

**UNIVERSAL PERIODIC REVIEW OF FIJI  
SUBMISSION BY THE UNITED NATIONS COUNTRY TEAM**

**Introduction**

1. As Fiji prepares for its second cycle review of the UPR in 2014, this submission is contributed by members of the United Nations Country Team in Fiji.<sup>1</sup> While the submission provides available information, it does not attempt to provide a comprehensive overview of the human rights situation in Fiji.
2. UNCT Fiji hopes that the preparations for the second review be seized as an opportunity for the Government and stakeholders to engage in consultations and exchange of views on new developments and implementation of 2010 UPR recommendations. It also encourages the Government to use the outcome of the second review to further the enjoyment of human rights in Fiji.

**I. BACKGROUND AND FRAMEWORK**

**A. Scope of international obligations** (*cf. 1<sup>st</sup> UPR cycle recommendations number 1-7 on treaty action regarding international human rights treaties*)

3. At the adoption of the UPR outcome in 2010, Fiji considered that it was its “obligation to ensure that it ratifies all core human rights conventions” and “set itself a timeframe of 10 years” wherein it will endeavour to implement them.<sup>2</sup> In June 2010, Fiji signed the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the Government has indicated that Fiji is moving towards ratification.
4. In December 2013, the UN High Commissioner for Human Rights encouraged States in the Pacific, including Fiji, to renew consideration of and become State Parties to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), and the respective Optional Protocols.<sup>3</sup> **UNCT Fiji also encourages Fiji to ratify ICESCR, ICCPR, CAT and the other remaining core human rights treaties including their optional protocols.**

**B. Constitutional and legislative framework** (*cf. 1<sup>st</sup> UPR cycle recommendations 11-21 on the constitution, and 27-35 on the lifting of the Public Emergency Regulations*)

5. In September 2013, the UN Secretary-General reiterated his hope that the forthcoming 2014 elections will take place in a transparent, participatory and democratic manner. He encouraged Fiji's efforts to restore a legitimate government and constitutional order as soon as possible.<sup>4</sup>
6. The Public Emergency Regulations that had previously been in place were repealed on 7 January 2012. The UN High Commissioner for Human Rights Ms. Pillay welcomed the lifting of the Public Emergency Regulations in Fiji as a step in the right direction. “The emergency law has seriously restricted the right to public assembly and freedom of expression, and given the authorities broad powers of arrest and

detention". Ms. Pillay noted that Fiji had committed to lifting the emergency regulations before the UN Human Rights Council during its first Universal Periodic Review in 2010, and had now fulfilled its pledge.<sup>5</sup> However, on 5 January 2012, the President issued the Public Order (Amendment) Decree that replicated the Public Emergency Regulation provisions regarding immunity from prosecution for the police and army.<sup>6</sup> This provision was also further upheld in the 2013 Constitution. This is regrettable, as the UN High Commissioner for Human Rights noted the Prime Minister's announcement in 2012 that amendments have been made to the Public Order Act and said she hoped that these amendments would be in line with international human rights norms and would not in any way replicate the restrictions in the Public Emergency Regulations.

7. Efforts to restore constitutional order since the first UPR review involved a process that led to the presenting of a draft 2012 Constitution to the President of Fiji by the Constitution Commission led by Professor Yash Ghai. However, the president requested the Government's legal team to amend the draft Constitution. Subsequently, the Government also dissolved the previously announced Constitutional Assembly and undertook further consultations and revisions. Concerns from some stakeholders were raised with regard to the design and transparency of the consultation and drafting process. The revised 2013 Constitution was assented to by the President of Fiji on 6 September 2013.<sup>7</sup>
8. The 2013 Constitution introduced a Bill of Rights with positive elements such as the constitutionally protected number of economic, social and cultural rights, a list of prohibited grounds for non-discrimination, the inclusion of the rights of the child and rights of persons with disabilities. The constitution also broadened some prior provisions and categories by including freedom from human trafficking, freedom of residence, freedom of conscience, and a right to join, form or campaign for a political party. However, concerns remain as it provided broad grounds for possible limitations to a number of key civil and political rights, including freedom of expression and opinion, association and assembly, that go beyond international human rights standards; and granted the State the power to detain persons without charge or trial in times of emergency and gave States officials immunity for a wide range of acts.<sup>8</sup> The 2013 Constitution does not contain specific provisions on the rights of women.
9. Running parallel to the drafting of a new Constitution, the Government promulgated decrees relevant in the context of holding general elections and the formation of political parties.<sup>9</sup> In 2012, Fiji's electoral laws were repealed by the *Electoral (Registration of Voters) Decree 2012* and the *Public Order Amendment Decree 2012* was issued with the lifting of the Public Emergency Regulations. The *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013* was promulgated to provide for rules and procedures of political parties and in particular to ensure transparency of operations and funding of Political Parties. The Electoral Decree was gazetted on 28 March 2014. While a full analysis has not yet been completed some concerns have been encountered, for example in relation to certain offences and respective sanctions.

