

## **INTRODUCTION**

This alternative report by the Human Rights and Anti-Discrimination Commission (“Commission” hereafter) to the CEDAW Committee on the fifth periodic review of Fiji addresses the list of issues raised by the Committee. It expounds on the legislative provisions ensuring the Commission’s independence, progress towards its accreditation and human rights interventions. It also appraises state’s fulfillment of its obligations under the Convention and makes recommendations.

### **Human Rights and Anti-Discrimination Commission**

The Commission lost its accredited status nearly a decade ago and has operated in a state of inertia until recently.

Building public confidence in the national human rights commission by ensuring that the Commission is accessible to the general public including persons living with disabilities supplemented by a robust education and advocacy campaign so that the general public is aware of their constitutionally guaranteed rights and freedoms, demonstrating the Commission’s ability to conduct independent investigations, hold institutions and individuals including the state and private actors within the state to account, to exhaust remedies available under the law in the event of an infraction including the ability to institute legal proceedings, make policy recommendations on existing and proposed laws, building a sound administrative platform to ensure regular and effective functioning of the Commission consistent with the principles of good governance and cultivating an ethos of constructive engagement with the state, civil society and the international community became the immediate priorities of the Commission.<sup>1</sup> These priorities were identified as integral in not only ensuring that the Commission is compliant with Paris Principles but also in assuaging any imputations of an actual or perceived lack of independence.

The mandate of the Commission with an expanded anti-discrimination scope is prescribed under section 45(4) of the Fijian Constitution as well as section 12 (1) of the Human Rights and Anti-Discrimination Commission Act 2009. Section 45 (7) of the Constitution provides that “in the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law”. Furthermore, section 45 (8) and 45(9) guarantees the administrative and financial autonomy of the Commission. Section 45 (11) requires that the Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties. Section 45 (12) expressly provides that the Commission shall have control of its own

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<sup>1</sup> Chairperson and Human Rights Commissioners were appointed by the President on the advise of the Constitutional Offices Commission in May 2015 and a Director of the Commission was appointed by the Board in February 2016.

budget and finances, as approved by Parliament. Following its budget submission for 2016/17 financial year, the Commission was allocated \$1.492m, an increase of \$942,000 from its baseline budget of \$550,000 in 2015. The Commission, following its last budget submission has now been allocated \$2.4m, an increase of \$900,000 for the 2017/18 financial year.

The Commission is committed towards ensuring that it is Paris Principles compliant and to that end will continue working closely with the Asia Pacific Forum of National Human Rights Institutions (APF) 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 currently as an observer of the APF, the Commission has and is actively participating in a range of activities.

Complaints of human rights violations received by the Commission from women and LGBTI persons	Commission's efforts in protecting and promoting human rights
<ul style="list-style-type: none"> <li>▪ Strip search of a female in a public place in the presence of a male police officer</li> <li>▪ Female kept in a cell with a drunk male suspect who allegedly molested her</li> <li>▪ Female kept in police custody without female officers</li> <li>▪ Domestic violence, marital rape, child sexual abuse and refusal by police to facilitate medical examination</li> <li>▪ Eviction notice to vacate marital home served to a complainant whose divorce case was pending in court.</li> <li>▪ LGBTI persons subjected to verbal and physical assault.</li> </ul>	<p><b><u>Independent Investigations:</u></b> The Commission has launched independent investigations into allegations of torture and brutality, death in custody, strip searches conducted by police, sexual assault of prisoners, deprivation of rights of arrested and detained persons, discrimination on a prohibited ground as it affects LGBTI persons, persons living with disabilities, racial and religious discrimination, denial of access to justice for foreign nationals in detention, arbitrary evictions, rights of the child, sexual assault of children and denial or prompt medical examination and treatment in such cases, deprivation of shelter for women with mental illness and human trafficking.</p> <p><b><u>Monitoring Compliance:</u></b> 40 visits were made to places of detention (corrections facilities, police cell blocks, immigration safe house, and hospitals) between 2016-2017.</p> <p><b><u>Human Rights during natural disasters:</u></b> Inspection of evacuation centres post Tropical Cyclone Winston</p>

