

**United Nations Human Rights Council
Universal Periodic Review: Fiji**

INTRODUCTION

While there are a range of human rights issues in Fiji, this report in particular shall serve as the “eyes and ears” of the committee as it relates to the treatment of Fiji’s most marginalised ethnic minority, the Banaban people. The Fiji government has failed to take positive action to facilitate the realisation of the Banaban people’s right to self-determination under Article 1 of the CCPR¹ despite ongoing advocacy efforts from human rights defenders. International mechanisms are a critical tool for NGOs to hold governments accountable, remind them of their obligations, and point to specific actions that must be taken to move the country forward, especially when many of the issues have persisted where democracy has been stifled. The human rights violations experienced by the Banaban community in the last cycle demonstrate critical gaps in Fiji’s failures to address discrimination against ethnic minorities and failures to protect human rights defenders more broadly. Important for all UN Member States, the issues presented in this report challenge common understandings of sovereignty, citizenship, and minority protection² in the context of displacement which is increasingly important in the context of conflict and climate change.

CONTEXT

The Banaban people, an ethnic minority in Fiji, primarily live on Rabi Island which is a semi-autonomous jurisdiction, governed by the Banaban Settlement Act 1970. The Banaban people were displaced from their Indigenous island of Banaba (Ocean Island) in 1945 due to phosphate mining by British Phosphate Commission, which was jointly owned by the UK, New Zealand, and Australia.

According to the Banaban Settlement Act, Rabi should be governed by the Rabi Council of Leaders, consisting of two elected members from each of the four villages on Rabi, along with a chairperson chosen by village representatives. In 1996, the Banaban Settlement (Amendment) Act added that upon dissolution of the Council, “the Minister shall appoint an Administrator vested with the powers of the Council to manage the affairs of the Council until a new Council is elected.” While intended as a temporary measure to ensure continuity of governance on Rabi as a semi-autonomous jurisdiction within Fiji and strengthen the administration of the Banaban Trust Fund³, an appointed Administrator has been governing since the last dissolution of the Rabi Council of Leaders in 2013.⁴

The failure of the Fiji government to call and fund elections for the Rabi Council of Leaders and the persistence of a sole, unelected Rabi Administrator over the last 11 years has led to a vicious cycle of neglect in which a lack of representative government stifles development and human rights protections and the concentration of power with a single administrator leads to retaliation against Banabans who speak out against his authority. Safeguarding Banabans’ rights in Fiji requires a representative Rabi Council of Leaders, and the Fiji government has failed to play their critical part in funding and facilitating elections and has looked the other

way when the Administrator, appointed by the Office of the Prime Minister, has retaliated against human rights defenders raising their concerns.

Methodology

1. The information in this report is from firsthand experience of the Banaban Human Rights Defenders Network (BHRDN) in its advocacy and monitoring in Fiji, primary sources including letters received by both the BHRDN and the International Center for Advocates Against Discrimination (ICAAD), State reports to treaty bodies, and recommendations by treaty bodies to the State.
2. While the examples in this report primarily concern the Banaban people living in Fiji, they identify critical issues affecting ethnic minorities and human rights defenders across the country. Far from isolated issues, these challenges require the international community to face the realities of human rights in the context of displacement. For the Banaban people, these challenges persist even 79 years on.

HUMAN RIGHTS DEFENDERS

General Issue Statement

3. In the last cycle, there were a number of recommendations responding to the need for protections of human rights defenders. These recommendations included the need to repeal restrictive laws, improve legal frameworks, and meet international standards including the Declaration on Human Rights Defenders.⁵ While non-state actors have helped to advance these calls, including the University of Queensland's Asia-Pacific Centre for the Responsibility to Protect translating the Declaration on Human Rights Defenders to the iTaukei language⁶, there has been next to no state action on these recommendations. Additionally, the experiences of the BHRDN on Rabi Island represent an increasing need to reassert previous recommendations. We reinforce the need for action drawing attention specifically to the laws and policies restricting freedom of expression, assembly, and association.⁷

Supporting Examples

4. On Rabi Island, the restrictions and retaliatory action by the Rabi Administrator against human rights defenders has centered around the attempted re-entrenchment of extractive industry on Banaba. While the Rabi Council of Leaders, and the Rabi Administrator acting on its behalf, is concerned with affairs on Rabi Island, the story of Banaban forced relocation from Banaba (in present-day Kiribati) to Rabi (Fiji) has led to necessary legal frameworks that transverse both jurisdictions. As such, Chapter 9 of the Kiribati Constitution also gives the Rabi Council of Leaders responsibilities and rights in Banaba and allocates a representative member of the Banaban community to the Maneaba ni Maungatabu.⁸

