

FIJI'S UNIVERSAL PERIODIC REVIEW (THIRD CYCLE)

This alternative report by the Human Rights and Anti-Discrimination Commission on the third cycle of Fiji's Universal Periodic Review expounds on the constitutional and legislative framework governing the national human rights institution, charts its progress towards regaining its accredited status as a national human rights institution that is in compliance with the Paris Principles, and outlines the key initiatives undertaken by the Commission in fulfilling its constitutional mandate. It also appraises the State's fulfilment of its human rights obligations following its last review in 2014 and concludes with recommendations that the Commission considers will help further strengthen Fiji's human rights landscape.



*Submission of the
Human Rights and
Anti-
Discrimination
Commission²*

March 20, 2019



Human Rights and Anti-Discrimination Commission

T +679 330 8577 | F +679 330 8661 | E info@fhrc.org.fj | W www.fhrc.org.fj
Level 2 Naibati House 9 Goodenough Street, Suva. Private Mail Bag, Suva, Fiji Islands

Contents

Background and Progress	3
Introduction.....	3
Constitutional and legislative framework.....	3
Human Rights and Anti-Discrimination Commission	3
International human rights framework:.....	4
Ratification of core human rights instruments.....	4
Openness to international scrutiny	4
Co-sponsoring of human rights resolutions	5
Promotion and protection of human rights on the ground.....	5
Right to equality and freedom from discrimination	5
Rights of persons with disabilities.....	5
Children.....	6
Gender based violence	6
Sexual orientation, gender identity and expression	7
Civil and political rights	7
Freedom from cruel and degrading treatment.....	7
Freedom of speech, expression and publication, freedom of assembly and freedom of association	8
Progressive realisation of social and economic rights	9
Social protection initiatives.....	9
Environment and climate change.....	9
Recommendations.....	10
List of Annexures	11
Annexure A : Nature of complaints received by the Human Rights and Anti-Discrimination Commission	11
Annexure B : Human Rights and Anti-Discrimination Commission stakeholder engagement and consultations	11
Annexure C : Litigation proceedings instituted by the Commission	11
Annexure D : Human Rights education, advocacy and outreach	11
Annexure E : Recommendations concerning existing or proposed laws	11
Annexure F : National consultation on LGBTI rights	11
Annexure G : Statistics on prosecutions against cases of police brutality.....	11
Annexure H : Press freedom and the right to political expression.....	11
Annexure I : Progressive realisation of social and economic rights	11

Background and Progress

Introduction

1. In the five years following the second cycle of its Universal Periodic Review (UPR), the Fijian Government has taken significant steps corresponding to the the UPR recommendations it accepted and towards giving concrete expression to the repertoire of rights enshrined in the Fijian Constitution. In 2018, Fiji became a member of the Human Rights Council and subsequently assumed the Vice-Presidency of the Council. It is a testament to the confidence that the international community has placed in Fiji as well as a vindication of Fiji's efforts towards building a sustainable democracy nourished by the respect for human dignity, fundamental human rights and freedoms, and substantive equality by removing vestiges of discrimination.
2. While the Human Rights and Anti-Discrimination Commission (Commission) acknowledges these achievements, significant human rights challenges associated with climate change, violence including sexual violence against women and children, and finding a balance that recognises the indivisibility of rights remain. Preferential framing of one set of rights over another without any intuition to the intersectional nature of violence and discrimination faced by vulnerable groups will accentuate existing vulnerabilities.

Constitutional and legislative framework

3. The Fijian Constitution (Constitution) has a progressive Bill of Rights which can be applied both vertically and horizontally and encompasses the most salient features of the core international human rights instruments. The limitations set out in the Bill of Rights, for the sole purposes of the recognition of the rights and freedoms of others and meeting the just requirements of national security, public order, public morality and general welfare in a democratic society, are consistent with international human rights law and must be interpreted concomitantly with Section 7(1) of the Constitution.

Human Rights and Anti-Discrimination Commission

4. The mandate of the Commission is prescribed under section 45(4) of the Constitution and section 12 (1) of the Human Rights and Anti-Discrimination Commission Act 2009. Section 45 (7) of the Constitution guarantees the independence of the Commission. Furthermore, section 45 (8) and 45(9) guarantees the administrative and financial autonomy of the Commission. Section 45 (11) requires that the Commission is adequately funded and resourced enabling it to independently and effectively exercise its powers and perform its functions and duties. Section 45 (12) expressly provides that the Commission shall have control of its own budget and finances, as approved by Parliament¹.

