



# BEATING JUSTICE

HOW FIJI'S SECURITY FORCES GET AWAY WITH TORTURE

AMNESTY  
INTERNATIONAL



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# TIMELINE

**5 JANUARY 2007**

Nimilote Verebasaga aged 41, died on January 5, 2007, approximately six hours after being taken into military custody at Nausori. Verebasaga died of hemorrhagic shock due to injuries to vital organs as a result of the beating by military officers. One military officer was found guilty of Verebasaga's manslaughter on 6 April 2009. Less than a month later, his lawyer announced that he would be released early on a compulsory supervision order.



**DIED 6 HOURS AFTER TAKEN INTO CUSTODY**



**NOVEMBER 2012**

Iowane Benedito was beaten and sexually assaulted by police and military officers. A video emerged on Youtube in February 2013 showing one individual, identified as Iowane Benedito being beaten and sexually assaulted and another individual having a dog set upon him by police. Both the individuals had previously escaped from prison. Three police officers and two military officers have been charged with offences relating to Benedito's assault. They are still awaiting trial.

**AUGUST 2014**

Vilikesa Soko died after being beaten and sexually assaulted after his arrest as a suspect in a robbery case. Senijeli Boila was also assaulted and arrested at the same time. Soko's autopsy report was leaked online, showing severe physical trauma leading to multiple organ failure and his death. Eight police officers and one military officer were convicted with rape and sexual assault on 11 November 2016. Two were also found guilty of obstructing justice for directing other officers to lie about the incident. The officers were initially charged with manslaughter, but it is not clear why these charges were dropped in 2015.



**OFFICERS CHARGED WITH MANSLAUGHTER BUT CHARGES DROPPED IN 2015**

**23 JULY 2008**



Escaped prisoner, Josefa Baleiloa was beaten in Suva by police and prison officers. He died from his injuries several weeks later. Reports suggest at least six law enforcement officers were involved in his death. There is no evidence to suggest police investigated Baleiloa's death and no charges have been laid.

**SEPTEMBER 2016**

Isaac James was taken in for questioning at Nakasi Police station, and detained for two nights in September, where according to a family member he was denied food and water for two days, beaten by police using sticks, a police belt and a screwdriver. After being assaulted for two days, he escaped custody fearing for his life and remained in hiding for most of October. He handed himself over to police on 27 October 2016 on assurances from the Police Commissioner to his family that he be safe. James and his family lodged a complaint with Police Headquarters in Suva in the week commencing 7 November 2016.



**24 OCTOBER 2016**

Ricardo Fisher claims he was beaten unconscious by police in Suva on 24 October 2016. He claims police continued to beat him after taking him to a prison cell where he spent the night. He spent two days in hospital with bruises, swelling and two broken ribs.



**2 DAYS IN HOSPITAL**

**JUNE 2007**

Tevita Malasebe was beaten to death by police at the Valelevu police station in Suva. In 2008, two police officers were convicted for his murder and one police officer convicted of being an accessory. One of the officers convicted of murder had his conviction quashed on appeal in 2013 and substituted with a conviction for being an accessory after the fact. His life sentence was reduced to two years imprisonment. Another five officers present during the assault on Malasebe, but the court found there was insufficient evidence to convict them for his murder.



**SEPTEMBER 2012**

Five people were beaten on arrest at Lami after they escaped prison where they were being held on remand. One person had his leg amputated as a result of severe physical injury to his leg (multiple fractures, leading to an infection). The Fijian government did not respond to Amnesty International's communication on this case and it is unclear if any investigation took place.



**NOVEMBER 2015**

Rajneel Singh (a witness) was been assaulted on three separate occasions by the security forces after reporting emails found on a computer at the internet café he owns, apparently disclosing criminal activity. In November 2015, he was picked up in a police vehicle, driven to a remote location where he was beaten, burned and left by the police. He complained about this incident and has since received ongoing threats and been assaulted on two occasions in 2016. On 26 November 2015, a police spokesperson said the alleged perpetrators were known to police, but no charges have been made.



**18 OCTOBER 2016**

Video released on social media showing three police officers beating suspects by the side of the road near Pacific Harbour. Police Chief of Operations Rusiate Tudravu said an investigation has been initiated.



**24 JANUARY 2007**

19-year-old Sakiusa Rabaka was severely beaten, sexually assaulted and forced to do military exercises by a joint taskforce of military and police officers. He later died from his injuries at Balck Rock military base in Nadi. Eight police officers and one military officer were charged with Rabaka's manslaughter. The military tried to avoid liability by sending the accused to serve overseas in UN Peacekeeping missions. However, this move was stopped by a court injunction. The officers were tried and convicted in early 2009 and sentenced to on average four years in prison each. All officers were released by the Prisons Commissioner within a month of being sentenced. The release coincided with the 2009 purported abrogation of the constitution, the sacking of all judicial officers in Fiji and the imposition of emergency regulations.



**CONVICTED AND SENTENCED TO ON AVERAGE 4 YEARS IN PRISON BUT ALL RELEASED WITHIN A MONTH OF BEING SENTENCED**



# 1. EXECUTIVE SUMMARY

**“We have long had a culture in Fiji of people resorting to violence; whether it is against women in the home, instilling discipline in our children or the police attempting to extract confessions from criminal suspects. The culture of what we call the *buturaki* – the beating – is deeply ingrained in parts of the Fijian psyche.<sup>1</sup>”**

Prime Minister Voreqe Bainimarama’s opening speech during the regional workshop on the UN Convention Against Torture and other Cruel, Inhuman or degrading treatment or punishment, delivered at Natadola Fiji on 28 October 2016.

The Fiji government has candidly acknowledged that “there have been a series of allegations pertaining to police brutality and the torture of detained persons. Such incidents have occurred for as long as the Police Force has been in existence.”<sup>2</sup> In October this year, the Prime Minister,<sup>3</sup> the Attorney-General<sup>4</sup> and the Police Commissioner<sup>5</sup> expressed publicly a commitment to end torture and other ill-treatment. Fiji’s ratification of the Convention Against Torture and other Cruel, Inhuman or degrading treatment or punishment (CAT) in March 2016 is a positive step towards fulfilling these commitments. However, these words must be followed up with action to change ingrained attitudes within the security forces and ensure full accountability for torture and other ill-treatment.

Often suspected criminals and escaped prisoners are most at risk of human rights violations in custody, and there is little sympathy for them when reports of torture or other ill-treatment emerge. Brutality by the security forces has resulted in at least five deaths since 2006<sup>6</sup> and other severe injuries, including one person having their leg amputated. The security forces have resorted to using excessive and unnecessary violence against suspected criminals or escaped prisoners in policing operations including beatings, rape,

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<sup>1</sup> Fiji Sun, *Fiji has one of the best laws against torture: PM*, (full copy of Prime Minister’s Voreqe Bainimarama’s opening speech during the regional workshop on the UN Convention Against Torture and other Cruel, Inhuman or degrading treatment or punishment, delivered at Natadola Fiji), 28 October 2016, available at <http://fijisun.com.fj/2016/10/28/fiji-has-one-of-the-best-laws-against-torture-pm/>

<sup>2</sup> At the Human Rights Council in Geneva for its second Universal Periodic Review in October 2014

<sup>3</sup> Fiji Sun, *Fiji has one of the best laws against torture: PM*, 28 October 2016, available at <http://fijisun.com.fj/2016/10/28/fiji-has-one-of-the-best-laws-against-torture-pm/>

<sup>4</sup> Fiji Sun, *Attorney General’s speech during the regional workshop on the UN Convention Against Torture and other Cruel, Inhuman or degrading treatment or punishment, delivered at Natadola Fiji*, 29 October 2016, <http://fijisun.com.fj/2016/10/29/pacific-regional-workshop-on-the-benefits-of-and-challenges-to-the-ratification-and-implementation-of-the-united-nations-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or/>

<sup>5</sup> Fiji Sun, *Qiliho: Full video inquiry, abuse not tolerated*, 21 October 2016, available at <http://fijisun.com.fj/2016/10/21/qiliho-full-video-inquiry-abuse-not-tolerated/>

<sup>6</sup> These are the known cases of deaths in custody due to use of force of security officers. Lack of independent oversight and public reporting on complaints against the security forces means there may be other cases which have not been reported in the media.

sexual assault, use of chillies, sticks or batons, attack by police dogs, and the use of firearms to shoot at people.

However, witnesses and lawyers also raised concerns about threats and intimidation against them, showing that the problem is not exclusively limited to abuses against persons in custody. Lawyers report that people in custody are likely to be subjected to intimidation, coercion to sign confessions; are denied prompt access to medical treatment, family and lawyers on arrest; and are not told their rights or immediately brought before a court to challenge their detention.<sup>7</sup> While there are many recent cases where confessions have been rightly excluded on the basis that they were forced under duress, there remains a clear risk that accused persons who are in fact intimidated, assaulted, tortured or otherwise ill-treated by police are not believed and are then convicted on the basis of false confessions made involuntarily.<sup>8</sup> These measures are not only essential to the right to a fair trial of an accused; they are important safeguards to protect from torture and other ill-treatment.

The lack of independent oversight and near-impunity for such crimes increases the risks of torture and other ill-treatment occurring. The police are effectively left to police themselves, and the military has interfered with policing investigations where it involves military officers as alleged perpetrators. The Commissioner of Police, Commissioner of Corrections and Commander of the Royal Fiji Military Forces (all senior military officers) have the discretion to appoint, remove and discipline their own officers and report to the Minister for National Security and Defence. This lack of independent oversight of the security forces, and blurred lines between functions and roles hampers their ability to independently investigate abuses when they do occur.

The close ties between the police and the military is in part due to Fiji's political history, which has been plagued by ethno-political conflict and interspersed with military coups in 1987, 2000 and 2006. This has resulted in the military playing a direct role in the executive and legislative branches of government, as well as in civilian policing. This has not changed significantly since elections in 2014. Military officers continue to be appointed to senior government roles, including as head of corrections and head of police, which not only militarizes these posts, it also brings into question their independence and ability to hold its officers, including military officers, accountable for human rights violations when they occur. In addition, the most serious cases of torture and other ill-treatment arose from a joint military-police taskforce, whose chain of command is not clearly established within the police force.<sup>9</sup> When the military is involved in policing matters, human rights violations are more likely to occur and they are less likely to be held accountable for their actions.

