



## LAW & JUSTICE REPORT

### FIJI

APRIL 2009 – APRIL 2010

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## **Introduction**

This report is designed to monitor and assess positive, negative or neutral developments in the law and justice sector in Fiji in order to identify where improvements can be made to strengthen the rule of law and improve the protection of human rights in Fiji. The rule of law and access to justice are crucial to upholding law and order and to human security, stability and development. Assistance in this area is vital to build peace and stability. The Preamble to the UDHR states that:

*...it is essential, if man has not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.*

This report analyses certain law enforcement institutions, new decrees and court cases, to identify whether the law and justice system is operating effectively, independently and efficiently. This report does not deal with the legality or otherwise of the present system of governance in Fiji, but merely analyses the impact of changes on access to justice in Fiji. This is done in good faith and for the public interest, and without prejudice to CCF's position on the purported abrogation of the Constitution.

This report only covers institutions where information on their work is publicly reported and readily available. It has been difficult to obtain certain information, particularly regarding the police force, the prisons service and the military (which all operate as law enforcement institutions) in the current political climate.

An assessment of public confidence in law enforcement institutions would be beneficial as this would demonstrate a perception of fairness, justice and equality. If justice is not seen to be done by the public, then people are less likely to rely on or use these institutions to promote and protect their human rights. A lack of confidence in the institutions that support and administer justice and the law also threatens peace and security. Such an assessment (potentially through surveys) may become part of later reports.

This report should be read as a whole document, as the law and justice sector is made up of a number of components which are all interdependent (i.e. the legal framework/laws, law enforcement agencies, the legal profession, prosecution services, the judiciary). For any reform in this area to be sustainable in the long term, there must be a holistic understanding of the entire system. Making a quantitative assessment for the purpose of this report would be inadequate because of the interdependence of these institutions and the legal framework. As a result, the report is mostly qualitative.

It should be remembered that an overall -negative assessment simply means that there is a need for improvement in the effectiveness, independence or efficiency of these institutions. This report is designed to gauge the extent to which all people equally experience and benefit from the rule of law.

**Executive Summary**

The table below is a tabulated summary of the conclusions each of the components of the law and order and justice system of Fiji.

<b>Components</b>	<b>Positive</b>	<b>Negative</b>	<b>*Overall component assessment (positive, neutral or negative)</b>
<i>Judiciary</i>	Increased no. of judicial officers	Dismissals have continued demonstrating executive interference with the judiciary.	negative
<i>Decrees</i>	Increased protection for Domestic Violence and certain crimes, increased accountability for legal and medical professions.	Majority of decrees relate to power and resources. Many amendments to earlier decrees. Removal of judicial review of government action. No public consultations.	negative
<i>DPP</i>		Dismissals plus appointment of a military lawyer as the head of DPP. Concerns about lack of independence and interference.	negative
<i>FICAC</i>	Increased no. of successful prosecutions for 2009.	Decrease in local lawyers compared to Sri Lankan lawyers. Need to improve effectiveness of this body. Concern about inappropriate prosecutions (Imrana Jalal Case).	neutral
<i>FHRC</i>		No Director or Commissioners appointed. Restricted powers, can only mediate.	negative
<i>Court Cases</i>	One successful case against government (may be overturned by <i>Limitation of Liability for Prescribed Political Events Decree 2010</i> ).	Concerns about persons persecuted for political beliefs and without due process before an independent and impartial tribunal.	negative

**OVERALL ASSESSMENT - NEGATIVE**

## 1. Judiciary

### 1.1 Major developments over the reporting period

Some highlights of developments in the judiciary over the past 12 months include:-

- 40 judicial officers were dismissed in this period (25 Magistrates and 15 High Court judges). Most of the judicial officers were dismissed on 10 April 2010 by the *Revocation of Judicial Appointments Decree 2009*. Since then, 5 Magistrates have been dismissed without notice. The table below includes details of when and why judicial officers were allegedly removed from their position.
- 8 of those dismissed on 10 April 2010 have been reappointed and are currently on the bench (4 Magistrates and 4 High Court judges). There are only 3 High Court Judges on the bench who were first appointed prior to the coup. Of these, both Pathik and Byrne JJ are over the constitutional retirement age for judges (70 years).
- There is one former military lawyer in both the Magistrates Court bench and on the High Court. Chief Registrar of the High Court, Ana Rokomokoti (former military lawyer) also holds the positions of Chief Registrar and prosecutor in disciplinary proceedings against lawyers.
- One third of judicial officers were brought in from Sri Lanka.

