



# Human Rights and Anti-Discrimination Commission

*Neither Greater nor Lesser but **EQUAL**: Dignity, Equality and Freedom for all in Fiji*

ANNUAL REPORT 2016







I AM

Neither Greater  
Nor Lesser  
but EQUAL:  
Dignity,  
Equality  
and Freedom  
for all in Fiji

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# Our Responsibilities

## Section 45 (4) of the Fijian Constitution bestows the Commission with the following responsibilities:

- (a) promoting the protection and observance of, and respect for, human rights in public and private institutions, and to develop a culture of human rights in Fiji;
- (b) education about the rights and freedoms recognised in the bill of rights of the Constitution as well as other internationally recognised rights and freedoms;
- (c) monitoring, investigating and reporting on the observance of human rights in all spheres of life;
- (d) making recommendations to Government concerning matters affecting the rights and freedoms recognised in the bill of rights including recommendations concerning existing or proposed laws;
- (e) receiving and investigating complaints about alleged abuses of human rights and take steps to secure appropriate redress if human rights have been violated, including making applications to court for redress or for other forms of relief or remedies;
- (f) investigating or researching, on its own initiative or on the basis of a complaint, any matter in respect of human rights, and make recommendations to improve the functioning of public or private entities;
- (g) monitoring compliance by the State with obligations under treaties and conventions relating to human rights; and
- (h) performing any other functions or exercising any powers as are conferred on the Commission by a written law.

## Section 12 (1) of the Human Rights and Anti-Discrimination Commission Act further prescribes the following powers and duties of the Commission:

- (a) to increase general awareness of human rights, including by making public statements and educating public opinion and public officials, coordinating human rights programs and acting as a source of human rights information;
- (b) to invite and receive representations from members of the public on any matter affecting human rights;
- (c) to consult and co-operate with other persons and bodies concerned with the promotion and protection of human rights;
- (d) to inquire generally into any procedure or practice whether governmental or non-governmental, if it appears to the Commission that human rights are, or may be, infringed thereby;
- (e) to make recommendations to the Government on the desirability of legislative, administrative or other action so as to give better protection to human rights;
- (f) to promote better compliance in Fiji with standards laid down in international instruments on human rights;
- (g) to encourage the ratification of international human rights instruments by the State and, where appropriate, to recommend the withdrawal of reservations entered to those instruments;
- (h) to advise the Government on its reporting obligations under international human rights instruments and, without derogating from the primacy of the Government's responsibility for preparing those reports, to advise on the content of the reports;
- (i) to make recommendations on the implications of any proposed law or any proposed policy of the Government that may affect human rights;
- (j) to investigate allegations of contraventions of human rights and allegations of unfair discrimination, on its own motion or on complaint by individuals, groups or institutions on their own behalf or on behalf of others;
- (k) to resolve complaints by conciliation and to



refer unresolved complaints to the courts for decision;

(l) to advise on any human rights matter referred to it by the Government having regard to the available resources and priorities of the Commission.

(m) to publish guidelines for the avoidance of acts or practices that maybe inconsistent with or contrary to human rights;

(n) to take part in international meetings and other activities on human rights; and to co-operate with other national, regional and international human rights bodies.

(2) The Commission may, from time to time, in the public interest or in the interests of any person or department, publish in any manner it thinks fit reports relating generally to the exercise of its functions or to any particular case or cases investigated under this Act.

(3) The Commission must not investigate (but may comment on) any decision by a court of law. Under section 45 (5) of the Constitution any person has the right to lodge a complaint with the Commission, alleging that a right or freedom in this Chapter has been denied, violated or infringed, or is threatened.

### **Administrative and financial autonomy of the Commission**

Section 45 (8) confers to the Commission the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission. Furthermore 45 (9) provides that the Commission has the authority to determine all matters pertaining to the employment of all staff in the Commission, including—

(a) the terms and conditions of employment;

(b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;

(c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and

(d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

Section 45 (11) requires that the Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties. Section 45 (12) explicitly provides that the Commission shall have control of its own budget and finances, as approved by Parliament.

## **Independence of the Commission**

Section 45 (7) of the Constitution provides that “in the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law”.

# Vision

Neither Greater Nor Lesser but EQUAL: Dignity, Equality and Freedom for all in Fiji

# Mission

To take a lead role in the promotion, protection and fulfillment of human rights for all in Fiji

To build, strengthen and sustain a human rights culture in Fiji

# Values

The Commission is committed to:

## **Promoting, protecting and fulfilling human rights**

Every person will be treated with dignity, respect and equality. We will apply a gender analysis to all our work.

## **Exercising the Commission's authority and powers independently**

In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

## **Promoting access to justice and equal application of the law**

Promote access to justice and equal application of the law including relevant international human rights law.

## **Providing a professional, transparent, accountable, ethical, responsive, and effective service**

We will be professional, transparent, accountable, ethical, responsive and effective in all dealings on behalf of the Commission.

# Our Strategic Goals

## **Goal 1**

Monitoring, Investigations and Compliance

## **Goal 2**

Litigation and Policy Analysis

## **Goal 3**

Education, Advocacy and Communications

## **Goal 4**

Institutional Strengthening



## Letter to His Excellency the President of the Republic of Fiji

15 June 2019

His Excellency  
The President of Republic of Fiji  
Office of the President  
Government House  
Berkley Crescent  
Suva

Dear Sir,

### Re: Human Rights and Anti-Discrimination Commission Annual Report 2016

Pursuant to section 44(1) of the Human Rights and Anti-Discrimination Commission Act 11 of 2009, I am pleased to submit the Commission's Annual Report for the year ending 31 December 2016.

Your Excellency will no doubt appreciate that I was appointed as Chairperson of the Commission on 20 September 2018. Hence, this report is compiled on the basis of records held by the Commission, provided by the Director and his staff.

Yours sincerely,

Honourable Mr. Justice Kamal Kumar  
**CHAIRPERSON**

## Letter to the Honourable Prime Minister of the Republic of Fiji

15 June 2019

The Honourable Prime Minister  
Office of the Prime Minister  
4th Floor, New Wing, Government Buildings  
26 Gladstone Road  
Suva

Dear Sir,

**Re: Human Rights and Anti-Discrimination Commission Annual Report 2016**

Pursuant to section 44(1) of the Human Rights and Anti-Discrimination Commission Act 11 of 2009, I am pleased to submit the Commission's Annual Report for the year ending 31 December 2016.

Yours sincerely,

Honourable Mr. Justice Kamal Kumar  
**CHAIRPERSON**

# The Commission

## Chairperson

Justice Mohammed Ajmeer

He was appointed in 2015 as the chairperson of the Commission. He is a High Court Judge and hails from Sri Lanka



## Commissioner

Ms. Senila Lee Wah

She was appointed in 2015 as a commissioner. She is a social worker and holds membership with several non-governmental organizations. Ms. LeeWah also served on the National Council for Building a Better Fiji (NCBBF) in 2008 and is a serving member of the Northern Division Development Board.



## Proceedings Commissioner

Mr. Faiz Khan is the Executive Chairman of Airports Fiji Limited (AFL) and the Pine Group of Companies (PGC). Mr Khan is also a Director of Fiji Revenue & Customs Services and a Commissioner of the Human Rights Commission.

Mr. Khan graduated from Bond University, Australia in 1999 with Bcom (Acct/Fin); LLB. Mr. Khan has been instrumental in restructuring AFL's and PGC's businesses in making them profitable and sustainable. He has endeavoured to create long term strategic directions in particular through planned capital upgrades and improvements to services.

He believes effective human resource management and team work is a key to success. Mr. Khan also believes in building relationships of mutual benefit with all stakeholders.



## Director

Mr. Ashwin Raj

Mr. Raj was appointed in February 2016. An academic by training, Mr. Raj is also the chairperson of the Media Industry Development Authority (MIDA).

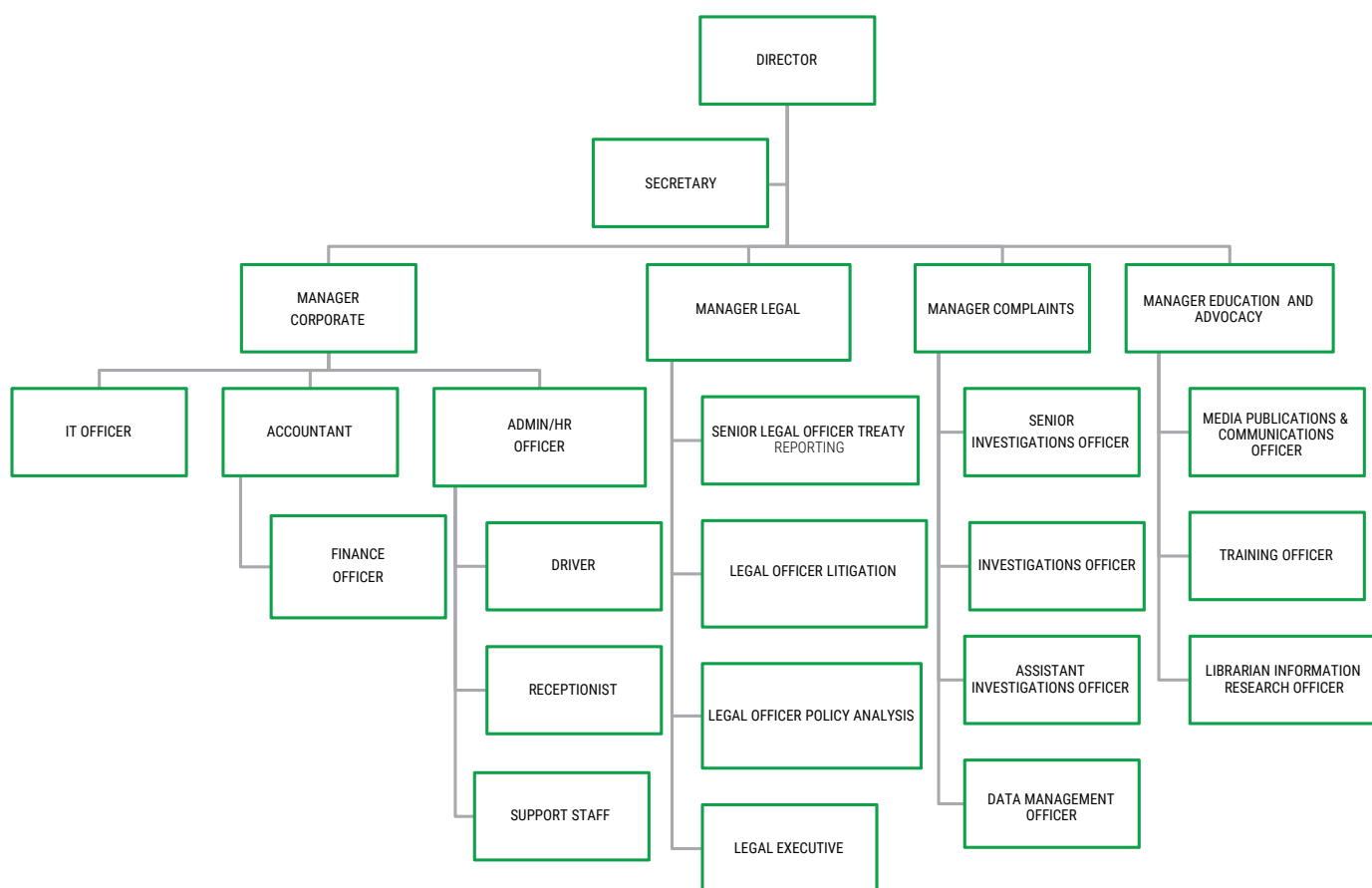




# Organisational Structure

The Commission is a national independent statutory body established under the Human Rights and Anti-Discrimination Commission Act of 2009, which exists as the Human Rights and Anti-Discrimination Commission.

The Fijian Constitution empowers the Commission to be independent of any direction or control of any person or authority except by a court of law or a written law.



# Chairperson's Report



It is with great pleasure that I present the Commission's Annual Report for 2016 as required by section 44 (1) of the Human Rights and Anti-Discrimination Commission Act. This Report reflects the exercise of the functions

of the Human Rights and Anti-Discrimination Commission.

