

## **1. Introduction**

- 1.1** The Citizens' Constitutional Forum (CCF) is a CSO based in Suva with more than 20 years' experience in community education and advocacy. CCF empowers the people of Fiji to participate and demand good governance, democracy, multiculturalism and human rights. CCF works with communities in educating the grassroots about the principles of human rights in their lives and lobbying policies to ensure democracy. CCF began in 1991.
- 1.2** The Fiji Women's Rights Movement (FWRM) began in 1986 and is a multiethnic and multicultural non-governmental organisation committed to removing discrimination against women through institutional reforms and attitudinal changes. By means of core programmes as well as innovative approaches, the Movement practices and promotes feminism, democracy, the rule of law, good governance and human rights. It strives to empower, unite and provide leadership opportunities for women in Fiji, especially for emerging young leaders. FWRM is listed under NGOs which are in consultative status with ECOSOC and/or accredited to the fourth world conference on women. FWRM submits this report with its CSO partners.
- 1.3** Fiji Women's Crisis Centre (FWCC) became operational on August 13, 1983 and was established in 1984, and celebrated its 33rd Anniversary on August 13, 2017. FWCC is a respected professional organisation and has succeeded in influencing public opinion in Fiji such that most sectors of society recognise and support the need for emergency services and ongoing support for women who are subjected to any form of violence.
- 1.4** Save the Children Fiji (SCF) started in 1972 and is part of an international movement of Save the Children organisations. We learn from the reality of children's lives and campaign for solutions to problems they face. SCF together with its partners aims to create a better world for children through programme support, action-oriented research, awareness raising and advocacy campaigns.
- 1.5** The Ecumenical Centre for Research Education and Advocacy (ECREA) is a NGO based in Suva and was founded in 1990 by the late Reverend Paula Niukula with the aim to address the social, religious, economic and political issues that confront Fiji.
- 1.6** The Social Empowerment Education Programme (SEEP) is committed to empowering rural indigenous Fijians particularly land owners and their structures by involving them in the decision-making processes that directly affect their land and lives. The organization was formed in 2000.
- 1.7** The Fiji Disabled People's Federation (FDPF) is a national cross disability organisation. The Federation is an organisation that is based in the central division, and is registered as a non-profit organisation. It has a constitution and an elected board. The four-affiliated disability specific organisations are Spinal Injuries Association (SIA), Fiji Association of the Deaf (FAD), United Blind Persons of Fiji (UBP) and Psychiatric Survivors Association (PSA). The Fiji Disabled Peoples Federation was first established by a group

of persons with disabilities in the late 70's and was originally known as the Fiji Paraplegic Committee, the movement was started because of an interest in Fijian sports. In 1984, the name was changed to the Fiji Disabled Peoples Association which included the cross disability sector and was later registered and incorporated under the provisions of the Charitable Trust Act (CAP 67). In 2012, the name changed to what it is today, the Fiji Disabled Peoples Federation (FDPF).

- 1.8** Fiji Council of Social Services (FCOSS) is a civil society organisation that strengthens people and communities in Fiji through advocacy and training. It promotes and develops networking and collaboration within the community sector. It treats all people with respect and embraces multi-culturalism. It empowers individuals and communities to contribute to a compassionate, prosperous and just Fiji. FCOSS was set up as a charitable organization in 1957 to provide relief and welfare to the vulnerable and marginalized in Fiji. The inaugural meeting of FCOSS was on March 14, 1960.
- 1.9** The Rainbow Pride Foundation (RPF) is a not-for-profit organisation legally registered in Fiji that advocates for the human rights of LGBT persons so that they are respected and are able to live with dignity, free from discrimination, persecution, and violence; and where their human rights are upheld. Its mandate includes promoting LGBTQI Rights and Equality, Social Justice and Health & Well-being. It empowers and encourage LGBT individuals in Fiji to participate fully in democratic decision-making in their households, communities and national processes. The organization began in 2014.
- 1.10** Bua Urban Youth Network (BUYN) is a network of young professionals who live in Suva and who are concerned about developments such as bauxite mining that is taking place in their Province of Bua, on the second largest island in Fiji which is Vanua Levu. The Youth Network has been vocal about the adverse effects of mining on their people and local communities. The Youth Network is affiliated to the larger Bua Provincial Youth Council which is affiliated to the Provincial Youth Council of the Fiji Islands under the National Youth Council of the Fiji Islands.
- 1.11** Haus of Khameleon (HK) is a movement that is led by young transgender women who are lobbying, campaigning, organizing, researching, training and advocating for transgender equality in Fiji and the Pacific. Haus of Khameleon's work is framed around feminism, using human rights based and evidence based approaches to address trans issues that is not only limited to gender-based violence, access to trans friendly services and resources, SRHR, peace & security, legal gender recognition, housing, employment, ecological justice and good governance. One of HK's core work is documenting and reporting trans specific violence and for the first time, the HK will be implementing Fiji's first ever research on the sexual and gender based violence experienced by trans and non-gender conforming people. HK is led by a team of young trans feminists who continue to push boundaries and reconstruct heteronormative binaries.
- 1.12** The Fiji Trades Union Congress (FTUC) is the largest federation of trade unions in Fiji, representing around 70 per cent of working men and women and their families. The Union was established in 1951, under the great leadership of a prominent

union leader of his time, Pundit Ami Chandra. The Union was then known as the Fiji Industrial Workers Congress (“FIWC”). Through his tireless vocation, Pundit Chandra managed to gather several trade union representatives to sign its first resolution with the British Parliamentary Delegation, with one objective which is to “**promote and safeguard the interest of the working class generally**”. In 1973, FIWC change its name and the Fiji Trades Union Congress was born.

