

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?**

The existing laws provide adequate definitions of these. Hate speech is clearly defined under section 17 (4) of the Fijian Constitution. The right to democratic dissent including legitimate criticism of government and its policies is not a criminally punishable offence and this is clearly defined by the Crimes Act. What is needed is a greater awareness and knowledge of the relationship between these concepts.

**2. With regard to Right to Life – and in reference to page 26 of the Report; the Commission filed for a constitutional redress application in the High Court of Fiji in relation to the death of a 26 year old male allegedly assaulted by the police outside a night club. Can the Commission comment on the status of the matter?**

The Commission investigated the death of Josua Laluvaki who was assaulted by police officers outside a nightclub in Suva on 2 September 2018. He passed away on 11 October 2018. The Commission had filed a Constitutional Redress application on behalf of the late Josua Lalauvaki in relation to the violation of his Constitutional Rights.

The declarations sought by the Commission in the Notice of Motion were that Lalauvaki's constitutional right to life under section 8 of the Fijian Constitution was violated by the Fiji Police Force and that Lalauvaki's Constitutional right to freedom from cruel and degrading treatment under section 11 (1) of the Fijian Constitution was violated and breached by the Fiji Police Force leading to Lalauvaki's untimely demise including Lalauvaki's constitutional rights as an arrested and detained person under section 13(1)(a)(I) of the Fijian Constitution was violated and breached by the Fiji Police Force.

However, the Commission's application to intervene in the matter was dismissed by the court. This case was covered widely by the media. Here are the links:

<https://fijivillage.com/news-feature/Human-Rights-and-AntiDiscrimination-Commission-file-Constitutional-Redress-application-on-behalf-of-late-Josua-Lalauvaki-2r5s9k>

<https://www.fbcnews.com.fj/news/hradc-files-constitutional-redress-of-josua-lalauvaki/>

<https://fijivillage.com/news/Suva-High-Court-has-struck-out-the-constitutional-redress-application-of-late-Joseua-Lalauvaki--k9r52s/>

<https://fijisun.com.fj/2018/10/14/raj-praises-quick-police-decision-to-probe-death/>

<https://fijisun.com.fj/2019/04/16/josua-lalauvaki-case-rights-bodys-application-dismissed/>

- 3. According to this Report and the previous Reports by the Commission on its annual activities, a number of legal actions have been taken by the Commission. Given its constitutional role, more legal actions are likely and that being so, could this Committee be given a brief on the competency of the legal team or aid that the Commission enjoys and whether that is adequate or more resources are required in this sphere?**

The Commission is adequately resourced to institute legal proceedings and the Proceedings Commissioner has oversight of all proceedings instituted by the Commission. The Commission intends to expand its legal section to include lawyers that can assist with policy analysis and development of jurisprudence.

- 4. The right of representation and self-determination are cardinal human rights pertaining to democratic governance. The Commission has its own report on the electoral process and then we have the Multi-national Observer Group Report on the conduct of the 2014 and 2018 Fijian National Elections. How does the Commission intend to address the issue of human rights arising out of these reports to ensure free and fair elections in the future, especially when dealing the rights of all the stakeholders involved in the electoral process?**

#### **Monitoring 2018 General Election**

The Human Rights and Anti-Discrimination Commission has a constitutional mandate under section 45(4)(c) of the Fijian Constitution to monitoring, investigating and reporting on the observance of human rights in all spheres of life. As a National Human Rights Institution, the Commission undertook a key initiative in 2018 to monitor the 2018 General Election with an aim to ensure Fiji enjoys free, fair and credible elections. The Commission monitored polling venues on the Election Day in 2018 ensuring observance on minimum human rights standards during the election process.

The Commission played an instrumental role both in the pre-electoral and the post-electoral phases, promoting and monitoring protection of all human rights during the election process. The Commission worked closely with the Fijian Elections Office in educating and informing the voters about the election process, in particular, features of free and fair elections, observance of minimum human rights standards during the election, compliance with the Electoral Act and on the role of the media. A brochure was produced and jointly launched by the Commission and the Fijian Elections Office to educate voters, aspiring politicians and political parties on features of a free and fair elections and observance of minimum human rights standards during elections.