Let me begin by thanking my predecessor Justice Mr. Mohammed Ajmeer and the previous board for their contributions towards the development of human rights in Fiji.

After nearly a decade's abeyance, the Commission was re-established under the Fijian Constitution with the appointment of a Chairperson and four other Commissioners by the President on the advice of the Constitutional Offices Commission on 8th May 2015.

Pursuant to section 6(2) of the Constitution, the responsibility to respect, promote, protect and fulfill human rights lies with the state and every person holding public office. The protection and promotion of human rights involve a number of actors: from international organisations to local communities, from government to national human rights institutions. As a national human rights institution, the Commission has a broad mandate to protect and promote human rights in Fiji. As an independent Commission, we take the lead role in the promotion, protection and fulfillment of human rights for all and stand committed to build, strengthen and sustain a human rights culture in Fiji. A fundamental duty of the Commission is to investigate allegations of contraventions of human rights and unfair discrimination, on its own motion or on the basis of a complaint made by individuals, groups or institutions on their own behalf or on behalf of others. The Commission resolves complaints by conciliation and refers unresolved complaints to

the courts for decision.

The above responsibilities essentially reflect Paris Principles that outline how a national human rights institution should function. This year has been a challenging one for the Commission. The Commission formulated a strategic plan and an annual corporate plan setting out strategic direction and priorities of the Commission, identifying Commission goals, our operational environment, key activities and substantive and operational challenges. In order to strengthen the Commission's function, we had to make key appointments such as the Director.

The Commission closely monitored observance of human rights in places of detention across the country. We also inspected evacuation centers post Tropical Cyclone Winston in ensuring that minimum human rights standards were met. Disaster relief and reconstruction efforts need to be conducted within a framework that protect and further human rights. The Commission appeared as amicus in Court in a number of cases where human rights issues were involved.

The Commission is indebted to the Fijian Government and key stakeholders such as the Legal Aid Commission, the United Nations and Development Programme, the Office of the High Commissioner for Human Rights Pacific Region, the European Union and the Asia Pacific Forum for their continued support and partnership in promoting human rights in Fiji.

I express my gratitude to the fellow Commissioners, the Director and his team for their efforts and commitment to revive this institution and rebuild public confidence. I expect the new financial year to be equally challenging but I stand optimistic and determined that the Commission will continue with its work in promoting dignity, equality and freedom for all people living in Fiji. Most importantly, I look forward to the commencement of the work on embedding human rights education in the school curriculum.

**Honourable Mr. Justice Kamal Kumar**  
**Acting Chief Justice of Fiji and Chairperson**

# Directors Report



The 2016 Annual Report is significant. It documents the renaissance of a national human rights commission that lost its accredited status nearly a decade ago, operated in a state of inertia and largely

seen as a pariah in the eyes of the international community and civil society until recently.

Building public confidence in the national human rights commission by ensuring that the Commission is accessible to the general public including persons living with disabilities supplemented by a robust education and advocacy campaign so that the general public is aware of their constitutionally guaranteed rights and freedoms, demonstrating the Commission's ability to conduct independent investigations, hold institutions and individuals including the state and private actors within the state to account, exhausting remedies available under the law in the event of an infraction including the ability to institute legal proceedings and serve as amicus, making policy recommendations on existing and proposed laws, building a sound administrative platform to ensure regular and effective functioning of the Commission consistent with the principles of good governance and cultivating an ethos of constructive engagement with the state, civil society and the international community became the immediate priorities of the Director upon his appointment in February 2016. These priorities were identified as integral in not only ensuring that the Commission is able to dispense with its mandate, assuage any imputations of an actual or perceived lack of independence but also setting the Commission on a path towards full compliance with the Paris Principles.

The Commission has made 35 visits to places of detention, received and investigated allegations of torture and brutality, human trafficking, discrimination on the basis of a prohibited ground, access to justice for foreign nationals in places of detention, the enforcement of social and economic rights, rights of children, workers'

rights, appeared as amicus on three matters, made submissions to relevant parliamentary standing committees on four bills before Parliament that pertain to human rights, successfully encouraged Fiji to co-sponsor human rights resolutions, and reached out to approximately 14,000 Fijians through its education, advocacy and outreach initiative and has taken to various media platforms in generating awareness about human rights.

In 2016, the Commission requested an increase of \$900,000 from its base allocation of \$550,000 and consistent with the constitutional requirement that Parliament must ensure that the Commission is adequately funded and resourced, it approved an annual budget of \$1.492 million creating the conditions of possibility for the Commission to fulfill its constitutional responsibilities.

The Commission is committed towards ensuring that it is Paris Principles compliant and to that end will continue working closely with the Asia Pacific Forum of National Human Rights Institutions (APF) as well as the Global Alliance of National Human Rights Institutions (GANHRI) to in regain its accreditation. I wish to express my gratitude to the APF and GANHRI for its continued support, technical assistance and for providing our Commission with a platform to engage with fellow national human rights institutions.

An ethic of constructive engagement, particularly in contexts where political fault lines run deep, is important if we are to build and strengthen the capacity of national human rights institutions so that they can effectively and independently discharge their mandate. The unwavering conviction must be towards building these accountability institutions so that the rights and inherent human dignity of the most vulnerable are not abandoned in the interests of political point scoring. I thank the Government, civil society and development partners who have stood by the Commission. I must also thank the staff of the Commission who have persisted in the toughest of times.

Ashwin Raj  
**Director**



# 2016 IN REVIEW

The following provides an overview of the key human rights achievements in 2016

## Monitoring Compliance

**Monitoring places of detention** - 35 visits were made to places of detention including 32 visits to corrections facilities throughout Fiji as well as police cell blocks, Department of Immigration safe house and hospitals.

### **Cruel and degrading treatment and the rights of arrested and detained persons-**

The Commission has *investigated allegations of police brutality* and issued public statements condemning such acts, calling for independent investigations and accountability.

#### ***Human Rights Wall in police stations***

– The Commission established human rights walls in police stations outlining the constitutional rights of arrested and detained persons piloting with the Totogo Police Station as well as the Criminal Investigations Division of the Fiji Police Force. The Human Rights Wall was subsequently established in other police stations and community police posts around Fiji.

***First Hour Procedure*** – In partnership with the Fiji Police Force, the Judiciary, the Office of the Director of Public Prosecutions and the Legal Aid Commission, the Commission conducted training on the First Hour Procedure to ensure early access to justice and video recording of caution interviews to address concerns of cruel and degrading treatment as well as the rights of arrested and detained persons.

#### ***Access to justice for foreign nationals***

– Interventions were made to ensure access to justice for foreign nationals (Tunisia, Sierra Leon, Afghanistan, Bangladesh, Egypt, India and Pakistan) nationals detained in prisons in Fiji.

## Monitoring Compliance

**Amicus Applications** – The Commission made applications to court as amicus on the unlawful detention of children as well as human rights conditions in places of detention as well as appeared in person to assist the honorable court in matters relating to human rights.

**Human rights in times of natural disasters** – The Commission inspected evacuation centers post Tropical Cyclone Winston in ensuring that minimum human rights standards were met.

**Discrimination on a prohibited ground prescribed under section 26 of the Fijian Constitution** – The Commission investigated cases of workplace discrimination on the grounds of sexual orientation, race, gender, pregnancy and age.

**Freedom of assembly and expression** – The Commission intervened to secure permit for civil society to march on Human Rights Day.

**Freedom of assembly and expression** – The Commission intervened to secure permit for civil society to march on Human Rights Day.

**Freedom from arbitrary evictions, freedom from compulsory or arbitrary acquisition of property and the right to housing and sanitation** – The Commission intervened in 8 matters pertaining to the restitution of rights of families allegedly threatened with arbitrary evictions, arbitrary acquisition of their property as well as an interdiction of their right to housing, sanitation and water.

**Rights of children** – The Commission has investigated cases of sexual assault of children including the denial of prompt medical examination and treatment in such cases.

**Human trafficking** – Interventions were made in relation to human trafficking where the travel documents and passport of Filipino workers were confiscated by their employer.

# 2016 IN REVIEW

The following provides an overview of the key human rights achievements in 2016

## Education and advocacy

**The Commission reached out to approximately 14,000 Fijians** through our advocacy / education public outreach programmes including training on gender based violence and human rights in collaboration with civil society organisations and international development partners for the Fiji Police Force, Fiji Corrections Service and human rights education in schools and communities.

## Submissions to Parliamentary Standing Committees

Consistent with the constitutional mandate of making recommendations to Government concerning matters affecting the rights and freedoms guaranteed by the Fijian Constitution including recommendations concerning existing or proposed laws, **submissions were made to relevant Parliamentary Standing Committees on Bills that explicitly affect human rights such as the Rights of Persons with Disabilities Bill, Information Bill, Parliamentary Powers and Privileges Bill and Adoption Bill.**

## Monitoring compliance by the State with obligations under treaties and conventions relating to human rights

**The Commission has commended the State where human rights strides have been made** such as the ratification of the Convention Against Torture and amendments to the Public Order Act to keep it on the path of human rights.

The Commission **successfully encouraged Fiji to vote for the UN Independent Experts on Sexual Orientation and Gender Identity** at the UN General Assembly in New York.

## Right to Equality and Freedom from Discrimination

Intervention was made by the Commission in **facilitating a medical examination of a minor who was allegedly kidnapped and sexually assaulted.** The Commission provided counselling support to the aggrieved family as well as to the complainant.

The Commission visited a hospital during a routine monitoring exercise and **assisted a person with mental illness** who was confined to his bed.



## Right to Equality and Freedom from Discrimination

The Commission **assisted a person living with HIV** in accessing his medication which was held up at the then Fiji Revenue and Customs Authority. After receiving a complaint, the Commission swiftly intervened in facilitating the process of accessing the medication.

27 October 2016

Dear FHR-ADC Commission Team,

I am humbled by your amazing call to action and rally to assist and support me in retrieving my medication in less than 24 hour! I have never seen such a group work such miracles right here in Fiji. You are all a testament to your fine Director, you have shown that all of you play an integral role in the success of your commission and you have all also shown first me hand, your passion to fight the good fight. I am so very grateful to all of you for your help. Fiji is truly blessed to have this team behind them. I was so distraught and hurt with my experience, I just wanted to give up. You helped me to recollect my dignity and restore hope. I will never forget your kindness and compassion. I am ever in your debt.

Warm Regards

XXXXXX

# Goal 1: Monitoring, Investigations and Compliance

The Monitoring, Investigations and Compliance are core functions of the Commission. Section 45 (4) (c) and (e) of the Fijian Constitution and section 12(1)(j) of the Human Rights and Anti-Discrimination Commission Act confers to the Commission the powers to investigate allegations of contraventions of human rights as well as allegations of unfair discrimination either on its own motion or on the basis of a complaint by individuals, groups or institutions on their behalf or on behalf of others. Section 45(5) of the Fijian Constitution provides that any person has the right to lodge a complaint with the Commission alleging that a right or freedom guaranteed under the Constitution has been denied, violated or infringed, or is threatened. Furthermore, section 45 (4) (e) of the Constitution and section 12 (1) (k) of the Human Rights and Anti-Discrimination Commission Act empowers the Commission to secure appropriate redress if human rights have been violated through conciliation or making application to court for redress or for other forms of relief or remedies.

A total of 248 complaints were received from the members of the public in 2016. This included 29 enquiries, persons seeking advice and assistance as well as 4 matters that were classified as 'watching brief' where complainants had copied the Commission in their letters of complaint to other institutions.

## DID YOU KNOW?

A total of 248 complaints were received from the members of the public in 2016.

## Summary of Complaints received in 2016

	No of cases
Total number of complaints (includes enquiries, advisories, assistance sought and watching brief)	248
Within Jurisdiction matters (In breach of Constitutional provisions, Human Rights and Anti-Discrimination Act and other human rights related legal provisions)	131
Other Complaints	50
Enquiries/advisories/assistance sought	29
Watching Brief	4
General matters	23

The number of complaints received by the Commission is indicative of the restoration of public confidence in the national human rights commission.