## **Scope of International Obligations**

**1.13** The report was compiled by the Citizens’ Constitutional Forum and reviews the Fiji Government’s compliance with International human rights treaties and obligations accepted in the 2<sup>nd</sup> UPR cycle. Fiji is a State party to the international human rights instruments on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The level of compliance to the conventions ratified by Fiji is lacking especially when taking into account reservations regarding the CAT. There were special procedures visits in Fiji from 2015 to 2018<sup>i</sup> but the government has not responded to all requests.

## **Institutional and Human Rights Infrastructure**

**1.14** The Fiji Human Rights and Anti-Discrimination Commission (FHRADC) continue to operate under the Human Rights Anti-Discrimination Commission Act (2009)<sup>ii</sup> although recommendations were made in the first UPR cycle for the legislation to be revoked.<sup>1</sup> The FHRADC fails to comply with the Paris Principles by way of the following:

- i. Inability to receive or challenge complaints and investigate the legality or the validity of the Revocation Decree and other decrees made by the President<sup>2</sup>;
- ii. The process of appointing members of the FHRADC (Chairman and Commissioners) including the criteria used is not clearly set out in law hence appointments are made without transparent guidelines and the inclusion of relevant stakeholders such as CSOs<sup>3</sup>;
- iii. The funding provided for the Commission is limited<sup>4</sup> hence there are not enough resources to allow sufficient or wider outreach to the people of Fiji<sup>5</sup>;

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 36.

<sup>2</sup> Section 11 (2) of the Human Rights Anti-Discrimination Act 2009 states; “Notwithstanding anything contained in this Decree or any written law, the functions, powers and duties of the FHRADC do not extend to receiving complaints against, or investigating, questioning or challenging, the legality or validity of the Fiji Constitution Amendment Act 1997 Revocation Decree 2009, or such other Decrees made or as may be made by the President.”

<sup>3</sup> Section 45 (3) of the Constitution of the Republic of Fiji 2013 states: “(3) In advising the President as to the person to be appointed as chairperson or other members of the Commission, the Constitutional Offices Commission must have regard not only to their personal attributes but also to their knowledge or experience of the various aspects of matters likely to come before the Commission.”

<sup>4</sup> Additional Comment: An example of the limited funding provided to the Commission is that there is only one office located in the Central Division of Fiji (Suva) which carries out the Commission’s mandate for the Country.

<sup>5</sup> Section 25 (1) of the HRADC Act 2009 states; “29.—(1) The Commission must investigate any complaint received by it, unless before commencing or during the investigation it decides not to do so because—... (i) the resources of the Commission are insufficient for adequate investigation, and may defer or discontinue an investigation for any of these reasons.”

- iv. The inaccessibility of the Commission to the public is a grave concern noting that the people of Fiji are the beneficiaries of this institute<sup>6</sup>;
- v. The current Director of the Commission is in conflict of interest while holding the Chairperson position in the Media Industry Development Authority (MIDA).<sup>iii</sup> The MIDA is mandated to monitor, investigate and conduct enforcement regarding offences by media organizations.<sup>7</sup> The Director of the Commission must be independent of any exterior influence from carrying out its responsibilities especially in the instance of Fiji's restricted media freedom.<sup>8</sup>

## Recommendations

- The State must follow through with the recommendations which it has accepted from its Second UPR Cycle on 17 March 2015.<sup>9</sup> There must be adequate funding provided to the Commission to allow proper services on the protection of Human Rights for the people of Fiji.

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<sup>6</sup> Additional Comments: Strenuous complaint procedures restricts the swift attendance to human rights issues such as the Commission's Complaint Form which people are advised to fill out for processing before any further action can be taken (see <http://www.fhradc.org.fj/wp-content/uploads/2016/09/HRADC-Complaints-Form.pdf>).

<sup>7</sup> See section 8 and 9 of the Media Industry Development (Amendment) Act 2015 (MID Act) formerly known as Media Industry Development Act 2010 [http://www.mida.org.fj/filemanager/files/downloads/Media\\_Industry\\_Development\\_Act\\_2010.pdf](http://www.mida.org.fj/filemanager/files/downloads/Media_Industry_Development_Act_2010.pdf) (Accessed 20 March 2019)

<sup>8</sup> Example: The Fiji Times Seditious Case which was acquitted in 22 May 2018. <https://www.radionz.co.nz/international/pacific-news/358027/media-censorship-condemned-as-fiji-times-acquitted> (Accessed 25 March 2019)

<sup>9</sup> Additional Comment: This was substantially on taking necessary actions for the FHRADC to become Paris Principle Compliant. In light of this, the State must also ensure the independence of the Commission at large.

