



Human Rights and Anti-Discrimination Commission

Fiji Human Rights and Anti-Discrimination Commission
Level 2, Maitani House, 11 Denarau Road, Suva, Fiji
Tel: 332 2222 Fax: 332 2223 Email: hrac@fiji.gov.fj Website: www.hrac.fj

PARLIAMENT STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Questions and Comments on Issues Raised by the Committee with regards to the Fiji Human Rights Commission Annual Reports 2016, 2017 and 2018

Questions specific to the Fiji Human Rights Commission Annual Reports 2016

1. What efforts have been done or is being done by the Commission in regard to aligning its activities with the SDGs?

Human rights are inextricably woven into the fabric of the Sustainable Development Goals and the Commission is working on the implementation of both sets of rights under the International Covenant on Civil and Political Rights [ICCPR] as well as the International Covenant on Economic, Social and Cultural Rights [ICESCR]. The Commission draws your attention in particular to Goals 1, 3, 4, 5, 6, 8, 13, 16 and 17 of the Sustainable Development Goals and the work carried out in 2016 by the Commission that aligns with these respective SDGs.

GOAL 1: No Poverty

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'.

GOAL 3: Good Health and Well-being

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.

GOAL 4: Quality Education

Human Rights Education - 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 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. It is worth noting that:

- ***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. 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*** - 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'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.
- ***Embedding human rights education in the school curriculum-*** 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.
- ***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.
- ***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. Some of these trainings included:

- 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.
- Training with Fiji Police - 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.
- 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 tran 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.
- 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 organized by the Citizens Constitutional Forum, Fiji National University and Fiji Women's Rights Movement.
- Workshop on 'Strengthening Citizen's 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)
- 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.

- ***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 justifiable limitations that come with those rights and freedoms, the role of a national human rights commission, on how one can access the Commission to seek advice 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.
- ***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.

GOAL 5: Gender Equality

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'.

GOAL 6: Clean Water and Sanitation

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.

GOAL 8: Decent Work and Economic Growth

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 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 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.

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.

GOAL 13: Climate Action

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.

GOAL 16: Peace and Justice Strong Institutions

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.

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. Complaints received under this section included:

- ***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.

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 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.

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'.

- **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)**

GOAL 17: Partnerships to achieve the Goal

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 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.

2. How is the Commission ensuring the upholding of Bill of Rights as enshrined in the 2013 Constitution? Furthermore, what is the yardstick of its success in this sphere in the year 2016?

Pursuant to section 45(4) of the Fijian Constitution, the Commission has a constitutional mandate to enforce the Bill of Rights by:

- Developing a culture of human rights in Fiji by promoting the protection, observance and respect for human rights in both public and private institutions;
- Educating the public about their rights and freedoms guaranteed under the Constitution;
- Monitoring, investigating and reporting on the observance of human rights in all aspects of our lives;
- Making recommendations to government in relation to existing and proposed laws to ensure compliance with human rights standards;
- Receiving and investigating complaints about alleged abuses of human rights and taking steps to address these violations including making applications to court for redress;
- Investigating or researching human rights matters on its own initiatives or on the basis of complaint and making recommendations to improve the functioning of public and private institutions;
- Monitoring compliance by the State to fulfill its obligations with respect to international human rights treaties and conventions.

In 2016, the Commission fulfilled its constitutional mandate by addressing the following:

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. Details of these visits can be found on pages 27-28 of the 2016 Annual Report.

Public statements on police brutality: The Commission has intervened in cases of police brutality calling for independent investigations and accountability.

Human Rights Wall in police stations: The Commission established a “Human Rights Wall” 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.

Pilot Project on the 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 Human Rights and Anti-Discrimination 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 upholding the rights of arrested and detained persons.

Access to justice for foreign nationals: The Commission made interventions to ensure access to justice for foreign nationals from Tunisia, Sierra Leon, Afghanistan, Bangladesh, Egypt, India and Pakistan detained in prisons in Fiji.

Amicus Applications: The Commission made applications to court as amicus on the unlawful detention of children as well as in relation to human rights conditions in places of detention.

Human rights in times of natural disasters: Inspection of evacuation centres in areas severely affected by Tropical Cyclone Winston to assess urgent human rights needs in the wake of natural disaster and determine whether these centres meet minimum human rights standards.

