

26. The impact of Fiji's 2006 coup on human and women's rights

Virisila Buadromo

In December 2006, the commander of the Republic of Fiji Military Forces (RFMF), Commodore Voreqe Bainimarama, overthrew the Laisenia Qarase-led multiparty government by claiming to invoke the 'doctrine of necessity'. He defended his actions by citing legal precedent that supported his 'clean-up campaign' to eliminate corruption and racism in government.

Self-appointed President Bainimarama declared a state of emergency in Fiji, arguing that this was the only way that the army could fulfill the aims of its campaign. According to the military, certain fundamental rights and freedoms were suspended as a result of the state of emergency. It warned the public not to interfere or criticize the military in any way. The military did not issue any specific decrees stating which rights were suspended.

On 4 January 2007, after handing back executive authority to President Ratu Josefa Iloilo, Bainimarama was appointed interim prime minister. His cabinet was sworn in. It included a number of unsuccessful candidates from previous elections and a few members of the deposed multiparty cabinet. Bainimarama continued to hold the position of RFMF commander. He subsequently removed the Chief Justice, Daniel Fatiaki, and appointed acting Chief Justice Anthony Gates in his place. He also removed from office virtually all civil service heads of departments and heads of government-owned corporations, including members of boards who objected to his rule. Only those who agree with the military have been appointed to powerful positions in government and on boards of institutions.

A number of civilians have been illegally detained by the military since the takeover. Most have been taken to the Queen Elizabeth Barracks (the main military camp in Suva) where they have been subjected to acts of humiliation, assault and torture.¹ The military has maintained that this is necessary to eliminate any opposition to its regime to allow its 'clean-up campaign' to run smoothly.

Those assaulted and detained fall into two broad categories. The first is made up of those who have been openly critical of the military. This group includes prominent people like Qarase and members of the Qarase-led *Soqosoqo Duavata ni Lewenivanua* (SDL) political party, unionists, and human rights and pro-democracy advocates. On Christmas Eve, my partner and I were part of a group of six pro-democracy activists who were illegally detained and assaulted

by the army for several hours at the military camp. Several days later, we had travel bans slapped on us; these lasted almost three months. My partner and I were lucky; we managed to have our travel bans lifted. Others were not so lucky.

Women appear to have been subjected to particular indignities, including being threatened with rape. At the end March 2007 the detention of human rights activists appeared to have ceased because of the media attention they attracted.

The second group of those being unlawfully detained is made up of people who have been suspected or accused of committing crimes or misdemeanors, or of being critical of soldiers. Accusations are being made by various complainants, including neighbours, by-standers, other witnesses or random soldiers who are guarding military checkpoints or patrolling the streets in army trucks. The vast majority of accusations falling into this category are opportunistic and unsubstantiated; and many are 'grudge complaints'. Some examples include the abuse of a group of young men returning from a night out. They were assaulted because their taxi driver complained to the soldiers at a military checkpoint that the men were joking about the soldiers. Neighbours or former associates have made accusations against each other about perceived or real harassment, noisy merry-making, stone-throwing, drunk and disorderly behavior etc, which the military has responded to by unlawfully detaining people and assaulting them.

Most media organizations are practising self-censorship, as many journalists have been personally threatened and intimidated by the military. This has resulted in the mushrooming of anti-coup blog spots. In mid-2007, this resulted in the military hunting down bloggers. Those who have been accused of blogging have been illegally arrested, detained, questioned and warned. Those targeted include business people, civil servants and university students. A senior military officer was quoted in the media in May 2007 as saying that any students on a government scholarship found to be blogging will have their scholarships revoked.²

Two people have died during military detention. In both cases the military has denied responsibility for the deaths but admit they occurred while the people were in military custody. The army has openly admitted that 1,193 people have been 'disciplined' at the barracks for speaking out against the military. The military-appointed interim Attorney-General, Aiyaz Sayed-Khaiyum, has said that rights under the constitution have been limited by the state of emergency that purportedly exists in the country.

On 17 January 2007, a presidential decree promulgated by the interim government granted criminal and civil immunity to members of the RFMF for all actions, including the killing of those arrested or detained, during the duration of the state of emergency. It allows any member of the RFMF, including members of the territorial forces, to execute any order during the duration of the state of emergency. The decree widens the growing power of the military to do whatever

it wants without accountability, and heightens the fear of civilians that human rights violations will continue with impunity.

The bill of rights included in Fiji's 1997 constitution protects fundamental rights and freedoms, including freedom from cruel, inhuman and degrading treatment, unreasonable arrest and detention, unreasonable searches, freedom of speech and movement, and the right to non-discrimination. These provisions bind all three arms of the state at all levels, including the military. Section 43 (2) of the constitution also enables the courts to apply international human rights laws without ratification. The courts in Fiji have used Section 43 to apply UN conventions in several instances; in effect, the international human rights obligations of the State have been promoted by the judiciary.³

Extraordinarily, the Fiji Human Rights Commission (FHRC) has openly supported the military's takeover and the latter's stand in relation to the limitation of human rights due to the purported existence of a state of emergency. Director of FHRC Shaista Shameem published a report on 4 January 2007 (the same day Bainimarama had himself appointed interim prime minister) essentially justifying the coup.⁴ Amongst the justifications was that the Qarase government had been unlawfully elected both in 2001 and 2006 and was guilty of grave violations of human rights. Shameem's report also stated that the 2006 election was rigged, that the government was guilty of racism against Indo-Fijians, was corrupt and was attempting to pass into law three pieces of unconstitutional legislation. The only lawfully remaining Commissioner, Shamima Ali, has publicly distanced herself from the report.

The vast majority of citizens whose rights have been violated have not complained to the Commission because its independence has been seriously compromised and they fear further victimization if they take their experiences to the FHRC. As a result of its pro-military stand, the FHRC has been suspended by the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, limiting its ability to work with UN bodies. It has also been suspended by the Asia Pacific Forum for National Human Rights Institutions, which the FHRC chaired until its recent resignation.⁵

There are daily violations of constitutionally guaranteed rights – freedom of speech, cruel or degrading treatment, and unlawful arrests or detention. These violations continue, and citizens are fearful of speaking out. On 5 April 2007 the emergency regulations suspending human rights were extended for a month.

ENDNOTES

¹ Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him ... information ... punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing

him or a third person ... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’.

² Leung, G. ‘Lawyers must cry freedom to the challenge in Fiji’, *The Fiji Times*, 9 June 2007.

³ Courts have applied the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child.

⁴ Shameem, S. 2007. Director, Fiji Human Rights Commission, ‘The Assumption of Executive Authority on December 5th by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces: Legal, Constitutional and Human Rights Issues’, 3 January 2007, at <http://www.humanrights.org.fj>

⁵ See, Asia Pacific Forum of National Human Rights, ‘The role of the APF in Relation to the Application of the Paris Principles’, Conference for Commonwealth National Human Rights Institutions, Marlborough House, London, 26-28 February 2007, available http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/AD78F055-BF5A-429D-BB69-A9458C733AAA_APFPresentationCommwNHRIconfPD.pdf, p7; 19th Session of the International Coordinating Committee of NHRIs, Palais des Nations. Geneva, Switzerland, 21–23 March 2007, available <http://www.asiapacificforum.net/services/international-regional/icc/icc-meetings/19th-icc-meeting/?searchterm=coordinating>