## Summary of all complaints received by the Commission

Constitutional breaches	Number of complaints
Section 10 - Freedom from slavery, servitude, forced labour and human trafficking	1
Section 11 (1) - Freedom from Cruel and Degrading Treatment	1
Section 11 (2) - Right to Security and Freedom from Violence (Police Brutality)	16
Section 11 (2) - Right to Security and Freedom from Violence (Corrections Brutality)	10
Section 13 - Rights of Arrested and Detained Persons	17

Section 15 - Access to Courts and Tribunals	1
Section 20 - Employment Relations	29
Section 21 - Freedom of movement and residence	1
Section 22 - Freedom of religion, conscience and belief	2
Section 24 - Right to Privacy	3
Section 25 - Access to Information	2
Section 26 - Right to Equality and Freedom from Discrimination	5
Section 29 - Protection of Ownership and interests in land	1
Section 31 - Right to Education	4
Section 32 - Right to Economic Participation	4
Section 36 - Right to Adequate Food and Water	1
Section 37 - Right to Social Security Schemes	1
Section 38 - Right to Health	1
Section 39 - Freedom from Arbitrary Evictions	8
Section 41 - Rights of Children	5
Breach of HRADC Act (section 31 – Letters from Prisoners or Patients)	3
1951 Refugee Convention	1
Crimes Act	14
<b>Other Complaints</b>	
Professional Misconduct - Police	21
Professional Misconduct - Corrections	2
Complaints in relation to delivery of State Services	6
Landlord/Tenancy Disputes	4

Domestic matters	4
Civil matters	13
Enquiries/Advisories and assistance sought from the Commission	29
Watching Brief	4
General matters	23
Missing files *An independent audit of the Complaints Section revealed that 11 complaints files are unaccounted for. This attests to the need for an automated Complaints Management System.	11

### Nature of Complaints:

#### Section 13 and 41 – Rights of arrested and detained persons and rights of children

The Commission received a complaint against the police for allegedly interviewing two teenage girls (15year old) without the consent of their parents and forced them to undergo medical examination.

#### Section 10 – Freedom from slavery, servitude, forced labour and human trafficking

The Commission received a complaint from an employee of a private construction company which withheld the passports and professional academic certificates of foreign national employees. The Commission intervened, reporting the matter to the Fiji Police Force resulting in the release of passports and professional credentials of the employees. The complainant was able to travel back home.

#### Section 11 (1) – Freedom from cruel and degrading treatment

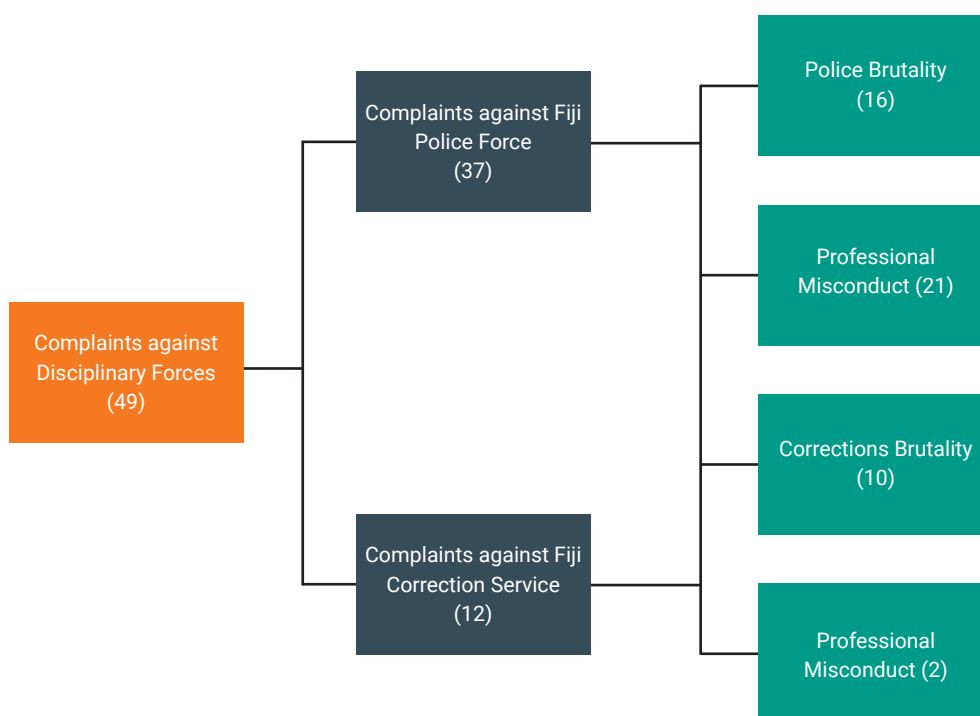
The Commission received a complaint from an individual who lodged a complaint on behalf of a fellow patient at the ANZ ward of the Colonial War Memorial Hospital. The patient

with a history of mental illness was tied to his bed in a condition that was not consistent with human dignity. The Commission intervened and directed the matter to the Director of the Department of Social Welfare.

#### DID YOU KNOW?

Human Rights and Anti-Discrimination Commission Act empowers the Commission to secure appropriate redress if human rights have been violated.

## Complaints against Disciplinary Services



## Section 11 – Freedom from cruel and degrading treatment

Section 11(2) provides that every person has the right to security of the person which includes the right to be free from any form of violence from any source, at home, school, work or in any other place.

### Allegations of police brutality

The Commission received 16 complaints of police brutality. The allegations included assault during arrest resulting in physical injuries and in one case, hospitalization of the victim.

### Allegations of professional misconduct against Fiji Police Force

The Commission received 21 complaints from

individuals alleging Police of professional misconduct. The nature of these allegations include complaints of bias while dealing with complainants, police inaction, wrongful detention, claims of missing files, non-registration of complaints, women harassed by male police officers over phone-calls, officers perverting course of justice, female suspects arrested by male officers, suspects not allowed to communicate with their legal counsel, suspects sworn at while in police custody and suspects coerced into signing police statements. The Fiji Police Force has been given the opportunity, as is procedurally required under section 32 of the Human Rights and Anti-Discrimination Commission Act to respond to these allegations. These matters have been referred to the Internal Affairs Department of the Fiji Police Force for investigations and further action. The Commission has implored the importance of fairness and

independent investigations in cases where police have conducted investigations against their own officers.

### **Allegations of brutality against Fiji Corrections Service**

The Commission received 10 complaints from inmates at various corrections facilities claiming brutality by corrections officers. The nature of brutality included physical assaults. Consistent with the requirements set out under section 32 of the Human Rights and Anti-Discrimination Commission Act, the Commission has brought these allegations to the attention of the Commissioner of Corrections and requested for independent investigations while the Commission conducts its own independent investigations to ascertain the veracity of these claims.

### **Allegations of professional misconduct against Fiji Corrections Service**

The Commission received 2 complaints from individuals alleging Corrections Officers of professional misconduct. These allegations included corrections officers inspecting food items with bare hands and in a separate case, an inmate alleged that his medical report and personal belongings went missing from the custody of corrections officers. These matters have been brought to the attention of the Commissioner of Corrections who directed the respective Officer-in-Charge of these facilities to look into the matters. These complaints have since been resolved.

## **Section 13 – Rights of arrested and detained persons**

Section 13(j) of the Constitution provides that every person who is arrested or detained has the right to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at State expense, of adequate accommodation, nutrition and medical treatment. The Commission received 15 complaints from individuals who claimed that their rights while

under arrest and during detention were violated. The allegations include a case where the suspect complained about the cell condition, overcrowding at a Correction Centre, detainees not allowed to use convenience, lack of food and poor sanitation at 'safe house', police arrest without warrant, poor bedding, confinement to a segregated cell in a deplorable state, inmates not provided with warm clothes and limitation on visitation rights. The Commission also visited inmates at the various detention centres to verify these allegations. The Commission assisted some inmates including foreign nationals in securing the services of the Legal Aid Commission as well as bringing matters to the attention of their respective consulates. Where the Commission brought these issues to the attention of the Commissioner of Corrections it notes that issues of meals, condition of the cells and the provision of warm clothes for inmates had been adequately dealt with.

## **Section 13 and 15 – Rights of arrested and detained persons and Access to Courts and Tribunals**

Section 13(1)(f) of the Constitution provides that every person who is arrested or detained has the right to be brought before a court as soon as reasonably possible but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter. The Commission received a complaint from the spouse of the victim who was taken from home and detained at a remand centre in excess of 48 hours without being charged. The spouse was not informed her husband was detained. Commission intervened and established that the complainant was remanded at the Natabua Remand Centre enabling the spouse to institute proceedings. The matter is before the High Court.

## **Section 20 – Employment relations**

The Commission registered 29 complaints of human rights violations under employment relations. The nature of complaints included advertisement of notices in news dailies informing the general members of the public that 'x' individual is no longer in employment with the



'y' firm, employers not complying with minimum wage order, employees terminated without notice, allegations of theft by employees without proof, suspension from employment, non-payment of overtime by employers and non-payment of final salary upon resignation by employer. These allegations have been referred to the Ministry of Employment, Productivity and Industrial Relations for its independent investigations.

### **Section 21 – Freedom of movement and residence**

The Commission received a complaint where the complainant who was abroad claimed that he wanted to return to Fiji and if he did he will be harmed and suffer ill-treatment. The Commission did not establish any human rights violation in the allegations made because the complainant failed to substantiate his claims.

### **Section 22 – Freedom of religion, conscience and belief**

The Commission received 2 complaints from concerned members of the public. In the first case, a temple was locked barring the devotees from exercising their right to access their place of worship and in the second matter, a devotee (complainant) was banned by the temple committee from accessing his preferred place of worship.

### **Section 24 – Right to privacy**

The Commission received 3 complaints from individuals claiming that their right to privacy had been breached. The nature of complaints included the publication of a photo of the complainant in a hotel catalogue without his consent. In another matter, the personal and financial information of a customer who purchased a motor vehicle from a second-hand motor dealer was released to a third-party without his knowledge or consent.

A complaint was also received where a representative of an employer interrogated the wife of his employee, releasing private and confidential information about him to his spouse resulting in the dissolution of their

marriage. A complaint was received in relation to the installation of surveillance camera directly behind a female worker and remote controlled to surveil the staff. The matter was referred to the Employment Relations Tribunal.

### **Section 25 – Access to information**

The Commission received 2 complaints in relation to access to information. A complainant alleged that information in relation to the donation to a public school from a businessman in the Northern Division was withheld from him and as a taxpayer he is entitled to that information. The matter has since ended up in Court. In another case, the complainant alleged that he was denied a copy of his own medical report after being examined in a public hospital in the western division. The Commission intervened and the complainant was given a copy of his medical report.

### **Section 26 – Right to equality and freedom from discrimination**

The Commission received 5 complaints from individuals. A supervisor at an island resort made racial slurs contrary to section 26 of the Fijian Constitution. In another case, a police officer situated at a community post in Suva, allegedly ridiculed a LGBTIQ person on the basis of the person's sexual orientation. In a separate incident, the managing director of a beauty salon made discriminatory remarks against a transgendered individual. In another incident, a complainant alleged that Police failed to lay charges on a second suspect involved in an assault case because the suspect was a prominent businessman. The complainant claimed that both the businessman and his employee were involved in assaulting the complainant's husband but alleged that the police laid charges on the employee only. This is contrary to section 26(1) of the Constitution which states that 'every person is equal before the law and has the right to equal protection, treatment and benefit of the law'.

## Section 29 – Protection of ownership and interests in land

The Commission received a complaint from a concerned member of the public who claimed that a parcel of native land leased to him had been leased to a third-party. The matter has since been brought to the attention of the iTaukei Land Trust Board.

## Section 31 – Right to education

The Commission received 4 complaints pertaining to the right to education. In one of the cases, it was alleged that a student was denied enrolment at a tertiary institute. The Commission intervened and was informed that the student failed to comply with the registration requirements. In another matter, a mother claimed that a tertiary institute failed to enrol her daughter because she had special needs. The Commission convened a conciliation conference between the complainant, the Fiji Higher Education Commission which was the recipient of the initial complaint as well as the concerned tertiary institution. The Commission also received a complaint for a concerned parent that her son was not allowed to sit for an external examination by her husband.