The Commission also monitored the pre-election preparations and campaign period, keeping a close eye on hate speech, statements related to racial and religious vilification and dissemination of information particularly on social media platforms which could have marred the integrity of the election process.

The Director of the Commission collaborated with the Fijian Elections Office in the pre-electoral and post-electoral phases, held joint press conferences on crucial issue such as racial and religious vilification, hate speech on social media, blackout period, dissemination of fake news and right to vote. The two institutions also held discussions with civil society organisations on electoral process which was facilitated by International Institute for Democracy and Electoral Assistance (International IDEA).

### **Minimum human rights standards**

- Principle of 'non-discrimination', which means every person is equal before the law and has the right to equal protection, treatment and benefit of the law.
- Creation of an atmosphere that ensures full political participation where citizens do not fear for their safety as a result of their participation. The law must therefore guarantee fundamental human rights and freedoms. This includes:
  - Freedom of speech, expression and publication and people must be able to freely express themselves including a free, fair and responsible media that gives access to all political viewpoints.
  - Right to information to be able to make an informed choice.
  - Right to peaceful (non-violent) assembly that must be only limited by law in the interest of national security, public safety, public order, public morality, public health and the orderly conduct of elections.
  - Freedom of association including the right to form and participate in political organisations. All restrictions must be (1) prescribed by law and (2) necessary in a democratic society for the protection of public interests. Role of the police and security forces must be clearly defined.
  - Human rights and freedoms come with responsibilities. The right to freedom of expression DOES NOT give one the right to promote hate speech or incite violence based on race, religion, ethnicity and other prohibited grounds of discrimination.

### **Monitoring Polling Venues**

The team was deployed in the Central, Western and Northern divisions on the Election Day, to observe the polling venues located in urban, rural and remote areas, monitoring compliance of human rights standards. The Commission monitored a total of 87 polling venues in these locations.

This consisted of 19 polling venues in Northern division (Labasa, Seaqaqa & Dreketi - Macuata & Bua), 47 polling venues in Western division (Nadroga, Nadi, Lautoka, Ba, Tavua & Rakiraki) and 21 polling venues in Central division (Navua, Suva, Nasinu, Nausori and Tailevu). This exercise was in line with the Commission's mandate to monitor observance of human rights standards during the electoral process. The Commission received no major complaints in relation to violation of the constitutional right to vote.

### **Engaging with the Multinational Observer Group (the MOG)**

The Director also held discussions with the Multinational Observer Group (the MOG) on observance of human rights standards during general elections. The MOG is a group of countries and international organisations invited by the Fijian Government to observe the 2018 Fijian General Election with key responsibility to assess whether Fijian voters were able to exercise their vote freely and whether the outcome of the election broadly represented the will of Fijian voters.

### **Engaging with Media**

A democratic election is impossible without media. The Commission vigorously used the mainstream media to reach out to the public and to appraise freedom to campaign in the pre-electoral phase, keeping a tab on hate speech and intolerance on the grounds of race and religion. The Commission made calls to the voters on the Election Day on the importance of voting, encouraging them to cast their vote. The Director held a number of joint-press conferences with the Supervisor of Elections both during pre-poll phase, at the closing of polling stations and on the announcement of the final results, sending sound messages to the voters, political parties and candidates on their rights and responsibilities during the poll. Director also appeared on live radio and television shows on the Election Day and in the post-electoral phase to reflect on the election process, campaigns, and political debates and to express concern on social media mania which sparked racial and religious vilification. An advertisement was also put out in the mainstream media, following the announcement of the outcome of the 2018 General Election, urging Fijians to report without fear any incidence of violence including racial and religious attacks either on the social media, in their communities or on the streets to the Commission. The media coverage is summarized in the table, below.

