

**Questions specific to the Fiji Human Rights Commission Annual Reports
2017**

- 1. In reference to page 24 of the Report; it is noted that there is mention of the Commission's investigation of the death of a suspect while in police custody in Nakasi Police Station and eventual request for an inquest into the matter. Is the Commission in a position to comment on the aforementioned matter?**

A suspect was found dead while in police custody at the Nakasi Police Station in February 2017. The Commission conducted its independent investigations by interviewing eleven police officers, inspected the cell block where the suspect was held and obtained necessary documents including copies of station diaries and registers. Pursuant to the Inquests Act [Cap 46], the Commission made a request for an inquest. Consistent with provisions of the Act, the Commission wrote to the Office of the Attorney-General who, based on the relevant police inquest docket, together with the findings of the Magistrates Court, concurred with the court's findings that there be no inquest. Please click on the links below for further information:

<https://fijivillage.com/news/Nands-autopsy-report-forwarded-to-a-Resident-Magistrate-kr9s25/>

<https://www.fbcnews.com.fj/news/autopsy-report-handed-to-magistrate/>

- 2. The Report makes mention of collaboration with the UNDP, the EU and civil society organisations on awareness on the 'First Hour Procedure'; how effective has collaboration been in terms of achieving its intent/objectives?**

The collaboration has been effective in engendering a greater ethos of accountability in relation to this initiative. Nationally, the collaborations have created the conditions of possibility for public consultations and civil society consultations on this initiative. The Commission draws your attention to pages 42 and 43 of the 2017 Annual report. This has also meant scrutiny, accountability and sharing of best practices on the margins of the Human Rights Council. In particular, the side events in Geneva for the three consecutive years has enabled the Commission amongst other institutions such as the Fiji Police Force, the Judiciary and the Legal Aid Commission to engage with the international community such as Amnesty International, Association for the Prevention of Torture, International Committee for the Red Cross and United Nations Office of Drugs and Crime on international best practice and these institutions have in turn returned to Fiji to train our officers.

3. **Given the ideals and principles of gender parity; what steps have been taken by the Commission, unilaterally or in partnership with other statutory authorities, to ensure that there is no gender discrimination when it comes to registration and investigation of complaints?**

The Commission upholds the principle of non-discrimination not just on the basis of gender but on any of the prohibited grounds of discrimination prescribed under section 26(3) of the Fijian Constitution in receiving, investigating or affording remedies available under the law to victims of human rights violations. The Alternative report of the Commission in CEDAW is a strong testament to this. Furthermore, one of the key values underpinning the Commission's Strategic Plan is that the Commission will "apply gender analysis to all its work".

4. **'Slumlord' activities are reported to be on the rise and given the engagement by the Consumer Commission, what (if any) was taken to address the issue of landlord tenancy issue including the indirect supply of electricity and water services, which are the basic constitutional rights of the people yet supplied illegally by the slumlords, in cases the services being cut off when the those renting in the slums cannot afford to pay for these basic services?**

The Commission recognises the constitutional right to adequate food and water, right to housing and sanitation and a clean environment and appreciates the concerns raised by the Commission in terms of the precarity of those dwelling in informal settlements where 'landlords' often arbitrarily suspend the economy of these rights. The Commission has received complaints in relation to the disconnection of water supply and electricity and the Commission has intervened to have these services restored. I draw your attention to page 23 of the 2016 Annual Report, page 27 of the 2017 Annual report and page 28 of the 2018 Annual Report.

5. **The Report makes mention of the Longman Sawari refugee issue as 'Human Rights of Refugees'. Can you elaborate further on the matter and what steps are being taken by the Commission to ensure that such incidents in the future are dealt with swiftly?**

The Commission issued a public statement in relation to the breach of Articles 32 and 33 of the 1951 Refugee Convention and raised its concerns with relevant government authorities as well as UNHCHR. The Commission has called for a review of the domestic legislation to fully align it with the imperatives of the 1951 Convention.

6. **In reference to page 31 of the Report, it is noted that the Commission makes submissions on legislation being proposed in the Parliament; what nature of consultation (if any) is undertaken by the Commission with the public in preparing those submissions?**

In making its submissions on existing and proposed laws, the Commission takes cognizance of the following: (1) complaints received by the public which pertains to the particular legislation under review (2) submissions (mostly oral) received from the public during the Commission's outreach initiatives (3) international law.

