

FIJI 2013 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Fiji is a republic that has been under a military-led government since armed forces commander Commodore Josaia Voreqe (Frank) Bainimarama overthrew the elected government in a bloodless coup in 2006. In 2009 the interim government headed by Prime Minister Bainimarama abrogated the existing constitution, imposed a state of emergency, and continued its rule by decree, a situation that continued at year's end. During the year the country had no parliament. On September 6, the government promulgated a new constitution. Military authorities controlled the security services. Security forces reportedly committed human rights abuses.

The leading human rights problems included the government's continued denial of citizens' right to change their government peacefully; government harassment and intimidation of the media, resulting in self-censorship; and government targeting of political opponents and human rights and labor activists for harassment, including through restrictions on political meetings and protests, and, in some cases, for prosecution.

The Public Order Act Amendment Decree (POAD) restricts freedoms of speech, assembly, and movement. The POAD, media decree, and other decrees promulgated since the 2006 coup remained in force under the new constitution. Freedom of the press remained restricted, although some criticisms of the government were printed, and the print and broadcast media began to cover opposition views and activities with less self-censorship. Other human rights problems included cases of police and military abuse of persons in custody; poor prison conditions; interference with judicial independence; government corruption; violence and discrimination against women; sexual exploitation of children; deep ethnic divisions; and restrictions on trade union and collective bargaining rights.

The ability of security services to act with relative impunity was a problem. The government took no steps to prosecute and punish police and military officials accused of assaulting persons in custody.

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

a. Arbitrary or Unlawful Deprivation of Life

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

b. Disappearance

There were no reports of politically motivated disappearances.

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

The new constitution and the crimes decree prohibit torture, forced medical treatment, and degrading treatment or punishment. The POAD, however, authorizes the government to use whatever force is deemed necessary to enforce public order. There were no reports of the military detaining and abusing government critics, but there were some reports of military and police abuse of persons in custody. For example, in March video footage of the November 2012 beating by security forces of an escaped prisoner, Iowane Benedito, and an accomplice, was posted on the internet. Apparently as a result of the video's release, the government fired three prison officers, but as of year's end, authorities had not charged any police or prison personnel in the case despite the perpetrators' faces being clearly identified in the video. The prime minister stated publicly that he stood by the security forces, and the investigation into the incident was inconclusive. Other investigations into similar cases involving security forces during the year were also inconclusive.

There were no further developments with regard to a complaint that union leader Felix Anthony claimed he lodged with police in the summer of 2012 against Prime Minister Bainimarama alleging that in 2011 Bainimarama ordered and was present at Anthony's unlawful detention and assault by Bainimarama's personal security officer, Major Aseri Rokoura, and other military personnel. As in 2012, police declined to confirm or deny receipt of the complaint or to comment on Anthony's allegations.

Prison and Detention Center Conditions

Prison conditions were harsh and did not meet international standards. The national prison system was seriously underfunded and overcrowded, with deteriorating infrastructure and complaints about delivery of essential services. The government permitted prison monitoring visits by independent human rights observers.

Physical Conditions: As in previous years, the number of inmates in the country's prisons continued to exceed the intended capacity of 1,361 in the 12 prisons run by the Fiji Corrections Service. In September the total prison population, including pretrial detainees, was approximately 1,530, including 57 women and one juvenile. The system was intended to hold up to 247 pretrial detainees but held 344 as of September, including eight women. In July the government opened a new pretrial detention center at Suva's Korovou Prison. The new center has a capacity of 200 inmates and as of September held 145 detainees. In general, pretrial detainees and convicted prisoners were separated at shared facilities, although in some cases they were held together.

Prisoners had access to potable water, but the system had insufficient beds, inadequate sanitation, and a shortage of basic necessities. There were no reports of inmate deaths during the year attributable to poor prison conditions.

Administration: Recordkeeping on prisoners was adequate. There were no alternatives to prison sentences for nonviolent offenders, but the Corrections Service arranged outside job placements for inmates with less than a year of their sentence remaining to ease their return to society. The department also used compulsory supervision orders, under which inmates with less than a year to serve could be released into the community to serve at a local church or other community center.

The new constitution and the law authorize the Office of Accountability and Transparency (formerly known as the Ombudsman's Office) to investigate maladministration in government departments, but decreases in staffing and budget levels for the office since 2009 greatly reduced its capacity to carry out its statutory duties, including investigating allegations of prisoner abuse or neglect, overcrowding, and recordkeeping problems.

Prisoners may submit complaints to the Fiji Human Rights and Anti-Discrimination Commission (FHRADC, formerly the Fiji Human Rights Commission), and during the year it investigated a few such complaints. The commission has operated with neither a chairperson nor commissioners since the previous constitution was abrogated in 2009, inhibiting its independence and effectiveness. Prisoners may also lodge complaints with the corrections service and with visiting judges and magistrates when they inspect prisons.

Prisoners and detainees had access to visitors, including family members, telephone calls, and religious observance. The law allows prisoners to submit complaints to judicial authorities, but the government reviews all prisoner letters and, in most cases, has the authority to seize them. The law prohibits the authorities from reviewing, censoring, or seizing prisoner letters to the FHRADC, but in practice the authorities routinely reviewed such letters. Authorities did not investigate or document in a publicly accessible manner credible allegations of inhumane conditions.

Independent Monitoring: During the year the International Committee of the Red Cross (ICRC) visited official detention facilities and interviewed inmates; prison authorities permitted such visits without third parties present.

Improvements: Various programs initiated in 2010 to build skills and generate income for prison inmates were augmented or continued during the year, including programs promoting prisoner rehabilitation and community reintegration. The newly opened pretrial detention center at Korovou Prison helped alleviate overcrowding in remand facilities in Suva. The center had a CCTV camera system, a courtroom, an infirmary, and a recreation area.

d. Arbitrary Arrest or Detention

The new constitution provides for protection against arbitrary arrest or detention. Procedures for lawful arrest are detailed in the Criminal Procedure Decree. The POAD authorizes security forces to detain a person for up to 16 days before bringing charges; the minister of defense must authorize detention without charge exceeding 48 hours. The government has not conducted any credible investigations of unlawful detentions by the security forces since the 2006 coup, but activists reported a reduction of such incidents after the government lifted Public Emergency Regulations (PER) in January 2012.

Role of the Police and Security Apparatus

The Ministry of Defense oversees both the Fiji Police Force and the Republic of Fiji Military Force (RFMF). The police force is responsible for law enforcement and the maintenance of internal security. The RFMF is responsible for external security. Under the POAD, soldiers also are authorized to perform the duties and functions of police and prison officers in specific circumstances.