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.
- Interventions were made by the Commission in facilitating a medical examination of a minor who was allegedly kidnapped and sexually assaulted. The Commission provided counseling 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 psycho-social disability tied to his bed in conditions that were inconsistent with human dignity.
- The Commission assisted a person living with HIV in accessing his medication which was held up by the then Fiji Revenue and Customs Authority. After receiving a complaint, the Commission swiftly intervened in facilitating the process of accessing the medication.
- The Commission also celebrated the International Day Against Homophobia, Biphobia and Transphobia.

Freedom of assembly and expression:

- The Commission intervened to uphold the rights, including the right to assembly of five opposition members of parliament and activists.

- 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 eight 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 Pilipino workers were confiscated by their employer.

Education and advocacy:

- The Commission reached out to approximately 14,000 Fijians through its education and advocacy public outreach programs including training on gender based violence and human rights in collaboration with Fiji Women's Crisis Centre and UNDP for the Fiji Police Force, as well as training for the Fiji Corrections Service and human rights education in schools and communities.
- A brochure was also developed and launched on International Human Rights Day on rights guaranteed under the Fijian Constitution, on justifiable limitations to these rights and how to interpret these limitations in a democratic society, the role and mandate of the Human Rights and Anti-Discrimination Commission, its achievements and how to lodge a complaint with the Commission.

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 concerns existing or proposed laws, submissions were made to relevant Parliamentary Standing Committees on the following bills that explicitly affect human rights:

- Rights of Persons with Disabilities Bill
- Information Bill
- Parliamentary Powers and Privileges Bill
- 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 in an effort to encourage the State to remain on the path of human rights.
- The Commission 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 successfully encouraged Fiji to vote for the UN Independent Experts on Sexual Orientation and Gender identity at the UN General Assembly in New York.

3. What is the Commission doing in terms of monitoring the implementation of the various Conventions and treaties ratified by Fiji in recent years and what were some of the steps taken in this direction in 2016?

The responses below entail the Commission's ongoing efforts towards monitoring the implementation of various conventions and treaties ratified since 2016.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- The Commission has received and investigated complaints of cruel, degrading and inhuman treatment and instituted proceedings where it found gross violations of these rights.
- The Commission established a "Human Rights Wall" in police stations and community posts around the country articulating the constitutional rights of arrested and detained persons as well as the provisions of legal representation.
- The Commission subsequently translated these rights into the vernacular in *iTaukei, Hindi, Rotuman* and Chinese.
- Following the ratification of UNCAT in 2016, the Commission embarked on a pilot project with the independent institutions of the office of the Director of Public Prosecutions, the Judiciary, the Legal Aid Commission and the Fiji Police Force in collaboration with the UNDP and the Association for the Prevention of Torture on the implementation of the First Hour Procedure and the video recording of caution interviews.
- The Commission conducted training for the Fiji Police Force in collaboration with the UN Office of the High Commissioner for Human Rights, Fiji Women's Crisis Center, UNDP, International Committee for the Red Cross (ICRC), and Association for the Prevention of Torture (APT).

- The Commission also contributed to the review of the Standard Operating procedures of the Fiji Police Force to ensure that it is consistent with human rights.
- The Commission facilitated a roundtable discussion between the Fiji Police Force and sex workers, community youth leaders and the LGBTI community.
- The Commission has also assisted and intervened in upholding the principles of non-discrimination in early access to justice in relation to vulnerable groups such as women, children, LGBTI, persons with disabilities and the elderly.
- The Commission has independently investigated allegations of cruel, degrading and inhuman treatment in correctional facilities and afforded remedy in instances of interdiction of constitutional rights.
- The Commission has conducted training for the Fiji Correction Services on the Mandela Rules in collaboration with the United Nations Office of Drugs and Crime (UNODC).
- The Commission conducted a week long training on monitoring places of detention in collaboration with an expert from the Office of the United Nations High Commissioner for Human Rights from Bangkok.
- The Commission has also conducted human rights training for the Republic of the Fiji Military Forces.
- The Commission in collaboration with the UNDP, EU and APT conducted human rights training for Fiji Independent Commission Against Corruption given that they have the power to detain individuals under the law.

Convention on the Rights of Persons with Disabilities

- The Commission made a submission on the Rights of Persons with Disabilities Bill and submitted that in its deliberations on the Rights of Persons with Disabilities Bill, Parliament must also consider the ratification of the CRPD without reservation. The submission mapped the salient features of the Convention, with the Bill and the Fijian Constitution outlining the States obligations under the Convention.

Convention on the Elimination of all Forms of Discrimination Against Women

- The Commission produced an alternative report on the implementation of CEDAW in Fiji.