Another key issue is impunity for torture and other ill-treatment. Following each coup, the incoming legal order has entrenched immunities in law thereby ensuring, for the most part, that the military is above the law. For example, Fiji's current Constitution entrenches immunities for any government action between 2006 and 2014, and reaffirms immunities for events surrounding the 2000 coup. Therefore, victims of human rights violations that occurred as little as two years ago are left with no justice.

Recent attempts by the Fijian authorities to improve accountability of police officers have included initiatives such as human rights training and introducing recording facilities in some interrogation rooms. However, as this report outlines, there remain significant gaps both in the current legal framework as well as in the implementation of laws and policies in practice. The new initiatives, although they represent some progress, do not go far enough in changing the ingrained culture within the security forces to ensure that resorting to torture and other ill-treatment is never acceptable.

The culture of impunity is reinforced by inconsistent leadership by senior government officials. Prime Minister Bainimarama (who was Commander of the Royal Fiji Military Forces from 1999 to 2014, now retired) and Police Commissioner Brigadier-General Qiliho, have both previously expressed support for military and police officers when allegations of torture come to light.<sup>10</sup> Recent strong statements condemning

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<sup>7</sup> Interview with three lawyers, 7 April 2016.

<sup>8</sup> See Chapter on Coerced Confessions below.

<sup>9</sup> Interview with former Police Commissioner Ben Groenewald, 25 July 2016.

<sup>10</sup> Stuff (NZ) reported that Bainimarama said, "At the end of the day, I will stick by my men, by the police officers or anyone else that might be named in this investigation" after a video showing the beating of Iowene Benedito (see case study below) was release on social media, in *Bainimarama stands by Fiji police*, 9 March 2013, available at <http://www.stuff.co.nz/world/south-pacific/8404014/Bainimarama-stands-by-Fiji-police>; see also Radio New Zealand, *Fiji NGO appalled military hired suspended cops*, 13 November 2013, available at <http://www.radionz.co.nz/international/pacific-news/289597/fiji-ngo-appalled-military-hired-suspended-cops>

torture must be understood in this context, and followed up with full accountability in order to deter future acts of violence by the security forces.

In the few cases where perpetrators have been prosecuted and convicted in a court of law, custodial sentences can, and sometimes are, reduced under 'Community Supervision Orders.' This, in essence, allows police and military officers to be released within weeks of being convicted and return to their previous posts. In addition, institutional weaknesses, including limitations placed on the Fiji Anti-Discrimination and Human Rights Commission, in law and practice, and curtailed powers of judicial review under decrees since 2009, have denied many people the means of redress for such abuses.

Despite accepting several UPR recommendations to stamp out abuses, violence (both actual and threatened) in Fiji, it remains serious and widespread, and confessions are often obtained under duress.

In order to effectively prevent torture and other ill-treatment, Fiji must take a number of steps including to:

- Order the prompt withdrawal of the armed forces from public security tasks on the basis that their involvement is unnecessary and its officers have failed to comply with international human rights laws and standards on policing and use of force.
- Publicly recognize the magnitude of the problem of torture and other ill-treatment in Fiji and send a clear message that these acts will no longer be tolerated and refrain from publicly commenting in a manner which might prejudice pending investigations.
- Ensure that all cases of torture and other ill-treatment, regardless of the offender's rank, position, political or familial connections, are promptly, independently and impartially investigated and that where there is sufficient evidence of criminal responsibility those responsible are brought to justice through fair trials.
- Repeal immunities and other legal barriers to holding security forces accountable for excessive use of force, torture and other ill-treatment.
- Ensure independent oversight of policing to investigate complaints of torture and other human rights violations by the security forces.

The failure to properly address past violations by the security forces continues to undermine public confidence in the police and deters victims from reporting crimes such as torture and other ill-treatment. This briefing highlights key recent developments and case studies that demonstrate where further progress is required for Fiji to address torture and other ill-treatment and other abuses of power.

## **METHODOLOGY**

Researchers for Amnesty International travelled to Fiji for eight days in April 2016 and met with 48 people, including civil society organisations, lawyers and journalists. Amnesty International also met with the Attorney General, the Solicitor General, the Chief Justice of the High Court as well as representatives from Legal Aid and the Fiji Law Society. Amnesty International arranged to meet with Police Commissioner Qiliho, however he cancelled this meeting due to flooding that affected the country during the visit. Amnesty International spoke with the Director of Internal Affairs for the Fiji Police and Fiji's former Police Commissioner Ben Groenewald by telephone. Amnesty International appreciates the time given to the delegation, particularly by senior government officials.

In addition to speaking with lawyers and witnesses and perusing available court cases, Amnesty International has seen medical records detailing claims of injuries relating to six separate incidents of alleged torture by the security forces. Amnesty International has also viewed the footage in the lowene Benedito case,<sup>11</sup> in which police officers in uniform can be heard laughing as they beat and sexually assault Benedito and another person. In one case, Amnesty International spoke with a person who claims he was tortured on three separate occasions.

Amnesty International also carried out desk research between April and November 2016.

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<sup>11</sup> Amnesty International, *Fiji: Shocking video depicts torture of prisoners*, media release, 3 March 2013, <https://www.amnesty.org/en/latest/news/2013/03/fiji-shocking-video-depicts-alleged-torture-prisoners/>

## 2. MAP OF FIJI





# 3. STRUCTURE OF THE SECURITY FORCES

The security forces in Fiji are comprised of Police, Corrections and the Royal Fiji Military Force (RFMF). Each officer reports to a separate Commissioner, who has constitutional powers to appoint, remove and discipline officers.<sup>12</sup>

The Commissioner of Police and the Commissioner of Corrections, are both senior serving military officers, blurring the roles and functions of these institutions with that of the military. All security forces report to the same Minister, the Minister for National Security and Defence, even though they have vastly different roles. While the Police and Prisons Commissioner must follow policy directions issued by the Minister, the Commander of the military need only 'consult' the Minister on certain issues. Collectively, this creates a perception that the police and corrections facilities are not operated as civilian institutions, but as part of the military.

In addition to the head of the Police being a military officer, at times, the military has been directly involved in civilian policing matters, including the arrest of suspected criminals.<sup>13</sup> When the military does take on this role, it is not clear whose command they are acting under, if they are expected to comply with police guidelines on the use of force and how they can be held accountable if there is evidence of misconduct, including torture and other ill-treatment.<sup>14</sup>

Currently, there is no independent oversight mechanism for the security forces. Complaints regarding police are determined by the Director of Internal Affairs, but the outcome of these cases are within the sole discretion of the Police Commissioner. In addition, the State Services Decree 2009 allows the heads of police, corrections and the military to administer, organise and direct their operations as they see fit. The Police Act (1966) continues to apply, but is subject to later laws, decrees and the Constitutional immunities.

Essentially, the legal framework means that no investigation can be initiated or disciplinary action taken against a police officer without the consent or approval of the Police Commissioner. Police investigations are usually conducted by the Internal Affairs Unit, which reports to the Police Commissioner, who decides on the outcome of the complaint. Information about the number of complaints, the findings of investigations, and whether any disciplinary action has been taken against an officer is not publicly available, making it difficult to determine the adequacy of complaints procedures in place to discipline officers where there is evidence of misconduct.<sup>15</sup>

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<sup>12</sup> Sections 129 – 131 of Fiji's Constitution.

<sup>13</sup> Interview with Groenewald on 25 July 2016; see also *State v Vulaca* [2008] FJHC 98 (regarding the assault and murder of Malasebe), and *State v Talala* [2016] FJHC 1016 (regarding the rape, sexual assault, torture and death of Viikesa Soko), with both cases involving military officers.

<sup>14</sup> Groenewald told Amnesty International that he was aware of a joint taskforce, which he tried unsuccessfully to disband during his time as Police Commissioner. He claimed he did not know who asked them to intervene in policing matters, and that he tried to stop military involvement in civilian policing.

<sup>15</sup> Interview with Selestino Babakoro, Director of Internal Affairs, Fiji Police, 3 November 2016.

# 4. TORTURE AND OTHER ILL-TREATMENT

**“Police were known as fairly brutal by the community.”**

Interview with Ben Groenewald, Former Police Commissioner (from 2014-2016), 25 July 2016.

It is difficult to tell how pervasive torture and other ill-treatment is in Fiji as information is not publicly available, is actively hidden or dismissed by government, and people are afraid to report such abuses. However, in recent years there have been a number of high profile torture cases and deaths in custody that highlight the gaps in the investigation and prosecution of such crimes. There is clearly a lack of accountability for such crimes, especially where the military is involved. Worse than inaction, there has been active protection of some of those accused in these cases.

The timeline in the centre of this report outlines some key cases of torture and other ill-treatment by the security forces and what steps, if any, have been taken to ensure accountability for such crimes. Documented in the timeline are five deaths in custody since 2006. The Malasebe case is the only one where an officer was investigated, convicted and served his sentence (without early release). In the Soko case, nine offenders were convicted of sexual assault and sentenced on 11 November 2016, but this remains subject to rights to appeal.

Accountability for torture or other ill-treatment is the exception rather than the rule. In some cases, action may have been taken against officers involved but a lack of transparency with regards to police operations, complaints and disciplinary procedures means this information is not publicly available. In other cases, the failure of prosecutors to charge the accused with the most appropriate offences can mean that perpetrators are not held accountable or are convicted of lesser offences (for example the failure to charge offenders with murder or manslaughter, assault or accessory to any of these offences when there is evidence that such crimes may have been committed).<sup>16</sup>

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<sup>16</sup> See *State v Vulaca* [2008] FJHC 98 (regarding the assault and murder of Malasebe), and *State v Talala* [2016] FJHC 1016 (regarding the rape, sexual assault, torture and death of Vilikesa Soko).

## 4.1 BEATINGS OF SUSPECTS AND ESCAPED PRISONERS

**“Extrajudicial punishment is meted out (for escaped prisoners). We need to get away from the mentality that you can hurt people.”**

Interview with Chief Justice Anthony Gates, 8 April 2016.