## Section 32 – Right to economic participation

The Commission received 4 complaints of alleged breach of their rights under section 32. In the first case, a market vendor was prohibited by a municipal council from selling juice outside the market premises. The matter was dealt with by the Office of the Prime Minister. In a separate matter, a fisherman claimed that the Ministry of Fisheries was unfair in issuing fishing licenses. The matter was referred to the Ministry of Fisheries. In the third case, a complainant alleged that his application for the renewal of his taxi permit was declined by the Land Transport Authority due to an adverse criminal record depriving the complainant of income. The Commission also received a complaint that the Land Transport Authority suspended driver's licenses of the complainant without notification.

## Section 36 – Right to adequate food and water

The Commission received a complaint in relation to the disconnection of water supply. The Commission intervened and referred the matter to the Water Authority of Fiji and water supply was consequently restored.

## Section 37 – Right to social security schemes

The Commission received a complaint from an individual who claimed that his application for withdrawal of funds in the aftermath of a natural disaster was delayed by Fiji National Provident Fund. Section 37(1) of the Constitution provides that the 'state must take reasonable measures within its available resources to achieve the progressive realization of the right of every person to social security schemes, whether private or public, for their support in times of need, including the right to such support from public resources if they are unable to support themselves and their dependents'.

## Section 38 – Right to health

The Commission received a complaint under section 38 of the Constitution, where the complainant alleged that his request for partial sponsorship of his airfares to the United States of America to undergo an eye surgery was declined by Ministry of Health.

## Section 39 – Freedom from arbitrary evictions

The Commission received 8 complaints for alleged breach of section 39. Nature of cases included eviction without Court Order and, an incident where though a matter was before the Family Court, the complainant was evicted by Police without a Court Order.

## Section 41 – Rights of children

The Commission received 4 complaints for the alleged breach of section 41. The nature of

complaints included an allegation where the mother of a 6 year old child subjected her to abuse and neglect. Upon the Commission's intervention, the child is now in the custody of her father. The Commission also received another complaint of sexual assault of a child by her grand-father. The matter was reported to the Sexual Offences Unit of the Fiji Police Force and the child was put in the custody of her biological father.

## **Breach of Human Rights and Anti-Discrimination Commission Act**

### **Section 31 – Letters from Prisoners or Patients**

The Commission received 3 complaints in relation to the breach of section 31 of the Human Rights and Anti-Discrimination Commission Act. It was alleged that letters from inmates were suppressed and not delivered to the Commission. Section 31 states that 'a letter written by (a) a person in custody; or (b) a patient in a hospital and addressed to the Commission must be forwarded immediately, unopened and unaltered, to the Commission by the person in charge of the place or institution where the writer of the letter is detained or in which he or she is a patient'.

### **Complaints under 1951 Refugee Convention**

In 1947, the Commission on Human Rights adopted a Resolution by which it expressed the wish that 'early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation'. The Commission received a complaint under this Convention where the complainant, a Tunisian national was not granted a refugee status by the UNHCR. The Commission facilitated the provision of a legal counsel.

### **Crimes Act**

The Commission received 14 complaints from individuals which fell under the jurisdiction of the Crimes Act. The nature of these allegations

included obtaining a financial gain, assault, stolen food items from Housing and Relief Trust (HART) premises, witchcraft practices, sexual abuse, abuse of trust monies, acts of criminal intimidation and harassment, attempted rape and damaging property. All these matters have been referred to the Fiji Police Force for investigations and further action.

## **Other Complaints received by the Commission**

### **Complaints in relation to the delivery of state services**

The Commission received 6 complaints from individuals alleging poor delivery of state services. These allegations include unhygienic conditions of the inn managed by the department of Social Welfare, non-registration of complaints to various public institutions, allegations that some individuals did not receive any relief post Tropical Cyclone Winston and unprofessional conduct of staff nurses at the public hospitals. These complaints have been referred to the respective ministries for their independent assessments and further action.

### **Landlord/Tenancy Disputes**

The Commission received 4 complaints in relation to disputes between landlords and tenants. The nature of complaints entailed allegations of tenants overstaying, complaints of leaking flats, overcrowding of flats where 14 tertiary students were crammed in a single flat as well as a case where the landlord was ill-treating a female tenant.

### **Cases of domestic disputes received by the Commission**

The Commission received 4 complaints that were in relation to issues around maintenance, reconciliation following the issuance of Domestic Violence Restraining Order (DVRO).

## Civil matters brought before the Commission

The Commission received 13 complaints that, upon assessment, were classified as civil matters. The nature of these complaints include allegations of unlawful transfer of property, complaint about defective white goods, uneven distribution of estate shares, probate issues, non-installation of electricity mains to the grid and civil claims for damages. These matters have been referred to the respective ministries and institutions for investigations and further action.

## Enquiries, Advisories and Assistance sought from the Commission

The Commission received 29 enquiries, advisories and requests for assistance. The nature of these requests included advise on the acquisition of land, administration of estate properties, individuals seeking advice on how to acquire child custody, how to access superannuation schemes, and how to apply for Domestic Violence Restraining Orders as well as how to restitute rights for Fiji nationals who are in conflict with the law in a foreign country.

## Watching Brief

Individuals copied the Commission in their letter of complaint to independent institutions of justice were classified as watching brief. These matters were not directly referred to the Commission. The nature of these matters included applications to Corrections Services to serve remainder of sentence extramurally, land issues and allegations of corruption to the Fiji Independent Commission Against Corruption (FICAC).

## General matters

The Commission received 23 complaints classified as general matters due to the nature of the allegations made. These complaints included complaints against the Fiji Revenue and Customs Authority for seizure of goods, complaints against consulates for denying visas, referral from

non-governmental organisations such as the Fiji Women's Crisis Centre and complaints against the Judiciary for delaying the delivery of rulings.

## Successful Case Studies

### Workplace Discrimination

The Commission received a complaint in February 2016 where the complainant alleged that following his resignation from work, his previous employer accused him of theft and refused to pay him the wages that was owed to him. The respondent did not carry out an internal investigation and threatened the complainant that the matter will be reported to the Police. The respondent went to the extent of tainting the complainant's character. Following these allegations, the potential employer rescinded the offer of employment.

The Commission called for a conciliation conference following its investigations to negotiate a reasonable settlement pursuant to section 33 of the Human Rights and Anti-Discrimination Commission Act of 2009. After an intensive conciliation process, the Commission was able to reach a settlement whereby both parties agreed that:

- The respondent to pay the complainant his wages and compensation;
- The respondent to provide the complainant with a character reference; and
- The respondent to formally withdraw the allegations made against the complainant to the potential employer.

### Freedom from arbitrary evictions

"Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances."

The Commission received a complaint against a solicitor for serving an eviction notice without declaring in the settlement agreement that the complainant was entitled to receive a fair share of the benefits from the property sale. The matter was thoroughly investigated and following the



Commission's intervention, the Complainant received a pay-out of \$40,000. The matter was also reported to the Independent Legal Services Commission (ILSC).

### **Freedom from slavery, servitude, forced labor and human trafficking**

A complaint was lodged with the Commission in April 2016 from a foreign national, who was under an employment contract with a local company. The complainant alleged that his passport and travel documents were confiscated by his employer. As a result, he was unable to travel home.

The complaint was assessed and classed under section 10 of the Fijian Constitution which guarantees freedom from slavery, servitude, forced labour and human trafficking. Section 10 stipulates: (1) A person must not be held in slavery or servitude, or subjected to forced labour or human trafficking. 8 (2) In this section, "forced labour" does not include— (a) labour required in consequence of a sentence or order of a court; (b) labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison; or (c) labour required of a member of a disciplined force as part of his or her duties."

The matter was reported to the Fiji Police Force. Following the intervention of the Commission, the travel documents of the complainants were returned enabling him to return to his home country.

### **Monitoring places of detention**

The Commission made 35 visits to places of detention including visits to the various corrections facilities and police stations throughout Fiji to independently investigate allegations of torture, brutality, cruel, degrading and inhumane treatment as well as the Colonial War Memorial Hospital, and the immigration safe house.

The nature of complaints received by the Commission, compelled it to monitor the places of detention including allegations of brutal attacks

on inmates; inmates confined to condemned cells if they raised alarm; inmates denied medical care and attention; inmates stripped searched and asked to squat; inadequate food rations; inmates given food against their religious belief; remarks and comments passed on cultural aspects after they were assaulted; and inmates allegedly sexually abused by Corrections officers.





## Visitation to Corrections Facilities

No.(s)	Date of visitation	Centre(s)
	23rd March	Suva Women's Correction
	10th August	Nasinu Corrections
	10th August	Suva Remand
	10th August	Suva Remand
	10th August	Suva Corrections
	10th August	Suva Corrections
	11th August	Suva Corrections
	12th August	Naboro Minimum
	12th August	Naboro Medium
	26th August	Suva Remand Centre
	22nd September	Nasinu Corrections
	23rd September	Naboro Minimum
	23rd September	Naboro Medium
	23rd September	Naboro Maximum
	27th September	Suva Remand
	5th October	Naboro Medium
	5th October	Suva Remand
	5th October	Suva Remand
	5th October	Suva Remand
	4th November	Nasinu Corrections
	4th November	Nasinu Corrections
	4th November	Natabua Corrections
	4th November	Natabua Corrections
	11th November	Nasinu Corrections
	11th November	Nasinu Corrections
	11th November	Nasinu Corrections
	24th November	Suva Women's Corrections Centre
	8th December	Naboro Maximum
	8th December	Naboro Maximum
	22nd December	Naboro Maximum
	22nd December	Naboro Maximum

Other places of detention visited by the Commission

Police Station – 4th June, the Commission visited a detainee at Totogo Police Station.  
Immigration Detention Centre - 19th August, the Commission visited the Fiji Immigration Detention Centre to provide assistance to a national from Columbia.

Visits to Public Hospital

6th November	Colonial War Memorial Hospital
15th December	Colonial War Memorial Hospital

Post-Tropical Cyclone Winston  
Commission visits Evacuation camps

Director, Mr. Raj visiting a hospital in Vunidawa after Tropical Cyclone Winston which not only left many Fijians homeless but also cost lives. A team led by the Director, visited evacuation centres set up to provide relief to the people affected by the cyclone to monitor whether minimum human rights standards were met in times of national disaster.



## Goal 2: Litigation and Policy Analysis



Director, Mr Raj, making a submission to the Parliamentary Standing Committee

It is imperative to note that the Commission has functioned without a lawyer since 2010. This, however, has not derailed the Commission from fulfilling its constitutional responsibilities of “making recommendations to Government concerning matters affecting the rights and freedoms” recognised in the Bill of Rights including “recommendations concerning existing or proposed laws” as well as “receiving and investigating complaints about alleged abuses of human rights and take steps to secure appropriate redress if human rights have been violated, including making applications to court for redress or for other forms of relief or remedies”.

### Parliamentary Submissions

In materialising this, the Director made four submissions to the Parliamentary Standing Committee on Justice, Law and Human Rights, Parliamentary Standing Committee on Foreign affairs and Defence and the Standing Committee on Social Affairs on the following Bills:

- Rights of Persons Living with Disabilities Bill
- Parliamentary Powers and Privileges Bill
- Information Bill
- Adoption Bill

### Rights of Persons Living with Disabilities Bill

In his submission, the Director asseverated that the Fijian Constitution for the first time explicitly defines the term “disability” thereby legally prescribing any preclusion from access and equity on the basis of an individual’s disability as a prohibited ground of discrimination. Although Fiji had not ratified the Convention on the Rights of Persons with Disabilities (CRPD), the Constitution, through Article 42, unequivocally guarantees the rights of persons with disabilities.