The police Ethical Standards Unit is responsible for investigating complaints of police misconduct. According to police, most complaints related to the criminal investigation process. The government suspended and brought corruption charges against seven senior officers in 2012; their cases remained pending at year's end. Several other officers either were suspended or removed from the force for misconduct during the year. The Fiji Independent Commission against Corruption (FICAC) also continued to investigate public agencies and officials, including some members of the police and military forces. Impunity and corruption remained problems, however. The constitution and POAD provide immunity from prosecution for members of the security forces for any deaths or injuries arising from the use of force deemed necessary to enforce public order. The government did not investigate credible charges of security force abuse of government opponents or punish the alleged perpetrators (see section 1.c.).

The new constitution provides extensive and irrevocable immunity for the president, members of the cabinet, and security forces for actions taken relating to the 2006 coup, the 2009 abrogation of the 1997 constitution, and the suppression of a mutiny at military headquarters in 2000.

Arrest Procedures and Treatment of Detainees

The constitution provides that detained persons be charged and produced in court within 48 hours of arrest or as soon as practicable thereafter. Police officers may arrest persons without a warrant for violations of the crimes decree. Police also arrest persons in response to warrants issued by magistrates and judges. Police may detain persons under the POAD for a maximum of 16 days; at that point persons must be charged or released. There is no legal requirement that persons detained under provisions of the POAD be produced in court for judicial review of the grounds for their detention, unless they are charged with an offense. The POAD prohibits any court, tribunal, or other body from reviewing a detention under POAD provisions.

The bail act gives accused persons the right to bail, unless it is "not in the interests of justice" that bail be granted. Under the act, both police and the courts can grant bail. There is a presumption in favor of granting bail, although this may be rebutted by the prosecution if it objects to bail and in cases where the accused is appealing a conviction or has previously breached bail conditions. Despite these provisions, a 2011 government directive to the magistrates' courts advised against granting bail for indictable offenses and stated that bail applications for such offenses would be handled only by the High Court. The directive requires accused

persons to demonstrate why they should be granted bail, in effect negating the bail act's presumption in favor of granting bail. Police retained authority to grant bail for nonindictable offenses but during the year refused to grant it to persons charged with drunk driving. Bail must be applied for by motion and affidavit that required the services of a lawyer.

Authorities generally allowed detainees prompt access to counsel and family members. The Legal Aid Commission provided counsel to some indigent defendants in criminal cases, a service supplemented by voluntary services from private attorneys. There were delays in the provision of legal aid to some accused persons due to lack of adequate legal aid staff and resources.

Pretrial Detention: During the year the number of pretrial detainees remained high because of a continuing pattern of refusal of bail by the courts. As of September pretrial detainees constituted approximately 25 percent of the prison population, compared with 27 percent in the previous year. A shortage of prosecutors and judges contributed to slow processing of cases. As a result, some defendants faced lengthy pretrial detention.

e. Denial of Fair Public Trial

The new constitution provides for an independent judiciary subject only to the constitution and law but gives the president, prime minister, and attorney general control over the appointment and removal of the chief justice and other members of the judiciary. Political parties and nongovernmental organizations (NGOs) complained that this is an interference with judicial independence in practice despite the constitutional provision on judicial independence. Additionally, the constitution and various decrees provide for numerous restrictions on the jurisdiction of the courts. During the year the government interfered with judicial independence.

The constitution prohibits all tiers of the judiciary from considering cases relating to: the 2006 coup; all acts of the interim government between December 4, 2006, and April 9, 2009; the abrogation of the previous constitution in 2009; and all government decrees since December 2006. This immunity remains in force until the first sitting of a new parliament under the new constitution. An amended decree also removed the courts' jurisdiction to hear challenges to government decisions on judicial restructuring, terms and conditions of remuneration for the judiciary, and terminated court cases. Various other decrees contain similar

clauses limiting the jurisdiction of the courts on decisions made by the cabinet, ministers, or government departments.

There were allegations of politically motivated prosecutions of government critics, including opposition politicians and labor leaders.

The chief registrar continued to prosecute lawyers for disciplinary breaches. NGOs criticized these additional duties as infringing on the independence of the judiciary. The constitution empowers the president, following consultations with the attorney general and the prime minister, to appoint or remove from office the chief justice and the president of the Court of Appeal. The president also appoints or removes from office the judges of the Supreme Court, justices of appeal, and judges of the High Court on the recommendation of the Judicial Service Commission (JSC). The JSC, following consultations with the attorney general, may appoint magistrates, masters of the High Court, the chief registrar, and other judicial officers. There was a pattern of nonrenewal of contracts for judges and magistrates, many of whom were foreigners limited to three-year contracts. The president, acting in consultation with the attorney general, did not renew the contract of President of the Court of Appeal William Marshall upon its expiration in 2012. Before he left the country, Marshall filed a lawsuit against the attorney general alleging interference with the judiciary. Contrary to normal court procedure, the case was not listed before a judge, although Marshall's affidavit was filed in court by the NGO Citizens Constitutional Forum (CCF). The matter remained pending at year's end.

The government continued to prohibit an International Bar Association delegation from visiting the country to evaluate judicial independence and reiterated its refusal to allow a visit by the UN special rapporteur on the independence of judges and lawyers. The government rejected a report by the United Kingdom Law Society alleging government interference with the judiciary. The government invited one researcher from the society to return to Fiji but refused to allow a full team from the society into the country. On May 3, a court convicted the CCF and its director, Akuila Yabaki, of contempt of court for publishing an excerpt of the society's report – freely available on the internet – in the CCF's newsletter. On August 10, the court sentenced Yabaki to pay a fine of 2,000 Fijian dollars (F\$) (\$1,099) or serve three months in jail; the jail term was suspended for 12 months. The court also ordered the CCF to pay a fine of F\$20,000 (\$10,989), F\$6,000 (\$3,297) in costs to the government, and to publish an apology to the judiciary in the next CCF newsletter. An appeal of the convictions by Yabaki and the CCF was pending at year's end.

Trial Procedures

In most cases defendants have the right to a public trial, and the court system generally enforced this right during the year. The chief magistrate's 2011 ruling that the trial of five men charged with sedition for an antigovernment graffiti campaign would be held in closed court on grounds of national security remained in force, however. In August, following an application by the defendants, the court ruled to stay the case indefinitely.

The crimes decree defines which offenses may be tried in the magistrates' courts and which must be tried in the High Court. Most cases were heard in the magistrates' courts. Serious offenses, including murder, rape, trafficking in persons, bribery, treason, sedition, and mutiny, can be heard only in the High Court. Trials in the High Court provide for the presence of assessors, typically three, who are similar to jurors but only advise the presiding judge, who may overrule their findings at the end of the trial. Defendants enjoy a presumption of innocence and may not be compelled to testify or confess guilt. They may present witnesses and evidence on their own behalf, confront witnesses against them, and access government-held evidence relevant to their cases. Defendants have the right to be informed promptly and in detail of the charges against them, with free interpretation if necessary. They are also accorded adequate time and facilities to prepare a defense. In most cases defendants have the right to counsel, but many are unaware of their rights when detained or interviewed and therefore often do not ask for legal counsel. The Legal Aid Commission, supplemented by voluntary services of private attorneys, provided free counsel to some indigent defendants in criminal cases. The right of appeal exists but often was hampered by delays in the process. These rights are extended to all citizens without discrimination.