#### **Media Engagement - 2018 General Election**

<b>Date</b>	<b>2018 General Election Media engagement ( pre-poll and post-poll)</b>	<b>Media Outlet</b>
<b>01/11/2018</b>	HRADC preparing teams for upcoming Election <a href="http://www.fbc.com.fj/fiji/69183/fradc-preparing-teams-for-upcoming-election">http://www.fbc.com.fj/fiji/69183/fradc-preparing-teams-for-upcoming-election</a>	FBC

19/11/2018	2018 General Elections: Campaign within electoral rules, says Human Rights director <a href="https://www.fijitimes.com/2018-general-elections-campaign-within-electoral-rules-says-human-rights-director/">https://www.fijitimes.com/2018-general-elections-campaign-within-electoral-rules-says-human-rights-director/</a>	The Fiji Times
20/10/2018	2018 General Elections: Close watch on campaigns <a href="https://www.fijitimes.com/2018-general-elections-close-watch-on-campaigns/">https://www.fijitimes.com/2018-general-elections-close-watch-on-campaigns/</a>	The Fiji Times
08/11/2018	Let people make their choice freely: Raj <a href="http://www.fbc.com.fj/fiji/70620/let-people-make-their-choice-freely-raj">http://www.fbc.com.fj/fiji/70620/let-people-make-their-choice-freely-raj</a>	FBC
12/11/2018	<p>Joint Press Conference</p> <p>..."just wanted to implore on everyone that we are still in the blackout period so that we would like to ensure that we comply with the requirements set out law under section 63, 110 and 118 so to the mainstream media, members of the political parties, individual candidates and members of the public - please ensure that you in full compliance with the requirements set out under the law for blackout period.</p> <p>The intention of blackout period is to give people, voters in particular the much needed reprieve so that they can cast their votes freely, without undue pressure.</p> <p>We also appeal to the public sense of reason particularly s so as it affects the activities on social media to ensure that if there is any proliferation of fake news under the pretext of legitimate media – please report that immediately so we can take swift action on it.</p> <p>Also to individuals who are residing abroad and are recusant and continue to claim that they will post whatever they wish to post, to please exercise reason.</p> <p>If you want to see free, fair and credible elections, you need to ensure that our voters get that reprieve so that they are able to cast votes without pressure, without influence and that fact that there is so much fake news, people are beginning to find it really difficult to delineate between fact and fiction, I think all the more reason to have something like the blackout period. So please ensure there is full compliance with the requirements of the law".</p> <p><a href="https://web.facebook.com/Fijianelectionsoffice/videos/207118116870037">https://web.facebook.com/Fijianelectionsoffice/videos/207118116870037</a></p>	Fijian Elections Office facebook page
13/11/2018	<p>Fiji warned about fake news</p> <p>Election authorities in Fiji are warning about false news stories in the run-up to tomorrow's election.</p> <p>They were telling people to report any so-called fake news.</p> <p>Social media users have found fake media sites with items about</p>	Radio NZ

<p>25/11/2018</p>	<p><a href="https://www.youtube.com/watch?v=QkbZVNlaZXI">https://www.youtube.com/watch?v=QkbZVNlaZXI</a></p> <p>4 The Record – Ashwin Raj</p> <p>Use of social media, hate speech by some politician</p> <p>Discusses the role of the HRADC</p> <p>Redress provided by HRADC</p> <p><a href="https://www.youtube.com/watch?v=9rzkxXin5Uc&amp;t=216s">https://www.youtube.com/watch?v=9rzkxXin5Uc&amp;t=216s</a></p>	<p>FBC TV</p>
<p>25/11/2018</p>	<p>Close Up – Ashwin Raj</p> <p>Role of mainstream local media in covering the 2018 general elections against the fake news being posted on social media platforms</p> <p>Respect for human dignity in light of level of mud-slinging used on social media by certain politicians to campaign</p> <p>Respect for the blackout period and how it was covered by the Fijian media</p>	<p>Fiji TV</p>
<p>27/11/2018</p>	<p>Aaina – Ashwin Raj</p> <p>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</p> <p><a href="https://www.youtube.com/watch?v=LIXCIEmKU">https://www.youtube.com/watch?v=LIXCIEmKU</a></p>	<p>FBC TV/ Radio Fiji Two</p>

**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 protecting 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



be carried out by trained personnel because body searches can amount to torture or other forms of cruel and degrading treatment if they are done with the intent of inflicting severe mental or physical pain or suffering. Developing guidelines and necessary safeguards when conducting body searches on those that are most vulnerable including children, women particularly sex workers, LGBTI and persons with disabilities is of particular concern.

