



April 12, 2024

Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
Canberra ACT 2600

### **Submission by Human Rights Watch on the Agreement between Australia and Fiji on Defense Cooperation and the Status of Visiting Forces**

Human Rights Watch is an independent nongovernmental organization that monitors and reports on respect for international human rights and humanitarian law in over 100 countries around the world.

We urge the committee to include human rights vetting in the proposed cooperation agreement with the Fijian government.

Overall, we urge the Australian government to introduce a new law or policy requiring human rights vetting for all security force cooperation arrangements. The Australian military should not be authorized to support, train, or appoint to its ranks anyone credibly accused of committing serious human rights or humanitarian law violations anywhere. This applies to Australian military training exercises, joint missions, embedding senior commanders or supplying equipment.

Training by, and cooperation with, Australian defense forces bestows legitimacy and professionalism on those who receive it. The Australian government should be extremely careful not to legitimize anyone credibly accused of serious abuses. It erodes Australia's credibility and risks implicating Australian soldiers indirectly – or possibly directly – in crimes or violations.

Given this overall framework does not yet exist, we urge the committee to recommend that a human rights vetting provision be incorporated into all bilateral security force cooperation agreements including the proposed agreement between Fiji and Australia.

### Context

The recent case of Fijian Col. Penioni (Ben) Naliva is a stark reminder of why human rights security force vetting is important. In 2011, the United Nations special rapporteur on the protection of freedom of expression specifically named Colonel Naliva, in a report to the UN Human Rights Council, citing his alleged role in the beating of the businessman and former politician, Benjamin Padarath, in Fiji.<sup>1</sup> According to newspaper accounts, a former Fijian member of parliament, Sam Speight has also alleged being tortured by Colonel Naliva in 2011.<sup>2</sup>

Despite some of these allegations already being in the public domain, in January 2024 the Australian Defence Force appointed Colonel Naliva as deputy commander of their 7th Brigade in Brisbane without having undertaken any comprehensive vetting.<sup>3</sup> The Australian Defence Force maintains they were “unaware” of the allegations prior to his appointment and is currently investigating.<sup>4</sup>

A requirement for security force vetting and a clear process would have avoided this situation.

### Content of the current agreement

According to article 2 of the proposed agreement, the purpose of the agreement is “to facilitate and foster closer defence cooperation between the Parties by establishing a framework for the conduct of such cooperation”. The parties will do this by mutually agreeing on cooperative activities, including (according to article 3):

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<sup>1</sup>United Nations Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, GE.11-13541, May 27, 2011, [https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27.add.1\\_efonly.pdf#page=107](https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27.add.1_efonly.pdf#page=107) (accessed April 10, 2024), para. 784.

<sup>2</sup>Former Fijian MP Sam Speight Reveals Torture by 7<sup>th</sup> Brigade Colonel Ben Naliva,” *The Australian*, January 31, 2024, <https://www.theaustralian.com.au/nation/defence/former-fijian-mp-sam-speight-reveals-torture-by-7th-brigade-colonel-ben-naliva/news-story/f0da552870ad298faa6d8df8667f1490> (accessed April 10, 2024).

<sup>3</sup>“Accused Fijian Torturer Colonel Penioni (Ben) Naliva to Command ADF Troops,” *The Australian*, January 30, 2024, <https://www.theaustralian.com.au/nation/defence/accused-fijian-torturer-colonel-penioni-ben-naliva-to-command-adf-troops/news-story/dd2d736dbf0f30186b33f53c24cd0ca9> (accessed April 10, 2024).

<sup>4</sup> Foreign Affairs, Defence and Trade Legislation Committee Senate Estimates, February 14, 2024, [https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/27711/toc\\_pdf/Foreign Affairs, Defence and Trade Legislation Committee\\_2024\\_02\\_14.pdf;fileType=application%2Fpdf#search=%22committees/estimate/27711/0000%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/27711/toc_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee%202024_02_14.pdf;fileType=application%2Fpdf#search=%22committees/estimate/27711/0000%22) (accessed April 10, 2024).

(a) the conduct of joint or unilateral visits and military exchanges, operations, exercises or other activities; (b) the provision of international humanitarian assistance and disaster relief; (c) the provision of joint or unilateral education and training of personnel; (d) the conduct of logistic support; (e) the exchange of information, including Sensitive Information and Classified Information; (f) activities to enhance and broaden the interaction of their respective military cultures; and (g) other cooperative activities mutually determined by the Parties.

**Vetting clause recommendation**

A vetting clause in this agreement would prohibit the Australian government from providing assistance and training to any Fijian military unit or individual security force member where there is credible information implicating them in gross violations of human rights, unless the Fijian government has taken steps to remediate, address the abuses, and hold those responsible to account.

This clause should become a standard clause in all bilateral security force agreements, absent an overarching legislative or policy requirement for mandatory security force vetting.