

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

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

Number of Complaints lodged with the National Human Rights Institution 2016 – 2018

Constitutional breaches	Number of complaints		
	2016	2017	2018
Section 8 – Right to Life	0	5	1
Section 9 - Right to Personal Liberty	3	0	1
Section 10 - Freedom from Slavery...	1	0	2
Section 11 (1) - Freedom from Cruel and Degrading Treatment	1	12	10
Section 11 (2) - Right to Security and Freedom from Violence (Police Brutality)	16	24	16
Section 11 (2) - Right to Security and Freedom from Violence (Corrections Brutality)	10	14	21
Section 12 – Freedom from Unreasonable Search and seizure	0	2	7
Section 13 - Rights of Arrested and Detained Persons	15	39	41
Section 14 – Rights of Accused Persons	0	2	0
Section 15 - Access to Courts and Tribunals	1	5	0
Section 16 – Executive and Administrative Justice	0	0	1
Section 19 – Freedom of Association	0	1	0
Section 20 - Employment Relations	29	28	21
Section 21 - Freedom of movement and residence	1	2	1
Section 22 - Freedom of religion, conscience and belief	2	2	3
Section 24 - Right to Privacy	3	0	2
Section 25 - Access to Information	2	1	0
Section 26 - Right to Equality and Freedom from Discrimination	5	16	5
Section 28 – Rights of Ownership and Protection of iTaukei, Rotuman and Banaban Lands	0	5	0
Section 29 - Protection of Ownership and interests in land	1	1	2
Section 31 - Right to Education	4	2	0
Section 32 - Right to Economic Participation	4	0	0
Section 34 – Right to reasonable access to transportation	0	0	1
Section 35 – Right to Housing and Sanitation	0	4	2
Section 36 - Right to Adequate Food and Water	1	2	1
Section 37 - Right to Social Security Schemes	1	1	5
Section 38 - Right to Health	1	5	4
Section 39 - Freedom from Arbitrary Evictions	8	21	2
Section 40 – Environmental Rights	0	1	0
Section 41 - Rights of Children	4	15	2
Section 42 – Rights of Persons with Disabilities	0	0	3

Section 8 – Right to Life

Complaints received in relation to breach of right to life ranged from death in police custody, death and hunger strike at Fiji Corrections Service facility and allegation of medical negligence leading to death of an infant at a public hospital. Concerns were also raised in relation to the sale of pesticides by traders by an aggrieved mother who had lost her son to suicide.

In the case of alleged death in police custody (Nakasi Police Station), the Commission conducted its independent investigation and pursuant to the Inquests Act [Cap 46], recommended for an inquest.

In the case of allegation of medical negligence leading to the death of a baby at a public hospital in the Western Division, the Commission brought the issue to the attention of Ministry of Health and Medical Services. The complainant chose to file a civil law suit.

In relation to the complaint from an inmate at a Corrections facility, who went on hunger strike, the matter was resolved by the Fiji Corrections Service.

In another matter, in which a complainant alleged that his son had passed away at the Korovou Corrections Centre, the Commission sought official response from relevant authorities which included the Fiji Corrections Service, Fiji Police Force and medical records including death certificate were sought to ascertain the cause of death.

Section 10 - Freedom from Slavery

Allegations of constitutional breach included the withholding of passports and academic transcripts of foreign workers by a private construction firm. The Commission intervened, reported the matter to Fiji Police Force that resulted in the release of passports and professional credentials of the workers. In another matter, four Indian nationals were locked outside their place of work, under fed and forced to live in deplorable conditions.

Section 11 (1) - Freedom from Cruel and Degrading Treatment

The alleged breaches included strip-search of a female by police Officers in the presence of a male police officer, allegation of cruel and degrading treatment by in-laws, complaints from inmates alleging solitary confinement without any reason and tortured by Correction Officers. In a similar matter, it was alleged that an accused was remanded for twenty days, allowed to shower once a day only, given one meal a day, verbally abused and subjected to sexual harassment. This attests to the significance of a broader definition of torture in the Fijian Constitution which is not restricted to the state and the public sphere.

Section 11 (2) - Right to Security and Freedom from Violence (Police Brutality)

Allegations include assault of suspects, including minors during arrest and assault while in custody resulting in physical injuries sustained by complainants.

Section 11 (2) - Right to Security and Freedom from Violence (Corrections Brutality)

Complaints from inmates at various correction facilities claiming brutality by Corrections Officers. The nature of brutality included physical assaults. Consistent with the requirements set out under section 32 of the Human Rights and Anti-Discrimination Commission Act, the Commission has brought these allegations to the attention of the Commissioner of Corrections and requested for independent investigations while the Commission conducted its own independent investigations to ascertain the veracity of these claims. The Commission is required by the Fiji Corrections Service to make a written request for visitation to respective correction facilities.