## Civic education and Electoral Process

**1.15** The Electoral process in Fiji and its credibility remains questionable. In the 2014<sup>iv</sup> and 2018<sup>v</sup> Fiji Election, there have been no domestic observer groups (DOG) due to unclear legislative provisions and unresponsiveness of the regulated process. In 2014, the CCF had applied for Domestic Observer Status as per the Electoral Act<sup>10</sup> by way of a letter sent to the Minister responsible as advised by the Supervisor of Elections but there was no response received. Therefore, a lack of confidence on the electoral process exists due to the ineffective and vague provisions and lack of support for Domestic Observer Groups in the said Act.<sup>11</sup>

**1.16** There are restrictive measures still in place regarding civic education where CSOs could otherwise provide assistance in if not for Section 115 of the Electoral Act.<sup>12</sup> The State has yet to comply with recommendations of the MOG<sup>13</sup> likewise the recommendation of the UPR First Cycle made by United Kingdom, Western European and Others Group (WEOG), European Union.<sup>14</sup>

## Recommendations

- The State needs to urgently review and amend the Electoral Act 2014 to allow for inclusivity and confidence in the electoral process. A more clear and practical accreditation process is required for DOG with the help of the Elections Office in implementing prior collaborative training programs with CSOs. The removal of restrictive provisions<sup>15</sup> is pertinent in allowing a confident and wider coverage of Fiji in terms of civic education.

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<sup>10</sup> Section 119 of the Electoral Act 2014 states; “The Minister may appoint or invite any person, organisation or entity to be observers for any election on such terms of reference as determined by the Minister.”

<sup>11</sup> Additional Comment: The 2018 Fijian General Election’s Multinational Observer Group (MOG) Report stated on page 7 as a recommendation: “Civil society organisations are keen to engage in their country’s electoral process (including in voter education and training women and other candidates) and can play an essential complement to the efforts of electoral authorities. Developing a broad partnership between electoral authorities and CSOs in Fiji would help reinforce community support for and confidence in Fiji’s electoral system.”

[https://docs.wixstatic.com/ugd/70ff7f\\_3b750fd0ac914d968eff8748b69b1575.pdf](https://docs.wixstatic.com/ugd/70ff7f_3b750fd0ac914d968eff8748b69b1575.pdf) [Accessed 25 March 2019]

<sup>12</sup> “115.—(1) Following the announcement of the date of the election, it shall be unlawful for any person, entity or organisation (including any person employed or engaged by any such person, entity or organisation) that receives any funding or assistance from a foreign government, inter-governmental or non-governmental organisation or multilateral agency to engage in, participate in or conduct any campaign (including organising debates, public forum, meetings, interviews, panel discussions, or publishing any material) that is related to the election or any election issue or matter...”

<sup>13</sup>Example: See page 35 of 2014 Multinational Observer Group Report:

“Civil society and elections

- Section 115 of the Electoral Decree 2014 should be revised to encourage civil society engagement in the election process, including removing restrictions on organisations receiving foreign funding.
- The Government of Fiji should engage with civil society organizations and actors to help support its civic education efforts.

The MOG respects Fiji’s national laws. However, the MOG suggests the Fijian Elections Office provides clarification on the reasons for rejecting civil society applications.”

<http://www.parliament.gov.fj/wp-content/uploads/2017/02/2014-General-Elections-Final-Report-of-the-Multinational-Observer-Group-1.pdf> [Accessed 25 March 2019]

<sup>14</sup> Recommendation: “Instigate an open and inclusive national dialogue leading to early and credible elections.”

<sup>15</sup> Section 115 of the Electoral Act 2014

## On-going Constitutional Challenges

**1.17** The Constitution of the Republic of Fiji 2013 (Constitution) has remained in its original form since its enforcement without there being any review.<sup>16</sup> The 1997 Constitution has still not been reinstated although recommendations were made by Israel and WEOG in the Report of the Working Group on the First UPR Cycle for Fiji.

A comprehensive review of the Constitution has not been carried out to ensure that it reflects the will of the people (A recommendation by Estonia noted by Fiji in the last cycle).

Pressing issues relating to the Constitution continues to exist:

- i. If necessary a law may limit or allow for limitation of rights and freedoms.<sup>17</sup> Sedition Laws continues to restrict media from publishing matters of public interest.<sup>vi</sup>
- ii. The immunity provisions which provide absolute and unconditional immunity for the 2006 coup cannot be reviewed, amended or repealed.<sup>18</sup>

## Recommendation

- The State needs to work with CSOs in providing free and proper consultation with citizens on what the Constitution entails and whether it represents the will of the people of Fiji.<sup>19</sup>

## Torture and ill-treatment

**1.18** Application of force or ill-treatment continues to surface in Fiji relating to law enforcers. A most recent and widely covered example would be the death of Josua Lalauvaki where two police officers have been suspended and charged with one count of murder.<sup>20</sup> Although Fiji has ratified the CAT, there has been slow implementation of the same. The POA allows for force to be implemented by Police Officers when needed as per Section 9 (3) which was amended in 2012 (by the Public Order (Amendment) Act 2012).<sup>21</sup>

## Recommendation

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<sup>16</sup> Recommendation in the UPR Second Cycle paragraph 101.12 by Mexico.