**C. Institutional and human rights infrastructure and policies** (*see 1<sup>st</sup> UPR recommendations 36-41 on the Fiji NHRI and recommendations 23-26 on elections*)

10. The 2013 Constitution provides for the Fiji Human Rights and Anti-Discrimination Commission, to continue the functions of the prior Human Rights Commission established under the Human Rights Commission Decree 2009. It will consist of a chairperson and four other members, all of whom are to be appointed by the President on the advice of the Constitutional Offices Commission. **UNCT recommends ensuring that the Fiji Human Rights and Anti-Discrimination Commission receives adequate funding and resources in order to function independently and in manner consistent with international standards, the ‘Paris Principles’.**
11. The 2013 Constitution establishes the Constitutional Offices Commission, which plays an important role in appointing the head of the military, police, human rights commission, electoral commission, public service commission, and various other institutions. The Constitutional Offices Commission is chaired by the Prime Minister. The Constitution also established an Accountability and Transparency Commission which is a new institution tasked to hold public office holders accountable.
12. Fiji’s Roadmap for Democracy and Sustainable Socio-Economic Development 2009-2014 sets out the strategies and policies aimed at promoting gender equality, eliminating discrimination and violence against women and children, and fulfilling Fiji’s obligations under ICERD, CEDAW and CRC. Fiji’s national gender policy was inaugurated in March 2014.
13. Fiji elaborated in recent years new policies on sexual harassment, conciliation, grievance procedure and counselling. The National Plan of Action to eradicate Trafficking in Persons provides protection and support for victims. The Ministry of Education’s Policy in national management of HIV and AIDS aims to ensure that students and school personnel living with HIV and AIDS are treated in a just, humane and life affirming way.
14. In 2013, the Government reviewed the Fiji National Council for Disabled Persons Act 1994 and drafted a Disability Decree that gives persons with disabilities more powers to exercise their rights.

**II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

**A. Cooperation with international human rights mechanisms** (*cf. 1<sup>st</sup> UPR cycle recommendations number 44-54*)

15. Fiji reported under ICERD and held in 2012 the inter-active dialogue with the Committee on the Elimination of Racial Discrimination in Geneva. The preparation for Fiji’s next reporting under CRC and CEDAW is underway in 2014. Fiji submitted a common core document in 2008 and an update thereto in 2012.<sup>10</sup>
16. As to cooperation with special procedures, the delegation of Fiji at the 1<sup>st</sup> UPR review stated that “Fiji would cooperate fully with any special rapporteur wishing to visit the country stressing that Fiji prefers to receive requests prior to such visits”. However, a

number of requests for visits remain to be granted, including those of the Special Rapporteurs on torture, independence of judges and lawyers and on human rights defenders. For example, the UN Special Rapporteur on the independence of Judges and Lawyers has repeatedly requested an invitation to visit Fiji since 2007. No standing invitation has been extended. **UNCT recommends Fiji to issue a standing invitation to the UN special procedures, and to receive the special rapporteurs of the UN Human Rights Council that have requested to visit Fiji.**