¹ In the 2016/17 financial year, the Commission was allocated \$1.492m, an increase of \$942,000 from its baseline budget of \$550,000 in 2015 and \$2.4m for 2017/2018 financial year, an increase of \$900,000. Pursuant to section 45(2) of the Constitution, a chairperson and four commissioners have been appointed by the President on the advice of the Constitutional Offices Commission. The appointment of three female Commissioners from civil society and disability background reflects pluralism.

5. The Commission lost its accredited status in 2007. The Commission recognises that building public confidence by ensuring accessibility to the general public including persons living with disabilities, that it dispenses with its education and advocacy mandate, conducts independent investigations holding institutions and individuals to account, and exhausts remedies available under the law including instituting legal proceedings when fundamental rights and freedoms are infringed are integral in assuaging any imputations of an actual or perceived lack of independence.
6. **Annexures A, B, C, D, E and F** outline Commission's efforts in relation to paragraph 5.
7. The Commission is committed towards ensuring compliance with Paris Principles and to that end will continue working closely with the Asia Pacific Forum of National Human Rights Institutions (APF) with a view of applying for accreditation and gaining full membership of the APF and Global Alliance of National Human Rights Institutions (GANHRI). The Commission has agreed to an APF facilitated capacity assessment and legal assessment of the Human Rights and Anti-Discrimination Commission act 2009. As an observer of the APF, the Commission has and is actively participating in a range of activities.

International human rights framework:

Ratification of core human rights instruments

8. Fiji has ratified the following core human rights instruments:
 - *Convention on the Elimination of All Forms of Racial Discrimination (CERD)*
 - *Convention on the Rights of the Child (CRC)*
 - *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*
 - *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*
 - *Convention on the Rights of Persons with Disabilities (CRPD)*
 - *International Covenant on Civil and Political Rights (ICCPR)*
 - *International Covenant on Economic, Social and Cultural Rights (ICESCR)*
9. The Commission urges the State to ratify:
 - *International Convention on the Protection of All Persons from Enforced Disappearances; and*
 - *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Openness to international scrutiny

10. Fiji has extended a standing invitation to Special Procedures mandate holders based on its priority areas:
 - Special Rapporteur on the right to education,
 - Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,

- Independent Expert on the enjoyment of human rights by persons with albinism
- UN High Commissioner for Human Rights
- Special Rapporteur human rights and the environment

Co-sponsoring of human rights resolutions

Amongst other resolutions, Fiji has co-sponsored:

11. Resolution on National Institutions for the Promotion and Protection of Human Rights at the 33rd Human Rights Council in Geneva
12. Fiji was one of the 84 countries that voted in favour of the UN Human Rights Council decision to establish a UN Independent Expert on sexual orientation and gender identity

Promotion and protection of human rights on the ground

Right to equality and freedom from discrimination

Rights of persons with disabilities

13. Fiji ratified the Convention on Rights of Persons with Disabilities (CRPD) in 2017 and enacted a national legislation, Rights of Persons with Disability Act, 2018, to further promote equality, social and economic progress of persons with disability.
14. The Constitution also safeguards the rights of persons with disabilities.
15. In consonance with the principles of non-discrimination prescribed under section 26 of the Constitution, the Electoral act was modified enabling persons with disabilities to select a person of their choice who is a registered voter to assist them to mark their ballot paper inside the polling station.
16. Fiji is also a signatory to the Incheon Strategy to “Make the Right Real” for persons with disabilities in Asia and the Pacific.
17. The Fiji National Disability Policy (2008 – 2018) sets the framework to address disability in Fiji.
18. State initiatives:
 - **Disability Allowance** - a monthly allowance of \$90 to assist people with permanent physical disability
 - **Accessibility** - Bus fare subsidy for persons with disabilities and new roads and footpaths to be disabled-friendly
 - **Education** - Scholarship schemes available for children with special needs

- **Employment opportunities** - Employment Taxation Scheme to include employment of disabled people for a period of three years with 300 percent tax deduction
- **Health** - \$850,000 to Frank Hilton Organization to detect disabilities in very young children and intervene with appropriate therapies
- **Sports** - \$120,000 allocated to promote participation of disabled persons in sporting activities
- **Fiji National Council for Disabled Persons** - \$1.2 million to support its operations

