 35 and 36.

¹²⁵ *Resolution on National Institutes for the Promotion and Protection of Human Rights* GA Res 48/134, UN GA, 47th sess, 85th plen mtg, UN Doc A/Res/48/134 (1993) annex.

¹²⁶ *Ibid* pt 1 art 2.

¹²⁷ *Ibid* pt 3(a).

¹²⁸ *Ibid* pt 2 art 3.

¹²⁹ *Ibid* pt 2 art 2.

¹³⁰ Committee on the Elimination of Racial Discrimination, CERD/C/62/CO/3 (21 March 2003) para 9.

3.9 The Commission's report supported the restrictions on civil liberties in post coup Fiji on the basis that, 'freedoms were not... derogated from to the extent anticipated under a Chapter 14 State of Emergency-type (sic) situation'¹³¹ and using freedom of assembly as an example, the report noted that, 'people were denied a permit to march and to protest or express their dissent against the military but they were permitted to take part in a mardis gras and dance in the streets.'¹³² The report considered that the *coup-d'etat* may potentially be legal on the basis of a repealed provision of the 1990 Constitution allowing for the military to act in the interest of national security.¹³³ Additionally, the report considered the doctrine of necessity as formulated in *Prasad v The Republic of Fiji*,¹³⁴ a case ironically dealing with Commodore Josaia Voreqe Bainimarama's abrogation of the 1997 Constitution following the 2000 coup, a potential legal basis for the *coup-d'etat*¹³⁵. However, the majority judgement of *Prasad* states that the doctrine of necessity may only be used where a desperate situation threatens the health of the body politic and social fabric of the nation.¹³⁶ A group of lawyers responding to the Commission's report pointed out that prior to the *coup-d'etat* the democratically elected government was in control, the economy was functioning and the country was at peace. The only threat to the nation was the military itself, the instigators of the *coup-d'etat* and therefore, the doctrine of necessity was not applicable.¹³⁷

3.10 Following the report, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights withdrew the 'A-level' status of the Commission in March 2007.¹³⁸ Specifically, the committee found that the Commission's report on the *coup-d'etat*,

¹³¹ Shaista Shameem, *The Assumption of Executive Authority on December 5th 2006: Legal Constitutional and Human Rights Issues* (Fiji Human Rights Commission, 2007), 19.

¹³² Ibid.

¹³³ Ibid 6.

¹³⁴ *Prasad v Republic of Fiji* (Unreported, FJHC, Gates AHCT, 8 December 2000).

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Anonymous, 'A Legal Responsse to Shameem Report: Fiji Human Rights Commission Director's Report on the Assumption of Executive Authority by Commodore J V Bainimarama, Commander of the Republic of Fiji Military Forces' (2007) 1.

¹³⁸ ICC Sub-Committe on Accreditation, *Accreditation Report* (2007) International Coordinating Committee of

'validates the military government to the extent that the Sub-Committee considers that the ability of the Commission to implement its human rights mandate in an independent manner has been compromised.'¹³⁹ Following the loss of its 'A-level' status, the Commission continued to vociferously support the actions of the interim military government and used press statements to both threaten journalists¹⁴⁰ and declare tacit support of the censorship and questioning of prominent Fijian 'bloggers'.¹⁴¹

3.11 The lack of independence of the Fijian Human Rights Commission is a grave concern. As a partisan supporter of the interim Fijian government, the Fijian Human Rights Commission adds authority and credibility to the Fijian government's attacks on civil liberties and constitutionally guaranteed freedoms. For the Commission to be in a position where it can again help strengthen the enforcement of civil liberties in Fiji, it must regain its independence.

The Judiciary

3.12 Judges must be free from external influences which would influence their impartiality and objectivity. For this reason, guarantees of independence from the executive and legislature are vital for judges to discharge their duties¹⁴². However, while the Fijian judiciary had largely remained independent and impartial prior to the 2006 coup,¹⁴³ developments rapidly began to occur which compromised the judiciary's independence. In January 2007, Chief Justice of the High Court and Supreme Court, Daniel Fatiaki was suspended from office with full pay in anticipation of pending

National Institutions for the Promotion and Protection of Human Rights, 19th Session, Geneva.