The Bangkok Rules calls for alternative searching methods such as scans. The Bangkok Rules are instructive because it clearly states for transgender and intersex persons, determination of their gender should not depend on their status as recorded in official documents, but in their own self-perceived gender at the time of the search.

## **2. USE OF RESTRAINT**

Both Bangkok and Mandela Rules prohibit the use of restraints during labour, during childbirth and immediately after childbirth. The Havana Rules states that instruments of restraint and force must only be used in relation to children in prison in exceptional circumstances.

## **3. INITIATING AN INVESTIGATION**

Rule 71 makes clear that all deaths, disappearances, serious injuries or allegations of torture and other forms of ill-treatment must be reported “without delay” and notwithstanding the initiation of an internal investigation. Rule 57(3) states that allegations of torture shall be “dealt with immediately”.

An internal inquiry can be carried out in parallel to the external investigation, provided it does not interfere with the external investigation. The fact that there may be a criminal investigation into a particular incident does not preclude the need for a prison to conduct its own investigation into that incident. *In no circumstances should there be a requirement for an internal inquiry to be completed before an external investigation can be initiated.*

## **4. CONTACT WITH THE OUTSIDE WORLD**

Contact with the outside world is also a key safeguard against torture and other forms of ill-treatment and therefore consistent with Article 23 of the ICCPR on the right to contact family as well as the right of children to have contact with their family members enshrined under CRC as well as the Havana Rules, Rule 58 provides for the right to contact family. Rule 62 provides that foreign nationals must be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the state to which they belong. Rules 53, 61, 119, 120 underscore the importance of access to legal advice, representation and legal aid integral in ensuring fair trial and the rule of law.

## 5. HEALTH-CARE AND VULNERABLE GROUPS

When the state deprives someone of their liberty, it also takes on the duty of care to provide medical treatment and to protect and promote their physical and mental health and well-being. Those in prison are entitled to receive the same standard of health-care as is provided in the community outside of prison. Minimum standard rules 24, 25, 27, 30, 31 and 33 are premised on the following fundamental principles of health-care provision in prisons: protection, equivalence of care, the right to the highest attainable standard of health, independence (Rule 28(2)), non-discrimination, confidentiality, informed consent, links to community health services and continuity of care, and state responsibility. The Mandela Rules make it clear that health-care professionals should see, talk and examine every prisoner not only on admission, but also as is necessary thereafter and to have full access to all prisoners and be informed about where they are located including those undergoing disciplinary sanctions. Prisoners must have the opportunity to seek medical care and must be able to access health-care services in confidentiality without having to give a reason for wanting to see a health-care professional. In assessing the detention conditions of prisoners in relation to their health, medical professionals should pay particular attention to the situation of prisoners with particular health-care needs including pregnant women and breastfeeding mothers, children in prison with their parent, elderly prisoners and others with specific physical and mental health conditions.

The Mandela Rules emphasize the importance of ensuring the dignity of prisoners at all times. Rule 19(3) for instance states that prisoners should be allowed to wear their own (civilian) clothes when they are transferred to hospitals or clinics for treatment. This is important to preserve their dignity.

Particular emphasis is also on the most vulnerable. The Bangkok Rules (Rules 6-18) which supplement the Mandela Rules makes it clear that the specific health-care needs of women must not be limited to pre-and post-natal care. Rule 48 of the Bangkok Rules provides guidance on the medical and nutritional needs of pregnant women, breastfeeding mothers and mothers with children in prison. Children held in detention, as pointed by the UN Special Rapporteur on torture are at risk of post-traumatic stress disorder which negatively affects their health and development. Recognizing the vulnerability of juvenile female prisoners, rule 38 and 39 of the Bangkok Rules addresses their specific health-care needs. The Mandela Rules also implore that in order to understand the healthcare needs of foreign nationals who may not speak the main language of the prison, information about available health-care should be explained in a language they understand. Prison staff should also receive training on the health-care needs of LGBTI prisoners including mental health conditions as well as the specific health needs of the elderly and terminally ill prisoners.

Rule 34 of the Mandela Rules states that health-care personnel have an important role in not only treating a prisoner that has been injured physically or mentally but also in documenting these injuries and other signs of ill treatment as a prerequisite for effective investigations and subsequent accountability.