Another key feature of torture and other ill-treatment in detention is the beating of suspects. The cases outlined below highlight the vulnerability of suspected criminals and escaped prisoners to beatings by the police. In Benedito’s case, there were delays of more than two years in the investigation before any alleged offenders were charged and the case is still before the court. Without justice or accountability in these well known cases, it is difficult to have confidence that there will be justice in the many other unknown cases.



### **VILIKESA SOKO – BEATEN, RAPED AND KILLED IN AUGUST 2014 <sup>17</sup>**

Vilikesa Soko was 30 years old when he died from severe injuries sustained during his arrest. He is survived by his wife and three daughters. He celebrated his daughter’s 5<sup>th</sup> birthday earlier in August. This was the last time his brother saw him alive.

Soko, along with Senijeli Boila and Eroni Baleinuku were the primary suspects in a robbery that took place at the Forex Foreign Exchange in Nadi. Police and military officers arrested Soko and Boila in Sigatoka, a few hours’ drive from Nadi. The suspects were interrogated, tortured and later hospitalised for serious injuries sustained during their arrest. Soko died in hospital four days later.

An autopsy report, leaked online, revealed that Soko died as a result of a blood clot on his lung after suffering multiple traumatic injuries, including to his rectum and penis. In late 2015, over a year after Soko’s death, four police officers were arrested and were charged with rape, sexual assault and perverting the course of justice. Initial charges of manslaughter were also laid, but dropped in 2015. By February 2016, a total of eight police officers and one military officer had been charged.

Investigating Police Officer Jona Toga gave evidence at Boila’s trial (co-accused for robbery) and said that when the suspects were handed over to him, they were injured to the extent that they could not walk and talk due to the seriousness of their injuries. In the summing up of this case, the judicial officer noted that one of the officers admitted lying on two of his three statements at the direction of a senior officer.<sup>18</sup>

Two of the officers (one military and one police) charged with Soko’s death and sexual assault have also been charged in Benedito’s torture case (outlined below) which occurred in November 2012. Had these officers been promptly, independently and impartially investigated for their role in Benedito’s torture case and held accountable through a court of law, Soko’s tragic and untimely death may have been avoided.

In hearing the trial, Justice Aluthge, held that there was both circumstantial and direct evidence that Soko and Boila had chillies crushed and rubbed on their face and anus, were hit with sticks and kicked, and that Soko was raped with a stick. All officers were convicted of and sentenced for rape and sexual assault on Friday 11 November 2016.

<sup>17</sup> *State v Talala* [2016] FJHC 1016 (1 November 2016).

<sup>18</sup> *State v Boila – Summing up* [2015] FJHC 302, available at <http://www.pacii.org/cgi-bin/sinodisp/fj/cases/FJHC/2015/302.html?stem=&synonyms=&query=Talala>



### IOWENE BENEDITO – TORTURE OF ESCAPED PRISONER

In February 2013, a video was released on YouTube showing security officers (some in uniform) beating and sexually assaulting a half-naked man on the back of a utility truck. He can be seen with his hands cuffed behind his back. Another man is being dragged along the ground by a dog while the assailants can be heard

laughing.

It was later confirmed by the authorities that this footage shows Iowane Benedito and another person being beaten after they escaped prison while on remand in late 2012.

In spite of widespread media attention the YouTube footage received, it is not clear whether the authorities took any steps to investigate this incident before 2014. It was nearly two years later when former Police Commissioner Groenewald ordered the reopening of this investigation.

Former Police Commissioner Groenewald told Amnesty International he reviewed the police investigation file and saw a statement withdrawing the complaint, purportedly signed by Benedito. Groenewald said he believed this to be a false or forged document, so he asked his senior investigating officer, Henry Brown, to ask Benedito on the record if he had freely withdrawn his complaint or would like to pursue it. As a result of this inquiry, the case was reopened in 2014 and properly investigated.

In October 2015, three police officers and two military officers were charged with offences related to Benedito's assault and they are all still awaiting trial.

One of the accused military officers, Pita Matairavula, (also charged in the Soko case) is a former bodyguard of Prime Minister Bainimarama. Initially the military refused to co-operate with the police to allow him to be arrested and charged. Former Police Commissioner Groenewald resigned, citing military interference with justice in this case (see below). Eventually, Matairavula voluntarily appeared before the courts.

Far from condemning these brutal acts of torture when they came to light, the government reaction was unequivocally in support of its security officers. Fiji's Prime Minister and former Commander of the Royal Fiji Military Forces Voreqe Bainimarama said:

**“At the end of the day, I will stick by my men, by the police officers or anyone else that might be named in this investigation... We cannot discard them just because they've done their duty in looking after the security of this nation and making sure we sleep peacefully at night.”<sup>19</sup>**

Such responses, from the highest levels of government, make it difficult to believe that there will be genuine accountability in such cases. At around the same time as Benedito's torture in November 2012, Amnesty International received medical reports and testimony regarding five other escaped prisoners, some of whom were on remand, who were severely beaten on their arrest just outside of Suva. One of these men had his leg amputated due to serious trauma. Medical reports detailed the severe physical trauma to his leg. Amnesty International wrote to Prime Minister Bainimarama regarding the status of cases, but never received a reply.<sup>20</sup>

<sup>19</sup> Michael Field, *Bainimarama stands by Fiji police*, Stuff (NZ), 9 March 2013, available at <http://www.stuff.co.nz/world/south-pacific/8404014/Bainimarama-stands-by-Fiji-police>

<sup>20</sup> Amnesty International, *Open letter concerning reports of torture of recaptured prisoners*, 12 December 2012.

## 4.2 DUTY TO PROTECT LAWYERS AND WITNESSES



### WITNESS RAJNEEL SINGH AND HIS LAWYER – THREATS, VIOLENCE AND INTIMIDATION

Rajneel Singh is an internet café owner in Lautoka. In the course of running his business, he discovered some emails on a computer that a customer failed to log out from. The emails, seen by Amnesty International, purportedly reveal plans by persons to commit serious crimes against senior government officials. Rajneel, concerned about what he had seen, reported this to the Lautoka police station in November 2015.

Several days after reporting the case to police, Rajneel was contacted by Ba police and asked to come in to the station in relation to a separate matter. He was then taken in a police vehicle by four men to another location, where he was transferred into another vehicle with four more police officers in it. Rajneel told Amnesty International that he was then handcuffed, hooded and driven for over an hour to a remote location where he was beaten and burned until he fell unconscious. Throughout his torture his attackers demanded he reveal how he obtained the emails he had reported to police and whether he knew anything else.

When he woke up he was in the bush at night with his leg on fire. He managed to flag down a vehicle near Sigatoka. He reported this incident to the police, but no one has been charged in relation to his assault.

He also claims that persons attempted to firebomb his home and have robbed his business. The most recent incident happened on Tuesday 30 August 2016, when two persons in police uniform came to his house. They assaulted him by attempting to strangle him after putting a plastic bag over his neck. They also fired a shot at him.

Rajneel believes he has been attacked by the authorities because they think he knows more about the alleged criminal activity he reported to the police. He maintains that he told the police everything he knows and does not know why they have continued to harass, intimidate, threaten and attack him and his family. Rajneel has not been charged with any crime.

Aman Singh is Rajneel's lawyer. He is an outspoken critic of government and a prominent lawyer representing several people charged with sedition. On 21 November, a law clerk working for Singh and a woman who was a personal friend were both attacked. The attacks occurred within hours of each other.

Then, on 25 March, Singh's office was ransacked. No one has been charged in relation to any of these incidents. Singh said his office was again broken into in August 2016.

The Fiji Law Society told Amnesty International it condemned the attacks against Singh: "We do not agree with any intimidation of whatever sort, for any lawyer that is representing his clients. I mean no lawyer should be subject to such violence, or intimidation or any such behaviour."

The European Committee for the Prevention of Torture has clarified that the right of access to counsel should apply even before a person has formally been declared a suspect, including if they are called to a police station as a witness or for discussion. It recommended that people called in for questioning as witnesses, who are legally obliged to attend and remain, should also have the right to assistance of counsel.<sup>21</sup>

Rajneel has not been charged with any offence, nor has he been informed that he is a suspect. As a result the authorities have a duty to protect him as a witness, including from further attacks, threats and intimidation arising from his complaint of torture. Victims and witnesses must be protected against any retribution or intimidation, including counter-charges, as a result of making the complaint.<sup>22</sup>

<sup>21</sup> CPT 21st General Report, CPT/Inf (2011)28 §19, CPT 12<sup>th</sup> General Report, CPT/Inf (2002)12 §41. See page 45 of Amnesty International, *Fair Trials Manual: Version 2*, 2014.

<sup>22</sup> Article 13 of the Convention against Torture, Guideline VII of the CoE Guidelines on eradicating impunity; See Articles 12 and 18(2) of the Convention on Enforced Disappearance; See page 45 of Amnesty International, *Fair Trials Manual: Version 2*, 2014.



# 5. BARRIERS TO JUSTICE

**“Certain actions can be done by certain people with impunity.”**

Interview with lawyer speaking on condition of anonymity, 7 April 2016.

In past cases of torture and other ill-treatment by the security forces, justice has been obstructed for a variety of reasons including:

- Complaints are not investigated at all or are not investigated with due diligence;<sup>23</sup>
- Rather than being condemned, reports of torture and other ill-treatment by security forces are met with senior officials stating that they will ‘stand by their men’, and the suspects are in practice recruited to the military or promoted within the ranks;<sup>24</sup>
- The military directly intervenes to protect its officers’ from liability, including by attempting to send officers on peacekeeping missions overseas, or obstructing police officers from investigating and charging military officers;<sup>25</sup>
- Constitutional immunities act as a barrier to the investigation or prosecution of such offences; and where officers are convicted with serious offences, they are released almost immediately by the Minister for Corrections and return to roles where they may commit further abuses.<sup>26</sup>

Collectively, these factors ensure that there is near complete impunity for past acts of torture and other ill-treatment by the security forces. They are effectively reinforced by immunities provided in law, which deny victims the right to redress.