7. **Given the concept of "Culture of Human Rights", what steps have been taken by the Commission during its education and awareness or advocacy programmes to promote this concept as a measure of promoting respect for human rights?**

The Commission's entire advocacy and outreach work is based on this principle.

8. **Aligning Government policies and programmes in line with the UN Agenda 2030 is one of the key tenets of the state mechanism now at work. How does the Commission seek to achieve the implementation of the SDGs within its own office and how does the Commission seeks to achieve the implementation of the SDGs within its own office and how does the Commission monitor the implementation of the SDGs in other institutions and structures?**

In the dispensation of its constitutional mandate, the Commission as articulated in its response to question 1 on the 2016 Annual Report aligns its key activities against the SDG's. Furthermore, consistent with Fiji's voluntary pledge to the Human Rights Council, the Commission in its alternative report on Fiji's Universal Periodic Review also recommended that the state adopt the National Mechanism for Implementation, reporting and Follow-Up (NMIRF) with a fully integrated National Recommendation Tracking Database (NRTD) embodying engagement, coordination, consultation and information management capacity.

9. **Accountability, good governance and transparency are important fundamentals principles when it comes to public administration and especially dealing with public funds. In reference to page 31 and 66 of the Report; reference is made to the Auditor-General's statement on the accounts of the Commission. Would the Commission explain, given its small scale of administration and operations, what is the cause of delay in furnishing the accounts for audits as required under the Financial Management Act?**

Since 2008, 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. 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. The Board of Survey reported missing items for which the Commission has instituted disciplinary proceedings including the termination of contract of service for three staff. Furthermore, the Commission has also conducted an Audit of the Complaints department in 2016 which revealed understatement of complaints received by the Commission. Assistance was also sought from the Fiji Revenue and Customs Authority to audit the Commission's accounting software.

The financial audit for the period 2008 to 2016 is now complete. The Commission financials are managed on cash basis of accounting. The Office of the Auditor General requires that the financial statements must be IFRS compliant prior to audit. The migration of the entire financial management ecosystem from cash basis to accrual is a mammoth task. Given that the entire back-log of audit for the period 2008 to 2016 is now complete, in an effort to expediting this migration process, the Commission has agreed to procure the services of an accounting firm who will now conduct a full internal audit of the Commission financials for the period 2016/17, 2017/18 and 2018/19. The scope will further include the review of the Commission's financial manual to ensure compliance with IFRS and implementation of an IFRS compliant accounting software. The current staff capacity of the Commission is 46%. It is anticipated that the Commission will have its financials prepared on standards prescribed by the Office of the Auditor General by June 2020, and submitted to the Office of the Auditor General for an independent audit.

The Commission, therefore, has made serious efforts in strengthening institutional governance since the appointment of the Commissioners and the Director.

Questions specific to the Fiji Human Rights Commission Annual Reports 2018

- 1. Hate speech, expressing dissent and freedom of expression are different things. Does the Commission believe that there is a need to further make a detailed definition by way of interpretation of these three things in our codified legislation or are the existing legislation sufficient enough?**

25/11/2018	https://www.youtube.com/watch?v=QkbZVNlaZXI 4 The Record – Ashwin Raj Use of social media, hate speech by some politician Discusses the role of the HRADC Redress provided by HRADC https://www.youtube.com/watch?v=9rzkxXin5Uc&t=216s	FBC TV
25/11/2018	Close Up – Ashwin Raj Role of mainstream local media in covering the 2018 general elections against the fake news being posted on social media platforms Respect for human dignity in light of level of mud-slinging used on social media by certain politicians to campaign Respect for the blackout period and how it was covered by the Fijian media	Fiji TV
27/11/2018	Aaina – Ashwin Raj Critical analysis of the campaigns led by the political parties and candidates using social media to incite and statements bordering on racial and religious vilification. Issue of division based on race and religion. Hate speech used during political campaigns https://www.youtube.com/watch?v=LIXCIEmKU	FBC TV/ Radio Fiji Two

General Questions pertaining to the Fiji Human Rights Commission Annual Reports 2016, 2017 and 2018

- 1. Complaints regarding our Prison and Correction Services has been a staple feature of the Annual Reports of the Commission for the years 2016, 2017 and 2018, which includes mental and physical torture. How does the Commission intend to mitigate such issues with the Prison authorities and what has been the success of the same?**