<sup>17</sup> This includes laws such as the Public Order (Amendment) Act 2017 (POA) which unduly restricts the Freedom of Assembly. The Online Safety Act 2018 due to its vague and low threshold restricts the exercising of the Freedom of Expression.

<sup>18</sup> Additional Comment: These sort of legal provisions including the Limitation of Liability for Prescribed Political Events Decree 2010 (now “Act”) do not steer citizens away from possible acts of Coup.

<sup>19</sup> Additional Comment: A thorough review and amendment must be made including a public consultation. Immunity clauses, unnecessary restrictions within the Constitution need to be removed urgently to allow for a truly democratic country.

<sup>20</sup> <https://www.fbcnews.com.fj/news/court/two-former-police-officers-front-court/> [Accessed 26 March 2019]

<sup>21</sup> “(3) Any police officer, if in his or her opinion such action is necessary for the public safety, after giving due warning, may use such force as he or she considers necessary, including the use of arms, to disperse the procession, meeting or assembly and to apprehend any person present thereat, and no police officer nor any person acting in aid of such police officer using such force shall be liable in criminal or civil proceedings for any harm or loss caused by the use of such force.” This entails that the use of force is still allowed in Fiji despite the ratification of CAT and the Bill of Rights in the Constitution.

- All provisions relating to force must be reviewed and removed especially from the POA. The State needs to exhaust the implementation of the CAT.<sup>22</sup>

### **Equality and freedom from discrimination**

**1.19** The Fiji Constitution recognizes every person as equal before the law and that no one should be subjected to unfair discrimination<sup>23</sup> but there have been occurrences of citizens being discriminated due to their sexual orientation or gender expression. Some members of the LGBTIQ community faced a lot of discrimination and experienced violence after Tropical Cyclone Winston in 2016 as documented in a publication called *Down By The River*.<sup>vii</sup>

**1.20** LGBTIQ persons have faced discrimination when accessing health care, housing or when employed or seeking employment. The FHRADC received complaints from LGBTIQ persons who have faced discrimination concerning the aforementioned as revealed in a 2017 report.<sup>viii</sup>

### **Recommendations**

- The State is to strengthen the implementation of laws on crimes and discrimination against the LGBTIQ community.
- Disaster Risk Management policies should include addressing the issue of violence against members of the LGBTIQ community during natural disasters.<sup>24</sup>
- Health care workers should be sensitized on transgender rights therefore health policies should be strengthened to be inclusive of the needs of gender diverse persons.

### **Women’s Rights<sup>25</sup>**

**1.21** Women and children make up a large proportion of victims/survivors of sexual abuse in Fiji. The Office of the Director of Public Prosecutions in 2018 recorded 387 separate counts of sexual offences with a total 204 victims/survivors out of which 189 were female and 129 of the victims/ survivors were under the age of 18 years.<sup>26</sup> In a 3 year trend analysis of sexual violence against women and girls, it was found that the average age of the victims/survivor has been under 17 years old and in 2018, 71% of victims/survivors knew the perpetrators.<sup>27</sup>

**1.22** Fiji has a ‘No Drop Policy’ for criminal cases that requires the police and prosecutors to take the case to Court. A 2017 research study by FWRM revealed that 60% of the women

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<sup>22</sup> Additional Comment: Police Officers and other law enforcers need to be well and thoroughly trained on laws against torture. The disciplinary and investigative measures on torture related offenders must be made known and harsher penalties to be implemented to discourage such acts.

<sup>23</sup> Constitution of the Republic of Fiji, Bill of Rights, cl 26 (1-3)

<sup>24</sup> Additional Comment: The reviewing of Disaster Risk Management policies should be inclusive of the LGBTIQ community adopting the “Nothing about us without us” concept.

<sup>25</sup> This section is a contribution of the FWRM.

<sup>26</sup> ODPP Rape and Sexual Offences Statistics –1 January to 31 December 2018 (2019) Office of the Director of Public Prosecutions <http://odpp.com.fj/wp-content/uploads/2019/01/ODPP-Rape-and-Sexual-Offences-Statistics-1-January-31-December-2018.pdf> (Accessed 14 February 2019)

<sup>27</sup> Sexual Violence Against Women and Girls Rape Case Analysis 2018 (2019) Fiji Women’s Rights Movement <http://www.fwrp.org.fj/images/A2J/FWRM-2018-Rape-and-Trend-Analysis.pdf> (Accessed 14 February 2019). It is to be noted that these are only reported cases and does not take into account the unreported cases.

surveyed and who had sought assistance from the Police said that the Police told them to resolve the issue within the family or village or the Police did not take them seriously.<sup>28</sup>

**1.23** Sexual Harassment in the workplace remains an issue. One in five women face sexual harassment in the workplace.<sup>29</sup> Although the incidence of sexual harassment in the workplace has decreased the findings of the research reveal links to economic development.<sup>30</sup> The follow up research found that of the total women interviewed, 22% said that their employer does not have a policy and a 16 % claimed that they did not know if there was a policy or not in their workplace.<sup>31</sup>

**1.24** Relocation of villages due to climate change present women with challenges in terms of economic empowerment. Prior to the relocation of the women of the community of Vunidogoloa, they fished every day. Now, they have to walk a distance of a mile and half away and due to their age or disapproval of their husbands they are now more dependent on their husbands.<sup>32</sup>