Children

19. The State implemented policies and schemes to ensure every child has access to education. Free tuition fee, bus fare subsidy to assist students from low income households and free text books are provided by the State.
20. Child Protection Allowance Programme also provides allowances for children from low-income families, single parent families and prisoner dependents.
21. A 24 -hour national child helpline is also available for children to raise concerns and seek professional counselling.
22. Measures are also in place to combat sexual exploitation of girls on streets and provide safe homes to the victims. Department of Social Welfare in partnership with CSOs provide counselling and shelter for victims of Commercial Sexual Exploitation of Children.
23. The Adoption Bill intended to give effect to Fiji's international obligations under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (or Hague Adoption Convention) is before Parliament.

Gender based violence

24. The Domestic Violence Act is implemented through judiciary, independent legal institutions and police, providing speedy access to victims seeking a Domestic Violence Restraining Order (DVRO). DVRO can also be applied through State-funded Legal Aid Commission.
25. There is strict compliance of *No Drop Policy* and *Zero Tolerance* for domestic violence and the custom of *bulubulu* (traditional apology).
26. Anti-trafficking laws are enforced through Crimes Act 2009 to deal with offence of "Trafficking in Persons and Children" and the State works closely with CSOs to provide safe-homes to the victims.

27. Measures are also put in place to assist victims of violence including sex workers to start a livelihood; pregnant girls who drop out of school to complete their education and a 24 hour domestic violence helpline with the state allocating \$0.2 million to support its operation.

28. State Initiatives

- **Training** - for judiciary and police to implement Domestic Violence Act
- **Health Guideline** - Ministry of Health and Medical Services launched the health guideline for comprehensive case management responding to intimate partner violence and sexual violence against women and girls
- **Access to Physical and mental health services** – Fiji Police Force has a memorandum of understanding with Medical Services Pacific to provide counselling support to victims of violence and their families
- **Emergency contraception** - Medical Services Pacific also provides PEP (Post-Exposure Prophylaxis) for survivors of rape to prevent HIV infection and contraception in cases where a pregnancy occurs during incident of rape or sexual assault
- **The National Service Delivery Protocol** - ensures the provision of appropriate, timely and quality services for survivors of gender-based violence together with accountability and appropriate justice for perpetrators
- **Fiji Police Force “DUAVATA COMMUNITY” Outreach** - community symposiums and radio talkback shows are used as means of advocating and raising awareness on gender based violence

Sexual orientation, gender identity and expression

29. Section 26(3)(a) of the Constitution prescribes sex, gender, sexual orientation, gender identity and expression as prohibited grounds of discrimination. Human rights concerns and recommendations emanating from a national consultation on LGBTI rights convened by the Commission in collaboration with the APF is included in **Annexure F**.

Civil and political rights

Freedom from cruel and degrading treatment

30. Fiji has ratified the Convention against torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) in 2016.

31. Independent institutions of the Judiciary, the Office of the Director of Public Prosecutions, Fiji Police Force, Legal Aid Commission and the national human rights commission are working collaboratively on the implementation of the *First Hour Procedure* and video recording of caution interviews as safeguards against forced confessions and police brutality.
32. Fiji Police Force has reviewed its Standard Operating Procedures and now have a *Use of Force Policy*.
33. Uniformed personnel have been prosecuted for assault and grievous harm by the Office of Director of Public Prosecutions as outlined in **Annexure G**.
34. The national human rights commission has established "Human Rights Wall" in police stations outlining the rights of arrested and detained persons. **Annexure C** outlines the legal proceedings instituted by the Commission for infraction of constitutional rights of arrested and detained persons.
35. *Military Forces Act* of 2015 has been amended removing capital punishment.
36. Fiji Corrections Services is working with UNODC to ensure compliance with Mandela Rules.
37. While corporal punishment is unlawful as a disciplinary measure in penal institutions and in schools, the Commission urges that consistent with section 11(2) of the Constitution measures must be taken comprehensively to prohibit corporal punishment in all spheres including alternative care settings.