Political Prisoners and Detainees

In 2012 Amnesty International stated its concern that the August 2012 conviction of former prime minister and government critic Laisenia Qarase for alleged corruption in 1991, and his one-year prison sentence, were politically motivated, and that he may have been imprisoned solely for his political beliefs. In April authorities released Qarase after he served seven months of his sentence. In June the government dropped an additional abuse of office charge pending against Qarase. There were no other allegations or reports of political prisoners.

There were no reports of long-term political detainees. Police detained for short periods and questioned a number of persons critical of the government. In August 2012, on the day that Qarase was sentenced for corruption, police detained Mere Samisoni, a businesswoman and Soqosoqo Duavata ni Lewenivanua (SDL) party politician, after police saw her driving in front of a FICAC vehicle that was transporting FICAC officials to court for the sentencing. Police questioned her for allegedly threatening the FICAC officials and charged her with dangerous driving. The case was pending at year's end, and Samisoni remained compelled to abide by strict bail conditions.

Civil Judicial Procedures and Remedies

Although the new constitution provides for an independent and impartial judiciary in civil matters, it prohibits the judiciary from considering lawsuits relating to the 2006 coup, subsequent actions by the interim government, the 2009 abrogation of the 1997 constitution, and subsequent military decrees. In the event of a human rights violation, an individual may complain to the FHRADC, but the FHRADC is prohibited from investigating cases filed by individuals and organizations relating to the 2006 coup and the 2009 abrogation of the previous constitution.

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

The POAD permits military personnel to search persons and premises without a warrant from a court and to take photographs, fingerprints, and measurements of any person. Police and military officers also may enter private premises to break up any meeting considered unlawful, and police did so during the year.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The new constitution provides for freedom of expression, speech, thought, opinion, and publication, but grants the government authority to restrict these rights for a broad array of reasons. These include preventing hate speech and insurrection; maintaining national security, public order, public safety, public morality, public health, and the orderly conduct of elections; protecting the reputation, privacy, dignity, and rights of other persons; and enforcing media standards and regulating the conduct of media organizations. Additionally, the POAD gives the government power to detain persons on suspicion of "endangering public safety" and to "preserve the peace," and the media decree prohibits "irresponsible reporting" and

provides for government censorship of the media. The government used the threat of prosecution under these provisions to intimidate its critics and impede public criticism.

Freedom of Speech: The crimes decree includes criticism of the government in its definition of the crime of sedition. This includes statements made in other countries by any person, who can be prosecuted on return to Fiji. The POAD extends the jurisdiction of the public order act outside the country and defines as terrorism any act designed to advance a political, religious, or ideological cause that could “reasonably be regarded” as intended to compel a government to do or refrain from doing any act or to intimidate the public or a section thereof. It also makes religious vilification and attempts to sabotage or undermine the economy offenses punishable by a maximum F\$10,000 (\$5,495) fine or five years’ imprisonment. During the year police monitored public and private meetings of NGO, labor, and political groups (see section 2.b.).

Press Freedoms: Independent media could not operate freely under the media decree. The attorney general continued to prosecute media organizations for contempt of court if they reported any discussion questioning judicial independence. In 2012 the attorney general charged the *Fiji Times* newspaper and international soccer official Tai Nicholas with contempt after the *Times* republished an article, originally published in New Zealand, in which Nicholas ostensibly questioned the independence of the Fiji courts. Both the newspaper and Nicholas pled guilty. In February the High Court fined the *Times* F\$300,000 (\$164,835) and former publisher Brian O’Flaherty F\$10,000 (\$5,495). The court also sentenced the editor in chief, Fred Wesley, to six months’ imprisonment, suspended for two years. Additionally, the newspaper, O’Flaherty, and Wesley were ordered to pay F\$2,000 (\$1,099) each in court costs to the attorney general. The court fined Nicholas F\$15,000 (\$8,242) and ordered him to pay costs of F\$3,500 (\$1,923) to the attorney general. The court further ordered the *Times* and Wesley, and, separately, Nicholas, to draft an apology directed to the country’s judiciary and submit it to the court for approval prior to being published in the *Times* within 28 days.

After previously withdrawing all advertising from the *Fiji Times*, the government published fortnightly supplements and all its advertisements in the *Fiji Sun* newspaper, which was generally progovernment. Fiji TV, whose station Fiji One broadcasts the most-watched television news program, is 51 percent owned by a company whose board is appointed by the minister for indigenous affairs (a position held by Prime Minister Bainimarama during the year) on behalf of the

provincial councils; the remainder is privately held. In March Yasana Holdings Limited, the company that owned 51 percent of Fiji TV, was dissolved and the shares transferred to another government-controlled company, Fijian Holdings Limited (FHL). In August FHL appointed a new chief executive officer (CEO) of Fiji TV and transferred a number of Fiji TV's management officials, ostensibly to reduce the independence of the station's news team to make it more favorable to the government. The government wholly owns the Fiji Broadcasting Corporation, which operates six radio stations and a television station.

Violence and Harassment: During the year some journalists reported they were given verbal warnings by authorities not to publish articles critical of the government. In June authorities forced the Fiji TV sports editor to resign after criticizing Prime Minister Bainimarama's daughter, the CEO of the Fiji Sports Council, a government-controlled statutory body, during a broadcast.

Censorship or Content Restrictions: The media decree contains a provision authorizing the Ministry of Information to censor all news stories before broadcast or publication. Although the government ceased formal media censorship under the decree in 2012, journalists and media organizations continued to practice varying degrees of self-censorship, with many reportedly fearing retribution if they criticized the government. Media continued to refuse to publish opinion articles by anti-government academics and commentators.

Under the media decree, the directors and 90 percent of the shareholders of locally based media must be citizens of, and permanently resident in, the country. The Fiji Media Industry Development Authority is responsible for enforcing these provisions. The authority has the power to investigate journalists and media outlets for alleged violations of the decree, including powers of search and seizure of equipment. The decree established a media tribunal to decide complaints referred by the authority, with the power to impose jail terms of up to two years and fines of up to F\$1,000 (\$549) for journalists, F\$25,000 (\$13,736) for publishers and editors, and F\$100,000 (\$54,945) for media organizations. The tribunal, which consists of a single judge, is not bound by formal rules of evidence. The decree strips the judiciary of power to review the decree itself or any proceedings or findings of the Media Authority, the tribunal, or the information minister. As of year's end, one case had been brought before the tribunal but the outcome remained pending. In May, however, the magistrate's court in Suva ruled that the Fiji Times Limited newspaper company failed to ensure that all its directors were citizens permanently residing in Fiji during 2012 and fined the company F\$5,000 (\$2,747) for breach of the media decree.