### **Recommendations**

- For the State to send strong messages about gender equality, non-discrimination and promoting tolerance and respect as a holistic approach to ending violence against women and children.
- Fiji Police to effectively implement the ‘No Drop Policy’ and ensure that those breaching the policy are taken to task in order to deter other Police Officers from breaching the Policy.
- State to ensure through Ministry of Employment for greater enforcement of sexual harassment policies in public and private sector.
- State to involve women in consultation in the planning of relocation of villages so they are not disempowered in any way.<sup>33</sup>

### **Freedom of expression, independence of the media and access to information**

**1.25** In the Crimes Act, sedition provisions have been used by the Fijian authorities to target members of the media and opposition politicians. Three members of the Fiji Times and an

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<sup>28</sup> “Balancing the Scales: Improving Fijian Women’s Access to Justice” (2017) Fiji Women’s Rights Movement [http://fwrn.org.fj/images/fwrn2017/PDFs/research/Balancing\\_the\\_Scales\\_Report\\_FINAL.pdf](http://fwrn.org.fj/images/fwrn2017/PDFs/research/Balancing_the_Scales_Report_FINAL.pdf) ( Accessed 14 February 2019)

<sup>29</sup> Sexual Harassment in the Workplace Survey, 2016. There was a high incident in the food, beverage and hospitality in the western division.

<sup>30</sup> Sexual harassment of women in the workplace in Fiji 2016 follow up study (2017) Fiji Women’s Rights Movement <http://www.fwrn.org.fj/images/fwrn2017/publications/analysis/FWRM-Public-Copy-MG-050916.pdf> ( Accessed 15 February 2019)

<sup>31</sup> Sexual harassment of women in the workplace in Fiji 2016 follow up study (2017) Fiji Women’s Rights Movement <http://www.fwrn.org.fj/images/fwrn2017/publications/analysis/FWRM-Public-Copy-MG-050916.pdf> ( Accessed 15 February 2019)

<sup>32</sup> Bertana.A HOW A COMMUNITY IN FIJI RELOCATED TO ADAPT TO CLIMATE CHANGE (2017) Scholars Strategy Network <https://scholars.org/brief/how-community-fiji-relocated-adapt-climate-change> ( Accessed 15 February 2019)

<sup>33</sup> This topic is further elaborated in the Fiji Women’s Rights Movement and its CSO Partners’ Joint Universal Periodic Review Submission 2019.



editorial contributor were acquitted in May 2018<sup>34</sup> but the prosecution submitted an appeal prolonging the judicial persecution against them.<sup>35</sup>

**1.26** The MIDA Act under section 22 states the media cannot publish material that threatens public interest or order, is against national interest or creates communal discord. In section 16 of the Act, journalists would be forced to reveal their sources to the MIDA. The Act was amended in 2016 to forbid the airing of local news or any local content by subscription-based television services.

**1.27** The Government has for the past years failed to publish eight key documents concerning the national budget in a fiscal year. The CCF is part of the Open Budget Survey Research and the 2015<sup>36</sup> and 2017<sup>37</sup> surveys found that Fiji still lacks in transparency. The survey also measures budget participation and budget oversight in which Fiji has scored low. Government is accountable to the citizens especially in informing them about how public funds are spent and if these funds are spent for the right purposes or for its intended beneficiaries. Added to the aforementioned, the Auditor General's reports are often published late.

### **Recommendations**

- Sedition provisions in the Crimes Act are vaguely defined and therefore need to be repealed to ensure that the legislation is consistent with best practices and international standards in the area of the freedom of expression.
- Ensuring freedom of expression and media freedom are in line with International standards.
- The MIDA Act should be reviewed and for provisions removed that restrict freedom of expression particularly for journalists.
- The Ministry of Economy must publish a citizens' budget and publish the In-Year reports<sup>38</sup>, Mid-Year Reviews<sup>39</sup> and Audit reports on time. It must hold legislative hearings on the budgets of specific ministries, departments and agencies  
Establish a specialized budget research office for the legislature.

### ***Freedom of Assembly and Freedom of Association***

**1.28** The 2013 Fiji Constitution provides for the <sup>40</sup>freedoms of assembly and association, but with limitations. Whilst citizens have the <sup>41</sup>freedom to assemble, the Constitution allows the government to limit this right.<sup>42</sup>

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<sup>34</sup> Additional Comment: The Editor of the Fiji Times, Fred Wesley and Publisher Hank Arts along with Na i Lalakai newspaper contributor Josaia Waqabaca and Na i Lalakai newspaper editor Anare Ravula were prosecuted in March 2017 for sedition over the publication of a letter in the Na i Lalakai newspaper allegedly having controversial views about Muslims. The letter was not written by any of the staff of the newspaper.

<sup>35</sup> Fiji: Media workers face potential prison sentences on allegedly politically-motivated charges', CIVICUS Monitor, 11 September 2017, <https://monitor.civicus.org/newsfeed/2017/09/11/media-workers-face-potential-prison-alleged-politically-motivated-charges>

<sup>36</sup> Fiji scored 15 out of 100 in its transparency rating for 2015. *Open Budget Survey 2015*, International Budget Partnership.

<sup>37</sup> Fiji scored 41 out of 100 in its transparency rating for 2017. *Open Budget Survey 2017*, International Budget Partnership.