In spite of the many legal and practical hurdles in Fiji, the police have occasionally been held to account for their abuses. For example, three police officers were charged, convicted and served full sentences for the manslaughter of Malasebe.<sup>27</sup> However, of the eight police officers initially charged, only two were convicted for murder (one was later acquitted on appeal), and one officer was convicted of being an accessory.

Interference with the justice process can happen at various stages of the investigation, or even after the matter has been heard by the courts. In recent cases, this has occurred through the special treatment and

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<sup>23</sup> For example, it took nearly two years for there to be any investigation into the Benedito torture case from the time when the YouTube video was released. In other cases, such as the five escaped prisoners referred to in Amnesty International’s letter of December 2013, there has been no official response to show that the matters were investigated.

<sup>24</sup> Prime Minister Bainimarama said that he will ‘stand by his men’, and Police Commissioner Qiliho said that he felt the three police officers had ‘been left on their own’ after being suspended from police duties and charged (see <http://www.abc.net.au/news/2015-11-06/fiji-military-hires-three-police-charged-over/6919986>).

<sup>25</sup> Rabaka case, see case study.

<sup>26</sup> See Chapter 5.1 below.

<sup>27</sup> See *State v Vulaca* [2008] FJHC 98 (regarding the assault and murder of Malasebe).

early release of security officers and through the obstruction of justice while police are investigating and prosecuting a complaint.

## 5.1 IMPUNITY THROUGH EARLY RELEASE

In a number of cases, those charged and convicted of torture have been released within weeks of being convicted on Compulsory Supervision Orders – which effectively allows the Minister of Corrections discretion to release a person from prison early - creating defacto impunity. Section 65 of the Prisons Act, provides:

65.-(1) The Minister may at any time, in his discretion, direct that a prisoner shall be released on an order of compulsory supervision, for such period as the Minister may think fit, and the Controller shall forthwith comply with such direction.

Article 4(2) if the Convention against Torture provides that “Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.” Providing a government Minister with powers of early release which extend to, and are used for, releasing from prison individuals convicted of torture for any reason s/he “may think fit” when they have barely started serving their sentence directly violates this provision. Instead of justice it facilitates impunity for a serious human rights violation and a crime under international law.

Nimilote Verebasaga, aged 41, died after being assaulted in custody on 5 January 2007, just a month after the 2006 military coup. Verebasaga was assaulted as he was made to crawl on the ground at a military camp. The post mortem report revealed that he died as a result of serious injuries to his vital organs due to the assault. Maika Vuniwawa, a military officer, was convicted of his manslaughter on 7 April 2009 and sentenced to three years imprisonment.<sup>28</sup> He was released on 7 May 2009, just a few weeks after being sentenced, on a Compulsory Supervision Order.<sup>29</sup>



### 19 YEAR OLD SAKIUASA RABAKA: KILLED BY MILITARY AND POLICE OFFICERS IN 2007, OFFICERS RELEASED SHORTLY AFTER BEING CONVICTED AND SENTENCED

Sakiuasa Rabaka was killed after he was assaulted by eight military officers and one police officer at the Black Rock Military site in Nadi in January 2007. The trial judge referred to Rabaka’s degrading and inhumane treatment at the hands of the accused officers. He was stripped, physically and sexually assaulted, and subjected to military exercises, resulting in severe brain trauma that eventually led to his death:

***“After the deceased was released from custody, he suffered from severe headaches and vomiting. His body was bruised. He started having fits. According to medical evidence, the deceased had an increased pressure in the brain as a result of fluid such as blood occupying the space in the brain. A CT scan revealed that the deceased was slightly bleeding between the two hemispheres of the brain. Albeit the deceased was conscious and alert in the hospital, his symptoms increased. Headaches, vomiting and fits increased. A substantial amount of blood was drained out from the brain after a surgery. Subsequently, the victim died due to extensive blood clots inside and the outside surface of the brain. The medical evidence was that the injury was more likely to have been caused by forceful blunt trauma to the head.”<sup>30</sup>***

On 25 October 2006 the military officers involved were arrested at the airport as they were about to be deployed on a UN Peacekeeping mission by the Royal Fiji Military Forces. This would have in effect

<sup>28</sup> *State v Vuniwawa* [2009] FJHC 101

<sup>29</sup> Radio New Zealand, *Another Fiji Officer convicted of manslaughter to be released*, 7 May 2009, available at <http://www.radionz.co.nz/international/pacific-news/183555/another-fiji-officer-convicted-of-manslaughter-to-be-released>

<sup>30</sup> *State v Nayacalagilagi* [2009] FJHC 73; HAC165.2007 (17 March 2009), available at <http://www.paclii.org/cgi-bin/sinodisp/fj/cases/FJHC/2009/73.html?stem=&synonyms=&query=Rabaka>

avoided accountability for those involved. While this attempt was thwarted by an eleventh hour court injunction, the conviction was undermined by the early release of officers involved, just three weeks into their sentences.

In March 2009, the nine security officers were each sentenced to on average four years in prison after a lengthy six week trial. Shortly after their sentence was handed down on 10 April 2009, the military government purported to abrogate the 1997 Constitution, dismissed all judicial officers and imposed strict emergency regulations. Within less than a month of their convictions, all 9 officers were released on a Compulsory Supervision Order'.<sup>31</sup>

At the time, the Fiji Law Society President, Dorsami Naidu, criticized this unusual use of the executive powers, which highlighted that the Fijian government does not take these crimes seriously.

## 5.2 OBSTRUCTING JUSTICE BY THE MILITARY

Former Police Commissioner Ben Groenewald publicly condemned the violence against Soko and suspended accused officers from police duties during the course of the investigation and warned the military to keep out of civilian policing operations.<sup>32</sup>

Groenewald told Amnesty International that one of the men his officers attempted to arrest in relation to the Soko and Benedito torture cases – also a former body guard of Prime Minister Bainimarama – was tipped off about his pending arrest and harboured by the Fiji military.<sup>33</sup> These allegations warrant a prompt, independent and impartial investigation, regardless of the rank of officials involved. The accused has since appeared before the courts in relation to these charges.

Groenewald also noted that when he ordered the suspension of three police officers in connection with Benedito's torture case, all three were immediately recruited into the military by Lieutenant Colonel Sitiveni Qiliho, the Land Force Commander of the Fiji military, who stated that he felt they had been 'abandoned' by the police.<sup>34</sup> Following intervention by the Director of Public Prosecutions, Qiliho later agreed to suspend these officers pending the outcome of the court proceedings.<sup>35</sup> While these actions were later corrected by the intervention of the Director of Public Prosecutions, the recruitment of men charged with torture into positions where they may commit further abuses is alarming.

Groenewald said he resigned as Police Commissioner because of this incident. He lodged a formal complaint on 16 February 2016 with the police on the obstruction of justice by the military. However, at the time of writing, Groenewald's complaint still does not appear to have been investigated by the police. Brigadier-General Sitiveni Qiliho was then appointed as Police Commissioner after Groenewald's resignation.

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<sup>31</sup> Radio New Zealand, *Rabaka assailants free after only weeks of a four year jail sentence in Fiji*, 6 May 2009, available at <http://www.radionz.co.nz/international/pacific-news/183518/rabaka-assailants-free-after-only-weeks-of-a-four-year-jail-sentence-in-fiji>

<sup>32</sup> FBC, *Criminal Investigation into Soko's death*, 22 August 2014, available at <http://www.fbc.com.fj/fiji/22397/criminal-investigation-into-soko-s-death>

<sup>33</sup> Interview with Groenewald, 25 July 2016.

<sup>34</sup> Radio New Zealand, *Fiji NGO appalled military hired suspended cops*, 13 November 2013, available at <http://www.radionz.co.nz/international/pacific-news/289597/fiji-ngo-appalled-military-hired-suspended-cops>

<sup>35</sup> Radio New Zealand, *Qiliho suspends nine Fiji police officers*, 8 February 2016, available at <http://www.radionz.co.nz/international/pacific-news/296022/qiliho-suspends-nine-fiji-police-officers>

# 6. SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT

**“I cannot deny the fact that as an institution our understanding and at times the adherence to the norms and principles of human rights have been both questionable and unacceptable.”**

Sitiveni Qiliho, Police Commissioner, August 2016.<sup>36</sup>

The lack of safeguards within the current legal framework – in both law and practice – is deeply problematic. While the UN, international organisations and donors are working with police to improve their post-arrest procedures, including through the introduction of video recording facilities for police interviews, these attempts do not go far enough in addressing the issues.<sup>37</sup>

So while recording places of detention is a welcome improvement in terms of addressing torture and other ill-treatment, and it can also help protect police officers from false allegations of ill-treatment and ensure the reliability of confessions or witness testimony, it should not be the only measure implemented to address torture and other ill-treatment. There are a range of reasons why recording equipment can be unreliable - equipment can break, footage can be deleted, or the ill-treatment could happen in places which are out of view from the cameras.

For example, in Fiji, not all reported assaults occur at police stations. People can be arrested or detained at military barracks (for example, Rabaka was beaten and sexually assaulted at Black Rock Military base in 2007) or at other locations where alleged perpetrators are taken in police vehicles (Soko was driven to an isolated location after his arrest where officers beat and raped him, leading to his subsequent death).<sup>38</sup> This highlights the need for monitoring or other oversight beyond police stations and prisons. Monitoring of all places of detention should occur regularly and include unannounced site visits by an independent body that reports on its findings. The Fiji Human Rights and Anti-Discrimination Commission recently carried out training on conducting such visits, but its capacity, independence and ability to make binding

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<sup>36</sup> Newswire, *Qiliho tells police officers to respect human rights*, 17 August 2016 <https://www.newswire.com.fj/focus/police/qiliho-tells-police-officers-to-respect-human-rights/>

<sup>37</sup> Farish Ahmed, *Police in Human Rights Training*, Fiji Sun, 30 June 2016, <http://fijisun.com.fj/2015/06/30/police-in-human-rights-training/>

<sup>38</sup> For example, Soko (*State v Talala* [2016] FJHC 1016), Rabaka (*State v Nayacalagilagi* [2009] FJHC 73) and Singh.

recommendations, is hampered in law and practice.<sup>39</sup> The Fijian government should support monitoring of places of detention by the FHRADC and human rights organisations by allowing regular and unhindered access to all places of detention, including police stations, prisons and military sites.