### III. Implementation of international human rights obligations

#### A. Equality and non-discrimination (*cf. 1<sup>st</sup> UPR cycle recommendation 55 related to combatting discrimination against women*)

17. The 2013 Constitution has equality provisions (Article 26) which includes protection from direct and indirect discrimination on the basis a comprehensive list of prohibited grounds, including gender and sex. While the Constitution of Fiji in Chapter 2, Art. 26 (3) states that “A person must not be unfairly discriminated against...”, according to international human rights law non-discrimination is absolute.
18. While gender equality in primary and secondary school enrolments has improved, there remains a need to enhance efforts and results to empower women in decision making and professional work. The Women’s Plan of Action 2010-2019 addresses the priority areas Fiji has committed to, including eliminating gender disparities in the labour market, small micro enterprise development, balancing gender in decision making, and eliminating violence against women. A UNPFA supported Gender Monograph based on the Fiji 2012 Census shows that the gap between participation rates of women and men has narrowed slightly in the last 20 years but occupational gender segregation persists and so do wage gaps. While women are employed predominantly in health and education service employment, they are generally largely under-represented in the formal sector where they hold mainly clerical and support positions rather than professional ones. **UNCT recommends further measures to ensure equality and non-discrimination between women and men in law and practice in all areas, including in access to land, employment and in economic and political participation.**
19. In early 2010, Fiji removed “sodomy” and “unnatural acts” from the National Crimes Decree, resulting in the decriminalization of consensual same-sex relationships.<sup>11</sup>
20. Article 41 of the 2013 Constitution makes provision for the rights of a child, including the right to both citizenship and nationality. However, reports through the National Coordinating Committee on Children indicate declining birth registration rates in the past 24 months for children under 5 years, particularly in remote islands and amongst indigenous children. **UNCT recommends strengthening the birth registration process, through regular timely monitoring of the process in real time through improved use of existing technology in both urban and rural areas.**
21. In 2011, Fiji enacted a new law on HIV/AIDS, which was soon after amended to remove several provisions that were inconsistent with human rights principles and

best practice guidelines (such as criminalizing infection, mandatory testing, or refusal of entry for persons living with HIV/AIDS). The Fiji HIV/AIDS decree explicitly requires its provisions to be interpreted in line with the UN International Guidelines on HIV/AIDS and Human Rights.<sup>12</sup> The decree provides legal protections against discrimination and stigmatization, and defines rights to confidentiality and informed consent.

22. Fiji is one of the first countries in the Pacific to adopt a National Aging Policy (2010-2015). This is based on the fact that the last population census data indicates that 8 per cent of the population is 60 and over in 2010, and will rise to 17 per cent by 2050. A UNFPA research reveals that presently, Fiji's older population is growing by 3,000 people per year and the population of 80 years and over is also expected to increase rapidly from 5,000 in 2010 to 28,500 by 2050. Because women have lower death rates than men, a higher proportion of women than men survive into older ages. The policy recognizes the contribution of older people to the social, cultural, economic and political sectors of society, and it strengthens social assistance and healthcare afforded to the population as well as establishing an enabling and supportive environment for the elderly.

**B. Right to life, liberty and security of the person** (*cf. 1<sup>st</sup> UPR cycle recommendations 57-59 on abolishing the death penalty and recommendations 62-65 on investigations*)

