

# **Universal Periodic Review of Fiji (third cycle)**



**Submission of OHCHR Regional Office for the Pacific  
Suva, Fiji**

## Abbreviations

ATS	Air Terminal Service
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCF	Citizens' Constitutional Forum
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
COP	Conference of the Parties
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
EIA	Environmental Impact Assessment
FHRADC	Fiji Human Rights and Anti-Discrimination Commission
FWRM	Fiji Women's Rights Movement
GANHRI	Global Alliance of National Human Rights Institutions
GBV	Gender-based violence
HRM	Human Rights Mechanisms
ICC	International Coordination Committee of NHRIs
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MIDA	Media Industry Development Authority
NDP	National Development Plan
NGO	Non-governmental Organisations
NMRF	National Mechanism for Reporting and Follow-up
OHCHR	Office of the High Commissioner for Human Rights
RMNCAH	Reproductive, maternal, newborn, child and adolescent health
SPC	Secretariat of the Pacific Community
UPR	Universal Periodic Review

## **Introduction**

This is an individual submission of the Office of the High Commissioner for Human Rights Regional Office for the Pacific. This submission does not cover a comprehensive assessment of the implementation of the past UPR recommendations to Fiji and attempts to highlight only some pertinent issues of concern based on the work of the Regional Office.

## A. Treaty ratification/accession, reporting and cooperation with UN human rights mechanisms

- *Acceptance of international norms*

1. Fiji progressed on the ratification of the core international human rights treaties. Following the second UPR cycle, Fiji ratified CAT and CRPD, and acceded to ICCPR and ICESCR. Meanwhile, the Standing Committee on Foreign Affairs & Defence of the Parliament of Fiji initiated deliberation on CMW and CED accession.<sup>1</sup> Although Fiji is party to seven of the nine core international human rights treaties, it is yet to expressly recognize the competence of the relevant treaty bodies to receive and consider complaints from individuals under its jurisdiction through a declaration pertaining to a specific provision of the treaty (ICERD and CAT) or through accession to the relevant optional protocols (ICCPR, ICESCR, CEDAW, CRC and CRPD).

### Recommendation

- *Ratify CMW and CED and Optional Protocols to the ICCPR, ICESCR, CAT, CRC, CEDAW and CRPD.*

- *Cooperation with the UN human rights mechanisms*

2. Fiji has made a gradual progress in fulfilling its reporting obligations under applicable international human rights treaties. CRC and CEDAW reviewed Fiji in 2014 and 2018 respectively. However, the combined 21<sup>st</sup> and 22<sup>nd</sup> periodic reports to the CERD and the initial report to CAT have been overdue since February 2016 and April 2017 respectively.
3. In March 2015, Fiji issued Standing Invitations for visits of the Special Procedures of the Human Rights Council. Since, one Special Procedures mandate-holder visited Fiji per year.<sup>2</sup> However, Fiji has yet to positively respond to the request of Special Rapporteurs on independence of judges and lawyers; freedom of assembly and of association; torture; and human rights defenders.
4. Fiji continues to engaging with UN human rights mechanisms in an *ad hoc* manner. Despite OHCHR advocacy and outreach, the Government of Fiji has yet to establish a standing national mechanism for reporting and follow-up (NMRF) for effective coordination among and between the government entities when it comes to reporting to and implementation of HRM recommendations.

### Recommendations

- *Step up engagement with treaty bodies by clearing the pending reports to the Committee on Elimination of Racial Discrimination and the Committee against Torture.*
- *Respond positively the requests for country visits from Special Rapporteurs on independence of judges and lawyers; freedom of peaceful assembly and of association; torture and other cruel, inhuman or degrading treatment or punishment; and human rights defenders.*
- *Establish an NMRF for timely reporting to treaty bodies and for systematic follow-up on the recommendations of the UN human rights mechanisms, including developing a comprehensive plan of implementation for HRM recommendations and management of information.*

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<sup>1</sup> On 18 February, OHCHR Regional Office made an oral submission to the Standing Committee on Foreign Affairs & Defence on CMW and CED and why Fiji should accede to these treaties. The Standing Committee is tasked by the Parliament to conduct a review on both the Conventions and table a Review Report in the May session (2019) of the Parliament.