**Legal Proceedings:** The Commission has instituted following legal proceedings either as amicus or on its own motion:

2016

1. State V Dhamendra [2016] FJHC 386; HAM 58.2016 (*amicus curiae*)
2. Dutt v Commissioner of Prisons [2016] FJHC 1028; HAM104.2016 (*amicus curiae*)
3. Elik Mototabua v State MC 01 of 2016 (*amicus curiae*)

2017

1. Suva High Court Civil Action 249 of 2017: Nete Kaloucava & Human Rights & Anti-Discrimination Commission Vs. AG's Office & Commissioner for the Fiji Police Force
2. Lautoka High Court HBM 24 of 2017: Pranil Sharma Vs. Commissioner of the Fiji Corrections Service (*amicus curiae*)
3. Lautoka High Court HBM 37 of 2017: Pranil Sharma Vs. Commissioner of the Fiji Corrections Service (*amicus curiae*)
4. Labasa High Court HBC 25 of 2017: Ranjeeta Devi & HRADC Vs. The Attorney General & Commissioner for Police
5. Lautoka High Court Civil Action No. HBM 30 of 2016: Mohammed Arafaoui Vs. The Director of Immigration & Minister for Defense, National Security and Immigration (*amicus curiae*)
6. Suva High Court HBM 51 of 2017: Usenia M. Manakiwai & HRADC Vs. Suresh Kant
7. Court of Appeal ABU 0063 of 2017:

Suresh Kant Vs. Usenia M.  
Manakiwai & HRADC

8. Suva High Court HBM 131 of 2017:  
Albertino Shankar Vs. Avneel  
Gounder Vs. Attorney General &  
Commissioner of the Fiji  
Corrections Service (amicus  
curiae)
9. Suva High Court HBM 144 of 2017:  
Junior Ravin Nath & HRADC Vs.  
Attorney General & Commissioner  
of the Fiji Corrections Service
10. Suva High Court HCCA 356 of  
2017: Joseph Christopher &  
HRADC Vs. Attorney General &  
Commissioner of the Fiji  
Corrections Service

**Submissions to Parliamentary Standing**

**Committees:** The following submissions have been made to relevant parliamentary standing committees:

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

**Advocacy:** The Commission has undertaken the following initiatives to promote human rights values:

- Establishment of a “Human Rights Wall” in every police station outlining the constitutional rights of arrested and detained persons.
- Collaboration with the Fiji Police Force, the Judiciary, Office of the Director of Public Prosecutions and the Legal Aid Commission to train police officers on the *First Hour Procedure* and video recording of caution interviews to

	<p>address police brutality.</p> <ul style="list-style-type: none"> <li>▪ Gender based violence and human rights training for the police in collaboration with the UNDP and Fiji Women’s Crisis Centre</li> <li>▪ Juvenile justice workshop in collaboration with the judiciary and OHCHR</li> <li>▪ Media freedom and human rights workshop in collaboration with MIDA and OHCHR</li> <li>▪ Video on LGBTI rights</li> <li>▪ Unite Against Racism Campaign</li> <li>▪ Booklet on constitutional rights and freedoms and accessing national human rights commission</li> <li>▪ Successfully encouraged Fiji to vote for the UN Independent Experts on Sexual Orientation and Gender Identity</li> <li>▪ 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</li> </ul> <p><b><u>Outreach initiatives:</u></b> The Commission visited 113 schools between 2016-17. It reached out to women in rural, remote, maritime areas, semi-urban and informal settlements, including women living with disabilities, mothers clubs, lesbians, trans-women, interfaith based organisations raising awareness on gender rights, prohibited grounds of discrimination, right to education, domestic violence, right to health in particular reproductive health rights, individual rights, accessing free legal service and state welfare schemes.</p> <p>The Commission led six public consultations (under the Access to Justice Project) with women, youth, LGBTI groups,</p>
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non-governmental organizations (NGOs) and civil society organizations (CSOs) across Fiji, held training workshops and conducted community visits to create awareness on human rights under REACH (Rights, Empowerment and Cohesion) Programme reaching out to **6,369 women and LGBTI** participants in 2017.