The code of ethics contained in the media decree requires that all stories run by the media be balanced, with comments obtained from both sides where there is any disagreement on the facts. This requirement enabled government departments and private businesses to prevent stories from being published by not responding to media questions, thus making it impossible for the media to fulfill the decree's requirement for comments from both sides. Media sources reported that if the story was positive toward the government, the balance requirement could be ignored without consequence.

The television amendment decree requires television licensees to operate in conformance with the media decree's code of ethics. Fiji TV's 12-year broadcasting license expired in 2012 and was renewed three times for only six months on each renewal after reports of a rift with the government regarding Fiji TV's news content.

Libel Laws/National Security: The new constitution includes national security and the need to protect the reputation of persons as allowable limitations to freedom of expression. The fear of prosecution for contempt of court or under provisions of the media decree and the POAD was sufficient deterrent to the Fijian media to practice self-censorship.

Internet Freedom

There were no government restrictions on general public access to the internet, but evidence suggested that the government monitored private e-mails of citizens. The government monitored internet traffic in an attempt to control anti-government reports by anonymous bloggers. In September local government authorities issued codes of conduct for operators of public internet cafes instructing them to block content that is pornographic, critical of the government, or likely to incite dissatisfaction with the government. In 2012 police investigated former University of the South Pacific (USP) professor Wadan Narsey, a prominent Fijian economist and long-time critic of the military government, for alleged sedition in writings published on his personal blog. The case remained pending at year's end.

By decree all telephone and internet service users must register their personal details with telephone and internet providers, including their name, birth date, home address, left thumbprint, and photographic identification. The decree imposes fines of up to F\$100,000 (\$56,721) on providers who continue to provide services to unregistered users and up to F\$10,000 (\$5,672) on users who do not

update their registration information as required. Vodafone, one of two mobile telephone providers, also required users to register their nationality, postal address, employment details, and both thumbprints.

The internet was widely available and used in and around urban centers, but its availability and use were minimal or nonexistent outside urban areas. According to the International Telecommunication Union, approximately 34 percent of the population used the internet in 2012.

Academic Freedom and Cultural Events

The constitution provides for academic freedom, although government work permit stipulations prohibit foreigners from participating in domestic politics. Contract regulations of the USP effectively restrict most university employees from running for or holding public office or holding an official position with any political party. Persons entering the country on tourist visas wishing to conduct research must notify and seek permission of the government. The government sometimes interfered with academic freedom. In 2012 university officials removed USP School of Journalism acting head Marc Edge, who maintained a personal blog often critical of the government and progovernment commentators and blogs. USP subsequently terminated his contract, and the government instructed him to leave the country.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The constitution provides for freedom of assembly but allows the government to limit this right in the interests of national security, public safety, public order, public morality, public health, and the orderly conduct of elections. The constitution also allows the government to limit freedom of assembly to protect the rights of others and to impose restrictions on public officials. The government continued to interfere with this right.

The POAD allows the government to refuse permit applications for any meeting or march deemed to prejudice peace, public safety, and good order or to sabotage or attempt to undermine the economy. It also allows authorities to use whatever force is deemed necessary to prohibit or disperse public and private meetings after “due warning” in order to preserve public order. On September 6, police broke up a peaceful gathering of the United Front for a Democratic Fiji (UFDF), a loose

coalition of three of the four registered political parties. The purpose of the gathering was to protest the new constitution and present a resolution condemning it (see section 3).

After refusing to do so between 2009 and 2011, for the second consecutive year the government granted a permit to the Methodist Church, which historically has been associated with indigenous Fijian nationalism, to hold its annual conference and for its 52 divisions to hold their quarterly meetings. The 2013 annual conference took place in August, but the government refused to allow it to continue beyond 40 hours during a four-day period and did not grant an extension requested by the church.

Freedom of Association

The constitution provides for freedom of association but limits this right in the interests of national security, public order, and morality, and for the orderly conduct of elections. It also allows the government to regulate trade unions and collective bargaining processes, strikes and lockouts, and essential industries in the interests of the economy and people of Fiji. The Employment Relations Promulgation (ERP) provides for the right of workers to join trade unions, but during the year the government restricted some individuals from joining unions under the Essential National Industries Decree (ENID) (see section 7). The government generally did not restrict membership in other NGOs, professional associations, and other private organizations.

c. Freedom of Religion

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

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

Under the POAD the government may restrict freedom of internal movement, foreign travel, emigration, and repatriation, and the government sometimes restricted or denied the right to foreign travel.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection

and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

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

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

Exile: The law does not provide for forced exile, and the government did not practice it. There have been several cases of self-imposed exile, however, in which government critics left the country because of government harassment or intimidation.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. There were several requests for asylum and refugee status during the year, and the government worked with the UNHCR to resettle several refugees to other countries.

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

The country continued to be ruled by a military-dominated government following the 2006 military overthrow of the popularly elected government, and at year's end parliament remained suspended and the government continued to rule by decree. Josaia Voreqe Bainimarama, the RFMF commander and leader of the coup, remained prime minister.

In 2012 the government authorized creation of a commission to develop a new constitution. The commission held public hearings, received written submissions, and produced a draft constitution that required a caretaker government to take the country to elections, provided for conditional immunity for perpetrators who confessed their part in the coup and assaults on citizens, and introduced a peoples'

assembly to choose the president. The government rejected the draft constitution in late 2012.

In March the government published its own draft constitution and undertook its own public consultation process on that draft. On August 22, the government published a revised draft along with translations in Hindi and the iTaukei vernacular. On September 6, the president signed the constitution decree, bringing the new constitution into force.

The new constitution requires that elections be held no later than September 30, 2014.

Elections and Political Participation

Recent Elections: The most recent elections, held in 2006, were judged generally free and fair. After the elections the governing SDL party established a multiparty cabinet together with the Fiji Labour Party (FLP), the second-largest party in parliament, as required by the 1997 constitution. This government was removed by the RFMF under Bainimarama's leadership during the 2006 coup.

In 2012 the government began an electronic voter registration process, and by September had registered and issued voter identification cards to approximately 550,000 of an estimated 600,000 eligible voters.

Political Parties: The new constitution guarantees the political right to form and join political parties, to campaign for political parties or a cause, to be registered as a voter, to vote by secret ballot in elections or referendums, to run for public office, and to hold that office. These rights may be limited, however, to allow parliament to prescribe eligibility requirements for voters, candidates, political party officials, and holders of public office.

Under the POAD permits are required for political meetings in both public and private venues. The police did not stop a meeting held without a permit by the UFDF on September 5; however, they did stop a subsequent UFDF gathering on September 6. Police detained for 90 minutes, questioned, and released without charge 14 UFDF supporters holding placards supporting the 2012 constitution commission's draft constitution and rejecting the new government constitution.

In January the government published the Political Parties Registration Decree (PPD). The PPD canceled the registration of all 20 registered political parties on

February 14 and required that parties submit applications, including 5,000 member signatures, for registration by February 30. Only three of the 20 existing parties and one newly formed party were able to comply with these requirements and register successfully. Three of the four registered parties complied with a subsequent requirement to pay for the publication of their assets and those of their members. The FLP objected and was temporarily suspended until it made the payment.