<sup>2</sup> They include Special Rapporteur on education (2015); Special Rapporteur on contemporary forms of racism, racial discrimination (2016); Independent Expert on the enjoyment of human rights by persons with albinism (2017); and Special Rapporteur on environment (2018).

## B. Civil and political rights

- *Freedom of opinion and expression*

5. During second UPR cycle, Fiji supported 10 out of 17 recommendations relating to freedom of opinion and expression. Most recommendations remain largely unimplemented. Overly broad legislation has been used to prosecute journalists whose work is deemed to be against the “public interest or public order”, with violations punishable by fines up to FJ\$1,000 or imprisonment of up to two years under the Media Industry Development (Amendment) Act 2010. Similarly, media organisations can be fined up to FJ\$100,000 for the breach of the Act.<sup>3</sup>
6. The sedition provisions of the *Crimes Act 2009* have been used to target the media and dissenting voices.<sup>4</sup> In March 2017, *The Fiji Times*, its three executives<sup>5</sup> and a columnist were charged with sedition over a letter reportedly containing inflammatory comments. In May 2018, the High Court acquitted all four stating the prosecution failed to prove beyond reasonable doubt that the letter was seditious.<sup>6</sup> However, the prosecution has submitted an appeal to the Court of Appeal. The case, protracted for about two years with a restriction imposed on the movement of the accused, was seen as an attempt to undermine freedom of speech and expression.<sup>7</sup>
7. In May 2018, Fiji introduced the Online Safety Act<sup>8</sup> with a view to promote safe online culture and behaviors and address cyberbullying, cyber stalking, Internet trolling and exposure to offensive or harmful content particularly in respect of children<sup>9</sup>. One of the key concerns raised is the use of term “harm” in the Act, defined as “serious emotional distress”<sup>10</sup>. Considering that serious legal implications, from investigations by a public Online Safety Commission to content restriction orders and even criminal prosecution, are linked to this term, the definition is too vague and broad and leaves the entire concept open to abuse. Prohibiting and even criminalising a legitimate expression does not pursue a legitimate goal as required by international human rights law.<sup>11</sup> Civil society actors expressed their concern over inadequate consultation in the development of this and other Acts, including the Information Act 2018.

### Recommendation

<sup>3</sup> Section 22 of the Media Industry Development Act deals with the content regulation, whereas section 23 deals with bylines; that is, the content of any print media which is in excess of 50 words must include a byline. Regarding the contents regulation, any media service must not include material that is against the public interest or order, or against national interest, or that creates communal discord. Also see, opening remarks by former UN High Commissioner for Human Rights at a press conference during his mission to Fiji, Suva, 12 February 2018.

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22648&LangID=E>

<sup>4</sup> In accordance with Section 66 of Crime Act 2009, “seditious intention” is an intention i) to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established; or (ii) to excite the inhabitants of Fiji to attempt to procure the alteration, otherwise than by lawful means, of any matter in Fiji as by law established; or (iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in Fiji; or (iv) to raise discontent or disaffection amongst the inhabitants of Fiji; or (v) to promote feelings of ill-will and hostility between different classes of the population of Fiji.

<sup>5</sup> Publisher Hanks Arts, Editor-in-chief Fred Wesley and *Nai lalakai* editor Anare Ravula and columnist Josai Waqabaca.

<sup>6</sup> OHCHR monitored the case, including observing the final hearing.

<sup>7</sup> CIVICUS, PINAGO, FWRM and CCF. (April 2019). Country Recommendations on Civic Space for UN’s Universal Periodic Review. Retrieved from <https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/3809-country-recommendations-on-civic-space-for-un-s-universal-periodic-review-2>

<sup>8</sup> The Act came into effect from 1 January 2019.

<sup>9</sup> Part 1 Preliminary. Section 3: Objectives.