United Nations Convention on the Rights of the Child

- In collaboration with the United Nations Office of the High Commissioner for Human Rights, the commission conducted a workshop for the judiciary, the media and staff of the Human Rights and Anti-Discrimination Commission on children in conflict with the law.

1951 Refugee Convention

- The Commission intervened in a case relating to an Iranian refugee which was in breach of Article 32 and Article 33 of the 1951 Refugee Convention. The Commission called for a legislative review in ensuring that the national immigration law is compliant with our international human rights obligations following the deportation of the Iranian refugee.
- The Commission intervened in the case of a Bangladeshi couple and their four year old child who were seeking asylum in Fiji, engaging with the Fijian Immigration Department and the United Nations High Commissioner for Refugees in Canberra and the National Human Rights Commission of Bangladesh.
- The commission attended to a Bulgarian refugee who claimed unfair treatment by Fiji Police Force, held discussions with his lawyer and assisted him to file his complaint with the Commission and also attended to concerns by three Afghani refugees seeking asylum in Fiji.

International Convention on the Elimination of All Forms of Racial Discrimination

The Commission has campaigned against the advocacy of hatred based on race. It has made public statements condemning both politicians and the general public. It has called out on the incitement of hatred on the social media. It has produced anti-racism campaign materials as "Unite Against Racism". The commission placed advertisements encouraging the public to report incidents to hate speech and racial vilification on social media which were subsequently reported to the Fiji Police Force following the 2018 General Election.

4. How can aggrieved citizens and organisations have access to assistance and service by the Commission, particularly, when it is dealing with the promotion and protection of the freedom of expression and how many individuals and organisations were assisted in this respect in 2016?

The Commission does not privilege or preferentially frame one set of rights over another whether they be civil and political or economic, social or cultural rights and complaints in relation to the protection and promotion of freedom of expression is no exception. Neither does it discriminate on any of the prohibited grounds of discrimination prescribed under section 26 (3) of the Fijian constitution including on the basis of one's political belief in receiving, investigating and affording remedies. In 2016, the Commission assisted the NGO Coalition for Human Rights in securing a permit to march on International Human Rights Day. The Coalition had approached the Commission to intervene. Similarly, the Director intervened to ensure that minimum human rights standards were afforded to five Opposition

politicians who detained for questioning in 2016. The Director also intervened when the SODELPA Youth Leader was arrested in 2017.

- 5. How does the Commission sought to work with the other statutory bodies to ensure that we put in place the following institutions:**
- a) Parole Board; and**
 - b) Mercy Commission?**

The director of the Commission had discussions with the former Chief Justice about how the Human rights and Anti-discrimination Commission can make representation on behalf of inmates who have been incarcerated for more than fourteen years and were requesting for a representation before the Mercy Commission and the Parole Board. The Commission needs to work more in this area in ensuring that the plight of the inmates is conveyed to the Parole Board and Mercy Commission.

- 6. The Commission has been accused of being partisan more than once. What safeguards are being put in place or being planned to project the Commission as an independent body, which is above and immune from political influence?**

Section 45(7) of the Fijian 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 and control of any person or authority, except by a court of law or as otherwise prescribed by written law”. A national human rights institution is neither state nor civil society, not an accessory of the international community and nor must it be seen to be coetaneous with the Opposition. That is the true mark of an independent commission. Being immune from partisanship means being immune to all the actors mentioned above and not simply the narrow parochial definition of anti-state as the alibi for institutional independence.

Pursuant to section 6(2), the primary responsibility of respecting, protecting, promoting, and the fulfilling the rights and freedoms guaranteed under the Constitution lies with the State. It is therefore imperative that the national human rights institution constructively engages with the State in fulfilling its mandate. Constructive engagement does not mean complicity in the violation of rights. The independent investigations, the court proceedings against the state, the content of the submissions made to parliament on existing and proposed laws and the public statements condemning acts of human rights violations such as police brutality and violation of rights in corrections facilities, treatment of refugees, treatment of LGBT community, violation of social and economic rights attests to the independence of the Commission. The Commission in particular draws your attention to pages 19-36 of the 2016 Annual Report, pages 21-39 of the 2017 Annual Report and pages

24-43 of the 2018 Annual Report. Neither has the Commission avoided public scrutiny. The Commission has always responded in a transparent manner to any allegations leveled against it whether by politicians, civil society or ordinary members of the public. The three annual reports detail all media statements made by the Commission.