### ***Informed consent and autonomy***

Before starting a medical screening, health-care staff should clearly explain to prisoners the reason for the examination and why it is important and not only for their own health and the health of others. Prisoners have the right to refuse a medical examination but if they do agree, they need to be informed of the potential negative consequences. Drawing on the Lisbon Declaration, the guidance document on the Mandela Rules states that in the instance that a prisoner is unconscious or otherwise unable to express her or his will, informed consent must be obtained from a legally entitled representative.

Informed consent and autonomy also becomes contentious in the context of hunger strikes and forced feeding, the UN Special Rapporteur on torture, the UN Special Rapporteur in the right to health have concluded that in cases involving prisoners on hunger strike that the duty of medical personnel to act ethically and to respect individual's autonomy must be respected and therefore unjustifiable to engage in forced feeding or other types of physical or psychological coercion contrary to their informed and voluntary refusal of food. Drawing on the work of the UNODC, the Guidance document on the Mandela Rules also talks about the need for adequate safeguards to protect prisoners with mental disabilities against treatment without free and informed consent.

### ***Confidentiality of information regarding HIV/AIDS.***

The Mandela Rules also draws on the *WHO Guidelines on HIV infection and AIDS in Prisons* on the issue of confidentiality in relation to HIV/AIDS which states that information regarding HIV status may only be disclosed to prison managers if health personnel consider that it is warranted to ensure the safety and well-being of prisoners and staff and that health-care staff should never routinely communicate the HIV status of prisoners to prison administrators including marks and labels on their files to indicate their HIV status.

## **6. MONITORING BY EXTERNAL AUTHORITIES**

The Mandela Rules provide for a two-fold system of inspection which includes internal or administrative inspections as well as external scrutinize through independent external monitoring bodies. Rule number 83, 84 and 85 underscore the significance of external monitoring of places of detention, including through unannounced visits as one of the most effective ways of preventing torture and other ill treatment and the structural and systemic causes of torture, brutality and other forms of cruel and degrading treatment. The mandate of external monitoring

in particular is the rights of prisoners and the implementation of national and international standards. It is imperative to note that the obligation to establish external monitoring bodies prescribed in the Mandela Rules applies irrespective of whether a state has ratified OPCAT and established a National Preventative Mechanism. The recommendations of external monitoring bodies constitute the basis for constructive dialogue with authorities on how to improve the treatment of prisoners and conditions in prisons.

In consonance with Rule 84(a), therefore, external monitors such as the Human Rights and Anti-Discrimination Commission must be granted access to all information in relation to the number of prisoners and places and locations of detention including relevant information regarding the treatment of prisoners, their records and conditions of detention. Rule 84(b) provides that external monitors must be able to freely choose which prisons to visit, including making unannounced visits on their own initiative and to freely select which prisoners to interview. Rule 84(c) states that they should be able to conduct private and fully confidential interviews with prisoners, prison staff and other relevant people in the course of their visits. Rule 84(d) states that they have a mandate to make recommendations to the prison administration and other competent authorities, and comment on draft legislations in its efforts towards preventing torture and other forms of cruel and degrading treatment. The HRADC is fully compliant with Rule 84(2) as a monitoring body that is established in law with guarantees of independence and appropriate resourcing.

Prison staff administrators play a key role in ensuring that all external monitors are able to perform their functions effectively and should cooperate with them including by agreeing to be intervened by them. Monitors should be able to perform their functions without interference, threats or harassment. At the same time Minotaur's should also respect prison rules and regulations. It is the role of government and prison administrators to ensure that prison administrators are able to perform their functions effectively in accordance with Rule 84(1). The state must refrain from applying any sanctions or reprisals on any person (including Prison staff) for having communicated with a monitoring body or having provided it with information irrespective of its accuracy.

Rule 85 provides that every inspection, both internal and external, should be followed by a written report to be submitted to the relevant authority and Rule 85(1) specifies that such reports of external inspections be made publicly available excluding personal data on prisoners unless they have their explicit consent. Rule 85(2) requires that authorities get back to the monitoring body with a decision on whether they will implement the recommendations resulting from external inspection bestowing upon prison authorities the responsibility of taking these reconditions seriously, consider carefully implementing them within a reasonable

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”.