Key challenges identified by women/LGBTI participants:

Discriminatory behaviors legitimised by customary, cultural and religious beliefs/village by-laws restrictions on dressing, self-expression and participate on an equal basis.

- Preclusion of non-heterosexuals from donating blood by the Ministry of Health and Medical Services.
- Despite the zero tolerance policy, some women are still apprehensive about lodging police complaints because of family pressure, cultural restrictions about going against household heads resulting in cases of incest, marital rape and child abuse being unreported.
- Sex workers taken in police custody not treated with respect.
- Greater awareness needed on accessing reproductive health services, contraceptives, counseling screening for HIV and STIs for rural and remote communities.
- Gender sensitization for healthcare workers who provide family planning services to LGBTI (trans-women in particular) in ensuring safe spaces to access contraceptives and hormonal tablets.
- Provision of interpreters for persons with disabilities (mute and deaf) when taken in police custody for questioning and ensuring that

	<p>hands of such persons remains untied enabling them to communicate with their lawyers and the police using sign language.</p> <ul style="list-style-type: none"><li>▪ Access to public transportation for women with disabilities</li><li>▪ Disclosure of identity of minors who are victims of sexual abuse or assault by media reporting on trials.</li><li>▪ Prevalence of hate speech (misogynist and homophobic) in the social media.</li></ul>
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### **State obligations under the Convention**

The Commission commends the state for the steps it has taken to fulfill its obligations under the Convention through legislative reforms and socially inclusive schemes in its efforts in addressing discrimination and structural inequality accentuated by the institutions of patriarchy, reproductive heteronormativity and other prohibited grounds of discrimination.

Issues under CEDAW	State Initiatives
<p><b>Constitutional, legislative and institutional framework to address discrimination</b></p>	<ul style="list-style-type: none"> <li>▪ Section 26(3) (a), (b) of the Fijian Constitution while guaranteeing the right to equality and freedom from discrimination expressly recognizes discrimination inter alia on the basis of sex, gender, sexual orientation, gender identity and expression as a prohibited ground and section 26 (7) defines discrimination. Section 44(1) and 45(4) provides for the enforcement of the bill of rights provisions in the event of a contravention through the High Court and the Human rights and Anti-Discrimination Commission.</li> <li>▪ The <i>Human Rights and Anti-Discrimination Commission Act 2009</i>, part 9 section 75 of the <i>Employment Relations Act 2007</i>, and section 6 of the <i>Domestic Violence Act 2009</i> prohibits multiple and intersectional forms of discrimination.</li> <li>▪ Part 6 (a) (b) (c) of the “Media Code of Ethics and Practice” of the <i>Media Industry Development Act 2010</i> explicitly references discrimination. Part 7 and 8 of the code of ethics also explicitly references media’s depiction of children and victims in sexual cases.</li> </ul>
<p><b>Women human rights defenders</b></p>	<ul style="list-style-type: none"> <li>▪ The <i>Public Order Act</i> was passed on 9 February 2017 enabling political parties, non-governmental organisations and individuals to hold meetings and demonstrations. Permits are required under the law for marches and processions. Marches by women’s human rights activists to mark and celebrate Human Rights Day, march by unionists, political party leaders,</li> </ul>

	<p>unionists, NGOs and ordinary citizens to raise the minimum wage as well as the Air Terminal Services dispute and the publication of opinions and columns that openly criticize government demonstrate that freedom of expression, assembly and association are intact. However, the law expressly provides hate speeches, incitement of communal ill will amongst different ethnic and religious communities as a justifiable limitation to these rights and freedoms.</p>
<p><b>National machinery for the advancement of women</b></p>	<ul style="list-style-type: none"> <li>▪ <i>Parliament Standing Order 100(2)</i> ensures that gender issues are mainstreamed in legislative processes. National Gender Policy (administered under Women’s Action of Plan), which ensures mainstreaming of gender responsive strategies by ministries, has received an increased budget.</li> </ul>
<p><b>Gender Stereotypes and harmful practices</b></p>	<ul style="list-style-type: none"> <li>▪ Ministry of Women, Children and Poverty Alleviation in collaboration with Fiji Women’s Crisis Centre has conducted awareness on gender based violence under the Zero Tolerance Violence Free Community Programme. The use of male advocates is integral in breaking gender stereotypes.</li> <li>▪ Media Industry Development Authority has also conducted workshops on media and LGBTI issues.</li> </ul>
<p><b>Gender Based Violence against Women</b></p>	<ul style="list-style-type: none"> <li>▪ Law requires strict compliance with <i>No Drop Policy</i> and zero tolerance for traditional apologies.</li> <li>▪ Greater accessibility to <i>Domestic</i></li> </ul>