Participation of Women and Minorities: There was one woman in the 12-member cabinet. Indigenous women played important roles in the traditional system of chiefs, and some became chiefs in their own right. Some women were active leaders of opposition parties, but cultural beliefs concerning women's place in society restricted participation of most indigenous women in political life.

There were two Indo-Fijian ministers in the cabinet and no other minority ministers. Indo-Fijians, who accounted for 36 percent of the population, continued to be underrepresented at senior levels of the civil service and greatly so in the military. Indo-Fijians comprised approximately 35 percent of the civil service overall and approximately one-third of the police force, but the military and prison services were estimated to be more than 95 percent indigenous Fijian.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials often engaged in corrupt practices with impunity.

Corruption: Measures by the government during the year to combat corruption within the bureaucracy, including FICAC public service announcements encouraging citizens to report corrupt government activities, had some effect on systemic corruption. Nonetheless, much government decision making was not transparent due to a self-censoring media, the absence of parliamentary oversight and other checks and balances, and civil servants under threat of criminal prosecution for disclosing government information without permission. The media published articles on FICAC investigations on abuse of office, and anonymous blogs reported on some government corruption. Since 2008, in the absence of a sitting parliament, the auditor general has submitted audit reports to the cabinet. The cabinet referred such reports to the Public Accounts Committee for review, but they were not made public.

Whistleblower Protection: The law does not provide protection to public and private employees for making internal disclosures or lawful public disclosures of evidence of illegality. The FICAC decree makes it an offense for public servants to make unauthorized disclosures of government information.

Financial Disclosure: There are no laws requiring income and asset disclosure by appointed or elected officials. FICAC, which is headed by a military officer who reports directly to the attorney general, is the primary body responsible for combating and prosecuting government corruption. FICAC was adequately resourced, but some observers questioned its independence and viewed some of its high-profile prosecutions as politically motivated.

Public Access to Information: The new constitution provides for public access to government information and for the correction or deletion of false or misleading information that affects each person. The constitution requires that a freedom of information law be enacted but does not specify a deadline for parliament to pass such a law. The government frequently was unresponsive to public requests for information.

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

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

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

NGOs were constrained in their operations by the crimes decree, which includes criticism of the government in its definition of sedition; the POAD, which contains a broad prohibition on speech that could damage the economy; and the media decree, which authorizes the government to vet all publications (see section 2.a.).

Prime Minister Bainimarama and senior military officers criticized NGOs in national media for reports commenting on human rights abuses, media freedom,

and immunity for government officials, as well as for expressing concerns about the constitutional reform process.

UN and Other International Bodies: The ICRC continued to operate in the country. A number of UN organizations concerned with human rights had regional offices in the country and sought to address reports of human rights abuses. The country remained suspended from the Commonwealth of Nations and the major regional organization Pacific Islands Forum (PIF), in response to Bainimarama's failure to address expectations "to return Fiji to democratic governance in an acceptable time frame," in addition to other concerns, including human rights violations, expressed in statements by the PIF and the Commonwealth. The government refused to invite the UN rapporteur on the independence of judges and lawyers to the country despite requests from that official.

Government Human Rights Bodies: Although the Fiji Human Rights Commission (FHRC) was re-established by decree after the abrogation of the constitution, it was not authorized to investigate complaints against the abrogation, other actions of the government, or the 2006 coup. It did not enjoy a high level of independence, effectiveness, or resources.

The new constitution establishes the FHRADC as the successor to the FHRC, but, like its predecessor, the FHRADC is prohibited from investigating cases filed by individuals and organizations relating to the 2006 coup and the 2009 abrogation of the previous constitution.

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

The new constitution prohibits discrimination based on race, culture, ethnic or social origin, color, place of origin, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status, or pregnancy. The government generally enforced these provisions effectively, although there were problems in some areas.

Women

Rape and Domestic Violence: Rape, domestic abuse, incest, and indecent assault were significant problems. The law provides for a maximum punishment of life imprisonment for rape, an indictable offense which can be tried only in the High Court. The law recognizes spousal rape as a specific offense. The NGOs Fiji

Women's Rights Movement and Fiji Women's Crisis Center pressed for more consistent and severe punishment for rape.

The domestic violence decree identifies domestic violence as a specific offense. Police claimed to practice a "no-drop" policy, under which they pursued investigations of domestic violence cases even if a victim later withdrew her accusation. Women's organizations reported that police were not always consistent in their observance of this policy. The decree gives police authority to apply to a magistrate for restraining orders in domestic violence cases, but police often told the victims to apply for such orders themselves. Police officers were not always aware they had the power to apply on the victim's behalf. As a result, complainants sometimes were obliged to seek legal assistance from a lawyer or NGO. Courts dismissed some cases of domestic abuse and incest or gave perpetrators light sentences. Incest was widely believed to be underreported. Traditional and religious practices of reconciliation between aggrieved parties in both indigenous and Indo-Fijian communities were sometimes taken into account to mitigate sentences in domestic violence cases. In many cases offenders were released without a conviction rather than jailed, on the condition they maintain good behavior. Several locally based NGOs sought to raise public awareness of domestic violence.

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

Sexual Harassment: A decree prohibits sexual harassment, and criminal laws against "indecent assaults on females" prohibit offending the modesty of women and have been used to prosecute sexual harassment cases. Under the ERP, workers can file complaints on the ground of sexual harassment in the workplace. There appeared to be judicial reluctance to act in sexual harassment cases. The Ministry of Labor reported that two sexual harassment complaints filed with the Employment Relations Tribunal (ERT) under the ERP in a prior year remained pending at year's end. One other sexual harassment complaint was filed with the ERT during the year; it also remained pending at year's end.

Reproductive Rights: Couples and individuals generally have the right to decide freely the number, spacing, and timing of their children. The government provided family planning services, and women had access to contraceptives free of charge at public hospitals and clinics, and for a nominal charge if prescribed by a private physician. Unmarried and young women generally were discouraged from

undergoing tubal ligation for birth control, and public hospitals, especially in rural areas, often refused to perform the operation on unmarried women who requested it. Nurses and doctors often required the husband's consent before operating on a married woman, although there is no legal requirement for such consent. Most women gave birth in hospitals, where skilled attendance at birth and essential prenatal, obstetric, and postpartum care were available.

Discrimination: Women have full rights of inheritance and property ownership by law but in practice often were excluded from the decision-making process on disposition of iTaukei communal land, which constituted more than 80 percent of all land. Women have the right to a share in the distribution of iTaukei land lease proceeds, but this right was seldom recognized. Women have the same rights and status as men under family law and in the judicial system. Nonetheless, women and children had difficulties getting protection orders enforced by police in domestic violence cases.