### **1.2 Judicial Appointments & Dismissals**

There is currently no Judicial Services Commission, even though this body was re-established under the State Service Decree in similar terms to the 1997 Constitution. The Judicial Services Commission is the appropriate body to consider disciplinary proceedings against judicial officers, assess the merits of new candidates for appointment, and remove judicial officers (on limited grounds).

Judicial officers should be appointed for 5 years. It is understood that current judicial officers are on 12 month contracts. This is concerning as security of tenure and ongoing pension entitlements after retirement are essential to ensure that judicial officers act impartially and are not susceptible to bribes or corruption.

Until the Judicial Services Commission is established, all judicial officers are appointed and dismissed by the President acting on the advice of the Attorney-General. This process is not transparent or accountable.

Judges who are either appointed or promoted after 5 December 2006 may be seen to have entered an implicit bargain with the current regime. The implicit bargain is particularly relevant to all judicial officers (whether or not reappointed) after 10 April 2010 as they have sworn a new oath of office, declaring allegiance to this government. The implicit bargain means that a judicial officer is compromised because deciding against government would mean implicitly accepting that their appointments as judicial officers

was unlawful and illegitimate (i.e. the validity and lawfulness of government is tied to the validity and lawfulness of judicial appointments) The implicit bargain does not mean that these judicial officers are not capable of making independent decisions, merely that their independence is compromised.

*The Regulation of Pensions and Retirement Allowances Decree 2009*, authorises the Prime Minister to terminate the pensions of judicial officers who undermine the Government of the Republic of Fiji which indicates that judicial officers may lose their pension entitlements if they make findings against the government in the course of their work as judges. This is further evidence of an implicit bargain where judicial officers are confronted with the loss of employment entitlements for not following the line

It is possible that judicial officers could independently decide against government and argue in favour of the validity of their own appointments on the basis of the doctrine of necessity.<sup>1</sup>

### **1.3 Judicial Recruitment**

Historically the Fiji judiciary has always been supported by judges from other jurisdictions (mainly Australia, New Zealand and the UK). Australian and New Zealand lawyers would often be briefed to appear in Fiji courts and would have some familiarity with the local legal system. Since July 2009, there has been a focus on recruiting Sri Lankan lawyers and judges to take up positions with the judiciary. This may be a result of the deteriorating diplomatic relationships with Australia and New Zealand. However, no explanation has been given as to why new judicial officers appear to now be recruited from one jurisdiction (Sri Lanka), rather than a merit-based appointment from any Commonwealth jurisdiction.

The presence of the Sri Lankan judges does not mean that they are not suitable persons to be appointed to the Fiji judiciary, and they may in fact be less politicised than local judicial officers because they are not from Fiji. It merely raises the following issues:-

- Whether the Sri Lankan judges are adequately trained in Fiji laws and practices when they arrive; and
- Are they recruited based on merit through a transparent and accountable process?

There is insufficient information available about the history of Sri Lankan judicial officers to make an assessment of whether or not they are suitably qualified, professional and experienced persons to accept appointments to the Fiji judiciary.

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<sup>1</sup> The 1960 Constitution by which the Republic of Cyprus was established, provided for the existence of both a High Court as well as a Supreme Constitutional Court. These Courts were composed of Greek, Turkish and neutral judges, i.e. judges coming from a foreign country excluding Greece and Turkey. The two neutral judges presided over the Courts. This Constitutional arrangement lasted only until the beginning of 1964 due to the eruption of intercommunal hostilities in Cyprus, as a result of which the neutral presidents vacated their posts without being replaced. In order to face this situation which paralysed the judiciary, there was enacted the Administration of Justice (Miscellaneous Provisions) Law no. 33/64. The establishment and operation of the new Supreme Court was held to be in conformity with the Constitution on the basis of recognised principles of the law of necessity.