7. How is the Commission working with the Fiji Law Review Commission to review certain legislation that continue to undermine the key ideals and principles of the culture of Human Rights in Fiji or what steps were taken on this front in 2016?

There is no such body. However, the Commission makes submissions to relevant Parliamentary Standing Committee on legislation to ensure a human rights approach.

8. Substances abuse and domestic violence is now a daunting national issue. There were early signs of these issues in 2016. What actions were taken by the Commission to caution authorities of this impending danger?

Government is already working with the United Nations Office on Drugs and Crime (UNODC) on a national drug policy. Furthermore, the Commission in its human rights education and advocacy initiatives in schools and communities also addresses the deleterious impact of drugs and domestic violence. The Commission in partnership with the UNDP and the Fiji Women's Crisis Centre conducted gender based violence and human rights training with the Fiji Police Force. The Commission specifically draws on Section 11 (2) of the Fijian Constitution on freedom from cruel and degrading treatment 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. This is an expansive provision in law that incorporates domestic violence in the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

9. One of the fundamental of human rights is media freedom. Now the Director of the FHRADC is also the Chairman of the Media Industry Development Authority (MIDA). Would the Director not mind to explain whether or not that there is a conflict of interest?

It is imperative to note that the Director of the Commission is not the Chairperson of MIDA. His term as Chairperson of MIDA lapsed on 31 July 2019. The issue of 'conflict of interest' requires a two tiered response: (1) institutional and (2) the Bill

of Rights and justifiable limitations to freedom of speech, expression and publication.

Institutional:

Section 9 of the Media Industry Act of 2010 provides that the Authority has inter alia powers to-

- (a) develop and monitor codes of practice relating to content or technical standards for media services or to standards of fair market conduct in the media industry, and monitor compliance with such codes;
- (b) monitor compliance with the ethical standards of the print and broadcast media in accordance with the Media Codes of Ethics and Practice;
- (c) monitor compliance by television broadcasters with the Television Programme Classification Code;
- (d) oversee the development, implementation, maintenance and review of media codes; and
- (e) refer to the Tribunal complaints brought by the public against media organisations alleging a breach of the media codes.

The Act also establishes the Media Tribunal ("Tribunal") whose chairperson must be qualified to be a judge. Under section 50(1) of the Act, the Media Tribunal has the jurisdiction to-

- (a) hear and determine complaints referred by the Authority;
- (b) hear and determine complaints referred by the Authority on behalf of a complainant;
- (c) hear and determine complaints referred by a complainant;
- (d) adjudicate on actions for breach of the media codes; and
- (e) adjudicate on matters relating to media disputes.

The Act clearly separates the powers and functions of the Media Industry Development Authority (MIDA) and the Media Tribunal to avoid any conflict of interest. It is therefore prudent to note that I was not the Chairperson of the Media Tribunal and therefore I did not adjudicate on complaints brought before the Tribunal.

Furthermore, section 45(4) of the Fijian Constitution outlines the various functions of the Human Rights and Anti-Discrimination Commission. It is imperative to note that under the Constitution the Commission is independent and is not subject to the direction and control of any person or authority, except by a court of law or as otherwise prescribed by written law.

When the Director of the Commission was appointed in February 2016, he gave a written undertaking to the then Board of the Commission that in the event that the

Fiji Human Rights and Anti-Discrimination Commission does receive a complaint against the Media Industry Development Authority, the Director of the Commission will recuse himself from dealing with the complaint in his capacity as the Director of the Commission as it is at this point that there is a clear conflict of interest. These measures are extremely important to avoid any perceived or actual conflict of interest- an issue that the Commission takes very seriously.

Bill of Rights and justifiable limitations to freedom of speech, expression and publication:

A free, responsible, accountable and robust media is critical in fostering a culture of deep and deliberative democracy thoroughly ensconced in the values of human rights. Unlike many other constitutional jurisdictions that deem the guaranteeing of freedom of speech, expression and publication to entail implicitly freedom of the press, the Fijian Constitution through its Bill of Rights, expressly recognises freedom of the press as pivotal in the materialization of freedom of speech, expression, thought, opinion and publication.