Section 12 – Freedom from Unreasonable Search and seizure

Nature of complaints in breach of section 12 of the Fijian Constitution included search without any reason/warrant, harassment by the Drug Unit of the Fiji Police Force at the Sigatoka Police Station and a search was allegedly carried out at a complainant's residence by officers in casual clothes without a search warrant. The complainant's wife was allegedly sworn at and strip-searched by officers in their house. It was further alleged that the complainant's baby was also strip-searched and sum of \$200.00 went missing after the raid by Police.

Section 13 - Rights of Arrested and Detained Persons

The nature of complaints ranged from deplorable condition of cell blocks, police interviewing teenage girls (15 years old) without consent of their parents and forced them to undergo medical examination, limitation to visitation rights, failure by police to inform family about the arrest, suspects being detained for more than 48 hours, suspects abused by others detained in police custody and inmates at Correction centres not provided meals. Referrals were also made to the Commission by the Office of the Attorney General in relation to allegations of human rights abuse at the Natabua Corrections Centre.

Section 14 – Rights of Accused Persons

It was alleged that the accused persons were detained for more than 48 hours in two separate matters.

Section 15 - Access to Courts and Tribunals

Nature of complaints included concern over counsel's failure to appear in court as well as allegations that the Legal Aid Commission declined a complainant's application for legal representation. Complainants also approached the Commission for legal representation assistance.

Section 16 – Executive and Administrative Justice

The Commission received a complaint from an aggrieved father claiming that the Office of the Director of Public Prosecutions had informed him that 'there was no evidence to make a case', in a matter where his daughter was forced to consume 'weed-killer' by her in-laws.

Section 19 – Freedom of Association

The Commission received a complaint where the complainant alleged that the police halted a meeting to on the grounds that they did not have the necessary permits.

Section 20 - Employment Relations

Allegations of breach of section 20 of the Fijian Constitution included termination from employment, a public servant allegedly paid only 50% of salary owed to him since 2012, unfair terminations from employment, harassment, failure of an employer to reinstate an employee after the dismissal of a case against the employee by the court, employers failing to uphold the minimum wage order, employees received injuries during working hours, advertisement of complainants photograph in the newspapers by employer, non-provision of protective clothing and equipment, ill-treatment by employer during pregnancy and workplace bullying.

Section 21 - Freedom of movement and residence

It was alleged that the complainant was terminated from service and told not to set foot in Levuka by the Police. In a separate matter, a Turaga ni Koro obtained a Domestic Violence Restraining Order, which the complainant alleged imposed restrictions on their daily lives.

Section 22 - Freedom of religion, conscience and belief

It is alleged that an inmate was denied his right to religion. In another matter, it is alleged that the Prisons Chaplin stopped some Church elders from conducting church service at the Prisons. Foreign nationals serving terms also raised concerns with the Commission during prison visits about non-provisioning of a designated place of worship. These concerns were intimated to prison authorities and adequately addressed. In another matter, a Hindu temple was put under lock and key due to an internal dispute between the management and trustees of the temple. This obstructed access to worshippers to offer prayers at their preferred place of worship.

Section 24 - Right to Privacy

The nature of complaints ranged from publication of a photo of the complainant in a hotel catalogue without his consent, allegation of an unconsented release and broadcasting of an ex-convict's testimonial by a charity organisation namely 'Art of Living', which led to his family, including his children being ridiculed. In another matter, personal and financial information of a customer who purchased a motor vehicle from a second-hand motor dealer was released to a third-party without his knowledge or consent.

The Commission had also received a complaint in which private and confidential information was released to the spouse of the employee which led to the dissolution of their marriage.

Section 25 - Access to Information

A complainant alleged that the Housing Authority of Fiji failed to provide accurate information in relation to a house she had purchased. In another matter, it was alleged that the donation to a school in the Northern division, was withheld from the complainant. The matter is now before the court. In another case, a complainant claims that he was denied a copy of his own medical report after being examined in a public hospital in the Western division. The Commission had intervened and the complainant was given a copy of his medical report.

Section 26 - Right to Equality and Freedom from Discrimination

In most cases, the complainants alleged that they were discriminated on the basis of their sexual orientation, denial of the right to education based on adverse criminal record, allegations of denial of visitation rights by the Women Corrections Centre to a mother due to her adverse criminal record and racial remarks made against suspects while in police custody. In another matter, a complainant alleged that he was accused of having sexual relation with

a person of same sex by his landlord and a customer alleged that she was declined a credit card by her bankers due to her age.

Section 28 – Rights of Ownership and Protection of iTaukei, Rotuman and Banaban Lands

In most of the cases, it was alleged that customary lands were being sold without the knowledge or consent of the landowners. The Commission was also in receipt of a complaint against a legal counsel whose failure to act in the best interests of the client resulted in the customary lands belonging to the complainant being sold to a third-party and a complainant alleged that a piece of land parcel classified as cemetery reserve was transferred to a company.