It is imperative to note that the Commission has drawn on numerous provisions in various legal proceedings it has instituted against the state in the restitution of fundamental human rights and dignity of prisoners in Fiji of the following international human rights principles: the *Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules), the UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*Bangkok Rules*), the UN Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*) the UN Rules for the Protection of Juveniles Deprived of their Liberty (*Havana Rules*) and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(*Istanbul Protocol*) The independent institutions of the Judiciary, the Fiji Corrections Services, the Legal Aid Commission and the Human Rights and Anti-Discrimination Commission are committed towards observing these internationally recognized standards and domesticating its provisions in relation to the administration of justice and the human rights of detainees in our collective efforts towards treating those in detention with humanity and to respect their inherent dignity while holding each other accountable.

The Commission also convened training on the Mandela rules for the Fiji Corrections Service in collaboration with the UNODC and the Association for the Prevention of Torture and the ICRC. The Minimum Standards Rules are significant because they constitute an important safeguard in the protection of human rights and respect for the dignity of the most vulnerable and its implementation is the beginning of a long term conversation in fulfilling our human rights obligations, ensuring compliance with international human rights law. In draw on some international principles are important:

1. BALANCING SAFETY, SECURITY IMPERATIVES AND RESPECT FOR HUMAN DIGNITY

The Mandela Rules provide guidance on how to search prisoners and cells in a manner that balances the imperatives of safety and security while respecting the privacy and dignity of the individuals concerned and pro testing their rights. The Rules also clarify the role of health-care professionals in carrying out body cavity searches. National laws and regulations governing searches of prisoners and cells should be in line with international standards. There must be clear regulations at national level defining when different types of body searches are permissible, particularly for strip searches and invasive body searches. These regulations should include details on who is authorized to carry out such searches and the manner in which they should be conducted. The circumstances under which strip searches and invasive searches can be carried out should be clearly defined by law.

There should be specific guidelines in place regarding searches of female and child prisoners. Rules 50, 51 and 52 underscore the importance of respecting human dignity and privacy because searches can be a tool for harassment and can be humiliating, distressing and traumatic and often conducted when prisoners are most vulnerable as they first arrive at a detention facility. The Rules call for all searches to be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched; in accordance with the principles of legality, necessity and proportionality; not to be used to harass, intimidate and impinge of the prisoners privacy; and prison authorities should keep appropriate records of all searches, as well as reasons for the searches, identities of who conducted them and the results of the search; procedural safeguards in place on the overuse of all types of searches and that searches must

time and provide reasons why they will not implement certain recommendations. The focus is on constructive dialogue between external monitors and prison administrators charged with the responsibility of implementing those recommendations.

2. One of the causes of conflict situations in Fiji as in many other parts of the world is economic disparity; this includes employment relations. Is the Commission aware that the trade union movement, which is seeking to draw attention of the authorities on this matter have been denied their freedom of expression more than once to stage a march and rally in Suva and what is the position of the Commission on that matter?

On 11 Aug 2019, the Director of the Commission issued the following statement which was subsequently published by the Fiji Sun in relation to freedom of association, assembly and expression:

“There is a pressing need for a national conversation about upholding and balancing the constitutional right to freedom of association, assembly and speech and expression including the right to express democratic dissent and the maintenance of public order and national security. Striking the right balance between these rights and the responsibilities that come with those rights is important because we have a history. In 2000, what started as a peaceful assembly and protest descended into violence. At the same time, it is equally important that people are able to express their concerns in a democracy about their rights as workers or any other pressing issue in a safe environment without threatening the safety, security or the diminution of the rights and freedoms of others. I note that while permits to march were rejected, the trade unionists and their supporters including politicians and academics were able to assemble in Suva, Lautoka and Nadi and freely express dissent without any obstruction from the police.

Such forms of peaceful assembly unlike a march does not pose security risks. So I am equally appealing to everyone to also think of constructive ways of expressing dissent and if securing permits to march is proving to be an intractable issue then perhaps think of other ways in which citizens can gather and freely express their views on critical issues such as panel discussions and meetings in a hall. There are countries, advanced liberal democracies, where people don't march on the streets but gather in a safe space to express dissent. Also, we must consider the view and rights of others such as the impact of these marches on businesses and the safety of ordinary citizens. A national conversation with trade unionists, civil society, human rights defenders and law enforcement agencies on the Public Order Act will be an important step in the right direction”.