5. Concerning the re-entrenchment of extractive industry on Banaba, the Rabi Administrator, Mr. Iakoba Karutake, faced widespread community resistance when news broke of his pursuit of a feasibility study to mine the remaining phosphate on Banaban. In August 2023, the Australian mining company, Centrex, made a public announcement that they signed an official agreement with the Rabi Council Leaders approving plans to explore the feasibility of mining.⁹ The letter approving the agreement was signed by Mr. Karutake, dated 15 August 2023, explained that he consulted “prominent members of the community” and also requested a “goodwill payment to the Rabi Council of Leaders (to show Centrex Ltd’s tangible and financial commitment to the Banaban Community given the strong anti-mining campaign from the NGO’s).” These actions were taken without the free, prior and informed consent of those affected. Those who were consulted included the Rabi Administrator (appointed by the Office of the Prime Minister), the current Rabi Council of Leaders (staffed by those appointed by the Rabi Administrator), and “prominent member of the community” (selected by the Rabi Administrator) who are not representative of the people affected by the decision. None of the four village Chairmen, nor any community members living on Rabi Island, who represent the majority of Banaban landowners, were consulted or informed.
6. When the letter was circulated on Rabi, Mr. Karutake’s anticipated campaign against mining from civil society came to fruition. The BHRDN assembled to consult community members about the actions taken by Mr. Karutake. The response from community members and civil society led to the proposal being put on hold for village consultations to be conducted.
7. Subsequent actions to restrict civil society under Mr. Karutake’s leadership have leveraged Fiji’s weak legal framework for protecting freedom of expression, assembly, and association. In a policy statement dated 18 January 2024, Mr. Karutake authoritatively instructed all non-Banabans to report directly to him if they wish to enter Rabi or risk being removed by Police within 24 hours. He has also granted himself the power to assess and approve of visitors’ planned activities, over the authority of village leadership. While the courtesy of notifying the local government of visitors is customary, especially on Rabi given its unique governance system, the power to assess and remove visitors with the purposes of “control” and avoiding “division and tension” warns of increasing authoritarian control. The letter came at the time of a human rights advocacy training on the island with the BHRDN.¹⁰
8. Mr. Karutake has also brought two civil cases against members of the BHRDN for alleged defamation. Since their founding, the BHRDN and their members have made public comments on human rights issues affecting Banabans in Rabi and Banaba with a focus on extractive industries, climate change, and self-determination. One case was brought in response to an anonymous post made on Facebook critical of Mr. Karutake’s leadership. The case was brought against all administrators of the Facebook group in which the post was shared which appears to indicate that Mr. Karutake and his legal team wanted to make an example of the human rights defenders involved. Importantly, General Comment 34 on Article 19 of the CCPR warns

that “defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.”¹¹ The Committee adds that, that comments about public figures, especially when there is public interest in the matter, are defensible.¹²

9. ICAAD has been collaborating with the BHRDN for human rights education programming, activism, and advocacy since 2020.¹³ In June 2024, Mr. Karutake issued a letter to ICAAD warning against working with the BHRDN and stating that all organisations looking to work with the Rabi community must go through him for assessment and approval. Mr. Karutake's letter stated: “We have witnessed and experienced the work of the BHRDN since August 2023, which was against the RA and the RCL as a whole, leading to their removal from the RCL’s office. An NGO was supposed to work closely with the government; however, their actions created division among our people on Rabi and in Banaba. The RCL does not recognise their work for the Banabans on Rabi and Banaba and informs your office that we won’t allow them to consult any meeting with the Banaban community unless with my official endorsement.” As reiterated in the General Principles Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, “The right of associations to freely access human, material and financial resources is inherent in the right to freedom of association, as set out in article 22 of the International Covenant on Civil and Political Rights. To realize this right, States are required to ensure civil society organisations can seek, secure and use resources from domestic, foreign and international sources without prior authorization or other undue impediments.”¹⁴ The language in Mr. Karutake’s letter suggests he finds the expression of opposition to his policy priorities to be sufficient grounds to restrict freedom of association, expression, and assembly.
10. There has been no further action from the Fiji government on these issues, nor implemented previous recommendations that further support a safe and enabling environment for civil society and human rights defenders, alike. Despite having an open standing invitation for Special Procedures since 17 March 2014, Fiji has not responded to requests for visits from the Special Rapporteur on the situation of human rights defenders since 2012. The situation on Rabi Island involving Mr. Karutake, who is an appointee of the Office of the Prime Minister, making unilateral decisions so widely out-of-step with international human rights law requires both a local remedy as well as national attention to the persistent gaps in legal frameworks and practice in protecting human rights defenders.