## 1.4 Government influence & separation of powers

Over the past year a number of former military lawyers have been appointed to various roles within the judiciary. It should be noted that this is a new development in Fiji (except for after the 1987 coup). The fact that these persons may be subject to the direction and control by the Military Commander, Fiji's interim Prime Minister is sufficient to taint the independence of the judiciary because it creates a perception that they will not be able to make fair and impartial decisions. This indicates possible interference by the Executive and creates a perception that the judiciary may not be independent.

Also, the powers given to the Chief Registrar (which cannot be challenged) to issue certificates of termination in particular court cases against government demonstrates a level of executive interference with the judiciary.

The appointment of military or former military lawyers within the judiciary indicates a lack of clear separation of powers. Separation of powers ensures that the judiciary is independent by separating them from the law-making body (usually parliament) and the government administration (the Executive, including PM and Cabinet). Without a clear separation of powers, the courts cannot independently decide on the lawfulness of government action.

### Former Military Lawyer

Appointed or promoted post 5 December 2006

Appointed or promoted post 10 April 2009

### Magistrates Court

No.	Date Appointed / Dismissed	Name	Position	Date removed/ resigned
1-	20.04.09	Mr Ajmal Gulab Khan	Chief Magistrate	15.07.09 ó dismissed by President. No official reason given. Allegedly over dispute with CR about administrative matters.
2-	20.04.09	Mr Salesi Temo	Magistrate	11.06.09 ó apt Judge of High Court
3-	20.04.09	Mr Maika Nakaora	Magistrate	Dismissed in early August ó for taking leave approved by CM
4.	20.04.09	Mr Anare Tuilevuka	Magistrate	
5.	20.04.09	Ms Alofa Aiva Seruvatu	Magistrate	
6-	20.04.09	Mr John Rabuku	Magistrate	11.06.09 ó apt Acting Director of Public Prosecutions. 01.01.10 dismissed or forced to resign from DPP.
7.	20.04.09	Mr Muhammed Nazeem UD-Dean	Magistrate	

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		Sahu Khan		
8.	20.04.09	<del>Ms Anjala Wati</del>	Magistrate	16.07.09 ó apt Judge of High Court
9.	20.04.09	Mr Faizal Koya	Magistrate	
10.	22.05.09	Ms Mary Muir	Magistrate	1.01.10 ó allegedly dismissed for not supporting FICAC (proceedings against Imrana Jalal's husband were listed on 31.12.09).
11.	11.06.09	Mr Eparama Rokoika	Magistrate	1.01.10 ó allegedly dismissed for not supporting FICAC. Was scheduled to hear PER cases against Methodist Church leaders.
12.	11.06.09	Mr Usaia Ratuveli (prev. FHRC lawyer)	Magistrate	
13.	11.06.09	Mr Chaitanyan Latchman (former Cabinet Minister for Qarase)	Magistrate	
14.	09.07.09	Ms Elsie Uzoamaka Hudson	Magistrate	1.01.10 ó allegedly dismissed for not supporting FICAC. In December 2009, she delivered a suspended sentence against Faga Solomone Finaisi (who pleaded guilty to corruptly acquiring \$380) despite FICAC pushing for a jail sentence.
15.	09.07.09	Ms Makareta Hiagi Mua	Magistrate	
16.	09.07.09	Mr Ropate Cabealawa	Magistrate	
17.	09.07.09	Mr Mosese Waqanika Naivalu	Magistrate	
18.	16.07.09	Mr Tomasi Bainivalu	Magistrate	
19.	05.11.09	Ms Nanayakkara	Magistrate (former Sri-Lankan Judge)	
20.	05.11.09	Mr Rajasinghe	Magistrate (former Sri-Lankan Judge)	
21.	05.11.09	Mr Henpitage Wimalasena	Magistrate (former Sri-Lankan Judge)	
22.	17.11.09	Mr Avantha Wickramasooriya	Magistrate (former Sri-Lankan judge)	
23.	17.11.09	Mr Lakmal A. Bandara	Magistrate (former Sri-Lankan judge)	
24.	02.12.09	Ana Rokomokoti	Acting Chief Magistrate* (also Chief Registrar of High Court)	
25.	8.01.10	Ms Irani Ganga Arachchi	Magistrate (Sri Lankan judge)	
26.	28.01.10	Mr Pathirannehelage Ratnayake	Magistrate (former Sri-Lankan judge)	