However, no country guarantees unfettered freedom without responsibility and Fiji is no exception. Whilst guaranteeing freedom of speech, expression, thought, opinion and publication, the Fijian Constitution expressly prohibits any speech, opinions or expressions that is tantamount to propaganda of war; incitement of violence or insurrection against the Constitution; or advocates hatred based on any prohibited grounds of discrimination such as race, culture, ethnic or social origin, sex, gender, sexual orientation and gender identity, language, economic, social or health status, disability, age, and/or religion. These rights are subject to limitation through law in the interests of national security, public safety, public order, public morality or the orderly conduct of elections and in upholding:

- i. the right to be free from hate speech (an expression in whatever form that encourages or has the effect of encouraging discrimination on the grounds mentioned earlier)
- ii. the rights of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law
- iii. preventing the disclosure of sources
- iv. preventing attacks on the dignity of individuals or groups in a manner likely to promote ill will between ethnic or religious groups or the oppression of or discrimination against individuals or groups.

The limitations to Freedom of speech, expression and publication in the Fijian Constitution on the prohibited grounds of discrimination listed in its Bill of Rights are aligned with General Recommendation No. 35 of the International Convention on the Elimination of All Forms of Racial Discrimination on Combating Racist Hate

Speech (CERD/C/GC/35). Under section 17 of the Fijian Constitution, the State is constitutionally obliged to make provisions for the enforcement of media standards and the regulation, registration and conduct of media organisations.

Since its establishment, the Media Industry Development Authority (MIDA) has called for balanced, accurate and evidence-based reporting encouraging quality of journalism that is ethical and follows internationally recognized protocols of responsible journalism. To ensure accountability and transparency in regulating the conduct of the media, the Media Industry Development Act 2010 also provides for an independent media tribunal (independent of the Media Industry Development Authority), presided by a High Court Judge, to adjudicate on breaches of media codes or matters relating to media dispute. MIDA has actively encouraged the mainstream media (both print and broadcast) to report freely and critically public opinion and views including those which critical of Government, within the bounds of responsible journalism. MIDA's consistent call for the exercise of self-regulation, continuous education of the media rather than imposition of draconian laws is in consonance with UNESCO's recent call towards "strengthening national legislative framework, the training of journalists to build capacity and to advance media and information literacy" and "support media independence by promoting professional standards and self-regulation" in its report on *World Trends in Freedom of Expression and Media Development*.

10. Climate change and environmental issues are also challenging areas and given Fiji's vulnerability to the problems arising out of the same; what actions were taken by the Commission in 2016 and what is being planned by the Commission on these issues, particularly, when it comes to conservation, sustainable development and matters arising from cases environmental degradation?

Ensuring that minimum human rights standards are met in times of natural disasters and that the principles of non-discrimination are observed as women, children, persons with disabilities and LGBTI are disproportionately affected in times of natural disasters was an important initiative undertaken by the Commission in 2016 post TC Winston. The Commission also received a complaint in 2017 in relation to a breach of section 40 on environmental rights where the complainant alleged that the Fiji Electricity Authority (now Energy Fiji Limited) caused an oil spillage which was harmful to the environment. The commission will also be making a submission on human rights dimensions of climate change in relation to the Climate Change Bill. The Director of the Commission has recently given a televised interview on this: <https://youtu.be/m3X-gd05Nsc>

11. The Annual Audited Financial Statements of the Commission is missing from the Report. All we have is a statement from the Office of the Auditor-General that it is being audited. What is the cause of the delay?

In the absence of a Chairperson, Commissioners and a substantive Director, the Commission has not undertaken a Financial Audit since 2008. 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. 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.

The Commission Director, on 28 March 2017 appeared before the Parliamentary Standing Committee on Public Accounts to explain the findings of the Auditor General in his 2014 report to Parliament. The Commission in its presentation committed to ensuring that it will have the back-log of its accounts audited by 22 December 2020. Following a meeting between the Solicitor General, the Auditor General and the Director of the Commission, it was collectively agreed that the Commission cannot proceed with a financial audit without clearing the entire back-log of audits dating back to 2008.

The institutional back-logs were the key reason for the delay in producing the necessary institutional documents. As the Commission makes this submission, it can confidently put on record that:

1. The 10 year financial audit dating back to 2008 is now complete
2. The asset audit dating back to 1999 is now complete
3. The Complaints audit for 2016, 2017 and 2018 is now complete
4. The payroll has been audited to ensure compliance with taxation laws

The Commission also wishes to bring to the attention of the Committee that in its effort to have the current (2016-2017, 2017-2018, and 2018-2019) financials audited by the Office of the Auditor General, the Commission has requested for quotations from accounting firms for the preparation of IFRS compliant financial statements. The finance section is in conversation with the vendors providing additional institutional information necessary. The Commission is envisaged to receive the quotes by 15 March, 2020 following which a full internal audit will commence.