## 6.1 ACCESS TO THE OUTSIDE WORLD

Other important safeguards include ensuring that detainees have prompt and regular access to the outside world, including family members, lawyers and medical professionals. This is not only crucial to the right to a fair trial;<sup>40</sup> it may be one of the most important safeguards against torture or other ill-treatment.<sup>41</sup>

Lawyers told Amnesty International that the authorities delayed or obstructed prisoners' access to prompt medical examination and treatment following alleged torture, and obstructed and delayed access to their medical records.<sup>42</sup> For example, after YouTube video was published showing lowene Benidito being assaulted on the back of a truck, he was denied visitation rights to his family for months. While corrections officers claim this move was necessary, prolonged isolation in itself can amount to torture or other ill-treatment.<sup>43</sup>

Denying access to the outside world makes it difficult for lawyers to provide evidence of torture. Where information obtained as a result of this torture or other ill-treatment is subsequently used in court these failures also undermine the right to a fair trial. All persons in detention have the right to adequate healthcare and to seek a second opinion.

## 6.2 COERCED CONFESSIONS

**“It is embedded practice that needs to change.”**

Ashwin Raj, the Commission's Director.

Coerced confessions can cover a range of situations where persons are threatened or intimidated into signing a confession. Not only does this create challenges in terms of the right to a fair trial, coerced confessions are notoriously unreliable. In jurisdictions where there is a heavy reliance on confessions as the main means of prosecuting an alleged perpetrator, the risk of torture and other ill-treatment in custody increases. Important safeguards, such as notifying a lawyer and a family member on arrest and proper policing procedures and practices, including appropriate training on other investigatory techniques as well as moving away from reliance on confessions as the only means of evidence in criminal proceedings, can help reduce the risk of torture or other ill-treatment.

Both lawyers and those working in the justice sector confirmed that the use or threat of force by police to extract coerced confessions remains a significant problem in Fiji. The Fiji Human Rights and Anti-Discrimination Commission told Amnesty International that 15-20% of all human rights complaints it receives are against Fiji Police and Fiji Corrections and identified combating police brutality as one of its key strategic priorities.<sup>44</sup>

In spite of this, it remains embedded practice for corrections officers or police to assault escaped prisoners.

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<sup>39</sup> UN Office of the High Commission for Human Rights (Pacific Office), *Newsletter*, April – June 2016, available at [http://pacific.ohchr.org/docs/Newsletter\\_April-June2016.pdf](http://pacific.ohchr.org/docs/Newsletter_April-June2016.pdf)

<sup>40</sup> Fair Trials Manual, Amnesty International, p51

<sup>41</sup> Richard Carver and Lisa Handley, *Does Torture Prevention Work?*, Liverpool University Press 2016, pp 71-75

<sup>42</sup> Interview with three lawyers, 7 April 2016.

<sup>43</sup> Vosita Kotalwasawasa, *Benedito denied visitation rights: Fiji Corrections Service*, 14 July 2013, <http://www.fbc.com.fj/fiji/11978/benedito-denied-visitation-rights-fcs>

<sup>44</sup> Interview with Ashwin Raj, 9 April 2016.



Lawyers told Amnesty International that “police have gotten smarter with their methods”, and described practices such as rubbing chilli on people in their custody<sup>45</sup> instead of resorting to violence more likely to leave visible signs of abuse. There were also reports of police using more subtle methods of coercion, such as threatening or arresting a suspect’s friends and family as a way of demonstrating authority and intimidating a person into confessing.<sup>46</sup>

Even if police do not actually assault a person, fear and distrust of police is widespread. “The threat of violence is always there. They might not hit you, but the threat is there,” one lawyer told Amnesty International on 7 April 2016, on condition of anonymity. Both actual and threatened violence, coupled with poor police processes after arrest, mean many alleged confessions are challenged in court through a *voire dire*, a court procedure where the admissibility of such evidence is determined. Where ‘confessions’ are obtained through torture or other ill-treatment, the courts should always exclude such evidence.

## 6.3 CONFESSIONS EXCLUDED BY COURTS

Fiji’s Constitution expressly recognises the rights of accused persons to remain silent and to not have unlawfully obtained evidence used against them<sup>47</sup> and the Fiji Court of Appeal has held that confessions obtained involuntarily or unfairly should be inadmissible.<sup>48</sup> The onus is always on the prosecution to prove that any confessions are properly and fairly obtained and any benefit of the doubt must go to the accused.

But while these basic legal protections exist, enforcing them has proved challenging. A review of published Fijian court cases shows that at criminal trials, accused persons routinely object to confessions by alleging that they were obtained through torture. Police routinely respond by rejecting all allegations against them. While medical evidence can sometimes resolve the issue, without video recordings or the presence of independent persons at interviews, judges are often required to make decisions based their personal assessment of who they believe – the police or the accused.

While there are many recent cases where confessions have been rightly excluded on the basis that they were forced under duress, there remains a clear risk that accused persons who are in fact intimidated, assaulted tortured or otherwise ill-treated by police are not believed and are then convicted on the basis of false confessions made involuntarily.

### **STATE V YALIBULA [2015] FJHC 382 (28 MAY 2015)**

Five men accused of being involved in the robbery of a shop in Nadi signed confessions which the prosecution wanted to rely on in court. The men were arrested in different places at different times, but all claimed that they were forced to sign confessions after being tortured by police. The men alleged a range of torture methods, including having chillies rubbed on their bodies, water poured in their ears, large rocks dropped on their backs and being repeatedly beaten.

The prosecutors called 19 police witnesses, including the arresting and interviewing officers, who all denied assaulting any of the accused prior to or during their police interviews. The prosecution maintained that all the men’s injuries (including some which were assessed as ‘life threatening’ by a medical examiner) were sustained in an earlier brawl and not the result of police brutality.

While the judge was sceptical of some of the men’s claims, saying that “some kind of exaggeration filled with common sensational stories about police torture such as rubbing chillies cannot be ruled out in this inquiry”, he ultimately found that the “inescapable inference that the court can draw upon hearing the evidence of doctors, coupled with that of the defence, is that the 2nd to 5th accused had been assaulted whilst they were in police custody.”

In ruling that the confessions were inadmissible, Judge Aruna Aluthge noted that “[t]orture, which is a crime against humanity, at the hands of police in the name of criminal investigation must at all cost be condemned

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<sup>45</sup> See also *State v Talala* [2016] FJHC 1016; interview with three lawyers, 7 April 2016.

<sup>46</sup> Interview with three lawyers, 7 April 2016.

<sup>47</sup> S.13(b) and 14(2)(k).

<sup>48</sup> *Shiu Charan v R* (F.C.A. Crim. App. 46/83)

and discouraged... This is not a Police State where functions of the police and that of the judiciary are fused together. Meting out punishment to offenders is the exclusive prerogative of the judiciary.”

**STATE V KADRE [2015] FJHC 442 (16 JUNE 2015)**

Five co-accused alleged that they had been forced to confess after being tortured by police. Four of the men said that they were taken by police to the scene of the alleged crime, handcuffed, forced to remove their pants and then physically and sexually assaulted.

The prosecution called nine witnesses to give evidence and maintained that the accused were lying and had been taken to the reconstruction site at separate times. However, the court found that the police’s own records suggested otherwise and that there was at least a reasonable doubt about whether the men’s confessions were obtained involuntarily through physical and sexual assaults by police. The confessions were ruled to be inadmissible.

**STATE V MAYA [2012] FJHC 1052 (27 APRIL 2012)**

Two men accused of robbing a house in Lautoka provided statements to police confessing to their role in the crime, but claimed that they were forced to make the statements by police and were assaulted and threatened while in police custody. Both men were interviewed by single police officers with no one else in attendance. The police denied the allegations and said the confessions were provided voluntarily.

The trial judge noted that in the absence of any medical reports, other police officers who witnessed the interviews or independent evidence shedding any light on whether or not either accused suffered any injuries while in police custody, the court was “faced with the uphill task of balancing the evidence of two individual interviewing officers, *who state that the statements were voluntary*, with that of the two accused, *who state that their statements were involuntary* due to the oppressive circumstances that they were placed whilst in police custody.”

The court ruled that there was at least reasonable doubt about whether or not the confessions were coerced, and so ruled that they were inadmissible.

# 7. NATIONAL LAWS AND POLICIES ON POLICING

## 7.1 POLICE POWERS AND THE USE OF FORCE

Police powers on the use of force are outlined in various laws and decrees including the Police Act, the Criminal Procedure Decree 2009 and the Public Order (Amendment) Decree.

Section 10 of the Criminal Procedure Decree provides that a person authorised to make an arrest can use 'all means necessary' but no 'greater force than is reasonable' to make an arrest. However, the Public Order (Amendment) Decree (as amended) goes significantly further and provides at section 9(3) that:

**“Any police officer, if in his or her opinion such action is necessary for the public safety, after giving due warning, may use such force as he or she considers necessary, including the use of arms, to disperse the procession, meeting or assembly and to apprehend any person present thereat, and no police officer nor any person acting in aid of such police officer using such force shall be liable in criminal or civil proceedings for any harm or loss caused by the use of such force.”**

Actions by officers pursuant to this Decree are not subject to judicial review and immunities override any limitation on police powers – in effect giving blanket immunity where the force used results in injury or was not reasonable, necessary and proportionate in the circumstances<sup>49</sup>. In addition, while the powers should be interpreted consistent with the Constitutional Bill of Rights, constitutional immunities override both these laws, giving a carte blanche to any government official who might use excessive force against a person, and denying many victims the right to a remedy (see part on Immunities below). As a result, police powers on the use of force are contradictory and at odds with international law on the use of force.