## High Court

No.	Date Appointed	Name	Position	Date removed/ resigned
1.	22.05.09	Mr Anthony Gates	Chief Justice	
2.	22.05.09	Mr Daniel Goundar	Judge	
3.	22.05.09	Mr Davendra Pathik	Judge	
4.	22.05.09	Mr Sofeso Inoke	Judge	
5.	25.05.09	Mr John Edward Byrne	Judge	
6.	11.06.09	Mr William Calanchini (prev. Permanent Arbitrator for Employment Tribunal, left Military in 2003)	Judge	
7.	11.06.09	Mr Salesi Temo	Judge (former Magistrate)	
8.	16.07.09	Ms Anjala Wati	Judge (former Magistrate)	
9.	16.07.09	Mr Paul Kenneth Madigan (former FICAC lawyer)	Judge	
10.	05.11.09	Mr Kiliritige Priyantha Fernando	Judge (former Sri-Lankan judge)	
11.	05.11.09	Mr Yohan Ian Fernando	Judge (former Sri-Lankan judge)	
12.	28.01.10	Mr Rahitha Hettiaranchi	Judge (former Sri-Lankan judge)	

**Indicators:-** Positive developments to indicate greater independence would include decrease in number of dismissals of judicial officers, a transparent process for the appointment or removal of judicial officers, decrease in positions held by former military lawyers, increase in pre-coup judicial officers returning to the bench, increase in experienced and credible local people taking up appointments (i.e. less Sri Lankan judges) or a reduction in the influence or interference by the Executive.

## 2. Decrees

### 2.1 The decree process

The parliament and parliamentary oversight committees are an important part of the justice sector, providing checks and balances ensuring laws are passed through considering the will of the people. The rule of law is a concept which relies on legal certainty and predictability (everyone is subject to the same rules or laws, and is entitled to know what those laws are). An important feature of this is that law must be changed by an established process that is transparent, accountable and democratic.

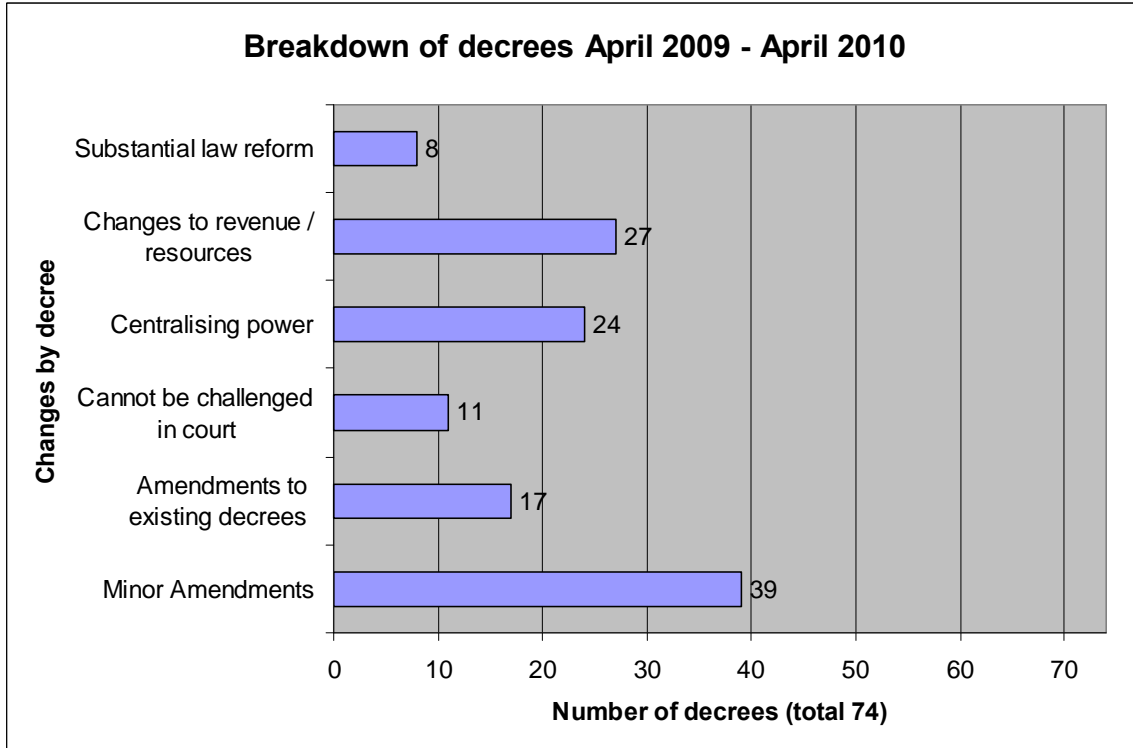
Currently, on a de jure basis, the President assents to new Decrees (according to the *Executive Authority of Fiji Decree 2009*, which may in itself be of questionable legality). On a de facto basis, decrees are considered in secret by the Cabinet before being passed by the President. This process of law reform lacks certainty, transparency and accountability. Laws that have been frequently amended or back dated create confusion and uncertainty about the rules which apply at any given time.