<sup>38</sup> A document that is produced on a monthly or quarterly basis and reports on actual revenues and expenditures against original targets in the budget.

<sup>39</sup> Mid-Year Review – a document that is produced in the middle of the budget year and contains a comprehensive update on the implementation of the budget, including a review of the economic assumptions underlying the budget outcome for the current fiscal year.

**1.29** The POA allows the government to refuse applications for permits for any meeting or march deemed to pose a threat to peace, public safety, and good order or to sabotage or attempt to undermine the economy. It also allows officials to use whatever force is deemed necessary to prohibit or disperse public and private meetings after 'due warning' to preserve public order<sup>43</sup>. A person exercising his or her rights of freedom of assembly and association if found in breach of the Act and upon conviction, will receive a penalty of a hefty fine and or a term of imprisonment

**1.30** Acts control institutions, CSOs particularly those that work in the area of Human Rights. These forms of legislation attempt to control and weaken organisations, institutions and citizens.<sup>44</sup>

### **Recommendation**

- A review and amendment of restrictive legislations such as; POA, the Constitution and the Crimes Act 2009 are urgently required to allow for a genuine enjoyment of the freedom of assembly and association.

### ***Right to work and to just and favourable conditions of work***

**1.31** There is a continued practice of government to dismantle platforms of social dialogue and tripartism particularly in the Wages Council, Fiji National Provident Fund, National Training and Productivity Council, Fiji National University, and the diminishing roles in National Occupational and Health Safety Board, National Employment Centre and Employment Relations Advisory Board. The Tripartite Forum represents the most effective and consultative mechanism within the spirit of ILO Convention 98 for negotiating wages, conditions of work, employment relations legislations and guidelines.<sup>45</sup>

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<sup>40</sup> **Freedom of Assembly:** Chapter 2 - Bill of Rights in the Constitution of the Republic of Fiji, Section 18 Subsection (1) states that Every person has the right, peaceably and unarmed, to assemble, demonstrate, picket and to present petitions. Subsection (2) to the extent that it is necessary, a law may limit, or may authorise the limitation of, the right mentioned in subsection (1) - (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purpose of protecting the rights and freedoms of others; or (c) for the purpose of imposing restrictions on the holder of public offices.

<sup>41</sup> **Freedom of Association:** Chapter 2 - Bill of Rights in the Constitution of the Republic of Fiji, Section 19 Subsection (1) states that every person has the right to freedom of association. Subsection (2) a law may limit, or may authorise the limitation of, the right mentioned in Subsection (1) - (a) the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purpose of protecting the rights and freedoms of others; (c) for the purpose of imposing restrictions on the holders of public offices; (d) for the purpose of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers; (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or (f) for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

<sup>42</sup> Additional Comment: Limitations have been made in the interests of national security, public safety, public order, public morality, public health, and the orderly conduct of elections. The Constitution also allows the government to limit freedom of assembly to protect the rights of others and imposes restrictions on a public official's right to freedom of assembly.

<sup>43</sup> 9 - (3) Any police officer, if in his or her opinion such action is necessary for the public safety, after giving due warning, may use such force as he or she considers necessary, including the use of arms, to disperse the procession, meeting or assembly and to apprehend any person present thereat, and no police officer nor any person acting in aid of such police officer using such force shall be liable in criminal or civil proceedings for any harm or loss caused by the use of such force.

<sup>44</sup> Government continues to control and criminalize peaceful political activities and to arrest, detain, fine and imprison people for peacefully exercising their human rights to freedom of assembly and association. In application, CSOs, human rights defenders and activists, journalists, trade union members and leaders in Fiji continue to face intimidation and harassment for carrying out their work peacefully.

<sup>45</sup> FTUC Special Delegates Conference (16 February 2019) Resolution 01: Tripartism

**1.32** The proposal to reinstate Wages Councils as the tripartite structure which provided non-unionized workers with the barest protection against absolute exploitation has been entirely abandoned by the government.<sup>46</sup>

**1.33** The government has time and again given assurances to amend the contentious issues of the labour laws and later carry out a comprehensive review of the industrial relations laws to comply with the ILO Conventions and Declaration of Human Rights and based on fair labour practices, but has so far failed to take any positive action to review such labour laws.<sup>47</sup>

### **Recommendations**

- The State needs to respect the ILO Convention on Tripartite Consultation (No.1440) and engage in meaningful and genuine social dialogue.
- Government to reconsider its action in removing the basic protection afforded to Fiji's most vulnerable workers through the Wages Councils in the interests of the welfare of Fiji's working people, its industrial peace and economic progress.
- To immediately begin the review process as agreed in the Joint Implementation of the Report including compliance with the ILO Conventions ratified by Fiji.

### ***Right of the Child***

**1.34** Corporal punishment on children is still lawful<sup>48</sup> in Fiji although the State has accepted a recommendation by Germany, WEOG and EU on the same.<sup>49</sup> There are clear inconsistencies with legislations and the Section 41 of the Constitution.<sup>50</sup>

**1.35** Sexual Exploitation of Children (SEC) is also a concerning issue regarding children. Past research showed that prostitution is the primary form of exploitation. Survival has been seen to be the reason behind such exploitation. However, a 2010 ILO survey of children in Fiji shows that children involved in exploitative sexual activities did so for material goods.<sup>51</sup> Hence, an updated report is required.