These laws should be reviewed, consolidated and updated to ensure consistency with international laws and standards on the use of force. Fiji committed to reviewing the Police Act in 2015, and improving procedures for detained persons and during interviews at the Universal Periodic Review, however such changes have not yet been implemented.<sup>50</sup>

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<sup>49</sup> Section 21 of the Public Order (Amendment) Decree now reads:

*Certain decisions not to be challenged*

21. - (1) No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any way entertain any challenge at law, in equity or otherwise (including any applications for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body in relation to the validity, legality or propriety of any decision made by the Commissioner of Police, any Divisional Police Commander or the Minister or any public official under this Act.

(2) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any Court, Tribunal, Commission or any other adjudicating body, in respect of any of the subject matters in subsection (1), then the presiding judicial officer, without hearing or in any way determining the proceedings or the application, shall immediately transfer the proceedings or the application to the Chief Registrar for termination of the proceedings or the application and a certificate to that effect shall be issued by the Chief Registrar.

(3) A certificate under subsection (2) is, for the purposes of any proceeding in a Court, Tribunal, Commission or any other person exercising a judicial function, conclusive of the matters stated in the certificate.

(4) A decision of the Chief Registrar to issue a certificate under subsection (2) is not subject to challenge in any Court, Tribunal, Commission or any other adjudicating body.”

<sup>50</sup> UN Human Rights Council, *National Report submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21: Fiji*, A/HRC/WG.6/20/FJI/1 26 August 2014, Para 71, available at <https://documents-ddsny.un.org/doc/UNDOC/GEN/G14/146/28/PDF/G1414628.pdf?OpenElement>

Police Commissioner Brigadier-General Sitiveni Qiliho recently announced plans to draft and implement operating procedures that may further clarify policing powers and responsibilities in this area. Police Commissioner Qiliho stated:

**“With the drafting and implementation of the Standard Operating Procedures we are sure to reduce and hopefully eliminate the significant number of Police investigations in which suspects have accused Police of unethical or unprofessional behaviour”.**<sup>51</sup>

However for this to take effect, the ambiguity with other laws must be addressed and immunities repealed. In addition, concurrent efforts must be made to change the culture within the police force and strengthen institutions that hold the police accountable.

## 7.2 DEFINITION OF TORTURE UNDER THE CRIMES DECREE 2009

Contrary to assertions by the Fijian government, the definition of torture under criminal laws in Fiji remains inadequate. While section 11 of the Constitution states that *‘every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment’*, the Constitution itself plays bridesmaid to the various decrees passed by government, and is curtailed by contradictory clauses which entrench immunities for government action.

Section 87 of the Crimes Decree makes torture, where it amounts to crimes against humanity, a criminal offence. Penalties of up to 25 years in prison are imposed for those who might violate this law. However, this does not cover the vast majority of incidents of torture which do not amount to crimes against humanity. Therefore Fiji has failed to criminalize torture in line with its obligations.

### **CRIME AGAINST HUMANITY - TORTURE**

**87. A person (the perpetrator) commits an indictable offence if -**

**(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and**

**(b) the pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions; and**

**(c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.**

**Penalty - Imprisonment for 25 years.**

However, despite these provision and in light of a number of high profile cases of torture in recent years, it is remarkable that not one person has been charged under this framework. Instead, police and security officers are often charged with less severe crimes such as assault, manslaughter or obstruction of justice. These offences fail to recognise the gravity of torture, and tends to reflect government policy and practice of not taking torture allegations seriously.

The Fiji government must ensure that the definition of the offence of torture is in line with international law, and that immunities do not undermine the absolute prohibition on the use of torture and prevent victims from accessing justice.

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<sup>51</sup> Fiji Sun, Qiliho: Full video inquiry abuse not tolerated, Brigadier-General Sitiveni Qiliho, 21 October 2016, available at <http://fijisun.com.fj/2016/10/21/qiliho-full-video-inquiry-abuse-not-tolerated/>

## 7.3 FIJI'S CONSTITUTIONAL IMMUNITIES

Section 11 of Fiji's Constitution contains the right to freedom from torture and other forms of cruel, inhumane or degrading treatment or punishment. However, it also grants extensive criminal and civil immunity to the military, police and other government officials for violations committed between 5 December 2006 and the first sitting of the first Parliament elected after the Constitution commenced on 6 October 2014. It also continues previous immunities granted under the *Limitation of Liability for Past Political Events Decree 2010*, which includes immunity for past acts by government officials, including by the military during the 2000 coup and subsequent mutiny (from 19 May 2000 until September 2001) and immunities under the previous 1990 Constitution, which related to the 1987 military coup.

The immunity protects perpetrators from any civil or criminal liability whatsoever and is made unconditional and irrevocable. In effect, for more than eight of the past 14 years, there is a black hole in Fiji's legal protection against torture and other ill-treatment. Fijians who have suffered torture or other ill-treatment as recently as two years ago are constitutionally barred from ever seeking redress and perpetrators face no prospect of ever being held to account.

Immunities have become an integral part of Fiji's coup culture. The protection of human rights and civil liberties are sacrificed in the interests of a superficial and subjective notion of 'peace and national security'. Immunity is granted under the pretence of protecting select persons from liability during loosely defined 'political events' such as the unconstitutional overthrow of an elected government, however it merely entrenches the lack of accountability for human rights violations by the police and security forces.

There can be no justification for torture and other ill-treatment. The prohibition against torture and other ill-treatment under international law is absolute. All states have an obligation not only to prevent and prohibit violations of customary international law, but also to provide victims with access to justice, rehabilitation and other forms of reparations.<sup>52</sup>

These immunities continue to violate the obligation under international law to provide redress to victims of human rights abuses. They also send a destructive message to the people of Fiji – that in certain circumstances and at certain times, anything goes. It is a message that still resonates throughout Fiji.

## 7.4 ACCOUNTABILITY MECHANISMS

Accountability is hampered, as demonstrated in this report, by weak and non-existent oversight or accountability mechanisms as well as a lack of adequate resources and powers to effectively investigate complaints against police, corrections and military officers. Internal mechanisms and disciplinary procedures within the police, corrections and military must be robust and transparent. In addition, people must be able to make complaints to an independent body with effective powers and resources to investigate such cases.

A US State Department report in 2014 claimed that, according to media, as of April 2014, there were 200 complaints of police misconduct and no budget to carry out investigations. It also noted that the Fiji Human Rights and Anti-Discrimination Commission, while it can receive complaints, was operating without a Director and Commissioners (from 2007 until 2015), limiting its ability to effectively carry out its functions. In addition, constitutional immunities restricted the ability to effectively investigate these cases.<sup>53</sup>

Prior to 2009, the Fiji Human Rights Commission (as it was then called) published quarterly data on the number of complaints it received, which government departments the complaints were against (including police or military), as well as how many complaints were resolved or taken to court.<sup>54</sup> The newly constituted Fiji Human Rights and Anti-Discrimination Commission (FHRADC) is currently re-establishing itself after nearly nine years of being largely defunct, without Commissioners or adequate powers and resources to carry out investigations. Several developments in the past year have taken place with a Director and

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<sup>52</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, resolution adopted by the General Assembly, 21 March 2006, A/RES/60/147.

<sup>53</sup> US State Department, *Fiji 2014 Human Rights Report*, 2014, available at <http://www.state.gov/documents/organization/236652.pdf>

<sup>54</sup> These publications were available on the website of the Fiji Human Rights Commission (Publications page) in 2009, prior to new laws which changed the structure and composition of the human rights commission. This website has since been removed and replaced with a new website available at [www.fhradc.org.fj](http://www.fhradc.org.fj). Publications from the former FHRC are not included on the new website.



Commissioners being appointed in late 2015, however the FHRADC can no longer take human rights cases to court, and immunities would still act as barrier to it investigating past complaints.<sup>55</sup>

While the FHRADC is now receiving significant funding,<sup>56</sup> and could in theory take a strong role in the independent assessment of complaints against police, corrections and the military, it is still in the process of rebuilding, and is not yet functioning as a national human rights institution compliant with International laws and standards. The Fiji government should invest in making the FHRADC compliant with international human rights standards,<sup>57</sup> so that it can effectively and independently fulfil this function.

In addition, the fact that public information on complaints against the police and how they are managed is not readily available on Fiji government websites also raises concerns about independence, credibility and lack of transparency of these institutions.

Independent mechanisms must exist to investigate, discipline and prosecute police officers accused of such violations in line with international human rights law and standards. In addition, Amnesty International encourages the Fiji government to publicly report on the number of complaints it receives against security forces as well as making information publicly available on the complaints handling procedure, especially at police stations, prisons and other places of detention. The Fiji government should ensure that there is appropriate punishment for torture and, where appropriate, other ill-treatment that reflect the grave nature of the crimes.<sup>58</sup>

## 7.5 POLICING THE POLICE

Some of the challenges to ensure police (and security forces) accountability lies with the fact that institutions are often responsible for investigating themselves with little independent oversight. The fact that the police, corrections and military have vastly different roles, but are headed by senior military officials and report to the same Minister does nothing to dispel this perception. Former Police Officer Napote Vere, who served for 33 years, highlighted the challenges with the police investigating themselves to the media:

**"During my time with the police force, there was a complaint against a police officer for brutality. The case was investigated by another officer and it was later found that he had fiddled around with investigations to make the case weak. So I was then tasked to investigate and both were charged — one for assault and the other for perverting the course of justice. As such, I'm saying comradeship exists when the police investigate their own officers for offences like assaulting suspects of crime. Therefore, there should be an independent body outside of the police force to investigate complaints against police officers like it is in some other countries."<sup>59</sup>**

While robust internal systems are important to maintaining the integrity and credibility of the police, corrections and military, there must also be independent oversight and accountability. At a minimum, there must be a procedure to ensure prompt, independent and effective criminal investigations where there is reason to suspect a person has committed an act of torture or other ill-treatment. In addition, the Fijian government should consider implementing recommendations by the Parliamentary Committee that the police, corrections and military report to separate ministers due to the different nature of their roles and to ensure independent political oversight of these institutions.<sup>60</sup>

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<sup>55</sup> Interview with Ashwin Raj, Director Fiji Human Rights and Anti-Discrimination Commission 5 April 2016.

<sup>56</sup> Interview with Ashwin Raj, Director Fiji Human Rights and Anti-Discrimination Commission 5 April 2016.