23. While Fiji removed the capital punishment from the Criminal Code in 1964, it retains the death penalty in the Military Code (albeit having not enforced it). At the first UPR review in 2010, the delegation submitted that “whether to abolish the same from the Military Code is a matter currently under consideration”.<sup>13</sup> **UNCT recommends Fiji to abolish the death penalty also in the Military Code.**
24. Concerns remain about allegations of torture and ill-treatment by officials in the military, police and corrections services, which are violations of international human rights law and inconsistent with Article 11 of the 2013 Constitution (which recognizes freedom from cruel and degrading treatment) and the values and objectives of these services. The UN High Commissioner for Human Rights expressed shock by the content of a video which emerged in March 2013 on social networks and the internet showing the apparent torture and inhuman and degrading treatment of two handcuffed men.<sup>14</sup> The nine-minute video shows a handcuffed man being physically and sexually assaulted, beaten and humiliated by a group of men while lying helpless in the back of a pick-up truck. The Fijian police authorities stated that they will seek to establish the facts in this case. OHCHR welcomed this commitment, and urged the Government to ensure that the apparent serious human rights violations are swiftly and effectively investigated by an impartial and competent authority, and that the findings are made public. OHCHR also called on the authorities to ensure that perpetrators – who are clearly visible in the video and should be easily identifiable – are brought to justice, and that a concerted effort is made to ensure that this type of treatment is not repeated. Victims of the abuse must have access to the necessary medical and psychological support, as well as redress. However, as of March 2014, there has not yet been a public announcement by the police of the outcome of the investigations and steps taken. **UNCT recommends that Fiji sends a strong public message of zero tolerance, by undertaking prompt and impartial investigations of any allegations**

**of torture, ill-treatment and degrading treatment or punishment, by making public the findings of investigations, by ensuring that perpetrators are brought to justice, and by ensuring support and redress to victims.**

25. Fiji has very high rates of all forms of violence against women across all divisions, age groups, education levels, ethnic groups and religions. Figures released by the Fiji Women's Crisis Centre at the end of 2013 reveal that 80 per cent of women in Fiji have witnessed some form of violence in the home, with over 25 per cent reporting having been beaten while pregnant – and that 43 women are injured, 1 is permanently disabled, and 71 lose consciousness every day in Fiji through domestic violence. 64 per cent who have ever been in a relationship have experienced either physical or sexual violence or both by a husband or intimate partner. Less than 1 out of 5 women go to police or health centers/hospitals for help. While Fiji has instituted policies and legislation to try to address the problem, including the Fiji Police 'No Drop' policy on domestic violence that has been in place for over a decade, these measures have not proven effective in significantly reducing violence against women and therefore, alternative measures should be explored. The Domestic Violence Decree 2009 has aimed to provide greater protection for victims of domestic violence, with clear guidelines for police and access to restraining orders. Urgent monetary relief is also provided for in the Domestic Violence Decree.<sup>15</sup> **UNCT recommends that urgent and decisive steps are taken by the Government of Fiji to end violence against women by sending out a strong public message of zero tolerance; by handling cases of violence against women with priority in order to bring perpetrators swiftly to justice and to ensure access to justice and to redress for survivors. Further, UNCT recommends to effectively implement the national Gender Strategy and to evaluate government programming such as the Zero Tolerance Violence Free Zone initiatives. UNCT recommends further efforts to break the cycle of violence against women by working at all levels and with all age groups in society, with both men and women.**
26. The UN and ILO have continued to receive information about serious allegations of acts of assault, harassment, intimidation, arrest and detention of trade union leaders and members: Allegedly, for example, members of the military intimidated and threatened trade union members and trade unionists were arrested for demonstrating against the new Constitution.<sup>16</sup>
27. The Child Protection Policy ensures that the well-being, safety and dignity of children are respected. Furthermore, the Government has set up with assistance from ILO a Child Labour Unit within the Labour Ministry in 2013 to monitor, investigate and prosecute perpetrators involved in the exploitation of children through hazardous and dangerous work.
28. While not a widespread practice, some caregivers continue to engage children in street begging, which the Ministry of Social Welfare is closely monitoring to respond to the children in need of care and protection. Services are limited and the government relies heavily on key NGOs for provision of counselling services. However, the existing NGO services are tailored more towards addressing the psychological recovery and social integration of women, with limited services for children and almost non-existent specific services for the boy child victim of violence or abuse.