DISCRIMINATION AGAINST ETHNIC MINORITIES

General Issue Statement

11. In previous cycles, there has been attention on Fiji’s treatment of ethnic minorities. In the most recent cycle, recommendation 139.43 highlighted the need for a comprehensive strategy to eliminate discrimination. In addition to policy,

recommendation 139.37 focused on the need for social cooperation and dialogue among different ethnic groups. Further recommendations draw attention to disparate development outcomes because of discrimination.¹⁵

12. Article 26 of the Fijian Constitution includes a general anti-discrimination provision which extends to the grounds of race, culture, ethnic or social origin, colour, and place of origin. While broader disparities between ethnic groups are obfuscated by the fact that the Fiji Bureau of Statistics still has not released disaggregated ethnicity data from the 2017 census, the information related to the Banaban people is illustrative.
13. In its 2012 decision, the Immigration and Protection Tribunal of New Zealand acknowledged that the situation of Banabans has “shut the Banaban community out of development assistance programmes and, alongside other causes, has contributed to a high incidence of poverty among the Banaban community. The Banaban community is discriminated against by the Fijian state in terms of development policies insofar as anti-poverty programmes are ethically based and bear no adequate connection to the actual incidence of poverty.”¹⁶ The Fiji government has failed to fulfill a number of fundamental rights enshrined in the Fiji Constitution in the Banaban community including the right to education (Article 31), the right to housing and sanitation (Article 35), the right to adequate food and water (Article 36), and the right to health (Article 38).
14. These rights are limited with the qualifier that the Fiji government takes “reasonable measures within its available resources” to realise them. Under ICESCR Article 2, State parties are required to take necessary steps to realise provisions of the Covenant “to the maximum of its available resources.” In General Comment 3, the Committee emphasises that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.”¹⁷ The distribution of resources towards these ends are not evenly distributed to achieved the widest possible enjoyment of these rights. For Rabi, in particular, funding for elections for the Rabi Council of Leaders is critical, however there are a number of pathways to achieving wider realisation of these rights including empowering a representative Rabi Council of Leaders to levy taxes for increased revenue and requesting ODA from the UK, Australia, and New Zealand (countries involved in mining and forcibly displacing the Banaban people to Rabi) earmarked for Rabi development.

Supporting Examples

15. In the 2024-2025 National Budget, there was a \$45,000 increase in annual funding for the Rabi Island Council, the coordinating government entity for development assistance and public services in Rabi. This meager increase still leaves Rabi Island far behind other ethnic minorities in terms of per capita development assistance, and this is reflected in disparate development outcomes. Even compared to Kioa and Rotuma, similarly situated ethnic minorities with semi-autonomous jurisdictions, Rabi receives only \$55 per capita from council funding compared to the \$140 per capita for Kioa and \$188 per capita for Rotuma.¹⁸ The population living on Rabi is more than double that of

Rotuma, yet the Rabi Island Council receives less than a third of the funds received by the Rotuma Island Council.

- 16. Water and sanitation.** On 2 February 2024, the Senior Medical Officer at the Rabi Health Centre declared the island's water is unsafe for people to drink. He added that the borehole water sources are also drying up due to climate change, so the main sources of water are also becoming increasingly unreliable.¹⁹ The 2022 Rabi Water and Sanitation Report details the findings from a preliminary assessment by the Rabi Island Water Department.²⁰ The report found that 70% of households connected to the water source have leakage issues which stem from a lack of servicing pipelines. Further, there are only 10 rain water tanks on the island which is wholly insufficient to serve the population of 5,000. Development partners including Habitat Fiji have stepped in to support efforts to improve water and sanitation to fulfill the shortcomings of the Fiji government. Further neglect by the Fiji government points to discrimination based on the disparate outcomes on Rabi as compared to other parts of the country.
- 17. Health.** The single health center on Rabi Island is unable to meet the health needs of Banabans and is severely under resourced. Non-basic healthcare treatment and maternity care can only be accessed by travelling between 80 and 200 kilometers to nearby islands which can be prohibitively costly for some. Article 38, section 3 of the Fijian Constitution clarifies that when the government claims that it does not have the resources to implement to right to health, the burden of proof lies with the government to show that the resources are not available. As a critical missing piece to the government's strategy to expand medical facilities to achieve universal health coverage, data must be collected and disaggregated by ethnicity to ensure there are no discriminatory outcomes.
- 18.** The absence of a functioning port or airport on Rabi Island poses a significant obstacle to achieving any of these outcomes. In the past, Rabi had both a port and an airport. However, these facilities have fallen into disrepair or become non-operational. This is another example of the compounding neglect from the government's failure to reinstate democratic processes on Rabi Island. Restoring a representative government is a critical step towards realising human rights for Banabans.