Although the ERP prohibits discrimination on the basis of gender and requires equal pay for equal work, women generally were paid less than men for similar work. According to the Asian Development Bank, approximately 30 percent of the economically active female population was engaged in the formal economy, and a large number of these women worked in semi-subsistence employment or were self-employed. Other than a prohibition on working underground in mines, there are no legal limitations on the employment of women, and many women were successful entrepreneurs. Several prominent women led civil society, NGO, and advocacy groups.

The Ministry for Women, Social Welfare, and Poverty Alleviation worked to promote women's legal rights.

Children

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

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

Child Abuse: Corporal punishment was common in both homes and schools, despite a Ministry of Education policy forbidding it in the classroom. Increasing urbanization, overcrowding, and the breakdown of traditional community and

extended-family-based structures led to an increased incidence of child abuse and appeared to be factors that increased a child's chance of being exploited for commercial sex.

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

Sexual Exploitation of Children: Commercial sexual exploitation of children continued to occur. It is an offense for any person to buy or hire a child under age 18 for sex, exploitation in prostitution, or other unlawful purpose, punishable by imprisonment for up to 12 years. Commercial sexual exploitation of children is an indictable offense that must be tried in the High Court. The government prosecuted two adults in 2012 for this offense. Both men were released on bail in March, and the case remained pending as of October.

It is also an offense for a householder or innkeeper to allow commercial sexual exploitation of children in his or her premises, but there were no known prosecutions or convictions for such offenses during the year.

Some high school children and homeless and jobless youth engaged in prostitution during the year, and there were reported cases of child sex tourism in tourist centers, such as Nadi and Savusavu. In some cases taxi drivers, hoteliers, bar workers, and others reportedly acted as middlemen, facilitating the commercial sexual exploitation of children. Family members, other Fijian citizens, foreign tourists, and crew on foreign fishing vessels also reportedly participated in the prostitution of Fijian children.

The minimum age for consensual sex is 16. The Court of Appeal has ruled that 10 years is the minimum appropriate sentence in child rape cases, but in such cases police often charged defendants with "defilement" rather than rape because defilement is easier to prove in court. Defilement or unlawful carnal knowledge of a child under age 13 has a maximum penalty of life imprisonment, while the maximum penalty for defilement of a child between ages 13 and 15, or of an intellectually impaired person, is 10 years' imprisonment. Women's NGOs

complained that magistrates imposed shorter sentences, from two to eight years, in child defilement cases.

Child pornography is illegal. The maximum penalty for violators is 14 years' imprisonment and/or a maximum fine of F\$25,000 (\$13,736) for a first offense and life imprisonment and/or a fine of up to F\$50,000 (\$27,473) for a repeat offense, and the confiscation of any equipment used in the commission of the offense.

A child welfare decree requires mandatory reporting to police by teachers and health and social welfare workers of any incident of child abuse.

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

Anti-Semitism

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

Trafficking in Persons

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

Persons with Disabilities

Under the new constitution, all persons are considered equal under the law, and discrimination against persons with disabilities in employment, education, provision of housing and land, or provision of other state services is illegal. Existing statutes provide for the right of access to places and all modes of transport generally open to the public. The new constitution addresses specifically the right of persons with disabilities to reasonable access to all places, public transport, and information, as well as the right to use Braille or sign language and to reasonable access to materials and devices relating to the disability; the law does not further define "reasonable," however. Additionally, the constitution provides that these rights may be limited by law "as necessary." Public health regulations provide penalties for noncompliance, but there was very little enabling legislation on accessibility for persons with disabilities, and there was little or no enforcement of laws protecting them.

Building regulations require new public buildings to be accessible to persons with disabilities, but only a few existing buildings met this requirement. By law all new office spaces must be accessible to persons with disabilities. There were only a small number of vehicles in the country accessible to persons with disabilities. The Fiji Disabled People's Association, an NGO, reported that most persons with disabilities were unemployed due to lack of sufficient education and training and discrimination by and negative attitudes of employers. There were no government programs to improve access to information and communications for persons with disabilities, and persons with disabilities, in particular those with hearing or vision impairments, had difficulty accessing public information. There were a number of community organizations that assisted those with disabilities, particularly children.

There were a number of special schools offering primary education for persons with physical, intellectual, and sensory disabilities; however, cost and location limited access. Some students attended mainstream primary schools and were monitored by the Early Intervention Center. Opportunities for a secondary school or higher education for those with disabilities were very limited.

A decree stipulates that treatment should be provided for persons with mental and intellectual disabilities in the community, public health, and general health systems. Most persons with such disabilities, however, were separated from society and typically were supported at home by their families. Institutionalization of persons with severe mental disabilities was in a single underfunded public facility in Suva.

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

National/Racial/Ethnic Minorities

Tension between ethnic Fijians and the Indo-Fijian minority has been a longstanding problem. Indigenous Fijians, or iTaukei, make up an estimated 58 percent of the population, Indo-Fijians comprise 36 percent, and the remaining 6 percent is composed of Europeans, Chinese, and Rotuman and other Pacific Islander communities. The abrogated constitution contained a nonjusticiable compact that cited the "paramountcy" of Fijian interests as a guiding principle and provided for affirmative action and "social justice" programs to "secure effective equality" for ethnic Fijians and Rotumans, "as well as for other communities." The compact chiefly benefited the indigenous Fijian majority, although Indo-

Fijians dominated the commercial sector. The government publicly stated its opposition to such policies, which it characterized as racist, and called for the elimination of discriminatory laws and practices that favor one race over another; nonetheless, as of year's end some programs with affirmative action components favoring indigenous Fijians remained in place. Indigenous Fijians continued to dominate the civil service and security forces.

In an effort to address the sensitive question of ethnic and national identity, in 2010 the government decreed that the country's citizens would henceforth be known as "Fijians," a term that previously was understood to refer only to the indigenous population. Indigenous Fiji Islanders would become known as "iTaukei" – literally, "owners" – in the Fijian language. (The 1997 constitution used the term "Fiji Islander" to refer to all citizens.) Some submissions from indigenous citizens to the constitution commission, however, called for the term "Fijian" to be reserved for indigenous citizens only.

Land tenure remained a highly sensitive and politicized issue. Ethnic Fijians communally held approximately 87 percent of all land, the government held 4 percent, and the remainder was freehold land, which private individuals or companies held. All indigenous land is held in a statutory trust by the iTaukei Land Trust Board (TLTB) for the benefit of indigenous landholding units.

Most cash-crop farmers were Indo-Fijians, the majority of whom are descendants of indentured laborers who came to the country during the British colonial era. Virtually all Indo-Fijian farmers were obliged to lease land from ethnic Fijian landowners. Many Indo-Fijians believed that limits on their ability to own land and their consequent dependency on leased land from indigenous Fijians constituted de facto discrimination against them. Many indigenous Fijian landowners believed that the rental formulas prescribed in the national land tenure legislation discriminated against them as the resource owners. This situation contributed significantly to communal tensions. A pattern of refusals by ethnic Fijian landowners to renew expiring leases between 1997 and 2008, resulting in evictions of Indo-Fijians from their farms and their displacement to squatter settlements, seemed to ease with a concerted government effort to encourage landowners to renew leases. A 2011 trend of increased numbers of lease renewals continued through 2013.