### 2.2 Decrees promulgated within the reporting period

A full list of decrees can be found in Annex 1.

Overview of Decrees passed since 10 April 2009:-

- 74 Decrees passed in this period. This is an exceptionally high number, signifying major changes to the legal framework in Fiji.
- 39 Decrees contain minor amendments to other legislation (53%). 17 of these are minor amendments to earlier Decrees or Promulgations (23%).
- 11 Decrees have a provision removing judicial review of government decisions (i.e. they cannot be challenged in court). (15%)
- 24 Decrees centralize power, thereby decreasing accountability (32%).
- 27 Decrees involve changes to revenue or appropriation of resources (36%).
- 8 Decrees involve substantial law reform (in the areas of regulation of the legal profession, the medical profession, the mahogany industry and crimes/DV). (9%)



**Indicators:-** Positive developments would be an increase in accountability and transparency in the process in which laws are passed (i.e. public consultations and responsiveness to public demand), increase in the ability of the courts to challenge government decision, de-centralising power (i.e. less control given to Ministers), and decrease in amendments to existing Decrees to show laws are not hastily prepared.

**Future indicators to track** might include decrease in retrospective legislation, and public consultations before laws are passed.

### 3. **Director of Public Prosecutions**

In early January 2010, the Acting Director of Public Prosecutions, John Rabuku (a former Magistrate) was replaced by a former military lawyer, Aca Rayawa. shortly after, Assistant Director of Public Prosecutions Navinesh Nand, senior prosecutor Heilala Tabete and Apataia Rokotuni had their contracts terminated, while Nancy Tikoisuva and former Acting DPP, John Rabuku, resigned under duress or pressure.

The Chief Registrar announced publicly that John Rabuku could return to his former work as a Magistrate after leaving the DPP, but no formal offer of employment was made to him.

On Friday 5 March 2010, another young DPP Lawyer was dismissed without notice over an alleged disagreement with the A-G.

There are 5 DPP lawyers who have been there since before December 2006.

**Indicators:-** *Credible, experienced and independent head of DDP (i.e. non-military lawyer). Decrease in summary dismissals of DPP lawyers – transparent process for the appointment or removal of DPP lawyers.*

**Future Indicators:** *Increased public confidence in the independence and impartiality of the DPP (may need survey data).*

#### 4. FICAC

There are currently 5 Sri Lankan lawyers and 2 Fijian lawyers working for FICAC.<sup>2</sup> The issue here is not nationality, but having a transparent appointment process to ensure officers are recruited on merit. Without a transparent process for the appointment and removal of FICAC lawyers, it is not clear whether FICAC lawyers are recruited on merit

The following table is based on FICAC Annual reports and assesses the rate of successful prosecutions by looking at the number of convictions per prosecution.