The Rights of Persons with Disabilities Bill 2016 (Bill No. 12 of 2016) before the parliament aligns with the imperatives of the constitutional provisions on the rights of persons with disabilities and encompasses the most salient features of the UNCRPD creating the conditions of possibility for a full ratification of the CRPD. The Convention on the Rights of Persons with Disabilities is one of the core international human rights instruments with an established committee of experts to monitor implementation of the treaty provisions by its state parties. **The Fiji Human Rights and Anti-Discrimination Commission, therefore, recommends that in its deliberations on the Rights of Persons with Disabilities Bill, Parliament must also consider the ratification of CRPD without reservation.** The ratification of the Convention, in consonance with the principles set out in the bill of Rights of the Fijian Constitution, will extend dignity, equality and freedom to persons living with disabilities enabling them to meaningfully participate in all spheres of life.

In summary, the Commission highlighted that with the ratification of the Convention, Fiji will have the following obligations:

**The collection of disaggregated data** indicating the number of persons with disabilities in all official statistics that will be instrumental in the formulation and implementation of policies in materialising the provisions of the Convention. Fiji should engage technical expertise in this



area and pay particular attention to intersectional nature of violence and discrimination that persons with disabilities may be subjected to on the basis of their gender, sexual orientation, gender identity or expression, children and those that are financially disenfranchised

**Establishment of focal points** such as the Fiji Human Rights and Anti-Discrimination Commission and the National Council for Persons with Disabilities. These focal points must engage not only with government but equally importantly with Disabled Persons Organisations (DPOs) to assist in the monitoring, promotion and protection of the rights of persons with disabilities as well as the review and formulation of policies and legislations that give effect to the Convention engendering greater participation of persons with disabilities.

#### **Establishment of a framework to implement the Convention.**

Government should review the existing National Policy on Persons Living with Disabilities (2008-2018) through the appropriate Ministry in ensuring that the framework is fully aligned with the Convention, and is in consonance with the Rights of Persons with Disabilities Bill 2016. Furthermore, the framework must also include monitoring and compliance provisions crucially recognising the role of the Human Rights and Anti-Discrimination Commission as an enforcing body and must engage DPOs as well as the National Council for Persons with Disabilities

#### **Reporting obligations of the State.**

The collection of credible disaggregated data will be instrumental in the formulation of Fiji's progress report in implementing the Convention. Fiji will be required to report after two years following the ratification and every four years thereafter in an inclusive, consultative and transparent manner engaging the views of persons with disabilities including children with disabilities.

The Commission also informed the Foreign

Affairs and Defence Standing Committee that the Commission is taking several steps in ensuring accessibility of its services to persons with disabilities. Following its relocation, the Complaints Department was moved to the ground floor of Naibati House with the provision of disability rails and a disability friendly reception area. Furthermore, the Commission is in the process of developing a disability friendly website, disability accessible complaints procedure, the appointment of a disability desk officer as well as a specific focus on the rights of persons with disabilities and in particular the rights of children with disabilities as a key human rights issue in the Commission's Strategic Plan. The Commission also intends to train its staff in sign language.

### **Parliamentary Powers and Privileges Bill**

The Commission in its submission to the Parliamentary Standing Committee on Justice, Law and Human Rights emphasised that freedom of speech of parliamentarians exists to protect and strengthen democracy and not to undermine it because the propagation of hate speech under the guise of parliamentary privilege will only serve to undermine democratic potential.

Section 73 of the Constitution on Powers, privileges, immunities, and discipline provides that every member of Parliament, and anyone else speaking in Parliament has the freedom of speech and debate in Parliament or its committees, subject to the standing orders and parliamentary privilege and immunity in respect of anything said in Parliament or its committees. Subsection 2 further provides that parliamentary privilege and immunity in respect of anything said in Parliament or its committees.

Section 73 of the Constitution, however, must not be interpreted in isolation precisely because of the limitations set out under Section 17 of the Constitution. The submission of the Commission is also consistent with the principle of equality before the law under 26 (1) of the Constitution. This is because a person who is

not a parliamentarian can be prosecuted under the Crimes Decree for inciting communal hatred but when a parliamentarian utters the very same words in Parliament, parliamentary privilege protects them. The Commission takes full cognizance that such limitations can have a chilling effect on robust democratic debate in Parliament and therefore submits that the law enforcement agencies develop a consciousness of the international law on the relationship between rights and limitations and the proportionality tests, which defines the boundaries between the two.

It is in this context that the Human Rights and Anti-Discrimination Commission submits that the purpose of Section 73 (1) (a) is to ensure that parliamentarians are free to participate in robust debates, which protect democratic values. However, when privilege is used to incite hatred against communities such incitement cannot be considered to be consistent with democratic values of human dignity, equality and freedom. Privilege should not be used to protect an undemocratic exercise of speech, which encourages discrimination on the grounds listed under Section 26 of the Constitution.

Speeches that fall under section 17 (2) of the constitution that is propaganda for war, incitement to violence or insurrection against the Constitution or advocacy of hatred based on a prohibited grounds of discrimination and which is an incitement to cause harm to any of the communities in Fiji should be an exception to the immunity from legal proceedings for parliamentarians under section 3 of the Parliamentary Powers and Privileges Bill 2016. In making this submission, the Commission is of the view that the parliamentary disciplinary processes are insufficient to stop parliamentarians from making hate speeches and insufficient to remedy the harm done to society as a whole. This is particularly so because of Fiji's political and social history.

In any adjudication on this matter, the following fundamental questions need to be asked:

- Limitations must be prescribed by law (written law) and not guidelines
- Are the limitations reasonable/justifiable in a democratic society and the values underpinning a democratic society as is provided in the Constitution?
- Are the steps taken by the State proportionate to the legitimate social need as articulated by the State as its reasons for its actions?

"I want to strongly discourage self-censorship in Parliament and I understand that a lack of clarity and definition on what the limitations are on freedom of expression including hate speech may have a chilling effect on robust democratic debate. This is why training for Parliament and Police is so critical".

Director,  
Ashwin Raj



## Information Bill

In its submission to the Parliamentary Standing Committee, the Commission submitted that any legislation on the right to information must be premised on the following principles:

- The principle of maximum disclosure which is premised on the assumption that information held by public office is accessible and subjected to a very narrow scope of exceptions and exceptions must be subjected to a strict “public interests”, “national security” and “right to privacy” test.
- Legal obligation to publish key information
- Promote open and transparent governance
- Efficient processes to facilitate information sought as well as fair, transparent and independent review of refusals
- Exorbitant costs must not be imposed which would have the effect of deterring individuals from seeking information.
- Ensuring access to information for the most marginal communities such as persons with disabilities and those with no access to social mobility.
- Consistent with Section 17 of the Constitution, the protection of whistle blowers for the release of information that exposes misconduct

## Adoption Bill

The Adoption Bill, intended to give effect to Fiji’s international obligations under the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (or Hague Adoption Convention) that Fiji ratified in 2012 raises fundamental questions about cultural autonomy as well as balancing the imperatives of cultural autonomy with that of the of the best interest of the child. The Standing Committee, in particular, asked the Commission to examine the impact of the Bill on children who are adopted by an Itaukei family who wish to apply for registration in the VKB, on the basis of adoption and not birth. The Commission also sought the assistance of Fiji’s Permanent

Representative to United Nations and Other Offices in Geneva Ambassador Nazhat Shameem Khan in responding to this.

The Constitution does not define who an Itaukei is and who is not leaving the issue open for customary practices from one *mataqali* to another in accordance with Section 3 of the Native Lands Act and is consistent with the principle of cultural autonomy. The consequence of this is that the registration of children in the VKB is likely to depend on customary acceptance and customary practice. The Adoption Bill does not interfere with that process, nor does it rule out the possibility that an adopted child brought up by parents in a *mataqali*, could be registered in the VKB as a landowner by that *mataqali*. The matter is one for the *mataqali* to decide. Traditions and customs are crucial factors for the clan/*mataqali* to consider when making the decision on when an adopted child can be registered under VKB.

Commending the Bill, the Commission stressed that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice.

- The Commission also successfully encouraged Fiji to co-sponsor the resolution on National Institutions for the Promotion and Protection of Human Rights at the 33rd Human Rights Council in Geneva.
- The Commission also successfully encouraged Fiji to vote against the African Resolution to halt the work of the UN Independent Expert charged with protecting people from discrimination and violence based on sexual orientation and gender identity (SOGI)

## Ratification of the United Nations Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Human Rights and Anti-Discrimination Commission made an intervention at the side event at the 33rd Session of the UN Human

Rights Council held in Geneva on 22 September 2016, which was co-sponsored by the Association for the Prevention of Torture (APT) and the Fiji Mission in Geneva. The purpose of the side event was to share with the Human Rights Council, the steps Fiji was taking to reform the police procedures post Fiji's ratification of United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In March 2016, Fiji ratified the UNCAT. Ratification was accompanied by a programme to implement UNCAT, in particular in relation to police procedures at police station, the rights of persons in custody, and the videotaping of confessions made to the police. In collaboration with the Judiciary, the Office of the Director of Public Prosecutions (DPP), the Fiji Police Force and the Legal Aid Commission with the assistance of the UNDP, embarked on pilot project on the First Hour Procedure and Video Recorded Interviews in two police stations: Totogo (Central) Police Station and the Criminal Investigations Division (CID) in Toorak, Suva.

The Commission has been also working closely with key stakeholders including UNDP to create

awareness on the reforms undertaken within the justice sector. The Commission together with the Legal Aid Commission has held training workshops with police officers on the pilot project. In particular, organising police training in relation to greater transparency in police stations. The Commission also played a lead role in organizing a training workshop with NGOs and CSOs on the pilot project with an aim to share information to raise awareness on the two initiatives.

At the side event in Geneva, the Commission recognised the two initiatives on the "First Hour Procedure" and video recording of caution interviews" as significant initiatives in engendering a greater ethos of accountability, transparency, and a human rights compliant justice system. It further demonstrates that human rights and policing are not diabolically opposed but mutually constitutive and a concrete expression of the rights and freedoms enshrined in the Fijian Constitution as it pertains to freedom from cruel and degrading treatment and the rights of arrested and detained persons and invariably as it pertains to the rights of accused persons, access to courts and tribunals



HRADC led training workshop on the First Hour Procedure with the Judiciary, the Office of the DPP, Legal Aid Commission, Fiji Police, UNDP and civil society organisations

resulting in a public that has confidence in these accountability institutions underscoring the significance of standard operating procedures (SOPs) for the Police are consistent with these constitutional provisions.

The provision of a “Human Rights Wall” in police stations is an important collaboration between police and the Human Rights and Anti-Discrimination Commission and will be instrumental in ensuring that both the police and the public are fully aware that when a person is arrested or detained, they are entitled to the following rights:

- Right to be informed in a language that you understand of the reason for your arrest or detention.
- Right to be informed of the possible charges that may be brought against you.
- Right to remain silent and the consequences of not remaining silent.
- Right to communicate with a lawyer of your choice at your own cost or the right to free legal advice from the Legal Aid Commission in private in the place where you are detained.
- Your right not to be forced into making a confession that could be used against you.
- Your right to be held separately from persons who are serving a sentence of imprisonment.
- If you are under 18 years old, your right to be kept separate from adults.
- Your right to be brought before a court within 48 hours after your arrest, or if that is not reasonably possible, as soon as thereafter.
- Your right to adequate accommodation, food, and medical treatment.
- Your right to inform someone of your arrest including the right to communicate with a family member or social worker.

From the interventions made by the Commission at the side event in Geneva, the Commission commended the State for the ratification of United Nations Convention against Torture (UN-CAT), and for its efforts on progressing the First Hour Procedure and video recording of interviews in Police Stations. The Commission

recommended that the State can proactively look into setting up national prevention mechanism in lieu of ratifying the Optional Protocol of UN-CAT. The Commission can play a major role in this. Discussions also noted that the Standard Operating Procedures are to be consistent with the Constitutional provisions as well as with the relevant international human rights frameworks.

The Commission recognises the need to develop a manual on detention monitoring that addresses issues such as prisoners, police custody, juvenile detention, hospitalisation, including psychiatric hospitalization.