To improve access to land, the government established a "land bank" in the Ministry of Lands under the land use decree for the purpose of leasing land from indigenous landowning units through the TLTB and subleasing the land to

individual tenants for lease periods of up to 99 years. The Land Bank, however, began leasing land directly to tenants, without TLTB involvement and sometimes with undue pressure on landowners to “deposit” their land in the land bank. In 2011 revisions to the formula for distributing lease proceeds to indigenous landowners abolished the system of chiefly privilege in land lease income distribution and provided for a “one person, one share” system. This change contributed to an increase in lease renewals, as individual members of landowning units received a greater share of lease monies than under the previous system.

In 1987 and 2000 political instability in the country was inflamed by indigenous politicians warning that indigenous land was being “stolen” despite a pre-independence policy banning any sale of such land. Consequently, in an effort to avoid further ethnic conflict, the previous two constitutions required special parliamentary majorities for changes to laws governing indigenous land, which include the ban on its sale. NGOs and political parties asserted that the absence of such provisions in the new constitution could once again lead to ethnic clashes if these laws were amended by a simple majority of parliament.

The new constitution includes other new provisions protecting land leases and land tenancies, but observers noted that the provisions seemed to have unintended consequences, including weakening the overall legal structure governing leases and other such contracts.

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

The new constitution provides that sexual orientation, gender, and gender identity and expression are prohibited grounds for discrimination; however, the right to equality and nondiscrimination may be limited for the purposes of adoption, marriage, devolution of property on death and pension, and excluding individuals from holding public office. The crimes decree does not criminalize consensual same-sex sexual conduct and recognizes male-on-male rape as a crime. The ERP prohibits discrimination in employment based on sexual orientation. There were no laws specifically prohibiting discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons in other areas. While same-sex sexual conduct was abhorrent to some with deeply held religious beliefs, in general attitudes toward LGBT individuals have become more accepting, especially among the young, and articles promoting tolerance appeared regularly in the media.

There was some societal discrimination against persons based on sexual orientation and gender identity, although there was no systemic discrimination. There were reports of bullying of LGBT students in schools. There were no official reports of discrimination against LGBT persons in such areas as employment, housing, or access to health care; however, intimidation or social stigma possibly prevented incidents of discrimination or abuse from being reported.

Other Societal Violence or Discrimination

There was some societal discrimination against persons with HIV/AIDS, although it was not systemic. There were no known cases of violence targeting persons with HIV/AIDS, but intimidation or social stigma possibly prevented reporting of cases involving abuse or discrimination.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The ERP, including related regulations and statutory instruments, gives many workers in the private sector the right to form and join independent unions, elect their own representatives with some restrictions, publicize their views on labor matters, and determine their own policies. The new constitution is silent on the right to strike and limits the right to bargain collectively.

Civil servants are excluded from the ERP and its tribunals, courts, and mediation services, and instead are covered by parallel mechanisms in the State Services Decree, which provides civil servants the same rights to equality and nondiscrimination as workers covered by the ERP. Unlike workers covered by the ERP, however, civil servants do not have the right to bargain collectively. The Essential National Industries Decree (ENID) restricts trade union and collective bargaining rights for workers in designated industries and corporations deemed “essential” to the national economy. These include 11 corporations in four sectors: finance, telecommunications, the public sector, and the airline industry.

All unions must register with the government, which has discretionary power to refuse to register any union with an “undesirable” name, as well as to cancel registration of existing unions in cases provided for by law. The ERP allows restrictions on freedom of association if necessary in the public interest or to protect national security. Police, military, and prison personnel are prohibited from forming or joining a union. The law prohibits some forms of antiunion

discrimination, including victimizing workers or firing a worker for belonging to a union, but union organizers occasionally were vulnerable to dismissal or other interference by employers. The government did not directly deduct union dues for civil service unions. The law makes automatic deductions a service rather than a right, so the government can choose not to provide this service. These unions claimed that this greatly hampered their ability to represent their members.

Although the POAD liberalized some restrictions imposed under the PER, many limitations on freedom of association and assembly were continued under the new decree, such as the government's broad discretionary authority over meeting permits. The POAD's restrictions on meetings, except at large public venues, were lifted in July 2012 for the duration of the constitutional reform process.

Under the law, any trade union with six or more members that is not in an enterprise or industry covered by the ENID may enter into collective bargaining with an employer. Individual employees, including nonunionized workers, as well as unions, can bring a dispute with employers before the permanent secretary for labor for mediation. If mediation fails, the authorities may refer the dispute to the ERT. The ERT's decision can be appealed to the Employment Court (a division of the High Court) and from there to the Court of Appeal and then the Supreme Court. Unions also have the right to appeal to the ERT against an adverse decision by the trade union registrar. ERT appellate cases were subject to the same lengthy waiting times as other judicial cases.

Individuals, employers, and unions (on behalf of their members) may submit employment disputes and grievances alleging discrimination, unfair dismissal, sexual harassment, or certain other unfair labor practices to the Ministry of Labor. While not promoted by the ERP, individual contracts were common. Employers tended to offer advantageous packages to new employees, particularly skilled labor, to promote individual contracts, which according to labor groups reduced the possibilities for collective bargaining and weakened unions.

Under the ENID the prime minister has final, unreviewable authority to approve the size and composition of the collective bargaining units. Such units were not registered as trade unions under the ERP and did not enjoy the same rights and protections accorded trade unions under the ERP. The ENID also prohibits any individual not directly employed by an employer from undertaking negotiations on the employees' behalf. The ENID allows designated enterprises and industries to renegotiate collective agreements if they are considered to be in financial distress. If the parties fail to reach a new collective agreement, these employers may

unilaterally submit a new or amended agreement to the prime minister for approval.

Unions can conduct secret strike ballots but must give the registrar 21 days' notice. More than 50 percent of all paid-up union members – not only those who actually cast ballots in the election – must vote in favor of a strike for the strike to be legal. The Ministry of Labor also must be notified and receive a list of all striking employees and the starting date and location of the strike. This requirement is intended to give organizers, unions, employers, and the ministry time to resolve the dispute prior to a strike. To carry out a legal strike, organizers of strikes in certain “essential services” – including emergency, health, fire, sanitary, electrical, water, and meteorological services; telecommunications; air traffic control; and fuel supply and distribution – are required to give an employer 49 days' notice. The law also permits the minister of labor to declare a strike unlawful and refer the dispute to the ERT. If the issue is referred to the ERT, workers and strike leaders can face criminal charges if they persist in strike action.