Year <sup>3</sup>	No. of Charges	No. of Prosecutions in Court	No. of Convictions	No. of complaints received	% of convictions per prosecution
2007				2128	
2008	155	29	1	2367	3.4%
2009	N/A	79	8	3974	10.1%

*\*By comparison, statistics from the Hong Kong Independent Commission of Corruption show that 79.7% of prosecutions resulted in successful prosecutions for 2008.*

It should be noted that FICAC is a relatively new institution and its efficiency is likely to improve as it becomes more established. Statistics are not recorded to indicate how many prosecutions are completed in any given year which may also affect the rate of convictions per prosecution.

A low number of convictions per prosecution could show that corruption is in fact lower than perceived or that there is insufficient evidence to convict.

The increasing number of complaints could show an increase in corruption or an increased understanding and reporting of corruption. It should also be noted that in the 2008 Annual Report, it was noted that nearly half of the complaints were out of jurisdiction and did not relate to corruption or bribery matters that FICAC could investigate. This would tend to indicate a lack of public understanding of corruption and that the increase in reporting is a result of other factors.

#### 4.1 FICAC Jurisdiction

It is not clear whether FICAC is equally prosecuting corruption claims against current and former members of government, but there may be some obstacles to prosecuting some current government officials based on decrees which remove the ability of courts to consider the legality of certain government decisions and create immunities for government decisions.

<sup>2</sup> Have been unable to independently verify this information.

<sup>3</sup> Statistics taken from FICAC Annual Reports (available online), and as reported by Fijilive on 10 December 2009 (Statement by Erica Lee of FICAC on International Anti-Corruption Day).

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These statistics are likely to be affected in 2010 by the fact that FICAC can prosecute anything under the Crimes Decree (which took effect from 1 February 2010), and not just corruption matters.

***Indicators:- Increase in effectiveness of FICAC, quicker prosecutions, solid evidence of corruption to justify resources allocated to this institution.***