There is a need to develop investigative capacity of the Commission to investigate allegations of torture. Discussions have started on this for support from the (Association for the Prevention of Torture) APT on possible training and attachments. There is a need to sustain these types of capacity building for the National Human Rights Institutions( NHRI) so it can carry out its mandate better

There is also a need to develop training manuals for the Police on torture prevention, as well as training on the Istanbul Protocol relating to interview questions on allegations of torture and getting information that can be used in the court of law. In light of the surfacing of a video on social media in Fiji showing alleged police brutality, the proposed SOPs must outline in detail the policy on use of force in terms of proportionality, necessity, and in terms of accountability mechanisms. There is also a need for a register on torture related complaints which is to be kept by the Police and the Commission

Possible challenges include the implementation of equitable service delivery of the First Hour Procedure and video recording in remote and rural communities. The availability of lawyers in rural and remote communities is a very practical challenge. Partners on this initiative cannot take for granted that lawyers and Police officers will have the same understanding of what is enshrined under Article 13 of the Constitution, and are



able to interpret and implement in the spirit of law. There is a risk when those that enforce these laws have their own interpretation and bias given people's ideological dispositions, and political proclivities in the adjudication of section 13 of the Constitution. There is a need to have systems in place to mitigate these risks. There is a need to agree on who facilitates training on Section 13 so that the intent of the Constitutional provision and the law is adhered to objectively. It can be very simple or get very complicated based on how it is applied.

### **Litigation and Constitutional Redress Applications**

In its effort to ensure that there is access to justice, the Commission sought the assistance of the Legal Aid Commission in the absence of a Commission lawyer in instances where there was no conflict of interest. Furthermore, the Director of the Commission, on the request of the High Court, made three amicus applications:

#### **Rights of arrested and detained persons and in particular the unlawful detention of children**

**(State v [XXX] [2016] FJHC 386; HAM58.2016)**

In its submissions, the Commission focused on the fact that one of the detainees was a juvenile and therefore invoked Article 13(1)(e) of the Constitution on the rights of arrested and detained persons which provides that in the case of a child, the child must be kept separate from adults unless that is not in the best interests of the child as well as Article 41 (1) (e) on the rights of children which expressly provides that every child has the right not to be detained except as a measure of a last resort and when detained to be held only for such period of time as is necessary and separate from adults and in conditions that take account of the child's sex and age. Furthermore, Article 13(1)(f) of the Constitution provides that no person may be detained over 48 hours unless a court order is obtained granting the extension of the detainment of the arrested persons over the 48 hours mark. In this case, the Fiji Police

Force was given extension from the Magistrates Court to extend the detainment period of the 3 detainees past the 48 hour mark.

The Commission also requested the Court to consider relevant international law particularly, the application of the Beijing Rules (United Nations Minimum Rules for the administration of Juvenile Justice).

Highlighting Rule 29 (1) and (2), the Commission submitted that determination must also be made in circumstances where parents and children are detained together, or whether parents are in the best state of mind to care for their children and make decisions in the best interest of their children while under detention.

Furthermore, the Commission highlighted Article 41 of the Constitution which concerns the rights of children and that in every situation concerning children, the primary consideration should be the 'best interests of the child'.

**13. - (1) Every person who is arrested or detained has the right -**

**(e) to be held separately from persons who are serving a sentence, and in the case of a child, to be kept separate from adults unless that is not in the best interests of the child;**

### **Freedom from cruel and degrading treatment ([XXX] v Commissioner of Prisons [2016] FJHC 1028; HAM104.2016)**

In its submission, the Commission drew the court's attention to Section 27(1) of the Human Rights and Anti-Discrimination Act, 2009, which explicitly provides that:

Any person may make a complaint to the Commission, including a representative complaint on behalf of other persons with a similar cause of complaint, about a contravention or alleged contravention of human rights.

The Commission made reference to the following international human rights instruments:

- Article 5 of the Universal Declaration of Human Rights (UDHR)
- Article 2 of the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (CAT)
- Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

In addition to XXX's allegations of cruel and degrading treatment, there were also allegations of denial of urgent medical attention, the tampering of letters by prison officials and inadequate provision of food. The Commission made further reference to: Section 31 of the Human Rights & Anti-Discrimination Act 2009

- Rules 10, 20, 22 and 31 of the Standard Minimum Rules for the treatment of Prisoners (Nelson Mandela Rules)
- Fiji Corrections Service – Commissioner's Orders

### **Rights of accused persons ([XXX] vs. State MC 1 of 2015)**

This matter is before the Court.



YOU  
ARE

Neither Greater  
Nor Lesser  
but EQUAL:  
Dignity,  
Equality  
and Freedom  
for all in Fiji

## Goal 3: Education, Advocacy and Communications

The Fijian Constitution and the Human Rights and Anti-Discrimination Commission Act bestows upon the Commission the important responsibility of increasing general awareness of human rights, making public statements and educating public opinion and public officials, coordinating human rights programs and acting as a source of human rights information. The Commission has fulfilled this responsibility through the production of human rights education and advocacy materials, conducting human rights education in schools, workshops in rural and remote communities on the rights and freedoms guaranteed under the Fijian Constitution through outreach initiatives, human rights training through constructive engagement



Gram Sangathan School was amongst the many schools the Commission visited as part of its human rights advocacy programme

with government, civil society and international development partners and through the use of various media platforms to generate discussion and awareness as well as promote greater visibility of the work of the Commission.

### Production of Human Rights Material

The Commission produced a comprehensive booklet in its effort to raise greater awareness about the rights and freedoms guaranteed under the Fijian Constitution, the responsibilities and



justifiable limitations that come with those rights and freedoms, the role of a national human



A patient at Suva's Colonial War Memorial Hospital who had lodged a complaint with the Commission after reading about his constitutional rights in the booklet that was widely disseminated.



rights commission, on how one can access the Commission to seek advise and lodge complaints on human rights violations, the complaints resolution mechanism and the remedies available under the law.

The booklet was launched on 10 December to mark International Human Rights Day.



## Establishment of a human rights wall in police stations

Following the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), a human rights wall was established by the Commission in police stations in an effort to create awareness on the constitutional rights of the arrested and detained persons. Posters outlining these rights, in both English and the vernacular, were placed on walls in police stations specifically dedicated to human rights with contact details of the Commission to report alleged instances of torture and brutality.



In collaboration with the United Nations Development Program (UNDP) and the Fiji Women's Crisis Centre, the Commission conducted human rights and gender based violence workshop for the Fiji Police Force.

## Public Outreach Programmes

The Commission reached out to close to 14,000 Fijians in 2016 through its education/advocacy programmes. A total of 33 schools were visited, engaging 12,304 children and 798 teachers, educating them about the significance of human rights values. The Commission also worked extensively with communities, visiting informal settlements and villages throughout Fiji.

The Commission also collaborated with key stakeholders such as Government, non-government organisations, civil society organisations and international development partners.

## Human Rights Education in Schools



The Commission's 2016 Annual Corporate Plan placed an emphasis on the importance of human rights awareness in schools, both primary and secondary schools covering semi-urban, rural and remote and maritime schools reaching out to the most vulnerable children and youth as well as working towards embedding human rights education in the school curriculum; conducting training workshops for teachers and establishing a 'Human Rights Corner' in pilot schools across the country.

The school visits were also used as a platform to train teachers on basic human rights principles with the expectation that they would then incorporate the core-human rights values such as equality and dignity in their teaching lessons. The

work on embedding human rights education in the school curriculum will begin in 2017. Both, the Commission and the Ministry of Education have had discussions on this national initiative. Some key subject areas which both students and teachers raised questions were: corporal punishment in schools, rights of the children, village by-laws, substance abuse in school, definition of discrimination and Bill of Rights in particular, right to education.



Manager Education/Advocacy, Laisias Rogoyawa and Commissioner Selina Leewah conducting human rights education at Tabia College, Labasa

#### DID YOU KNOW?

Every child has the right to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour.

### Schools visited by the Commission in 2016

Date	School
23/03/16	Nasinu Secondary School
10/06/16	DAV College
17/06/16	Nasinu Sangam Primary School
21/06/16	Rishikul Nadera Primary School
22/06/16	Dr. Ram Lakhan Primary School, Nadera
27/06/16	AOG Secondary School
13/07/16	Soloira District Primary School
29/08/16	Nasinu Gospel Primary School
31/08/16	Bulavou District Primary School
01/09/16	Seaqqa Muslim Primary School
01/09/16	Cadranasiga District School
02/09/16	Tabia College
05/09/16	Nakelo District School
09/09/16	Burebasaga District School
14/09/16	John Wesley Primary School
15/09/16	Rambisessar Primary School
16/09/16	Pt. Vishnu Deo Memorial Primary School
19/09/16	Tacirua Bhartiya Primary School
20/09/16	Nasinu Muslim Primary School
21/09/16	Nakasi Cluster Schools Awareness
22/09/16	Rambisessar Primary School
07/10/16	St. John Bosco Primary School
11/10/16	Wainibuku Hart Primary School
12/10/16	Waimanu Sawani Schools Cluster Programme
17/10/16	Nasele Catholic Primary School Naitavuni Primary School Navunikabi Catholic Primary School
18/10/16	Toga District Primary School
19/10/16	Dilkusha Girls Primary School
27/10/16	Nabua Primary School
01/11/16	Lutu District Primary School
02/11/16	Muaira District Primary School
21/11/16	Namalata District Primary School





## Working with Communities under the Rights, Empowerment and Cohesion (REACH) Project

The Commission partnered with the Ministry of Women, Children and Poverty Alleviation, the Legal Aid Commission under the Rights, Empowerment and Cohesion (REACH) Project, a mobile service delivery initiative supported by the Government of Japan and the United Nations Development Programme (UNDP). The REACH Project aims to promote peace building, social cohesion and inclusiveness through awareness of rights, access to services, provision of legal advice and institutional capacity building in Fiji.



Under this project, the Education, Advocacy and Communications team visited the most remote communities to raise awareness on the role of the Commission, the Bill of Rights enshrined in the Fijian Constitution, how to lodge complaints or seek advice of the Commission on allegations of human rights violations.

Much of the discussions during these visitations centered on: village by-laws, access to clean drinking water, right to education, adoption rights, divorce, land leases, rights of the LGBTI persons, rights of persons with disabilities, right to health and how they could access Government services.

### The Commission was part of the following three REACH Missions:

- We visited 16 villages in in the Naitasiri



Province, taking Government services to the doorsteps of the villagers who would travel for hours on foot or horseback to the nearest bus stop to get to the city where these services are accessed. We were able to educate them about the role of the Commission and how they could lodge complaints with us.

- Kadavu Province was another island we visited 18 communities in 4 districts (Nakasaleka, Ravitaki, Tavuki and Yawe) in the Eastern Division. In addition, we conducted awareness programme with some students and teachers on human rights. Villagers who participated in the awareness and service delivery sessions highlighted various issues troubling them, ranging from adoption, divorce, maintenance, deed poll (a legal document that proves a change of name), child custody, probate (the official proving of a will), transfer of assets, power of attorney, debt issue, land lease issues such as the registration of native landowners or Vola ni Kawa Bula (VKB).
- The mobile service delivery was provided at Navatukia village, in Naitasiri Province as well. Participants included people from 3 villages



of Navatukia, Vunidawa and Waikalou. The participants were briefed on the services provided by the Commission, how they could access free legal advice and the availability of other forms of Government assistance.

Key issues raised by the participants included: corporal punishment, employees’ health and safety, teenage pregnancy, adoption rights, how to obtain a birth certificate and the minimum age to get married.

Communities we visited under REACH

Date	Province	Communities
13/07/2016	Naitasiri	Navatukia, Vunidawa, Waikalou
01/11/2016 to 04/11/2016	Naitasiri	Nukuloa, Navuniyao, Lutu, Boteinaulu, Matainasau, Lutu, Waibasaga, Lasalevu, Udu, Nasauwere, Nasava, Tubarua, Matawalevu, Sawanikula, Korovou, Nadovu
21/11/2016 to 25/11/2016	Kadavu	Solodamu, Waisomo, Namara, Mataso, Richmond Community, Korovou, Natokalau, Busa, Nabira, Galoa, Ravitaki, Nataruku, Burelevu-i-cake, Nakaunakoro, Joma Lomanikoro, Nakoronawa, Nakaugasele

The Commission also visited the following six communities on its own initiative: Naividamu Village, Nakalou Village, Raviravi Village, Vuo Village, Wailevu Village in the Macuata Province and Nasalia Village in Naitasiri Province. Some of the issues discussed were child rights, corporal punishment, village by-laws and family law matters.