EQUAL PARTICIPATION OF ETHNIC MINORITIES

General Issue Statement

- 19.** The CERD's concluding observations in both 2008 and 2012 recommended that the Fiji Government "consider adopting measures to ensure that all ethnic groups are duly represented in State institutions and the public administration, including special measures aimed at achieving adequate representation of all communities."²¹ Further, Fiji supported the recommendation to "guarantee access to the participation and representation of ethnic minorities in the different instances of public and private life" in the previous UPR cycle.²² While the Fiji government has made gestures towards

these ends, the Banaban community suffers from a lack of action, specifically in the Fiji government's responsibility to call for and fund elections for the Rabi Council of Leaders.

20. CCPR General Comment No. 25 explains that the “genuine periodic elections” in accordance with Article 25 (b) “are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors.”²³ Over 11 years have passed since Rabi Island had a representative government, and the lack of a government based on the “free expression of the will of electors” has contributed to a number of human rights violations of concern.

Supporting Examples

21. In theory, the Rabi Council of Leaders should retain a large degree of autonomy to govern Banaban affairs, both on Rabi Island as well as protecting Banaban interests on Banaba.²⁴ Even compared to other island councils, the Rabi Council of Leaders is empowered under the Banaban Settlement Act to make its own regulations and even levy taxes²⁵, a potential pathway to promote development on the island without reliance on the Fiji government. In 2013, a Rabi Administrator was appointed in lieu of calling new elections because the Council had “failed to meet targets set by the government in relation to works to be carried out on Rabi.”²⁶ However, the Banaban people have been left under the leadership of an Administrator whose leadership was intended to be a temporary continuity measure. After finding favour with an Australian mining company, the current Rabi Administrator, Mr. Karutake, has not only pushed the limits of his authority by proceeding with an agreement with the company without free prior and informed consent of Banaban landowners, but he has further retaliated against human rights defenders who oppose him. This has effectively left the Banaban people without political recourse making it imperative that representative government is restored on Rabi Island.
22. The Prime Minister of Fiji made a public commitment in March 2024 to review the Banaban Settlement Act, hold elections for the Rabi Council of Leaders, and naturalise Rabi Islanders.²⁷ This is a welcome commitment and, if realised, would start to address the series of issues outlined in this report. Importantly, the review of the Banaban Settlement Act must also be representative of wide Banaban interests, not just those of a select few.

RECOMMENDATIONS

23. Reinstate the Rabi Council of Leaders as a representative, elected body by providing funding and technical assistance for fair and democratic elections.

24. Conduct consultations in each village on Rabi to develop proposed amendments to the Banaban Settlement Act.
25. Institutionalise the collection and publication of data on development outcomes disaggregated by ethnicity to ensure there is no discrimination on these grounds.
26. Invite mandate holders of the UN Special Rapporteur on the situation of human rights defenders and implement their recommendations.
27. Amend the Public Order (Amendment) Act in order to guarantee fully the right to the freedom of assembly and to remove restrictions other than those provided for within the framework of international law
28. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against civil society members, journalists, and human rights defenders and bring the perpetrators of offences to justice.
29. Develop and implement a strategy for aligning policies and practice with the UN Declaration on Human Rights Defenders.
30. Train all government officials and law enforcement in human rights and the Declaration on Human Rights Defenders to reduce arbitrary arrests, unlawful detention, and retaliatory civil actions.

¹ CCPR, *General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples*, (13 March 1984).

² Jane McAdam, *'Under Two Jurisdictions': Immigration, Citizenship, and Self-Governance in Cross-Border Community Relocations*, *Law and History Review* (May 2016).

³ Sir Paul Reeves, Tomasi Rayalu Yakatora and Brij Vilash Lal, *The Fiji Islands: Towards a United Future: Report of the Fiji Constitution Review Commission*, (1996), para. 17.77.