<sup>57</sup> UN General Assembly Resolution A/RES/48/134, National institutions for the promotion and protection of human rights, also known as the 'Paris Principles', 20 December 1993, available at <http://www.un.org/documents/ga/res/48/a48r134.htm>

<sup>58</sup> Punishments themselves must not amount to torture or other ill-treatment such as corporal punishment or the death penalty. It must at least criminalize acts of ill-treatment which constitute offences under international law. For instance, acts which would have constituted 'cruel treatment' and outrages upon personal dignity, in particular humiliating and degrading treatment' prohibited in Common Article 3 of the four Geneva Conventions of 1949 and criminalized under the statutes of subsequent International criminal tribunals and the Rome Statute of the International Criminal Court. Amnesty International is aware that certain practices constituting cruel, inhuman or degrading treatment or punishment, such as poor prison conditions, may be better addressed outside the criminal justice system, for instance through administrative or disciplinary measures.

<sup>59</sup> Fiji Times, *Police Brutality*, Avenish Gopal, 30 August 2014, available at <http://www.fijitimes.com/story.aspx?id=278782>

<sup>60</sup> Standing Committee on Foreign Affairs and Defence, *Fiji Parliamentary Paper No. 48 of 2006*, April 2016, available at [http://www.parliament.gov.fj/getattachment/Parliament-Business/Annual-Reports/Annual-Review-of-the-Ministry-of-Defence-\(1\).pdf.aspx](http://www.parliament.gov.fj/getattachment/Parliament-Business/Annual-Reports/Annual-Review-of-the-Ministry-of-Defence-(1).pdf.aspx)

# 8. INTERNATIONAL LAW AND STANDARDS

## 8.1 TORTURE AND OTHER ILL-TREATMENT

Under international law, torture and other cruel, inhuman or degrading treatment or punishment is prohibited absolutely, in all circumstances and without exception. This is enshrined in Article 5 of the Universal Declaration of Human Rights, but is also a rule of customary international law.

Anyone potentially implicated in acts of torture or other ill-treatment must be removed from a position of control or power over complainants, witnesses and the investigators. State agents who are suspected of torture or other ill-treatment should be suspended from active duty while the investigation is taking place.

All states have an obligation not only to prevent and prohibit torture, which is a gross violation of human rights and a crime under international law, but also provide victims with access to justice, rehabilitation and other forms of reparations.<sup>61</sup> Reparations include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>62</sup>

A person who has been subjected to torture or other ill-treatment or punishment is entitled to reparation, regardless of whether those responsible have been identified and brought to justice. Compensation from the state must afford adequate redress to the victim and the reparations should be proportionate to the violations suffered. However, the state's obligations to ensure victims' right to a remedy cannot be fulfilled just by awarding compensation. The state must also ensure an investigation that is capable of leading to the identification and bringing to justice of those responsible, who should receive penalties commensurate with the gravity of the violation.<sup>63</sup>

States must not relieve perpetrators from personal responsibility by means of amnesties, indemnities, immunities or similar measures.

### THE CONVENTION AGAINST TORTURE

Fiji ratified the *Convention Against Torture* in March 2016, in line with its acceptance of recommendations made by several countries at the UPR.

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<sup>61</sup> UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, resolution / adopted by the General Assembly, 20 March 2006, A/RES/60/147

<sup>62</sup> See for instance UN Commission on Human Rights, *Updated set of principles for the protection and promotion of human rights through action to combat impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, especially principles 34-8.

<sup>63</sup> Amnesty International, *Fair Trials Manual*, Second Ed., 2014.

While ratification is undoubtedly a positive step, Fiji made a number of significant reservations. Most notably, Fiji will define what is and what is not torture and will not allow the UN Committee Against Torture to review its compliance with its obligations or rule on complaints.

### **FIJI AGREES TO BE BOUND BY THE CONVENTION AGAINST TORTURE, BUT...**

Fiji ratified the Convention Against Torture (CAT) in March 2016, but carved out huge chunks of the treaty before doing so:

#### **Fiji will define what torture is**

Fiji's ratification included a reservation to the definition of torture in Article 1.

#### **Fiji won't owe victims anything if it breaks the rules**

Fiji did not agree to be bound by the right for torture victims to obtain redress and to fair and adequate compensation in Article 14.

#### **Fiji will restrict international scrutiny**

Fiji does not recognise the competence of the Committee Against Torture to conduct confidential inquiries (Art 20), to receive communications by individuals alleging torture (Art 21) and to receive communications from other States about Fiji's failure to fulfil its obligations under the CAT (Art 22).

Fiji also doesn't recognise the jurisdiction of the International Court of Justice (Art 30).

Fiji's Attorney-General, Aiyaz Sayed-Khaiyum, told Amnesty International that Fiji's reservation to the definition of torture was because the definition of torture under Fijian law was broader and offered greater human rights protection than the definition in the Convention because it extended to non-state actors. However, Article 1 makes crystal clear that it is without prejudice to domestic laws with wider application.

The Attorney-General also advised Amnesty International that the reason his government made reservations to various accountability mechanisms was that "we do not have the level of maturity in our society for people to use that complaints process in good faith to bring legitimate complaints. It would be politically motivated." This explanation is unsatisfactory - the appropriate way to dispute the merits and motivation of individual complaints against the government should be through the complaints process itself, not through the use of a blanket reservation.

Because of the absolute prohibition on torture under international law, the attempted reservations by the Fiji government are meaningless in practice. However, it conveys the message that the Fiji government will not only be the sole arbiter of what constitutes torture domestically but also decide when and how people will be held responsible, if at all.

A more likely explanation for Fiji's wide-reaching reservations to the CAT is to avoid scrutiny and accountability measures, which could conflict with the vast constitutional immunities enjoyed by military, police and government officials for abuses committed prior to October 2014. While ratification of the CAT is a positive step, removing the widespread reservations is crucial to making it more than a symbolic gesture.

## **8.2 TREATMENT OF PRISONERS**

A number of international documents set out standards for the treatment of prisoners and the running of prisons. Prisoners, by virtue of their detention by the state, are at high risk of abuse and ill treatment if their rights are not respected. Therefore it is important that states implement adequate safeguards to prevent abuses against persons in custody.

## **ARTICLE 46(1) OF THE STANDARD MINIMUM RULES ON THE TREATMENT OF PRISONERS**

### **Institutional personnel**

**46. (1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.**

**(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.**

**(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.**

The UN Human Rights and Prisons Pocketbook states that ‘the administration of prisons should be in civilian hands. It should not be a part of the military structure.’<sup>64</sup>

The lack of separation between the administration of prisons and the military compromises its ability to ensure that complaints regarding the treatment of prisoners will be independently and impartially investigated, with reparations provided to victims. In addition, evidence of past interference by the military in investigations, suggests that the corrections service would not be independent or held accountable if run by the military. The Fiji government should appoint a civilian person of integrity, humanity, professional character and personal suitability to run the prisons.

The Fiji government should take steps to ensure that Fiji Corrections is administered by civilian hands, by a person who has integrity, humanity, professional capacity, is of good character and personal suitability to that role, in line with international human rights standards. It should also ensure that a primary function of Fiji Corrections is to respect and protect the rights of prisoners in law, policy and practice. Where Fiji Corrections officers are involved in the torture or other ill-treatment of prisoners, the authorities should ensure that they are promptly and independently investigated, with officers suspended from duty during the investigation, and subject to criminal and disciplinary proceedings where there is evidence that ill-treatment occurred.

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<sup>64</sup> Office of the High Commissioner for Human Rights, *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials*, United Nations, 2005 available at <http://www.ohchr.org/Documents/Publications/training11Add3en.pdf>

## COMMISSIONER OF CORRECTIONS, COMMANDER FRANCIS KEAN

Commander Kean is the current Commissioner of Corrections, after being appointed in March 2016. There are concerns about his suitability for the role, in line with the Minimum Standards Rules, because he is a military officer, he has a criminal record for violent offences and he has made statements in support of corporal punishment, which would amount to torture.

In December 2006, Francis Kean beat John Whippy to death at a wedding. He was initially charged with murder, but pleaded guilty to manslaughter. The court, in sentencing Kean, found there were aggravating factors because Kean punched the victim more than once, including after he was lying on the ground.

**Justice Winter said, “Your serious loss of self-control also aggravates this crime... Kicking this man when he was down demonstrates to me that this was an attack of considerable ferocity. You lost your temper. You resorted to violence. You had to be dragged away from your victim.”<sup>65</sup>**

He was sentenced to 18 months in prison. Kean returned to his position as Commander of the Navy immediately after his release from prison in early 2009. In 2011, he was appointed as Acting Permanent Secretary to the Department of Works, in addition to retaining his position as Commander. Kean was appointed as Commissioner of Corrections on 5 March 2016. He retains his military title.

Kean has not resigned from the military and it is not clear that even if he did so, that he would be able to independently manage prisons administration outside a military command. His closeness to the military and his past criminal record casts a shadow on his appointment, undermining public faith in the Corrections Service.

In addition, Kean has recently spoken in support of introducing corporal punishment of prisoners.<sup>66</sup> Corporal punishment, which includes flogging, caning, whipping, amputation, branding and stoning, is prohibited by international laws as it violates the absolute prohibition of torture and other cruel, inhuman and degrading treatment or punishment.<sup>67</sup> Prolonged solitary confinement may also violate the absolute prohibition of torture and other ill-treatment.<sup>68</sup>

Regardless of who is in charge of the Fiji Corrections Service, the Fiji government has ultimate responsibility for ensuring that the human rights of prisoners are respected and that complaints of torture and ill-treatment are independently investigated with due diligence.

## 8.1 POLICING STANDARDS AND THE USE OF FORCE

In the past, where the military has played a lead role in civilian policing operations, it has led to an increase in human rights violations, including torture and other ill-treatment.

Several cases of torture and other ill-treatment have either been meted out by a joint police and military task force. This task force operates outside police command and accountability structures, making it impossible for the police to charge or discipline military officers when they are involved in such abuses.<sup>69</sup> It substantially undermines credibility and public confidence in Fiji Police Force, as well as blurring the functions and duties of the Police Force when the current Police Commissioner is also a senior ranking military officer.