¹³⁹ Ibid pt 4.2.

¹⁴⁰ Fiji Human Rights Commission, *Freedom and Independence of the Media in Fiji* (2007) 1 and 2.

¹⁴¹ Fiji Human Rights Commission, *Press Statement: Freedom of Expression – Blogs* (2007).

¹⁴² Michael J Kirby, 'Independence of the Legal Profession: Global and Regional Challenges' (2005) 26 *Australian Bar Review* 133.

¹⁴³ Anonymous, 'A Legal Resposse to Shameem Report: Fiji Human Rights Commission Director's Report on the Assumption of Executive Authority by Commodore J V Bainimarama, Commander of the Republic of Fiji Military Forces' (2007) 3.

charges of corruption.¹⁴⁴ Almost two years later however, in December 2008, a settlement was reached between Daniel Fatiaki and the interim government, with the government dropping his scheduled appearance before a special tribunal and making a payment of \$148,000 United States dollars to the former Chief Justice.¹⁴⁵ Following the Chief Justice's suspension, six Justices of the Court of Appeal jointly resigned in September 2007, citing unreasonable interference from the acting Chief Justice, Anthony Gates.¹⁴⁶

3.13 The length of time between the suspension of former Chief Justice Daniel Fatiaki and the date of the settlement, coupled with the size of his settlement bring into serious question the motives for and justification of his original suspension from office. During an interview with Radio National, interim Attorney General Aiyaz Sayed-Khaiyum, refused to say exactly why the former Chief Justice was receiving such a large settlement.¹⁴⁷

3.14 This perceived lack of independence of the Fijian judiciary, compounded with a new and disturbing precedent set by *re Application by the Attorney General of Fiji* of charging those responsible for questioning the judiciary's independence with contempt will only serve to concentrate power in the hands of the interim government and create a judicial system where judges can no longer be seen as impartial.

4. Conclusions

4.1 The Fijian Bill of Rights is a flawed document, with numerous exceptions and caveats that go

¹⁴⁴ Fiji Times, *Army Sends Top Judge on Leave* (2007) Fiji Times <<http://www.fijitimes.com/story.aspx?id=54557>> accessed on January 20 2009.

¹⁴⁵ Pacific Beat, *Fiji Chief Justice accepts payout, quits* (2008) Radio Australia <www.radioaustralia.net.au/programguide/stories/200812/s2441879.htm> accessed on January 20 2009.

¹⁴⁶ Bureau of Democracy, Human Rights and Labor, United States, *Country Reports on Human Rights Practices (Fiji) 2007* (2008).

¹⁴⁷ Pacific Beat, *Fiji Chief Justice accepts payout, quits* (2008) Radio Australia <www.radioaustralia.net.au/programguide/stories/200812/s2441879.htm> accessed on January 20 2009.

beyond the spirit and the letter of international human rights mechanisms such as the ICCPR. Despite the document's shortcomings however, prior to the 2006 coup judges applied these provisions broadly, and their limitations restrictively, and were willing to find for applicants, for example in *McCoskar v The State* . even where their judgement would be in conflict with cultural norms, 'public morality' and the will of the government. However, following the 2006 coup the independence of the judiciary has been thrown into question, and criminal charges have been levelled at the press in *re Application by the Attorney General of Fiji* for contempt of court.

4.2 The press faces similar difficulties to the judiciary with numerous threats and attacks made upon journalists following the coup, the Fijian government is now acting on the advice of a controversial report and drafting a Media Promulgation law which will remove the ability of the press to manage their profession independently.

4.3 The actions of the interim government in compromising key institutions such as the press, judiciary and Fijian Human Rights Commission have been methodical and deliberate. The restrictions placed by the interim government on free speech, free assembly and other civil liberties go far beyond the wide exemptions allowed by the Fijian Bill of Rights.