<sup>10</sup> Part 1 Preliminary. Section 2: Interpretation

<sup>11</sup> OHCHR made submissions on the Online Safety Bill to the Parliament in March 2018.

- *Review and strengthen the existing legislation, particularly the Media Industry Development Act 2010, Public Order (amendment) Act 2017 and Crimes Act 2009 in compliance with the international human rights standards, particularly the International Covenant on Civil and Political Rights and also to consult with the Rabat Plan of Action.*

- *Prevention of torture and ill-treatment*

8. Incidents of torture and ill-treatment continue to occur.<sup>12</sup> In August 2014, a robbery suspect died in hospital from injuries inflicted following his arrest. He was reportedly interrogated, tortured and later hospitalised. The leaked autopsy report revealed that the victim died as a result of multiple traumatic injuries. His family claimed that his death was a result of police brutality. In 2016, eight police officers and one military officer were convicted for their involvement in his death.
9. Following visits by OHCHR in 2017,<sup>13</sup> OHCHR remains concerned with conditions of detention, policies that allow for discriminatory procedures to be in place and at the violations and abuses reported at the corrections facilities in the country.
10. Between 2016 and 2018, OHCHR conducted a series of human rights briefings for senior police officials of Fiji Police Force (FPF),<sup>14</sup> with a view to integrate a human rights-based approach to management and operations. The briefings led to the development of action plans, review of operational directives, development of a training package on human rights, review of the staff appraisal system, and a policy and procedural framework on the use of force, and the establishment of Human Rights Cell to strengthen internal accountability.
11. Fiji hosted a regional conference on the implementation of CAT in February 2019 and renewed its commitment to ensuring compliance with international standards and a “zero tolerance” approach to torture.<sup>15</sup> While Fiji’s ratification of CAT represents an important step forward, reservation to articles 1, 14, 20 and 30 has limited the scope of the application of the Convention. Although article 11 of the Constitution prohibits torture, it does not provide definition of torture.

### **Recommendations**

- *Provide prison officers with guidance on the lawful treatment of criminal suspects in custody and convicted prisoners.*
- *Continue collaborating with the OHCHR and other relevant UN agencies and partners to provide training to prison officers on human rights, focusing on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).*
- *Withdraw the reservations to CAT, particularly on article 1, 14 and 20 relating to the definition of torture, compensation and confidential inquiry procedures.*

### **C. Vulnerable groups**

- *Persons with disabilities*

<sup>12</sup> Based on the information OHCHR received from victims, their families and NGOs.

<sup>13</sup> Assessment was carried out at Nasinu Corrections Centre; Naboro Maximum Security Corrections Centre; Naboro Minimum Security Corrections Centre and Suva Women’s Corrections Centre.

<sup>14</sup> Officials included from the Police Directors of Internal Affairs, the Legal Department, Community Policing, Training Academy, Special Response and Divisional Commanders.

<sup>15</sup> The High-Level Regional Seminar was held on 6-8 February in Fiji, being hosted by the Government of Fiji with a view to share experience and exchange on national practices around processes of legislative review and drafting anti-torture laws or amendments. Fiji’s Attorney-General delivered a keynote address in the opening of the High-Level dialogue.

12. Fiji enacted the *Rights of Persons with Disabilities Act 2018* with a view to give effect to CRPD. The Act establishes the National Council for Persons with Disabilities<sup>16</sup> as a coordinating body to advance the implementation of CRPD, including collating data and statistics on persons with disabilities<sup>17</sup>.