The Commission also distributed copies of pocket-sized Constitution and human rights booklets to raise awareness on the Fijian Constitution in villages particularly to women, elderly, youths and children across the country.



Working with Diverse Communities

The Commission organised and participated in a number of workshops and engaged in interactive discussions with relevant stakeholders on emerging human rights issues. These engagements provided the Commission staff a platform to enhance their knowledge and training skills as human rights officers.

A snapshot of those workshops:

Workshop on Monitoring Places of Detention

Together with the Samoan Human Rights Commission, the Commission participated in a workshop convened by Office of the High Commissioner for Human Rights (OHCHR) on monitoring places of detention.

International Day against Homophobia, Transphobia and Biphobia

To commemorate the International Day against Homophobia, Transphobia and Biphobia, the Commission participated in a panel discussion on the pathologisation of LGBTI community. The pathologization of LGBTI as ill- based on their sexual orientation, gender identity, or gender expression and nourished by stigmatizing medical classifications particularly for trans persons through forced, coercive and otherwise involuntary treatments and procedures constitute a fundamental violation of their right to be free from torture and other cruel inhuman or degrading treatment or punishment. Our Constitution under Section 11 affirms



that every person has the right to freedom from torture of any kind whether physical, mental, or emotional, and from cruel, inhuman, degrading or disproportionately severe treatment or punishment including the right to security of the person as well as the right to be free from any form of violence from any source whether it be at home, school, work or any other place. It further affirms the right to freedom from scientific or medical treatment or procedures without an order of the court or without the informed consent of individuals. Enforcement of these provisions, the embedding of human rights education into our school curriculum and making policy recommendations to ensure that our laws are human rights compliant is critical.

Furthermore, the pathologization, criminalization of same sex attraction, “corrective” rape, bullying and incrimination in schools and the media resulting in depression, self-harm and suicide, exclusion from meaningful economic and political participation, denial of their social and economic rights including the right to health, education and housing amongst others is a vicious circle that eviscerates the very possibility of pluralism and gnaws at the fabric of common and equal citizenry.

### **Visit by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

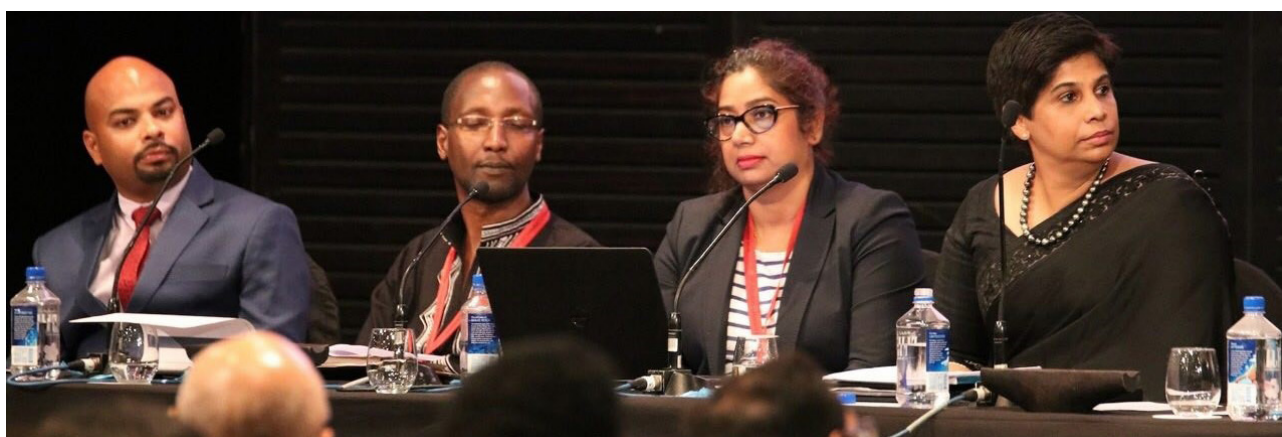
Given Fiji’s political history, the Commission has taken a strong stance against racism and related prohibited grounds of discrimination. It is imperative that Fiji considers the relationship

between hate speech and freedom of expression and examine ways of evacuating race from the vicissitudes of racism.

The Director of the Commission was a panelist with the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, Fiji’s Permanent Representative to the United Nations in Geneva, Madam Nazhat Shameem Khan and Regional Representative of the Office of the High Commissioner for Human Rights, Dr. Chitralekha Massey at the 18th Attorney-General’s Conference 2016.

### **Other Trainings/Events/Engagements in which the Commission participated:**

- Panel discussion on Religion and Human Rights at the 3rd Fiji National Hindu Conference
- Panel discussion on the Rights of Persons living with Disabilities at the Pacific Regional Dialogue on Disability organised by the Fijian Elections Office and International Foundation for Electoral Systems (IFES) and Pacific Disability Forum
- Panel discussion on the Divisibility of the Bill of Rights in the Fijian Constitution organised by the Citizens Constitutional Forum, Fiji National University and Fiji Women’s Rights Movement.
- Workshop on ‘Strengthening Citizen’s



HRADC Director Ashwin Raj taking part in a panel discussion at the 18th Attorney General’s Conference with the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Fiji’s Permanent Representative to the United Nations and Other Offices in Geneva, Ambassador Nazhat Shameem Khan and the Regional Representative of the Office of the High Commissioner for Human Rights, Dr. Massey.

Engagement in Fiji Initiative, for Government officials, rokos, and youths from different provinces with emphasis on the link between the constitution and multiculturalism convened by the UNDP.

- Hosted Amnesty International
- Attended the 21st Annual Asia Pacific Forum AGM meeting in Bangkok, Thailand
- Pacific Regional Meeting on Protection: Strengthening Cooperation and Developing National Capacity organised by the UN High Commissioner for Refugees (UNHCR).

### Increasing Visibility and Advocacy through Media

The media plays a fundamental role in building awareness about human rights and promoting greater visibility of the work of the Commission. The Commission engaged all media platforms – print, broadcast and digital including social media in its efforts to generate greater discussions about human rights.

2016 saw an increase in the Commission's visibility with more press releases, in-depth interviews and online discussions concerning crucial human rights issues such as police brutality, hate speech, discrimination towards LGBTI community, domestic violence, child rights, racism, establishment of a human rights corner in police stations and socio-economic rights among others.

The Director appeared on a Hindi radio talk back show *Aaina* on the Bill of Rights, role of the Commission including the complaints procedures, redress mechanisms and responded to queries and concerns raised by callers. He also appeared on Gold FM talkback show (*Speak Your Mind*) and issued press statements.





## News coverage in Daily Newspapers

Date	Article title	Fiji Times	Fiji Sun
14/02/2016	Remand assault probe	✓	
16/03/2016	Raj Is New Fiji Human Rights Director		✓
19/03/2016	New Human Rights head has a key role to play		✓
12/04/2016	A-G Receives \$10K For PM's Appeal From Fiji Human Rights And Anti-discrimination Commission		✓
28/04/2016	Talking About Human Rights and Law in Interactive Ways		
18/05/2016	Need to address homophobia	✓	
13/06/2016	Brutality claim	✓	
15/06/2016	Commission head refutes claims by women's group		✓
16/06/2016	Disabled People To Have Full Say: Director Raj		✓
23/06/2016	Human rights	✓	
25/06/2016	Raj: Ratify CRPD	✓	
25/06/2016	Human rights probe	✓	
30/06/2016	Respect human rights	✓	
06/07/2016	Belong to each other	✓	
06/07/2016	Human Rights probe	✓	
10/07/2016	Police brutality drops	✓	
13/07/2016	Brutality claim	✓	
15/07/2016	Raj refutes comments	✓	
15/07/2016	Police brutality claim	✓	
20/07/2016	Need to look at torture	✓	
10/08/2016	Human rights violations	✓	
10/08/2016	Commission to probe allegations, visit prisons	✓	
12/08/2016	Rights body ensures freedoms	✓	
13/08/2016	Party questions 19 hour detention	✓	
11/09/2016	Questioned: Rabuka, Prasad, Singh, Baba and Dakuvula being treated properly in Police custody says Ashwin Raj		✓
12/09/2016	Director Human Rights commends police in Chaudhry release	✓	
12/09/2016	Rights body ensures freedoms Director Human Rights at Totogo Police Station	✓	
13/09/2016	Chaudhry treated well: Human Rights Director		✓
14/09/2016	Trio consider action	✓	
10/10/2016	Racism Tops At A-G talks		✓
19/10/2016	Independent investigation into alleged police brutality requested by Commission		✓
19/10/2016	Alleged brutality video sparks investigation	✓	
22/10/2016	TV show under scrutiny	✓	
24/10/2016	TV show still under investigation: Police	✓	
11/11/2016	Questioned: Rabuka, Prasad, Singh, Baba and Dakuvula being treated properly in Police custody says Ashwin Raj	✓	
11/11/2016	Raj launches Human Rights wall in Totogo		✓
18/11/2016	Qiliho, Raj hit out at attack on officer		✓
19/11/2016	EDITORIAL: Unpaid Foreign Affairs Traffic Fines Tarnish The Good Work (HRADC Director mentioned)		✓

02/12/2016	Raj: Parliamentary process insufficient to stop parliamentarians from making hate speech		✓
03/12/2016	Testing limits in courts needed for change: AG		✓
10/12/2016	Justice is enshrined in Constitution, says expert		✓
14/12/2016	Racial issue trends in Fiji	✓	

## Television/ Radio Coverage

Date	Subject	FBC TV	Fiji TV	Radio
16/03/2016	Raj is new Human Rights and Anti-Discrimination Commission Director	✓		✓
17/05/2016	Elections training to help mitigate risks	✓		
18/05/2016	Mental Health often mistaken for Mental Illness - Rogers			✓
20/04/2016	Status of Human Rights conditions in Fiji highlighted by US Government		✓	
12/08/2016	No human rights abuses in high profile investigation	✓		
11/09/2016	Raj meets Police Commissioner	✓		
11/09/2016	FLP leader joins politicians in Police detention	✓		
14/09/2016	Six men were not locked up with drunkards and prisoners			✓
25/09/2016	2016 good year – Nazhat Shameem			✓
04/10/2016	Corporal punishment mooted as a deterrence	✓		✓
05/10/2016	Human Rights body says no to corporal punishment	✓		✓
17/10/2016	Police probe alleged brutality video	✓		✓
18/10/2-16	Qiliho calls for immediate investigation	✓		✓
18/10/2016	Human Rights Commission pleads for independent investigation	✓		✓
19/10/2016	Human Rights Commission calls for independent investigation	✓		✓
19/10/2016	Video recording to be used in police interrogation		✓	
24/10/2016	22 Complaints of alleged Police Brutality	✓		✓
03/11/2016	Investigation still underway in relation to Wasea Bhasha shows aired by FBC TV			✓
10/11/2016	Detained individuals have rights	✓		✓

10/11/2016	Rights of arrested and detained persons poster launched		✓	
10/11/2016	4 <i>The Record</i> interview with Director, Fiji Human Rights and Anti-Discrimination Commission	✓		
02/12/2016	Parliamentary Privilege abused: Raj	✓		✓

## Embedding Human Rights Education in the School Curriculum

Based on the feedback the Commission had received from various public engagements and outreach programmes, and consistent with the recommendations of the UN Special Rapporteur on Education, the Commission is in discussion with the Ministry of Education on embedding human rights education in school curriculum for both primary and secondary schools including schools facilitating children with special needs.

# Goal 4 – Institutional Strengthening

## Corporate Services

The Corporate Services, comprising of finance, information technology, administration and human resources, plays an integral role in strengthening institutional capacity.