⁴ In 2013, the Rabi Council of Leaders was dissolved because of "corruption and a lack of activity in their administration of island services." See Katerina Teaiwa, *Consuming Ocean Island*, (2014), p. 220 fn 29.

⁵ See recommendations 139.81, 139.80, 139.186, 139.187, 140.35, 139.36.

⁶ University of Queensland Asia-Pacific Centre for the Responsibility to Protect, *Declaration on Human Rights Defenders Translations*, (19 March 2024), <https://r2pasiapacific.org/article/2024/03/declaration-human-rights-defenders-translations>.

⁷ Recommendation 140.36 from the Netherlands was noted in the previous cycle: "Repeal all laws and policies that unlawfully restrict fundamental rights of freedom of expression, assembly and association, including sections of the Public Order (Amendment) Act, the Media Industry Development Decree, the Electoral Act 2014 and the Online Safety Act."

⁸ Kiribati Constitution Chapter 9, Section 117, Section 2.

⁹ Centrex Limited, *Centrex Signs Agreement as First Step Towards the Commencement of Exploration on Banaban Island*, (16 August 2023), <https://app.sharelinktechnologies.com/announcement/asx/e1bd6bfb341b21a39c71121a29a601a3>; Ben Doherty, *Mining once made this Pacific island unlivable, now residents fear its return*, *The Guardian* (4 Sept 2023),

<https://www.theguardian.com/world/2023/sep/04/mining-once-made-this-pacific-island-unliveable-now-residents-fear-its-return>.

¹⁰ ICAAD, *Banaban Human Rights Defenders Host ICAAD for Training to Safeguard the Rights of the Banaban People on Rabi*, (21 January 2024), <https://icaad.ngo/2024/01/22/banaban-human-rights-defenders-host-icaad-for-training-to-safeguard-the-rights-of-the-banaban-people-on-rabi/>.

¹¹ CCPR, *General comment No. 34 Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34 (12 Sept 2011).

¹² *Id.* para. 47.

¹³ ICAAD, *Justice for Rabi: The Story of Banaba*, (2023), <https://icaad.ngo/justice-for-rabi/>.

¹⁴ Clément Nyaletsossi Voule, *General principles and guidelines on ensuring the right of civil society organizations to have access to resources Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Human Rights Council, (23 June 2023), A/HRC/53/38/Add.4.

¹⁵ See recommendations 139.116 and 139.124

¹⁶ New Zealand Immigration and Protection Tribunal, *BG (Fiji)*, NZIPT 800091, (2012),

<https://www.refworld.org/jurisprudence/caselaw/nzipt/2012/en/87643>.

¹⁷ CESCR, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, (14 December 1990) E/1991/23, para. 11.

¹⁸ See Republic of Fiji Budget Estimates 2024-2025 as Presented to Parliament, p. 17. From the Office of the Prime Minister, the Rotuma Island Council will be allocated \$300,000 with Fiji Census data citing a 2017 population of 1,594. The Kioa Island Council will be allocated \$70,000 with a population of 500 in 2022. The Rabi Island Council will be allocated \$200,000 with the Rabi Island Community Hub citing a resident population of 3,612 in 2023.

https://www.finance.gov.fj/wp-content/uploads/2024/06/Final-Budget_2024-v2-1.pdf.

¹⁹ Jone Salusalu, *Water on Rabi Island Unsafe to Drink*, FijiSun (2 February 2024),

<https://fijisun.com.fj/2024/02/02/water-on-rabi-island-unsafe-to-drink/>.

²⁰ Itinterunga Rae Bainteti and Teibouri Eria, *Rabi Water and Sanitation Report 2022*.

²¹ CERD, *Concluding Observations*, (2008), CERD/C/FJI/CO/17, p. 4.; CERD, *Concluding Observations*, (2012), CERD/C/FJI/CO/18-20, p. 3.

²² See recommendation 140.54

²³ CCPR, *General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Human Rights Committee, (12 July 1996), CCPR/C/21/Rev.1/Add.7.

²⁴ Kiribati Constitution Chapter 9, Section 117, Section 2.

²⁵ *Supra* note 3.

²⁶ *Supra* note 2, at 300.

²⁷ Ritika Pratap, *Human rights defenders welcome PM's announcement*, (18 March 2024), FBC News, <https://www.fbcnews.com.fj/news/human-rights-defenders-welcome-pms-announcement/>.