### Recommendations

- *Effectively implement the Rights of Persons with Disabilities Act 2018 and in particular, design and implement specific psychosocial support programmes aimed at effectively addressing the accumulated experiences of discrimination and stigma faced by persons with disabilities, with a view to providing a space for expression, building self-confidence and empowerment.*

- *Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI)*

13. Fiji received two recommendations during the second UPR cycle, including concerning taking concrete measures to counter the stigma of LGBTI persons.<sup>18</sup> These recommendations await implementation. Despite constitutional prohibition on discrimination based on sexual orientation<sup>19</sup>, LGBTI equality is still a debated topic in Fiji and members of the LGBTI community have been subjected to violence and discrimination. In 2018, there were two separate reported brutal murders of a transgender woman and a gay man, respectively. Police investigations are said to be ongoing and no arrests have been made yet.<sup>20</sup>

14. Recently, the Prime Minister has maintained his position that while human rights are granted to each individual, he does not agree with the concept of same sex marriage.<sup>21</sup> This sparked criticism from the human rights community.<sup>22</sup>

### Recommendations

- *Take specific measures, including strengthening legal framework to eliminate discrimination, hate speech and violence against lesbian, bisexual and transgender women, including by prosecuting and adequately punishing perpetrators, and conduct awareness-raising activities to address stigma within society.*

### D. Emerging issues

- *Climate change and environment*

15. Fiji has been vulnerable to the impacts of climate change and associated natural disasters<sup>23</sup>. The adverse effects of climate change have negatively impacted development gains in Fiji and forcing a

<sup>16</sup> Section 3, Part 2, the Rights of Persons with Disabilities Act 2018.

<sup>17</sup> Section 5, the Rights of Persons with Disabilities Act 2018.

<sup>18</sup> Report of the Working Group on the Universal Periodic Review: Fiji (A/HRC/28/8), 17 December 2014, paras 99.51 and 100.2.

<sup>19</sup> Article 26 (3) (a).

<sup>20</sup> ABC News, *Murdered on International Day Against Transphobia; fears Fiji killing is a hate crime*; [www.abc.net.au/news/2018-07-23/trans-woman-murdered-in-fiji-in-suspected-hate-crime/10026188](http://www.abc.net.au/news/2018-07-23/trans-woman-murdered-in-fiji-in-suspected-hate-crime/10026188)

<sup>21</sup> Fiji Sun, *PM Bainimarama Reiterate, No to Same Sex Marriage In Fiji*, 08 April, 2019; <https://fijisun.com.fj/2019/04/08/pm-bainimarama-reiterates-no-same-sex-marriage-in-fiji/>

<sup>22</sup> The Fiji Sun, *Fiji Coalition Disturbed By PM 'No Same-Sex Marriage' Comment* by Wati Talebula; 09th April, 2019; <https://fijisun.com.fj/2019/04/09/fiji-coalition-disturbed-by-pm-no-to-same-sex-marriage-comment/>

<sup>23</sup> Statement of United Nations Special Rapporteur David R. Boyd on the conclusion of his mission to Fiji. (17 December 2018). <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24025&LangID=E>

growing number of islanders to migrate from their traditional lands. In February 2016, Tropical Cyclone Winston hit Fiji and caused 44 deaths and cost approximately \$1.4 billion, which was one-third of Fiji's annual GDP.<sup>24</sup> It adversely affected 540,000 people (60% of Fiji's population) and left more than 35,000 people in evacuation centres.<sup>25</sup> Around 30,000 homes, 500 schools and 90 health clinics were damaged or destroyed.<sup>26</sup> In 2014, the village of Vunidogoloa, on the island of Vanua Levu and home to 140 people, was relocated to higher grounds.

16. Fiji introduced several laws, policies and programmes aimed at protecting people from climate change and environmental degradation. Besides constitutional protection of the right to a clean and healthy environment,<sup>27</sup> Fiji has also introduced the National Biodiversity Strategy and Action Plan, the Green Growth Framework, the National Adaptation Plan Framework (2017), the Integrated Coastal Management Framework, National Climate Change Policy, National Solid Waste Management Plan, and National Liquid Waste Management Plan and the Relocation Guidelines (2018), among others. Yet law reform has not kept pace with policy development<sup>28</sup> and there remains gaps between environmental commitments and implementation on the ground.<sup>29</sup>
17. During the visit of the Special Rapporteur on environment,<sup>30</sup> civil society organizations and some *iTaukei*<sup>31</sup> landowners expressed frustration with their inability to gain easy, timely and affordable access to important information, the lack of adequate consultation, constraints on the public's ability to participate in assessment processes, the poor quality of some Environmental Impact Assessments (EIA) reports, and the lack of access to remedies.
18. During the second cycle of UPR, Fiji committed to take further steps to ensure a safe and enabling environment for human rights defenders<sup>32</sup> and to adopt concrete measures to guarantee the protection of human rights defenders, as recommended previously<sup>33</sup>. During the visit of SR on environment, concerns were expressed by environmentalists and human rights activists about them being threatened and intimidated.<sup>34</sup>