## Administration

2016 commenced with the appointment of a substantive Director of the Commission after a vacuum of seven years. In order to accommodate an expanding commission as well as ensuring accessibility to persons with disability, the Commission relocated its operations from Level 2 Civic Tower to Naibati House located at 9 Goodenough Street, Suva. The ground floor and Level 2 of Naibati House, was assigned to the Commission. Assistance was sought from the then Public Service Commission with bearing the costs of upgrading the ground floor of the Naibati House. The ground floor now accommodates a reception area, a sound proof interview room and the Complaints department.

## Strategic Plan and Annual Corporate Plan

The formulation of a three year Strategic Plan and an Annual Corporate Plan aligned with the imperatives of the constitutional mandate and responsibilities of the Commission was a significant achievement as it gave the Commission strategic directive. The development of these strategic documents, through an inclusive and consultative process, has placed the Commission on a firm footing and engendered an ethos of constructive engagement with the State, civil society organisations, international community and the wider Fijian community. The Commission

expresses its gratitude to the Asia Pacific Forum of National Human Rights Institutions (APF) in providing technical assistance to the Commission in the formulation of these documents.

## Operations

The Commission sought quotations from reputable uniformed security providers to safeguard the Commission staff, assets and the premises on a 24/7 basis.

The Commission has 2 motor vehicles in its fleet pool. Vehicle specifications of the pool are as follows:

- **GP 670** – Mazda BT 50, a four wheel drive twin cab which is primarily used for advocacy, training and human rights education related tasks. This vehicle is an all-terrain vehicle capable of transporting the Commission staff to and from geographically challenging and remote locations. A motor vehicle running sheet is maintained and each run is logged and verified by Acting Manager Corporate.
- **GQ 164** – Kia Optima, sedan car is used for all executive duties including the transportation of board members. Following Director's request for an additional vehicle to compliment the operations of the Commission, GQ 164 was commissioned into service on 2 August 2016.

Both vehicles are State leased vehicles and as such all servicing costs are covered under the leasing agreement between Kia Motors, Niranjans and the Ministry of Economy.

## Attendance

The Commission has a bio-matrix facial recognition attendance management system in place. This system phases-out the conventional manual attendance registers which risks being misplaced. Safe-keeping of attendance record is integral in assessing staff punctuality as well as appraisals. All staff of the commission are entitled to 21 days sick leave, 21 days annual leave and 3 days bereavement leave per annum which are the regulated benefits enjoyed by each staff.



## Audit

The Commission also conducted a board of survey through the physical and operational inspection of all assets and equipment owned by the Commission. Procedurally, a board of survey must be undertaken annually to identify the physical presence, health and condition of each asset. The last board of survey was conducted in 2008. After 8 years, following the appointment of the Director, a full board of survey was undertaken, commencing in July 2016 and concluding in November 2016. The internal audit report consists of a report on the recommendations to write-off obsolete items, a report on discrepancies, a report on missing items and a detailed report on the personal computers inspection and findings. This report has been verified by an external auditor.

## Human Resources

### Review of Organizational Structure

The previous organisational structure had 33 established positions. Most of these positions have since been left vacant. A review of the organizational structure was undertaken to remove layers of bureaucracy which impeded efficient service delivery. This has resulted in the formulation of a lean and effective organizational structure. This structure is able to address the immediate and future human capital needs of the Commission.

### Key Result Area Review

A review of all existing key result areas (KRAs) was undertaken and it was discovered that some job descriptions (JDs) were duplicated while some staff did not have KRAs. Following the review, new KRAs have been developed. Every employee in the Commission is given specific KRAs for which she or he is solely responsible and accountable for.

### Salary review

For the last eight years staff of the Commission have worked without any increment or contracts. A review of all salaries was undertaken. All staff

received an increment based on the assessment of their performance by the Director in consultation with the Board. Based on the review of KRAs and JDs, the Commission commenced with the formulation of individual staff contracts consistent with the provisions of the Employment Relations Promulgation (ERP).

### Appointments

The Director of the Commission was appointed on 5 February 2016.

### Promotions

Following staff assessment, the following officers were promoted on the basis of their merit, performance, experience and qualification:

- Varanisese Dominiko – promoted to the position of Finance Officer from Accounts Clerk
- Tiko Vosalotaki – promoted to the position of Assistant Investigations Officer from Clerical Officer
- Shareen Narayan – promoted to the position of Investigations Officer from Assistant Investigations Officer, who also acted as Manager Complaints

## Information Technology

The Commission's IT department completed the following tasks assigned to it in the financial year ending 31 December 2016.

- update and back-up data
- relocate all IT infrastructure from Level 2 Civic Tower to Level 2 Naibati House
- E-mail system upgraded, with new e-mail domain now functional. The Commission now has a Cloud based e-mail system
- Complaints forms are now available online on the Commission's website
- Internet accessible to all staff via wireless internal proxy
- Telecommunication system upgraded with the Commission now having a functional PABX system.

## Staff Development

Complaints section participated in the following

workshops:

- Public Legal Awareness in partnership with the Legal Aid Commission and UNDP;
- Training on Electoral Risk Management Tool hosted by the Fiji Elections Office and International IDEA; and
- Monitoring places of detention conducted by the Office of the United Nations High Commissioner for Human Rights.

## Findings of the 2014 Report of the Auditor General

Section 12.1 of the Auditor General's Report on Accountability, Transparency, Human Rights and Anti-Discrimination Commission states that:

"The audit of the 2014 financial statement of the Accountability, Transparency, Human Rights and Anti-Discrimination Commission resulted in the issue of an **unqualified audit report**".

While the Commission welcomes the findings of the 2014 financial audit that there are no anomalies in the operations audit of the Commission, it equally acknowledges the Auditor General's findings that in the absence of a Chairperson, Commissioners and a substantive Director, the Commission has not undertaken a Financial Audit since 2008.

Section 45(2) of the Human Rights Commission Act expressly provides that "with the prior written approval of the Minister, any Commissioner may from time to time, by writing under his or her hand, delegate to any employee of the Commission any of the Commissioners powers under this Decree, **except this power of delegation and the power to make any report under this Decree**". Furthermore, pursuant to part 15 of the Human Rights Commission Finance Manual, the responsibility of the preparation of financial reports is assigned to the Director, the Deputy Director and Accountant. Procedurally, the Deputy Director is responsible for coordinating the preparation of a monthly management report outlining the performance of the Commission including the formulation of a financial performance report. The Accountant of the Commission is required to submit a financial

performance report including (i) actual revenue collected against forecast (ii) actual expenditure to date against budget for each activity/output and each SEG (iii) actual expenditure to date and commitments against budget for each output/activity of each SEG.

Since 2008 however, the Commission has been functioning without a Chairperson and Commissioners. The Commission was without a Director and Deputy Director in 2009. The Principal Legal Officer assumed the responsibilities of the Officer in Charge in 2009 until 2011 when the Accountant took over the responsibilities of the Officer in Charge. It is imperative to note that since 2008, the officers of the Commission have failed to comply with the requirements of the Finance Manual. The Commission, however, has had periodic Operation's Audit conducted by the Auditor General. The last Operations Audit was conducted in 2014.

Pursuant to section 45 (2) of the Fijian Constitution, the President on the advice of the Constitutional Offices Commission appointed a Chairperson and four Human Rights Commissioners in May 2015. In February 2016, the Board appointed a substantive Director.

Following these appointments, the Commission conducted a full 'board of survey' in 2016 verifying the existence and physical health of all assets dating back to 1999. Furthermore, the Commission has also conducted an Audit of the Complaints department. Assistance was also sought from the Fiji Revenue and Customs Authority to audit the Commission's accounting software. The Commission, therefore, has made serious efforts in strengthening institutional governance since the appointment of the Commissioners and the Director.

## Way Forward

In order to comply with the national legislations on financial accountability, the Commission will appoint a qualified internal auditor on project term who will undertake the responsibility of preparing the financials and submission to the Office of the Auditor General (OAG). The appointment will be made by June 2017. The timelines are as follows:

Year	Targets
2008 financials	30 November 2017 – submit to Board 15 December 2017 – submit to OAG
2009 financials	08 June 2018 – submit to Board 29 June 2018 – submit to OAG
2010 financials	30 November 2018 – submit to Board 21 December 2018 – submit to OAG
2011 financials	12 April 2019 – submit to Board 26 April 2019 – submit to OAG
2012 financials	09 August 2019 – submit to Board 30 August 2019 – submit to OAG
2013 financials	06 December 2019 – submit to Board 20 December 2019 – submit to OAG
2014 financials	10 April 2020 – submit to Board 01 May 2020 – submit to OAG
2015 financials	07 August 2020 – submit to Board 28 August 2020 – submit to OAG
2016 financials	04 December 2020 – submit to the Board 22 December 2020 – submit to OAG

## Statements of Receipts and Expenditure

### Commission's Comments

The Commission made a budget submission of \$1,285,070.00 in 2014. Only \$550,000.00 was approved by the Government which was sufficient to cater for the operational expenses.

Following the appointment of the Commission Board in May 2015 and its substantive Director in February 2016, the Government approved 100% of the Commission's budget requisition of \$1,492,000.00 for the financial year 2016/17.

The Commission concurs with the findings of the Auditor General that in 2014 there was an increase in operating grants and transfers by \$137,500.00. This is a result of full disbursement of budgeted funds to the Human Rights and Anti-Discrimination Commission. The budgeted fund was not fully disbursed to the Commission in 2013.

## Appropriation Statement

### Commission's Comments

The re-deployment of \$735,070.00 from the

Commission's budget resulted in the Government disbursing \$550,000.00 to the Commission under Special Expenditure Grouping (SEG 6) – one line budget.

Following the announcement of the 2014 Budget by the Minister of Economy, the Commission had re-strategized its objectives to ensure that the proposed expenditure did not exceed the budgetary allocation of \$550,000.00. Complaints, investigations & resolutions and education/advocacy were prioritised as targets for 2014.

## Grants to the Commission

Pursuant to section 45(11) of the Fijian Constitution which provides that "Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties". Subsection (12) further provides that "The Commission shall have control of its own budget and finances, as approved by Parliament". To secure the disbursements of grants on a quarterly basis, the commission submitted the following reports:

- Quarterly Acquittal Returns
- Activity/Achievement Report and
- Quarterly Operational Plan

The Commission is fully committed to the principles of good governance, accountability and transparency and will ensure that the Commission will undertake a financial audit for the period 2008-2016 as outlined in its submission to the Parliamentary Standing Committee on Public Accounts.

**OFFICE OF THE AUDITOR GENERAL**

Excellence in Public Sector Auditing



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File: 494

11 January 2019

Mr. Ashwin Raj  
The Director  
Human Rights & Anti-Discrimination Commission  
Level 2 Naibati House  
**SUVA**

Dear Mr. Raj

**AUDIT OF HUMAN RIGHTS & ANTI-DISCRIMINATION COMMISSION FOR THE  
YEARS ENDED 31 DECEMBER 2008 TO 31 DECEMBER 2017**

With reference to the above-mentioned subject.

The Office hereby confirms that the Commission's financials for the years 2008 to 2016 are currently being audited on our behalf by a Chartered Accounting firm after being appointed by Auditor-General under section 7A(1) of the Audit Act.


The Office would undertake the audit for year 2017, once the accounts are submitted by the Commission.

Yours sincerely

Sairusi Dukuno  
**Deputy Auditor General**  
for **AUDITOR GENERAL**



The Commission reached out to close to 14,000 Fijians in 2016 through its education and advocacy programmes. A total of 33 schools were visited, engaging 12,304 children and 798 teachers, educating them about the significance of human rights values. The Commission also worked extensively with communities, visiting informal settlements and villages throughout Fiji.



The Fijian Constitution and the Human Rights and Anti-Discrimination Commission Act bestows upon the Commission the important responsibility of increasing general awareness of human rights, making public statements and educating public opinion and public officials, coordinating human rights programs and acting as a source of human rights information.

2016 saw an increase in the Commission's visibility with more press releases, in-depth interviews and online discussions concerning crucial human rights issues such as police brutality, hate speech, discrimination towards LGBTI community, domestic violence, child rights, racism, establishment of a human rights corner in police stations and socio-economic rights among others.