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<sup>46</sup> FTUC Special Delegates Conference (16 February 2019) Resolution 02: National Minimum Wage and Wages Councils

<sup>47</sup> FTUC Special Delegates Conference (16 February 2019) Resolution 03: Joint Implementation Report and Labour Law Reforms

<sup>48</sup> Section 57 of the Juveniles Act 1974 punishes cruelty to children but also confirms "the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him".

<sup>49</sup> "Repeal the right "to administer reasonable punishment" in the Juveniles Act 1974 and prohibit all corporal punishment of children, including in the home"

<sup>50</sup> Section 41 states "...to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour."

<sup>51</sup> Example: clothing, accessories, drinks and cigarettes.

**1.36** Legislative provisions on sexual offenses regarding children appear to be inconsistent hence failing to address SEC.<sup>52</sup>

### **Recommendations**

- Necessary legislation is required to explicitly prohibit corporal punishment and existing legislations and provisions must be amended to reflect the rights of children as per Section 41 of the Constitution and Article 28 of the Convention on the Rights of the Child.
- Optional Protocols of the CRC need to be ratified by Fiji to address SEC. A revision and amendment of current provisions relating to children and sexual offences need to be made to reflect the CRC and address SEC.

### ***Rights of Minorities and Indigenous peoples***

**1.37** The 2013 Constitution does not have definitions for racism or racial discrimination in its Part B “Interpretation”. It does however have in Section 26<sup>53</sup> specific benchmarks, circumstances for enjoying freedom from discrimination.<sup>ix</sup>

**1.38** The Surfing Act 2010 contradicts the ILO Convention 169 which Fiji ratified in the 1970’s.<sup>x</sup> The Act essentially impinges on the *qoliqoli* or fishing areas of the traditional iTaukei landowners as it merely allows the license holders to deal with the Fiji Revenue Customs Authority and ostracize the *qoliqoli* owners<sup>54</sup>. The minority groups<sup>55</sup> in Fiji are socially and politically marginalized. There has been the problem of lack of disaggregated data regarding the socioeconomic situation of the aforementioned ethnic groups. The Fiji Bureau of Statistics did not release Ethnicity data in the 2017 Census.<sup>56</sup>

### **Recommendations**

- Strengthen efforts and continued commitment to redressing past policies of racial and ethnic discrimination.

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<sup>52</sup> Additional Comment: Section 27 of the Crimes Act of Fiji 2009 states that a child above 10 years but below 14 years may be held criminally liable should he or she know that the conduct was wrong. This would need to be proven by the Prosecution (burden of proof). However, Section 26 states that those under 10 years cannot be held responsible for an offence. This seems to leave child victims of prostitution over age 10 open to criminal prosecution.

<sup>53</sup> As a contracting party to UN-CERD, Fiji could just choose to adopt its definition of racial discrimination in Article 1 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination (UN-CERD) defines racial discrimination as: ...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

<sup>54</sup> Daurewa A, 2016. *Indigenous (iTaukei) Institutions Monitoring Report 2012-2015*. Citizens’ Constitutional Forum, Suva, Fiji. Additional Comments: The State may justify the Act on the grounds of economic development, it impinges on the socio-cultural aspects of the traditional qoliqoli areas. As the qoliqoli owners are not consulted on the usage of their fishing areas, it may give rise to conflicts over the utilization of natural resources, something which the State needs to take into consideration.

<sup>55</sup> Minority groups in Fiji are Rotumans, Banabans and Melanesians from the Solomon Islands and New Hebrides.

<sup>56</sup> Fiji Bureau of Statistics releases 2017 Census results <https://www.fiji.gov.fj/Media-Center/Press-Releases/Fiji-Bureau-of-Statistics-Releases-2017-Census-Res.aspx> (Accessed 24 February 2019). There was no ethnicity data released. The Citizens’ Constitutional Forum called for clarity with Census data on Ethnicity <http://news.ccf.org.fj/ccf-calls-for-clarity-with-census-data-on-ethnicity/>

- Policies are required to better the socio-economic status of all ethnicities and to advocate for unity.
- Ensure the implementation of Free, Prior and Informed Consent (FPIC) and consult with the traditional *qoliqoli* owners on the usage of their fishing areas by reviewing the Regulation of Surfing Act 2010.
- The State to evaluate the effectiveness of existing policies and programmes which can be achieved through detailed statistics.

### ***Rights of Persons living with disabilities***

**1.39** Accessibility is an issue that not only covers the physical structure and environment but includes information and communication. Information are all public information that are accessibility to the diverse needs of people with disabilities. Communications includes sign language interpreters. All persons with disabilities have the right to accessibility to facilities as legislated in the Rights of Persons with Disabilities Act.<sup>57</sup> However, Fiji is yet to have a comprehensive set of regulations that would cover public infrastructure, transportation, private services open to the public, information and communication services in line with the CRPD.<sup>58</sup>

### **Recommendations**

- The building code needs to be revised to ensure that it is in compliance with CRPD.
- Government needs to ensure the equal access of persons with disabilities to adequate standards of living and social protection programs as well as access to affordable and quality disability-related services and assistance to cover disability-related expenses.
- Other legislations to be reviewed and amended to align with the rights of persons with disability act of 2018. The government needs to ensure budgetary allocations to support the implementation.