**UNCT recommends stricter enforcement of laws relating to child protection and increase budgetary allocation towards the establishment of services targeted particularly at children, and increase education and awareness at local and national levels on the dangers of street begging and selling on the life of a child.**

29. Fiji has recently seen a number of prosecution cases regarding trafficking in persons. The Government promulgated Crimes Decree provisions on Trafficking of Persons and Children including the establishment of the Anti-Trafficking Unit within the Fiji Police Force which has been at the forefront of cases involving domestic trafficking. However systems for follow up on international trafficking have not been adequately addressed.<sup>17</sup> **UNCT recommends the Government to strengthen coordination enforcement and monitoring at the national level to ensure that government ministries and departments have a central system of operation to abduction and trafficking in persons reports. It also recommends the introduction of the draft Adoption Decree which will strengthen the legal framework on adoption and complement existing laws that can curb issues relating to child trafficking.**
30. The only law that has been amended to explicitly ban the use of corporal punishment (penal system only) is the Prisons and Corrections Act 2006, following the High Court ruling in the case of Naushad Ali v State (March 2002). It remains of great concern to the UNCT that Article 57 of the Juveniles Act 1974 grants the right to any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him. New laws such as the Child Welfare Decree 2010 do not explicitly ban the use of corporal punishment. The Government should encourage the enforcement of zero tolerance policies nationwide through greater awareness at local and national levels encouraging alternative forms of discipline. **UNCT recommends that the Education Act and other relevant laws should be amended to explicitly prohibit the use of corporal punishment in schools, alternative care settings and day care, to be consistent with policy changes that have already banned the practice.**
31. To date there are no specialized and widely available professional counselling services for children although suicide is noted as a major health concern. The Mental Health Decree 2010 has set up stress management services in the three main hospitals in Suva, Labasa and Lautoka to respond to mental health needs though not specifically to address children's needs. School counselling is provided at high schools though teachers are not trained in psychosocial support. The Ministry of Social Welfare has a plan to establish a child helpline that would provide a free and accessible counselling service for children. **UNCT recommends the Government to strengthen specialized counselling services (abuse/neglect/violence) for children and youth, including proper access by children and youth in the outer islands.**

**C. Administration of justice, including impunity, and the rule of law** (*cf. 1<sup>st</sup> UPR cycle recommendations 83 – 95 regarding independence of the judiciary*)

32. The 2013 Constitution contains provisions relevant to the independence of the judiciary, including section 97(2) which mandates that “the courts and all judicial officers are independent of the legislative and executive branches of Government...”. Section 97(3) states that “no person may interfere with the judicial functioning of the

courts, or unreasonably interfere with the administrative functioning of the courts” and section 97(6) provides that “the judiciary has control of its own budget and finances, as approved by Parliament”.

33. However, in practice concerns remain regarding the independence of the judiciary: The Government continued to prosecute media organizations for contempt of court if they reported discussions questioning judicial independence: An illustrative example in this regard is a court case involving the head of the Citizens Constitutional Forum (NGO). The judgement by the court was delivered on 3 May 2013 and found that the respondents were guilty of contempt of court. The court found that the words “*Independence of the judiciary cannot be relied on*” risk undermining the public confidence in the administration of justice and that the contempt had “crossed the limits”<sup>18</sup>. Citizens Constitutional Forum Chief Executive Officer Reverend Akuila Yabaki received subsequently a 3 -month suspended sentence in addition to a fine and request for a public apology. In February 2013 the High Court fined the Times F\$300,000 for contempt of court and the former publisher F\$10,000. The court also sentenced the editor in chief to six months imprisonment, suspended for two years. **UNCT recommends further efforts to ensure the independence of the judiciary, and guarantees of fair trial, consistent with international human rights standards.**

34. The Legal Aid Commission announced in 2013 that it is being allocated further resources and expanding its operations which is a welcome development. However, significant challenges in this area exist. For example, information collected suggests that only about 50 per cent of remandees who face criminal charges and convicts have access to legal assistance. **UNCT recommends that an evaluation be undertaken of the current legal aid system identifying challenges and priorities hampering effective access to justice.**

35. In Suva, the establishment of a separate specialized court has improved hearings of children’s evidence pursuant to the new Child Welfare Decree and the Domestic Violence Decree. The presumption to bail of juveniles in conflict with the law remains a priority except when parents or guardians cannot be located. However, there is an inconsistency between the definition of a child in the Juvenile Act including all children up to 17 years and the Prison and Corrections Act which disallow detention of any persons below 18 years. Any person under the age of 18 sentenced to a detention term is taken into care and protection by the Ministry of Social Welfare. On the recommendation of the Director for Social Welfare they may be re-united with their parents or complete their sentence in the adult prison when they reach the age of 18. **UNCT recommends that the Government review the laws related to juvenile offenders (Prisons and Corrections Act and other relevant laws) to harmonize provisions in the best interest of the child. Government should also adopt into law the draft Community Based Corrections Decree, and draft Child Justice Decree.**

**D. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life** (*cf. 1<sup>st</sup> UPR recommendations 75 – 82 on freedom of expression and media freedom*).