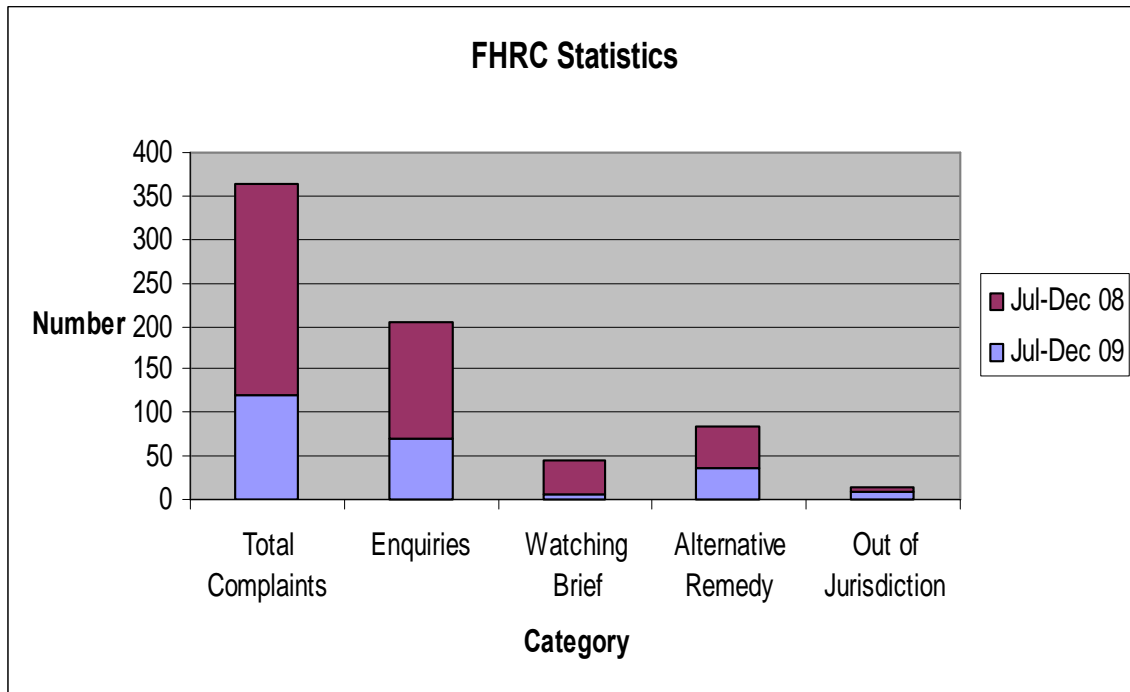
## 5. Fiji Human Rights Commission

The Fiji Human Rights Commission has indicated that it now only mediates cases, and will not intervene or commence court proceedings. This in effect reduces the powers of FHRC to hold people accountable for human rights violations. All activities, including complaints handling, are now reported to the Office of the Prime Minister,<sup>4</sup> compromising the independence of the Commission.

The *Fiji Human Rights Commission Decree 2009* has substantially reduced the Commission's powers and its role. The decrease in recent complaints could indicate a lack of public confidence in the FHRC or a lack of understanding of their current role. The Commission is no longer publishing what rights are alleged to have been violated or who the allegation is against (i.e. Police, prisons service, private organization or individual). Attempts to gain further information on the types of complaints being received or considered by the Commission and their powers in relation to complaints against the military, police and prisons service have been unsuccessful.<sup>5</sup>

Human rights which are protected under the *Fiji Human Rights Commission Decree 2009* include CEDAW, CERD, CRC and those rights existing under common law.

It should be noted that the proportion of complaints 'out of jurisdiction' has doubled compared to a similar period for the previous year.



<sup>4</sup> Information provided by confidential source

<sup>5</sup> Email sent to the Principal Legal Officer on 19 April 2010. The response was vague and said they were still receiving human rights complaints, but with no detail on how they respond to them.

***Indicators:- Increase in number of complaints or enquiries to show increased awareness and understanding of human rights, increase of matters within jurisdiction, increased powers and operational independence of FHRC.***

## 6. Court Cases

Below is a summary of certain high profile court cases in the past 12 months. An indication of the public's ability to access justice can be gauged through monitoring cases where there is evidence of a miscarriage of justice due to procedural unfairness, persecution due to political beliefs or opinion, or executive interference.

No.	Case	Details	Comments (if any)
1.	Imrana Jalal . Human Rights Lawyer and Human Rights Advisor at RRRT	<p>FICAC charged Imrana Jalal with seven misdemeanors relating to the Public Health Regulations, the Food Safety Act and the Penal Code of Fiji.</p> <p>Charges include operating a restaurant without a licence, failing to display restaurant licence on premises and failing to obey an order or direction.</p> <p>The maximum penalty for failing to have a restaurant licence is only \$20. Penalty for failing to obey an order is 2 years imprisonment. The prosecution has also applied to seized the accused's passport.</p>	<p>The charges are simple civil misdemeanors and are usually prosecuted by SCC.</p> <p>Magistrate Mary Muir commented that FICAC may not have jurisdiction to prosecute this case and was subsequently dismissed. Amendments under the Criminal Procedure Decree 2009 purportedly give FICAC the power to prosecute this case. This Decree only came into force on 1 February 2010, 2 months after charges were filed in Court.</p> <p>The application to seize passports is unusual in a case of this nature.</p> <p>This case should be monitored as IJ has been a vocal human rights defender and there is a risk that she is being persecuted for her political beliefs.</p>
2.	Dorsami Naidu . President of the Fiji Law Society and Lawyer	<p>7 charges were made in late February 2010 by the Chief Registrars Office under the new Legal Practitioners Decree. The charges relate to conflict of interest and negligence (by delay).</p> <p>On 12 April 2010, the CR withdrew 4 of the charges. The 3 remaining charges relate to overcharging by \$125, a complaint by a beneficiary of an estate, and delay (FCA has already held this delay was not solicitor's fault). These 3 charges have been set down for hearing.</p>	<p>Commissioner John Connors has made strong comments that the adjournment sought by DS to appear for a client's trial in the High Court was inappropriate. This disregards the public interest in access to justice and undermines the Court hierarchy.</p> <p>On 14 April 2009, Dorsami was detained by police for 24 hours under Public Emergency Regulations for assembling peacefully outside the Lautoka High Court building.</p> <p>This case should be monitored as DN has been vocal against this government, particularly since the purported abrogation of the Constitution and there is a risk he is being persecuted for his political beliefs.</p>
3.	Fiji Court of Appeal . Taito Navualaba v Fiji Military Forces Commander (16 Feb 2010)	<p>FCA upheld a court decision that ordered compensation cost against RFMF Commander (for \$45,000) for the beating of the villager in 2000. Costs of the Appeal in the amount of \$3,000 were ordered to be paid by the RFMF.</p>	<p>This is a positive result.</p> <p>However, the outcome of this case may be overturned by the <i>Limitation of Liability for Prescribed Political Events Decree 2010</i> which includes immunity to the RFMF Commander for all civil claims relating to the 2000 and 2006 coups.</p>