### **Relevant Issues unrelated to the second cycle of the UPR**

#### ***Mining***

**1.40** The State has systematically ignored or paid little attention to the Environment Impact Assessment process, especially in mitigating the predicted impacts of extractive mining by developers, by ensuring that developers are paying attention to assessing alternatives, monitoring outcomes and enforcing ethical consent conditions within communities as mandated by the EIA

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<sup>57</sup> Section 29 of the Rights of Persons with Disabilities Act 2018 provides for the rights to: reasonable access to all indoor and outdoor places, public transport and information; to use sign language, Braille or other appropriate means of communication; reasonable access to necessary materials, substances and devices relating to the person's disability; reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realization of their rights; in buildings and other facilities open to the public; information, signage and forms in Braille and in easy to read and understand modes; and to forms of assistance and intermediaries.

<sup>58</sup> Pacific Disability Forum SDG-CRPD Monitoring Report 2018 Significant steps towards CRPD compliant legal frameworks (SDG 10-16, CRPD 4-5; IS goal 9, p.g 4  
[http://www.pacificdisability.org/What-We-Do/Research/FINAL\\_SDG-Report\\_Exec-Summary\\_2018.aspx](http://www.pacificdisability.org/What-We-Do/Research/FINAL_SDG-Report_Exec-Summary_2018.aspx)

process. Unless these factors change, the comprehensive EIA system proposed in the EMA 2005 will lead to environmental and social impacts.<sup>59</sup>

**1.41** Inherent within the process of mining are substantial environmental risks which have the potential to permanently eradicate the society and ecosystem surrounding it.<sup>60</sup>

### **Recommendations**

- Improve the objectivity of the EIA process. Strengthen the capacity of the Environment Tribunal to comprise of experts and stakeholder representatives to undertake the EIA report.
- More awareness on the impact of extractives on sustainability of the environment, health and standard of living.

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<sup>59</sup> Social Empowerment and Education Programme (SEEP) input into this UPR report on *Non-compliance by government in fulfilling legislative responsibilities on mining*

<sup>60</sup> Accountability mechanisms are therefore pertinent due to the historic precedent that “corporations cannot be trusted to enhance social and environmental welfare”. Finau, G. 2016, ‘Mining and Community Resistance in Post-Coup Fiji’, Proceedings from the 1st Conference of the Pacific Islands University Research Network, Noumea, pp. 323-335



## Endnotes

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<sup>i</sup> *View Country visits of Special Procedures of the Human Rights Council since 1998*, United Nations Human Rights, Office of the High Commissioner for Human Rights. Available at [https://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=FJI](https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=FJI) (accessed 18 March 2019)

<sup>ii</sup> Human Rights Anti-Discrimination Commission Act, (Accessed 25 March 2019)

[http://www.paclii.org/fj/promu/promu\\_dec/hrcd2009280.pdf](http://www.paclii.org/fj/promu/promu_dec/hrcd2009280.pdf)

<sup>iii</sup> Swami. N. Fiji: 'I won't stand down,' says MIDA Chief in response to UN rights critic

<http://www.pmc.aut.ac.nz/pacific-media-watch/fiji-i-wont-stand-down-says-mida-chief-response-un-rights-critic-10093> (Accessed 25 March 2019)

<sup>iv</sup> 2014 Fijian Elections Final Report of the Multinational Observer Group

<http://www.parliament.gov.fj/wp-content/uploads/2017/02/2014-General-Elections-Final-Report-of-the-Multinational-Observer-Group-1.pdf> (Accessed 1 March 2019)

<sup>v</sup> 2018 Fijian General Election Final Report of the Multinational Observer Group

[https://docs.wixstatic.com/ugd/70ff7f\\_3b750fd0ac914d968eff8748b69b1575.pdf](https://docs.wixstatic.com/ugd/70ff7f_3b750fd0ac914d968eff8748b69b1575.pdf) (Accessed 1 March 2019)

<sup>vi</sup> International Federation of Journalists; *Fiji Times executive and writer cleared of sedition*

<https://www.ifj.org/media-centre/news/detail/category/ethics/article/fiji-times-executives-and-writer-cleared-of-sedition-1.html> (Accessed 1 March 2019)

<sup>vii</sup> Down By The River (2018) Gender and Disaster Network Online [https://www.gdnonline.org/resources/Down-By-The-River\\_Web.pdf](https://www.gdnonline.org/resources/Down-By-The-River_Web.pdf) (Accessed 3 November 2018)

<sup>viii</sup> FIJI 2017 HUMAN RIGHTS REPORT (2017) US Department of States

<https://www.state.gov/documents/organization/277325.pdf> (Accessed 3 March 2019)

<sup>ix</sup> Kant R, 2015. *Charting a new course? Race relations in Fiji 2012-2014*. Citizens' Constitutional Forum, Suva, Fiji

<sup>x</sup> Daurewa A, 2016. *Indigenous (iTaukei) Institutions Monitoring Report 2012-2015*. Citizens' Constitutional Forum, Suva, Fiji