	<p><i>Violence Restraining Order</i> to victims of domestic violence. Applications can be made at any judicial registry or Legal Aid Commission Office in person, via telephone and by third parties on behalf of victims of domestic violence.</p> <ul style="list-style-type: none"> <li>▪ Judiciary and police have undergone training on gender based violence to address gender bias.</li> <li>▪ National Domestic Violence Toll Free Helpline has been established.</li> <li>▪ National Standard Operating Procedure or protocols for responding to gender based violence is being developed.</li> <li>▪ <i>Crimes Act 2009</i> has been amended providing a broader definition of rape and section 212 (3) of the Act provides that consent can not be used as a defense for indecent assault of a child under the age of 16.</li> <li>▪ Section 29 of the <i>Marriage Act 1968</i> criminalises child marriage and reporting such acts is mandatory under <i>Child Welfare Act</i>.</li> </ul>
<p><b>Trafficking and exploitation of prostitution</b></p>	<ul style="list-style-type: none"> <li>▪ Section 111-121 of <i>Crimes Act 2009</i> imposes heavy fines and imprisonment terms for international and domestic trafficking.</li> <li>▪ State is also party to <i>UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</i></li> <li>▪ State provides temporary visas, work permits and safe homes, medical care, interpreters and access to legal aid to victims of human trafficking.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Civil society organizations in collaboration with the state play a critical role in provision of reproductive health services, counseling, shelter and access to justice for women forced into prostitution.</li> </ul>
<p><b>Participation in Political and Public Life</b></p>	<ul style="list-style-type: none"> <li>▪ The state has not adopted Temporary Special Measures</li> <li>▪ The Constitution however explicitly references sex, sexual orientation, gender identity and expression as prohibited grounds of discrimination and guarantees the right to political participation.</li> <li>▪ Following the 2014 general election, women parliamentarians make 14% of the legislature with a female Speaker, Leader of Opposition, Ministers and Assistant Ministers.</li> <li>▪ Out of its 18 diplomatic missions, women make 30% of the postings including 3 Heads of Missions.</li> </ul>
<p><b>Education</b></p>	<ul style="list-style-type: none"> <li>▪ Section 31 of the constitution guarantees the right to education.</li> <li>▪ State provides free tuition including free tuition to accredited pre schools and technical colleges, bus or boat fares, free textbooks at all levels, free cereal and milk for all Year 1 students and National Toppers Scholarships and Tertiary Education Loan Scheme and women can access the scheme to further their education.</li> <li>▪ Discrimination on the basis of pregnancy is prohibited under the Constitution. Therefore pregnant girls are encouraged to return and complete their education.</li> <li>▪ Consistent with the recommendations of the UN Special</li> </ul>

	<p>Rapporteur on Education, the Ministry of Education is currently working with the Human Rights and Anti-Discrimination Commission in embedding human rights in the school curriculum.</p> <ul style="list-style-type: none"> <li>▪ Sex education has been incorporated into the school curriculum and appropriate steps have been taken by the Ministry to review sex education in Family Life and Healthy Living subjects.</li> </ul>
<b>Employment</b>	<ul style="list-style-type: none"> <li>▪ The implementation of Open Merit Recruitment Based System (OMRS) and Equal Employment Opportunity has been integral in addressing occupational segregation.</li> <li>▪ Under the labour laws, women cannot be terminated on the grounds of pregnancy and are entitled to maternity leave.</li> <li>▪ Women have access to <i>Employment Relations Tribunal</i> and <i>Employment Relations Court</i>.</li> <li>▪ Section 76 of the <i>Employment Relations Act 2007</i> provides measures to address sexual harassment in the workplace and <i>Crimes Act 2009</i> also provides for the offences of indecently insulting or annoying a person.</li> <li>▪ National minimum wage was increased from \$2.32 to \$2.68 in 2017.</li> </ul>
<b>Health</b>	<ul style="list-style-type: none"> <li>▪ While abortion is illegal, section 234(2) of <i>Crimes Act 2009</i> outlines situations and conditions under which abortion is permissible.</li> <li>▪ Ministry of health provides contraception on a confidential basis and without parental consent.</li> <li>▪ The Constitution under section</li> </ul>