Freedom of speech, expression and publication, freedom of assembly and freedom of association

38. Reporters Without Borders on world press freedom index ranked Fiji 93 from 107 in 2015, 80 in 2016, going up 13 ranks in 2017 and another 10 ranks to 57 in 2018².
39. *Media Industry Development Act* has been amended removing penal liabilities attached to individual journalists.
40. Ban on foreign journalists has been lifted.
41. *Public Order Act* has been amended delimiting rights and freedoms.
42. Newspaper clippings included in **Annexure H** demonstrate the extent to which Fiji enjoys freedom of the press as well as the right to political expression without fear of reprisal, recrimination and self-censorship.

² <https://rsf.org/en/ranking>

43. In the context of *State v Waqabaca* HAC 361 of 2016, Fiji must continue to develop its own jurisprudence on freedom of expression that balances its constitutional safeguards for the protection of freedom of speech, expression, thought, opinion and publication including freedom of the press with the positive obligation of the State to protect against the advocacy of hatred on any prohibited grounds of discrimination.
44. The independent report of the Multinational Observer Group on the 2018 Fijian General Election notes that the Fijian media “facilitated some robust debate, especially on television and radio. Parties and candidates were generally able to convey their political messages to the electorate”³.
45. A complaint made to the International Labour Organisation by trade union movement in Fiji was resolved.
46. Right to peaceful assembly and freedom of expression was affirmed in the context of an industrial strike, marches and political forums organised by workers of the Air Terminal Services, trade unionists, political parties and their affiliates and human rights activists. Dissenting views were freely published by the media and not considered as seditious.
47. Online Safety Act is now in effect and an Online Safety Commission established pursuant to the Act to protect the right to reputation, privacy and the right to be free from harm.

Progressive realisation of social and economic rights

Social protection initiatives

48. Social protection initiatives such as poverty benefit scheme, social pension scheme, housing and education for women, children, persons with disabilities and senior citizens are included in **Annexure I**.

Environment and climate change

49. Fiji has shown leadership on the issue of climate change being the first country to ratify the *Paris Agreement*.
50. Fiji delivered a successful COP 23 under its presidency as well as its leadership on oceans including a *Talanoa Dialogue*⁴ enabling countries to collectively move closer to the more ambitious *Paris Agreement* goal of keeping the rise in global temperature to 1.5 degrees

³ <https://docs.wixstatic.com/ugd/70ff7f3b750fd0ac914d968eff8748b69b1575.pdf>

⁴ <https://cop23.com.fj/wp-content/uploads/2017/12/Informal-Note-on-the-Approach-to-the-Talanoa-Dialogue.pdf>

Celsius, the formulation of a clear and comprehensive implementation guidelines⁵ for the *Paris Agreement*, the launch of Ocean Pathway Partnership⁶ and the finalisation of the Gender Action Plan⁷.

Recommendations

The Commission urges the State to undertake the following:

51. Consistent with its voluntary pledge to the Human Rights Council, establish a National Mechanism for Implementation, Reporting and Follow-up (NMIRF) with a fully integrated National Recommendations Tracking Database (NRTD) embodying engagement, coordination, consultation and information management capacity.
52. Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the establishment of a National Preventive Mechanism (NPM).
53. Adopt the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and consistent with recommendations of the Special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance convene a national dialogue.
54. Embed human rights education into the school curriculum.
55. Strengthen the inclusion and participation of vulnerable and marginalised communities including women, children and persons with disabilities into all emergency responses in times of natural disasters.
56. Strengthen the rights based approach in the implementation and roll out of policies and guidelines in building climate resilience in Fiji.

⁵ <https://cop23.com.fj/wp-content/uploads/2018/01/Fiji-Momentum-for-Implementation.pdf>

⁶ <https://cop23.com.fj/fiji-sweden-launch-ocean-pathway-draw-stronger-link-climate-change-ocean/>

⁷ <https://cop23.com.fj/cop23-presidency-announces-first-gender-action-plan-highlights-role-women-climate-action/>

List of Annexures

Annexure A : Nature of complaints received by the Human Rights and Anti-Discrimination Commission

Annexure B : Human Rights and Anti-Discrimination Commission stakeholder engagement and consultations

Annexure C : Litigation proceedings instituted by the Commission

Annexure D : Human Rights education, advocacy and outreach

Annexure E : Recommendations concerning existing or proposed laws

Annexure F : National consultation on LGBTI rights

Annexure G : Statistics on prosecutions against cases of police brutality

Annexure H : Press freedom and the right to political expression

Annexure I : Progressive realisation of social and economic rights