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Fiji law society raids anger local lawyers

By Kate Gibbs

THE Australian and New Zealand legal professions have riled against the Fiji Government's raid of the country's law society offices on the weekend.

The weekend raid included them removing files from the law society offices. The society has been told it no longer has control of licensing lawyers, and that membership is no longer compulsory.

Today the Law Council of Australia expressed its "grave concerns" about the future independence of the legal profession in Fiji.

It raised concerns about Decree 16, which places the power to issue practising certificates in the hands of the Chief registrar of the court, a government employee.

"I am concerned that this could be the first step in the Fiji Government's attempts to control the country's legal profession by not allowing lawyers who oppose the regime to practise law," said Law Council president John Corcoran.

The weekend move follows the military regime's reappointment of judges on Friday, just six weeks after firing them all.

Those reinstated include two High Court justices who previously ruled that the military's 2006 coup was legal.

The Law Council president said it was alarming that these measures had not been the subject of consultation with the Fiji Law

Society or Fiji's legal profession.

"Without an independent legal profession, a vital ingredient in upholding the rule of law in Fiji would be missing," he said.

He said the Law Council was also appalled at disturbing reports which indicate that the Fiji Government raided the offices of the Fiji Law Society over the weekend, seizing confidential documents in the process.

"The Law Council, in conjunction with the Fiji Law Society, will continue to keep a watchful eye on events to monitor whether the new arrangements result in an attack on the independence of the legal profession in Fiji," Corcoran said.

Fiji's interim attorney general, Aiyaz Sayed-Khayum, said reforms to the society would improve transparency. Fiji's military ruler Commodore Frank Bainimarama ousted the government in a 2006 coup and installed himself as prime minister.

Meanwhile, due to the large number of Australian and New Zealand citizens that serve as judges in Fiji, law societies in Fiji, Australia and New Zealand have urged all lawyers not to take up judicial postings to serve the regime.

"Once you cancel that element of independence you don't have an effective judiciary at all. It is a police state just like you had in Nazi Germany," NZ lawyer, Peter Williams QC, told TVNZ.

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NZ politician slams regulation

"New Zealand is over regulated. Government has got too big," said the Minister for Regulatory Reform in New Zealand, Rodney Hide. In a speech to the Wellington Chamber of Commerce last week, Hide said "red tape is tying up businesses in knots", while also condemning the draining of resources from the "productive sectors" into the state sector, "which has been dragging the economy and the country down". The NZ politician, who has long campaigned about government spending, said an "avalanche of new rules and regulations" is forcing businesses and councils to give up on projects. He said government regulation is "coercion". "Using law to restrict people's rights and actions is only acceptable when better alternatives won't work, and when it's in the public interest to do so," he said.

Short-selling ban lifted: ASIC

ASIC has lifted its ban on short-selling, effective from this morning. The regulator announced this morning that the ban, which has been in place since 21 September last year, would be lifted from 10am. The Commission had reviewed market conditions and found that the balance between market efficiency and potential systemic concern had now moved in favour of the ban being lifted, Money Management reports. ASIC has claimed, however, that it will not hesitate to reimpose the ban if needed.

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COMMENT & DEBATE: 2009 UNSW LAW ESSAY COMPETITION WINNER

Student talks human rights

Year 12 high school student Sarah Yip answers the following essay question, scoops award. "Human rights are adequately recognised and protected in Australia. Discuss."

THERE is no need for debate on whether human rights need to be protected in Australia and around the world. Ever since the United Nations was developed with the central aim of establishing and protecting human rights, international society has become increasingly concerned with human rights, and rightly so.

The question is: to what extent is Australia committed to human rights, and is this adequate? In considering this, 'adequate' must first be defined. The notion of human rights is essentially an idealistic one, having been conceived with standards of excellence, if not perfection, in mind. Therefore, only the highest practicably attainable standard of human rights should be accepted as 'adequate', otherwise the idealism upon which human rights are founded will have been betrayed. As for a commitment to human rights, this would require both recognition and protection. With these in mind, the question reads: to what extent are human rights recognised and protected in Australia, and is this extent the highest standard practicably attainable?

As an advanced democratic nation, Australia has demonstrated its emphasis on human rights through the signing of various documents, which include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Collectively, these provide a list of rights which Australia has now agreed to recognise and protect. However, agreement is useless if these rights are not enshrined in Australian law.