Bibliography

Books

Henry J. Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context* (3rd ed, 2008).

Sue Farran, *Human Rights in the South Pacific – Challenges and Changes* (1st ed 2009)

Jon Fraenkel and Stewart Firth (eds). *From Election to Coup in Fiji, the 2006 Coup and its Aftermath* (2006).

Cases

Aba v The State (Unreported, FJHC, Prakash AJ, 4 July 2001).

Leituala v Mauga [2004] WSSC 9 (Unreported, Vaai J, 13 August 2004).

McCoskar v The State (Unreported, FJHC, Winter J, 26 August 2005).

In re Application by the Attorney General of Fiji (Unreported, FJHC, Hickie J, 22 January 2009).

Prasad v Republic of Fiji (Unreported, FJHC, Gates AHCT, 8 December 2000).

Proceedings Commissioner, Fiji Human Rights Commission v Commissioner of Police (Unreported, FJCA, Ward P, Wood and McPherson JA, 24 November 2006).

Qarase v Bainimarama (Unreported, FJHC, Gates CJ, Byrne and Pathik JJ, 9 October 2008).

Yaya v Attorney General (Unreported, FJHC, Pathik J, 23 February 2007).

Journal Articles

Margot Salomon, 'Masking Inequality in the Name of Rights: The Examination of Fiji's State Report Under the International Convention on Racial Discrimination' (2003) 4(1) Asia Pacific Journal on Human Rights and the Law.

Michael J Kirby, 'Independence of the Legal Profession: Global and Regional Challenges' (2005) 26 Australian Bar Review 133.

Sue Farran, 'Human Rights in the Pacific Region – Challenges and Solutions' (2005) 6 Lawasia Journal 39, 45.

Legislation and Constitutions

Constitution (Amendment Act) 1997 (Fiji).

Constitution of the Democratic Republic of Timor-Leste.

Emergency Powers Act 1998 (Fiji).

Human Rights Commission Act 1999 (Fiji) s 27.

Public Emergency Regulations 2007 (Fiji).

Public Order Act 1969 s 8.

Sedition Act 1985 (Singapore).

Other

Anonymous, 'A Legal Response to Shameem Report: Fiji Human Rights Commission Director's

Report on the Assumption of Executive Authority by Commodore J V Bainimarama, Commander of the Republic of Fiji Military Forces' (2007) 1.

Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into Human Rights Mechanisms and the Asia-Pacific', Parliament of Australia, Canberra, 20 November 2008 (Regional Rights Resource Team).

Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into Human Rights Mechanisms and the Asia-Pacific', Parliament of Australia, Canberra, 20 November 2008 (Sydney Centre for International Law).

Reports & Press Releases

Bureau of Democracy, Human Rights and Labor, United States, *Country Reports on Human Rights Practices (Fiji) 2007* (2008).

David Robie, *Freedom of the Gatekeepers: A Free Media Study of NZ and Fiji – Self-regulation or State Intervention?* (Pacific Media Centre, 2008), 26.

Fiji Human Rights Commission, *Freedom and Independence of the Media in Fiji* (2007).

Fiji Human Rights Commission, *Press Statement: Freedom of Expression – Blogs* (2007).

J. M. Anthony, *Freedom and Independence of the Media: An Inquiry* (Fiji Human Rights Commission, 2007).

P. Imrana Jalal, *Pacific Culture and Human Rights: Why Pacific Island Countries Should Ratify International Human Rights Treaties* (Pacific Rights Regional Resource Team, 2006).

Shaista Shameem, *The Assumption of Executive Authority on December 5th 2006: Legal Constitutional and Human Rights Issues* (Fiji Human Rights Commission, 2007), 18.

Speeches

Commodore Josaia Voreqe Bainimarama, 'Prime Minister's Statement at the United Nations' (Speech delivered at the United Nations, 63rd General Assembly, New York, 26 September 2008).

Major Neumi Leweni, 'Address at the 10th Attorney General's Conference' (speech delivered at the 10th Attorney General's Conference, Yanuca Island, Sigatoka, 29 November 2008).