	<p>38(1) provides for the right to health including reproductive health care and state has allocated \$295,000 for 2017-18 fiscal year to the Fiji Adolescent Reproductive Health Programme under the Ministry of Health &amp; Medical Services.</p>
<p><b>Social and Economic Benefits</b></p>	<ul style="list-style-type: none"> <li>▪ Ministry of Women, Children and Poverty alleviation has various social welfare schemes such as the <i>Poverty Benefit Scheme, Social Pension Scheme</i> and <i>Food Vouchers for Rural Pregnant Mothers</i> scheme.</li> <li>▪ Government also provides Small Medium Enterprise Grant and Incoming Generating Grant.</li> <li>▪ 7,209 women have been assisted by the Ministry of Trade \$1000 grant to small enterprises to start small businesses.</li> </ul>
<p><b>Rural women, indigenous and minority women</b></p>	<ul style="list-style-type: none"> <li>▪ Awareness of their rights and access to service delivery for rural women has been significantly enhanced through the REACH initiative.</li> <li>▪ Section 28 of the Constitution guarantees the right of ownership, and protection of iTaukei, Rotuman and Lands. Land ownership is registered under the “Vola ni Kawa Bula” (VKB) and women also qualify for land ownership. support prosecutions</li> </ul>
<p><b>Women with disabilities</b></p>	<ul style="list-style-type: none"> <li>▪ Fiji has ratified the Convention on Rights of Persons with Disabilities</li> <li>▪ Section 42 of the Constitution guarantees rights of persons with disabilities and disability is also a prohibited ground of discrimination under section 26.</li> <li>▪ The <i>Rights of Persons with</i></li> </ul>

	<p><i>Disabilities Bill 2016</i> before Parliament incorporates salient provisions of CRPD including freedom from exploitation, violence and abuse as well as the right to education, health and employment.</p> <ul style="list-style-type: none"> <li>▪ Fiji National Disability Policy (2008-2018) provides for an inclusive framework for addressing disability.</li> <li>▪ State has allocated a significant budget to the Fiji National Council for Disabled Persons, bus fare subsidies for persons with disabilities and an Employment Taxation Scheme to include employment of persons with disabilities for a period of years with 300 percent tax deduction.</li> </ul>
<p><b>Marriage and Family Life</b></p>	<p>Legal Aid Commission assists with all family law matters, Hague Convention, child Adoption including inter-country adoption as well as DVROs. While legal aid is granted to both parties, legal aid representation is granted to first in time while the second in time will have their matter briefed out to a private practitioner and fee paid by Legal Aid Commission.</p>

## **Recommendations**

The Commission encourages the state to undertake the following:

- Review of the *National Gender Policy* to align it with the imperatives of the Bill of Rights of the Fijian Constitution which expressly references sexual orientation, gender identity and expression as prohibited grounds of discrimination
- Review of the *Births, Deaths and Marriages Act* to enable change of gender in birth certificates consistent with the principles of equality before the law and prohibited grounds of discrimination
- Review of the standard operating procedures of the Fiji Police Force in relation to arrests, body searches conducted on vulnerable groups such as women with disabilities, sex workers, children and LGBTI persons, force procedure and conditions of detention to ensure consistency with human dignity and international human rights law.
- Develop legal and social protection framework that ensures human dignity, economic advancement and access to justice for Fijian women in the informal workforce and increase their visibility in official statistics.
- Establish a National Monitoring and Reporting Framework that encourages constructive engagement between the state, national human rights commission and civil society.

The Human Rights and Anti-Discrimination Commission makes a voluntary commitment to appoint a dedicated gender desk officer to advance the work of CEDAW.