In *The Sydney Morning Herald* article Statute of Liberty, Geoffrey Robertson puts it this way: "If rights are not capable of legal enforcement then they are not rights at all." One



Are our human rights laws sufficient? High school student Sarah Yip is on the case.

instance where Australia has recognised human rights, but consistently failed to protect them, is the rights of indigenous Australians. Even without taking into account the atrocities committed against the indigenous people in decades gone by, Australia still cannot be said to protect their rights. Consider the following: "In 2003-04, Indigenous Australians had a higher rate of hospitalisation for intentional self harm than the non-Indigenous population: 2.4 higher for Indigenous males and 1.9 times higher for Indigenous females", (Australian Human Rights Commission, 2006). This is just one example of how the basic human right to "a standard of living adequate for health and well-being" (UDHR, Article 25) has been neglected.

Another issue is the rights of refugees, as Australia has a strict policy of mandatory detention of asylum seekers. Deprivation of liberty for an indefinite period of time through this policy is a clear violation of the rights outlined in the UDHR, in particular those under Articles 9 and 14. However, according to the report Seeking Safety Not Charity by Anne McNevin, even when bridging visas are granted to asylum seekers as a temporary measure, the restrictions these visas entail mean that these individuals' needs ('accommodation, medical care, food, clothing... health care services for children' (p43, 2005)) are not met. This is despite Australia's obligation under the Convention on the Rights of the Child (CRC), ICCPR, the Refugee Convention and ICESCR to provide those necessities. Unfortunately, not only has Australia failed to protect rights outlined in these covenants,

it has directly and intentionally violated a number of them. Australia's counter-terrorism laws are an example of this; rights such as the right not to be subjected to arbitrary detention have been ignored. This is despite the fact that they are contained in the ICCPR, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the UDHR (Article 9), all of which have been ratified by Australia.

However, the noting of these failures and the various reports and commissions which have investigated them demonstrate that they do not go unnoticed, and that Australia is working towards rectifying these human rights violations. In 1986, the Federal Parliament established what is now the AHRC, which exists to recognise and protect human rights through education, investigation and recommendation.

Also, various pieces of legislation enacted by governments in Australia serve to protect human rights, such as the *Children and Young Persons (Care and Protection) Act 1998* (NSW) which takes into account the rights in the CRC. These demonstrate that the government does actively protect human rights, and seeks to rectify existing issues. Despite this, the fact that laws have been passed in Australia, as recently as April 2009, which allow gang members to be charged without warning (a violation of the freedom of association, UDHR Article 20), is a sobering reminder that human rights are still being violated.

It has now been clearly established where Australia stands in terms of recognising and protecting human rights, but is this the

highest standard that Australia can practicably attain? One might argue that, firstly, new issues and problems arise constantly and secondly, legal review and the implementation of measures to improve human rights take time. The combination of these factors could mean that at any one point in time, not much more can be done.

Also, legislation such as the counter-terrorism laws and 'bikie laws' is often deemed necessary in order to protect the rights and security of society, albeit at the expense of certain individuals' rights. Thus, some believe changing these pieces of legislation is not practicable. On the other hand, there are many who do not perceive the current state of human rights in Australia as acceptable.

At the moment, there is considerable debate over the introduction of a national charter or bill of human rights. Proponents say that the way to properly protect rights is to state them in black and white, so that there can be no room for governments to ignore or abuse them. In the article Rights devil is in the detail in *The Australian* (4 April 2009), the president of the AHRC, Catherine Branson, states "a human rights act would require consideration of rights at every stage of decision-making". However, there are many complications associated with such an act. In his submission to the National Human Rights Commission, Prof Parkinson explains that in some cases "both parties would... seek remedies based on charter rights". The case of *R v Pascoe* (2002), where a conflict arose between the defendant's rights as an indigenous person and children's rights, is an example of where this could occur.

Once again the issue of practicability is a point of contention, nevertheless this bill has the potential to raise the standard of human rights in Australia. Ultimately, it is up to the individual to decide whether Australia is adequately committed to human rights, to determine how the overall standard can be improved, and to act.

■ Sarah Yip is 17 years old and is a Year 12 student at Ravenswood School for Girls.