Ratu Joni Madraiwiwi, 'Keynote Address' (Speech delivered at the 11th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Suva, 31 July 2006).

UN Treaties and Other International Documents

Committee on the Elimination of Racial Discrimination, CERD/C/62/CO/3 (21 March 2003).

Committee on the Elimination of Racial Discrimination, Summary Record of CERD 1165 Meeting CERD/C/SR.1165 (9 August 1996).

ICC Sub-Committee on Accreditation, *Accreditation Report* (2007) International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 19th Session, Geneva.

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 1057 UNTS 407, art 19(3) (entered into force 23 March 1976).

International Convention on the Elimination of all Forms of Racial Discrimination, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

The Cotonou Agreement, opened for signature 23 June 2000, art 8(4) (entered into force 1 April 2003).

Resolution on National Institutes for the Promotion and Protection of Human Rights GA Res 48/134, UN GA, 47th sess, 85th plen mtg, UN Doc A/Res/48/134 (1993) annex.

Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights, UN Doc A/CONF.157/23 (1993) pt 1 art 5.

Websites

Angus Hohenboken, *Fiji Times was Doing its Job: Deported Published Rex Gardner*, The Australian (2009) <http://www.theaustralian.news.com.au/story/0,,24970273-7582,00.html?from=public_rss> accessed on 1 February 2009.

Australian Foreign Minister's Office, *Deportation of Evan Hannah from Fiji* (2008) Australian Foreign Minister's Office <www.foreignminister.gov.au/releases/2008/fa-s066_08.html> accessed January 12 2009.

Commodore Josaia Voreqe Bainimarama, *Statement by PM Bainimarama on the Public Emergency Regulation* (2007) <http://www.fiji.gov.fj/publish/printer_9993.shtml> at 14 December 2008.

One National News, *NFP denied permit for Sunday meeting* (2007) Fiji TV <<http://www.fijitv.com.fj/index.cfm?si=main.resources&cmd=forumview&cbegin=-4026&uid=newsnational&cid=4040>> accessed on 12 January 2009.

Fiji Times, *Army Sends Top Judge on Leave* (2007) Fiji Times <<http://www.fijitimes.com/story.aspx?id=54557>> accessed on January 20 2009.

Fiji Times, *Blogs Drop off the Web* (2007) Fiji Times <<http://www.fijitimes.com/story.aspx?id=62827>> accessed on January 12 2009.

IFJ Asia Pacific, *Alarm Bells Ring for Media Freedom in Fiji* (2008) IFJ Asia Pacific <asiapacific.ifj.org/en/articles/alarm-sounds-again-for-media-freedom-in-fiji> accessed January 13 2009.

Pacific Beat, *Fiji Chief Justice accepts payout, quits* (2008) Radio Australia <www.radioaustralia.net.au/programguide/stories/200812/s2441879.htm> accessed on January 20 2009.

Pacific Regional Office *OHCHR Programme for Asia-Pacific*, Office of the High Commissioner for Human Rights <<http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/PacificSummary0809.aspx>> at 4 January 2009.

Shailendra Singh, *Fiji's Resilient Media Again Face Government Censure* (2008) Pacific Islands Report <<http://archives.pireport.org/archive/2008/August/08-05-com.htm>> accessed January 20 2009.

The Fiji Times, *Emergency Decree Under Review* (2007) The Fiji Times <<http://www.fijitimes.com/story.aspx?ref=archive&id=59735>> accessed on December 14 2008.

The Government of Fiji, *Government to Formulate Media Legislation*, The Government of Fiji <http://www.fiji.gov.fj/publish/page_12360.shtml> accessed January 12 2009.

The Government of Fiji, *News Briefs* (2007) The Government of Fiji <http://www.fiji.gov.fj/publish/page_9099.shtml> at 14 December 2008.

The Government of Fiji, *News Briefs* (2007) The Government of Fiji <http://www.fiji.gov.fj/publish/page_10269.shtml> at 14 December 2008.

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