The ENID severely restricts the rights of workers in designated industries to strike, requiring more than three years of unsuccessful negotiations, excluding most common causes for disputes, and requiring prior strike approval from the government. The ENID gives the prime minister broad authority to declare any strike unlawful, and violators are subject to severe penal sanctions. The government has wide discretionary authority to determine that additional industries are “essential.” Decisions made under the ENID's auspices are not contestable in court.

The authorities did not always respect fundamental labor rights in practice. The two trade union umbrella bodies, the Fiji Trades Union Congress (FTUC) and the Fiji Islands Council of Trade Unions, were able to hold meetings during the year. Unions, however, alleged that POAD restrictions on meetings, arbitrary permit decisions by authorities, and monitoring by authorities severely limited their ability to conduct union business. Labor leaders and civil society groups also criticized the POAD's broad definition of “terrorism” and government officials' broad discretion under the law to detain individuals or prohibit meetings on poorly defined grounds, such as intent to “undermine” the economy. Major trade unions reported instances of the government using the ERP in a biased fashion to shut down negotiations and appeals.

Although not directly related to the exercise of trade union rights, the constitution prohibits union officers from becoming members of parliament. The Political

Parties Decree also limits the ability of union members to form or join political parties and exercise other political rights. International observers commented on the chilling effect this had on organizing, as well as its incompatibility with international law.

In July the Fiji Sugar and General Workers Union obtained a strike ballot from over 50 percent of its members employed at the Fiji Sugar Corporation, a state-owned enterprise. NGOs reported the company repeatedly failed to negotiate with workers' representatives, and the government deployed security forces to interfere with the vote, including by intimidating workers. The government appealed to the union members not to strike, and, on August 15, sent security personnel into the sugar mills to "protect the government's investment." The workers did not strike. The International Trade Union Confederation reported that on August 22, military officers drove to the mill for an "inspection," and that the attorney general threatened to bring in replacement workers.

At year's end Daniel Urai, president of the FTUC and general secretary of the hotel workers' union, and union organizer Nitin Goundar continued to await trial on 2011 charges of breach of the PER for holding a meeting without a permit. Urai was also awaiting trial on a separate 2011 charge of sedition. Under his bail conditions, Urai required court permission to travel abroad. In July the director of public prosecutions petitioned the court to combine Urai's case with that of New Zealand businessman Jagath Karunaratne, who was charged with using anti-government graffiti to urge political violence during an unrelated event. The cases of both men remained pending at year's end.

During the year access for an International Labor Organization (ILO) mission to investigate allegations related to the government's failure to meet obligations regarding freedom of association and the right to collective bargaining remained under discussion. During its initial meeting, the ministry of labor asked the original ILO mission, which arrived in September 2012, to leave the country. The government claimed the terms of reference (TOR) had not been approved government-wide and offered the ILO different TOR unacceptable to the ILO. As of September, in part due to noncommunication on the part of the government, neither new TOR nor new dates for the mission had been identified.

b. Prohibition of Forced or Compulsory Labor

The new constitution and the ERP prohibit forced or compulsory labor. Under the crimes decree, the maximum penalty for "unlawful forced labor" is five years'

imprisonment, and for human trafficking, 25 years. The Labor Inspectorate, police, and Department of Immigration are responsible for enforcing the law, depending on the circumstances of the particular case. There were reports that such practices occurred, including forced labor of children (see section 7.c.).

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

c. Prohibition of Child Labor and Minimum Age for Employment

Under the law children under age 12 may not be employed except in a family-owned business or agricultural enterprise. Any such employment must not interfere with school attendance and is to be of limited duration. Although the law provides that education is compulsory until age 15, children between ages 12 and 15 may be employed on a daily wage basis in nonindustrial "light" work not involving machinery, provided they return to their parents or guardian every night. Children between ages 15 and 17 may be employed, but they must be given specified hours and rest breaks. They may not be employed in certain occupations involving heavy machinery, hazardous materials, mines, or heavy physical labor. The ERP provides for imprisonment of up to two years, fines of up to F\$50,000 (\$27,473), or both, for employers who violate these provisions. The Child Labor Unit filed charges against three employers during the year for violating the provisions of the ERP relating to child labor, but the cases remained pending with the ERT at year's end.

The ministry of labor deployed inspectors nationwide to enforce compliance with labor laws, including those covering child labor. In 2010 the government established a multiagency task force led by the ministry of labor to work toward the elimination of the worst forms of child labor, and during the year the task force worked with NGOs and labor organizations to implement programs through the ILO's Tackling Child Labor Through Education (TACKLE) program. Poverty continued to lead children to migrate to urban areas for work, increasing their vulnerability to exploitation, and to work as casual laborers, often with no safeguards against abuse or injury. Youth continued to find employment in the informal sector and in hazardous work, including work as wheelbarrow boys; casual laborers, including in cane farming and other agriculture; and in commercial sex (see Section 6). There was some risk that children working in the homes of relatives could fall into situations of involuntary domestic servitude, or be forced to engage in sexual activity in exchange for food, clothing, shelter, or school fees.

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

d. Acceptable Conditions of Work

There was no single, national minimum wage, although the Wages Councils, comprising representatives of both workers and employers, set minimum wages for certain sectors. The 11 corporations designated by the ENID are excluded from the ambit of the Wages Councils. There was no current official poverty-level income figure, but minimum wage levels in regulated industries and entry-level wages in unregulated and informal sectors did not typically provide a decent standard of living for a worker and family.

The law stipulates that every employer shall pay male and female workers equal remuneration for work of equal value. There is no single national limitation on maximum working hours for adults, but there are restrictions and overtime provisions in certain sectors. The ENID bans overtime payments for work in the 11 designated corporations unless agreed upon by the employer.

There are workplace safety laws and regulations, and safety standards apply equally to both citizens and foreign workers.

The labor ministry uses its office of labor inspectorate to enforce minimum wages, but the inspectorate did not have sufficient capacity to enforce the law fully. The ERT and the Employment Court adjudicate cases of employers charged by the Labor Inspectorate with violating minimum wage orders and decide on workmen's compensation claims filed by the inspectorate on behalf of workers.

The Occupational Health and Safety Inspectorate in the Ministry of Labor monitors workplaces and equipment and investigates complaints from workers. Although mines are excluded from the general workplace health and safety laws, the mining act empowers the director of mines and his inspectors to enter and inspect all mines with a view to the health, safety, and welfare of employees.

Unions generally monitored safety standards in organized workplaces, but many work areas did not meet standards, and not all were monitored by the labor ministry for compliance. Workers in some industries, notably transportation and shipping, worked excessive hours. Government enforcement of safety standards suffered from a lack of trained personnel and delays in compensation hearings and rulings. During 2012 (the latest figures available) there were 206 cases of

workplace injuries or deaths (148 injuries and 58 deaths) in the public sector and 778 cases (700 injuries and 78 deaths) in the private sector reported to the Department of Labor. Workmen's compensation paid during the year totaled F\$one million (\$549,450) in 107 public-sector cases and F\$494, 583 (\$271,750) paid by employers in 161 private-sector cases.