## Recommendations

- *Carry out a review of environmental legislation to identify where new or amended legislation and/or regulations are needed to be consistent with the constitutional right to a*

<sup>24</sup> Statement of United Nations Special Rapporteur David R. Boyd on the conclusion of his mission to Fiji. (17 December 2018). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23964&LangID=E>

<sup>25</sup> UN OCHA. 'Fiji: Tropical Cyclone Winston – Evacuation Centres (as of 24 Feb 2016)'. Available at <[https://reliefweb.int/sites/reliefweb.int/files/resources/fiji\\_viz\\_2016feb23\\_ocha\\_snapshot.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/fiji_viz_2016feb23_ocha_snapshot.pdf)>.

<sup>26</sup> Fiji Government, 'Fiji Post-Disaster Needs Assessment: Tropical Cyclone Winston, February 20, 2016' (2016). <[www.sheltercluster.org/sites/default/files/docs/post\\_disaster\\_needs\\_assessments\\_cyclone\\_winston\\_fiji\\_2016\\_online\\_version.pdf](http://www.sheltercluster.org/sites/default/files/docs/post_disaster_needs_assessments_cyclone_winston_fiji_2016_online_version.pdf)>.

<sup>27</sup> Article 40 of the Constitution.

<sup>28</sup> Statement of United Nations Special Rapporteur David R. Boyd on the conclusion of his mission to Fiji. (17 December 2018). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23964&LangID=E>

<sup>29</sup> Statement of United Nations Special Rapporteur David R. Boyd on the conclusion of his mission to Fiji. (17 December 2018). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23964&LangID=E>

<sup>30</sup> United Nations Special Rapporteur David R. Boyd visited Fiji from 7 to 17 December 2018.

<sup>31</sup> Major indigenous peoples of the Fiji islands.

<sup>32</sup> Para 99.70. A/HRC/28/8 (99.)

<sup>33</sup> Para 99.71. Para 99.70. A/HRC/28/8 (99.)

<sup>34</sup> Statement of United Nations Special Rapporteur David R. Boyd on the conclusion of his mission to Fiji. (17 December 2018). Retrieved from

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23964&LangID=E>



*clean and healthy environment and other related human rights, particularly ICCPR and ICESCR.*

- *Consider creating an online environmental registry that would make publicly available extensive information, including laws, regulations, policies, permit applications and decisions, pollution data, and enforcement actions taken. Such a registry would also enhance the public's ability to participate meaningfully in environmental decision-making in Fiji.*

## **E. National Human Rights Institution**

19. The Constitution requires that the FHRADC be independent in the performance of its functions or the exercise of its authority and powers and allows the FHRADC control of its own budget and finances.<sup>35</sup> However, the independence of FHRADC in practice remains a concern. One of the reasons being the dual role played by its Director, who is also the Chair of the Media Industry Development Authority. The constitution prohibits FHRADC from investigating any human rights and discrimination cases relating to the 2006 coup and the 2009 abrogation of the previous Constitution.<sup>36</sup>

### **Recommendations**

- *Bring the Human Rights and Anti-Discrimination Commission fully into line with the Paris Principles.*
- *Vest the Commission with the authority necessary to receive and investigate complaints about alleged violations of human rights, including with regard to legislation adopted between 2006 and 2013.*

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<sup>35</sup> Section 45 (7) and (12).

<sup>36</sup>Article 157 of the Constitution of Fiji 2013.