All law enforcement officials, including military officers acting in a law enforcement capacity, must comply with the UN Guidelines on the Use of Force and Firearms. Non-lethal force should be used first, and only such force should be used as is necessary to protect life. Immunities should not apply. Where governments

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<sup>65</sup> *State v Kean* [2007] FJFC 69.

<sup>66</sup> UN Human Rights Committee, General Comment 20.

<sup>67</sup> See UN Human Rights Committee, General Comment 20; Rule 31 of the Standard Minimum Rules on the Treatment of Prisoners.

<sup>68</sup> UN Human Rights Committee, General Comment 20.

<sup>69</sup> Interview with Former Police Commissioner Groenewald, 25 July 2016.

are unable to meet these high standards, they should refrain from involving the military in policing operations.

In both the Prisons and Police administration, a reduction in complaints should be viewed with caution. Reduced reporting of abuses in detention does not necessarily mean that such cases have reduced, but could be a reflection of fear of reporting such cases or a sense that there would be no justice even if such cases were reported.

## **MILITARY CONTROLLING POLICING**

A country's police service plays a critical role in the administration of justice and in upholding and protecting people's rights. It is important that the public have faith in the police service and its ability to investigate all criminal complaints with due diligence, including complaints against officers of the security forces.

Since 2006, there have been three military officers in charge of the Fiji Police Service. In an interview with Australian media in 2014, former Brigadier-General Mosese Tikoitoga conceded that citizens had been beaten and tortured by the security forces in the past, but claimed this was 'necessary' to prevent civil disorder.<sup>70</sup> This is reflective of a prevailing attitude across the security forces in Fiji that must change if Fiji is to address its poor record on accountability for torture and other ill-treatment and highlights why they are ill-equipped to run civilian policing operations without violating human rights.

The current Police Commissioner Brigadier-General Sitiveni Qiliho, who was appointed in late 2015, has not consistently opposed torture. After hiring three police officers charged in the Soko and Benedito torture cases (outlined above) into the military, he stated:

**"They haven't been convicted yet but unfortunately the police force has abandoned them. They were working for the Fiji police force and they were working with military officers. Now we will stand by our men and women through thick and thin. We're not going to abandon them."**<sup>71</sup>

Police Commissioner Brigadier Qiliho did however change his position in February 2016 and suspended the officers from duties after intervention by the Director of Public Prosecutions.

Accountability must apply equally to all persons in the security forces, regardless of their rank, position or connections if Fiji is to change the culture of impunity for torture and other ill-treatment. At a minimum, these allegations are sufficiently grave to warrant an independent and impartial investigation. In the meantime, the Fiji government should appoint a civilian Police Commissioner of suitable professional integrity to head the Fiji Police Force.

The military should not, as a general rule, be used to carry out policing roles and functions. In exceptional circumstances if this becomes necessary - that is, if there is no alternative because the civilian police do not have sufficient personnel to carry out this task - the military personnel used for policing must be (a) subordinate to and under the command of the civilian authorities and (b) fully trained in, adopt and be bound by international human rights law and standards, in particular the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as well as any national law enforcement policy, guidelines and ethics, and they must be provided with all necessary instructions, training and equipment to enable them to act in full respect of this legal framework.<sup>72</sup>

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<sup>70</sup> Kathy Marks, *Fiji Military leader admits beatings, torture*, The Age, 20 June 2014, available at <http://www.theage.com.au/world/fiji-military-leader-admits-beatings-torture-20140620-zsg90.html>

<sup>71</sup> Radio New Zealand, *Fiji military says recruited officers 'abandoned' by police*, 9 November 2015 <http://www.radionz.co.nz/international/pacific-news/289253/fiji-military-says-recruited-officers-abandoned-by-police>

<sup>72</sup> See A/HRC/31/66, para 66; see also UN Code of Conduct para 1.

# 9. CONCLUSION AND RECOMMENDATIONS

While the Fijian Government has taken a number of positive steps - including through the ratification of CAT, statements by officials condemning torture, training of the security forces on human rights and implementing audio-visual recording at police stations - incidents of torture and other ill-treatment continue to occur. Changing the culture within the security forces is imperative to preventing future acts of torture and other ill-treatment. This systemic change can take time, but it is possible with strong leadership and a commitment to upholding human rights and strengthening the institutions that can hold perpetrators accountable. Critical to this is addressing the gaps in the legal and policy framework to ensure that when torture or other ill-treatment does occur, the perpetrators are promptly, independently and impartially investigated and held accountable through a fair trial. As such, Amnesty International recommends:

## **THE FIJIAN PARLIAMENT TO:**

- Address the significant gaps and consolidate the various laws on policing powers on the use of force and ensure that torture and cruel, degrading and inhuman treatment is adequately defined in law, in recognition of the gravity of the offence.
- Remove legal barriers to the prosecution of torture and other ill-treatment, including by:
  - Repealing immunities provided in sections 155 to 158 of the Constitution;
  - Amending section 65 of the Prisons Act to ensure that military and police officers are not given special treatment through early release if convicted of offences; and
  - Amending the definition of torture under the Crimes Decree to ensure it complies with International human rights law and that penalties reflect the gravity of the offence.
- Repeal the Public Order (Amendment) Decree (as amended).
- Immediately withdraw Fiji's reservations to the Convention Against Torture, ratify and implement the Optional Protocol to the Convention Against Torture.

## **THE POLICE COMMISSIONER, RFMF COMMANDER, CORRECTIONS COMMISSIONER AND THE MINISTER FOR NATIONAL SECURITY AND DEFENCE TO:**

- Order the prompt withdrawal of the armed forces from public security tasks on the basis that their involvement is unnecessary and its officers have failed to comply with international human rights laws and standards on policing and use of force.
- Ensure that all officers required to carry out law enforcement duties are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional human rights based training. Their continued fitness to perform these functions should be subject to periodic review.
- Publicly recognize the magnitude of the problem of torture and other ill-treatment or punishment in Fiji and send a clear message that these acts will no longer be tolerated; refrain from publicly commenting in a manner which might prejudice pending investigations.

- Draft, implement and publicize Standard Operating Procedures or regulations for all law enforcement officials in line with International human rights laws and standards, including UN Guidelines on the Use of Force and Firearms.
- Ensure separate and independent oversight of the RFMF, Police and Corrections – as these three arms of national security have different roles, functions and responsibilities – which are transparent and accountable to the public.
- Ensure that all cases of torture and ill-treatment, regardless of the offender's rank, position, political or familial connections, are promptly, independently and impartially investigated; and that where there is sufficient evidence of criminal responsibility, those responsible are brought to justice through fair trials.
- Ensure that all security forces disciplinary procedures and investigatory mechanisms are independent, adequately resourced.
- Implement guidelines or regulations on investigation and complaint procedures and ensure public information on complaints procedure is readily available in all places of detention including at police stations.
- Ensure that information is publicly available on the numbers of complaints and action taken against officers of the security forces.
- Immediately authorise FHRADC and human rights organisations full and unimpeded access to monitor all places of detention on a regular basis.
- Ensure anyone arrested is brought before a public prosecutor or judge without delay and is able to access a lawyer and family member immediately upon arrest.
- Suspend any agents – regardless of rank – suspected of being involved in acts of torture or other ill-treatment, pending impartial and independent investigation and ensure that any public official found to have been directly or indirectly responsible for torture and other ill-treatment is not employed in other public security, prosecutorial or judicial institutions.
- Repeal or amend Section 65(1) of the Prison Act to ensure that it does not allow impunity for torture or other crimes involving human rights violations or abuses.
- Implement a range of safeguards, with the support of donors, to prevent torture and ill-treatment for persons in custody in Fiji, including accurate recording of arrests and monitoring places of detention and by allowing immediate access to lawyers and family members for arrested or detained persons.
- Conduct comprehensive human rights trainings to both lower grade police staff and officers, to ensure that the absolute prohibition of torture and other ill-treatment is instilled throughout the Chain of Command.
- Provide a clear legal basis for the use of the military to assist in civilian policing matters, ensuring that such use is made only if it is necessary in exceptional circumstances where the civilian police do not have sufficient personnel to carry out their law enforcement functions. In such circumstances the military must be subordinate to and under the command of the civilian policing authorities and comply with relevant international law and standards, in particular on the use of force by law enforcement officials. Soldiers acting in support of civilian police must and be held accountable for their actions under the same laws and procedures applicable to civilian police officers.

#### **THE DIRECTOR OF PUBLIC PROSECUTIONS TO:**

- Ensure that appropriate charges are laid and effectively prosecuted where there is evidence that serious crimes, including torture or murder, have been committed.

#### **THE CONSTITUTIONAL OFFICES COMMISSION TO:**

- Appoint a Commissioner of Police and a Commissioner of Corrections who is a civilian with integrity, humanity, professional capacity and is of good character and personal suitability to that role, in line with international human rights standards; ensure that any public official found to have been directly or indirectly responsible for torture and other ill-treatment is not employed in such a position.



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# BEATING JUSTICE

## HOW FIJI'S SECURITY FORCES GET AWAY WITH TORTURE

In spite of Fiji's recent commitments to uphold human rights, extrajudicial punishment is often meted out by the security forces – police and military officers – resulting in severe injuries and sometimes death. Suspected criminals or escaped prisoners are at high risk of torture and other ill-treatment in custody and have been beaten, raped, sexual assaulted, rubbed with chillies, hit with sticks or batons, attacked by police dogs, or shot at. Military involvement in civilian policing operations is unnecessary, undermines public confidence in the police and has led to serious human rights abuses. When such abuses do occur, perpetrators are rarely held accountable for their actions.

Weak institutions, inconsistent leadership, lack of independent oversight mechanisms, a failure to investigate complaints, interference with justice and legal immunities undermine attempts to hold officers accountable and create a climate of impunity.

Fiji has taken some positive steps to address torture and accountability, including through ratification of the UN Convention Against Torture and audio-visual recording at police stations. The new initiatives, although they represent some progress, do not go far enough in changing the ingrained attitudes within the security forces, leading to further violations of the absolute prohibition of torture and other ill-treatment.