Section 29 - Protection of Ownership and interests in land

Allegations of breach of section 29 included the erection of a structure for the purposes of operating a community hall. A portion of the structure was allegedly encroaching on the driveway of the complainant making it unsafe for him to access his place of residence. In another case, a parcel of native land initially leased to the complainant had been leased to a third-party. The matter has since been brought to the attention of the institution concerned. In another matter, the complainant claimed that he was not part of the consultations between the Jittu Estate residents and the People's Community Network and a complainant alleged that the Ministry of Lands and Mineral Resources failed to issue him with a lease.

Section 31 - Right to Education

Nature of complaints included allegation that an individual was denied the right to education due to his adverse criminal conviction and age; The Commission also received a complaint that a state-funded school was charging levy when the state was providing grant to schools. In other matters, it was alleged that a student was denied enrolment at a tertiary institution. The Commission intervened and was informed that the student must comply with the enrolment requirements; a mother also claimed that a tertiary institute failed to enrol her daughter who has special needs. The Commission intervened, called both parties to a conciliation conference. The complainant refused the terms of the conciliation agreement. In another case, the complainant alleged that her son was not allowed to sit for external examination by her husband. During assessment of the complaint, it was established that the complainant had lack of interest in the case.

Section 32 - Right to Economic Participation

A market vendor was prohibited by a municipal council from selling juice outside the market premises. The matter was dealt with by the Office of the Prime Minister. In a separate matter, a fisherman claimed that the Ministry of Fisheries was unfair with issuing fishing licenses. The matter has been reported to the Ministry of Fisheries by the Commission. In another matter, a complainant alleged that his application for the renewal of his taxi permit was declined by the Land Transport Authority due to an adverse criminal record depriving the complainant of income. During assessment, the Commission noted that the complainant had lack of interest in his case. It was further alleged that the Land Transport Authority suspended driver's licenses of the complainant without notification. Before commencement of investigations, it is noted that the complainant has had lack of interest in the case.

Section 34 – Right to reasonable access to transportation

A village ‘headman’ of Gau Island raised his concerns in relation to a damaged bridge frequented by his people as the only means of access to government stations.

Section 35 – Right to Housing and Sanitation

An individual sought the Commission’s assistance with approaching the Department of Social Welfare for assistance with housing. The Commission was also approached by individuals seeking extension of time, who were issued with Court Orders to vacate. In a separate matter, a complainant raised that she was living on the streets waiting for the Ministry of Social Welfare to provide/build her a home since 2002 and another complainant raised that despite furnishing the Department of Social Welfare with a house plan 7 years ago, there has been no progress by the department.

Section 36 - Right to Adequate Food and Water

An individual approached the Commission, requesting for groceries and shelter. A church member as well as concerned individuals also approached the Commission after the electricity and water supply to the church and their place of residence was disconnected.

Section 37 - Right to Social Security Schemes

Nature of complaints ranged from the rejection of a complainant’s application for education assistance by the Fiji National Provident Fund, delay by Department of Social Welfare in providing assistance/relief to applicants for housing and shelter, the non-provisioning of bus fare card despite getting assurance that the complainant will receive one and request of a mother for assistance with purchasing milk for her children not addressed by the Department of Social Welfare.

Section 38 - Right to Health

The complaints ranged from the sale of unhealthy food items in a school canteen in Nadi to the cost of dialysis in Fiji to concerns that a patient was allegedly over-dosed with medication. The Commission also received complaints of negligence by health professionals resulting in the death of a baby in a public hospital. An individual also alleged that his application for medical treatment abroad was declined by an insurance broker. A number of complaints relate to the denial of medical treatment to inmates.

Section 39 - Freedom from Arbitrary Evictions

Nature of complaints include property disputes within families resulting in arbitrary evictions, allegations against iTLTB, Ministry of Lands, and Fiji Roads Authority of threatening tenants with evictions. The Commission also received complaints by tenants allegedly locked out of their flats by landlords as well as allegations that ‘village headman’ threatened a villager with eviction.

Section 40 – Environmental Rights

The Commission received a complaint in relation to a breach of section 40 of the Fijian Constitution where the complainant alleged that the then Fiji Electricity Authority caused an oil spillage resulting in adverse environmental impact.

Section 41 - Rights of Children

Nature of complaints pertains to child custody, police brutality on teenagers, a case of bullying and assault at a prominent boarding school, allegations of abuse by teachers, suspension of students from school for being in possession of drugs, parental neglect as well as children subjected to harmful cultural practices. The Commission also received a complaint that three police officers allegedly assaulted a 15 year old child with special needs. In another incident, a 3-4 year old child was physically assaulted by her father along Extension Street in Suva. The incident was witnessed by the Commission Director and the matter was subsequently reported to Police.

Section 42 – Rights of Persons with Disabilities

The nature of complaints received by the Commission include threats made against a person with vision impairment, depriving an individual of permanent employment due to his disability and the unavailability of sign language for accused persons in court.