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4.	<p>Assassination Plot Case - State v Ratu Takiveikata &amp; Others</p>	<p>8 men were tried in the High Court and convicted of conspiracy to commit murder of Frank Bainimarama by Madigan J.</p> <p>The 8 Men were sentenced to terms of imprisonment ranging from 3 to 7 years.</p> <p>Ballu Khan was granted a permanent stay in these proceedings in March 2009 because of procedural unfairness and the fact that he was severely beaten in custody. This means Ballu Khan cannot be tried for this charge.</p>	<p>The case relied strongly on circumstantial evidence (i.e. no direct proof). The primary witness was an undercover military officer who gave uncorroborated hearsay evidence. As a result the conviction may be unreliable.</p> <p>There are concerns about possible misdirection on the facts and rules of evidence, and the improper admission of former unrelated criminal charges (for treason in 2000). Lawyers have indicated they will appeal the conviction on these grounds.</p> <p>The Judge named Ballu Khan as being part of the conspiracy. The mention of Ballu Khan's role denies him the right to a fair trial and the presumption of innocence until proven guilty. These comments resulted in the DDP investigating ways to extradite Ballu Khan from NZ and retry him in spite of the permanent stay order. Any attempt to retry Ballu Khan would violate the double jeopardy rule (a person cannot be tried twice for the same crime).</p>
5.	<p>Breach of PER . Charges against Methodist Church Ministers</p>	<p>Charged with meeting contrary to the terms of a permit issued under PER.</p>	<p>Case is still ongoing and needs to be monitored as there is a risk of persecution for their religious or political beliefs and opinions.</p> <p>This has been used by the Police as a reason to issue a complete ban on all Methodist Church meetings at district level and above.</p>

**Summary of Cases**

There was one positive case in this period, but this may be superseded by a Decree extending immunities granted to the security forces. However, this decision demonstrates the ability of a victim to access justice for a human rights violation against the government.

There is evidence to suggest that there are a number of cases in which certain high profile persons have been targeted based on their political beliefs. Some of these cases are not yet finalised and should be monitored on an ongoing basis to ensure that the right to a fair trial is protected. The flow on effects, such as repercussions against judicial officers and laws overriding judicial decisions should be monitored after cases are heard as a further indication of fair and equal access to justice. An example of this is the 3 Magistrates dismissed in January 2010 after making negative comments against government institutions (refer to pages 6-7). This also highlights the interdependence of components of this Report.

Due to the ability of the Chief Registrar to dismiss cases by issuing a termination certificate, there is a real concern that many cases will not get to court. In this sense, it is important to realise that many future cases against government are unlikely to reach the

public forum and get to court. As a result, the lack of new cases against government should not necessarily be interpreted as a positive development. In order to accurately assess whether people feel they can access justice through the court system this information may need to be the subject of a future survey.

***Indicators:- This is closely linked to the judiciary. Increase in successful cases against government might indicate greater independence of the court and ability for them to review government decisions. Aim for less interference in court cases (i.e. followed by government and not ignored or overturned by Decree) and ensure protection of the right to a fair trial, particularly for persons likely to persecuted for their beliefs and opinions.***