36. In 2012, the UN High Commissioner for Human Rights Ms. Pillay expressed concern at developments in which critics of the Government have faced criminal charges, arbitrary detention or other forms of intimidation. “Silencing criticism with such heavy-handed measures is in breach of international human rights standards. I urge the Government to ensure that the rule of law is fully respected and that there is space for civil society to operate without fear,” Pillay said. “As Fiji... prepares for elections to be held in 2014, I look forward to seeing an environment in which ordinary people and civil society organisations can participate fully.”<sup>19</sup>
37. The Public Order Act requires permits for public gatherings and also allows the Government to refuse applications for permits for marches and meetings and to regulate the use of any public place by three or more persons. It furthermore precludes the possibility to legally challenge such a refusal.<sup>20</sup> In 2013, in connection with celebrating international women’s day on 8 March, a permit for the Fiji Women’s Crisis Centre was refused by the police on the grounds of security, whereas a year later in 2014 the permit was granted by the police. The withdrawal by the authorities of a permit for a march on 17 May 2012 in Suva, Fiji, to commemorate the international day against homophobia and transphobia raised questions about the human rights enjoyed by the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community and individuals in Fiji.
38. The removal of the Public Emergency Regulations in 2012 signalled a positive change also to the media landscape with the removal of blanket censorship of all Fiji media by Ministry of Information censors. Despite this, however, it appears that an environment of self-censorship continues to exist for journalists. This environment is also supported by provisions in the *Media Industry Development Decree 2010*, which established a Media Industry Development Authority (MIDA) and a Media Tribunal to investigate complaints referred to it by the authority with powers to impose a range of penalties and fines (including imprisonment of up to two years) for journalists, editors and publishers. The right to protect sources is acknowledged in the decree, with a provision that the MIDA in exercising its powers of investigation has no powers to demand information about a source or the identification of a source. MIDA can however apply to the Media Tribunal for disclosure of a source under section 28, and must show cause why the source should be disclosed. Overt media censorship, like that experienced under the period of emergency regulation, can be imposed by the Government at any time under section 80 of the Decree. Recent history, combined with the provisions of the Decree and continued reports of self-censorship and intimidation among media stakeholders in Fiji, continues to have a chilling effect on the country’s news media.<sup>21</sup> **UNCT recommends Fiji to take further measures to ensure respect for media freedom, freedom of expression and the protection of journalists in line with international human rights law, both with regards to legislation and practice.**
39. In February 2013, the “*Political Parties (Registration, conduct, funding and disclosures) Decree*” adopted a new Code of Conduct for parties to ensure ethical behaviour requiring the disclosure of donors and assets. To register all parties need 5,000 member signatures along with 5 office holders and application fee of 5,005 FJD or 1 \$ for every member and office holder. *The Political Parties (Registration, Conduct, Funding, and Disclosures) (Amendment) Decree 2013* introduced fines of

up to FJD 50,000 and/or prison sentences of up to 5 years for media organizations that refer to associations or organizations that have been de-registered, have registration pending, or are not registered, as political parties. **UNCT recommends ensuring that an enabling framework is provided for political parties to be formed and to enjoy the level playing field, in particular in relation to their ability to access funding, and to exercise their rights to freedom of expression, including through peaceful demonstrations and access to the media.**

40. The Government, mainly through the military and police, have maintained pressure against trade unionists. In February 2011, there were allegations of arbitrary detention and beatings of several union officials. In August, Mr. Daniel Urai, President of the Fiji Trades Union Congress, was detained under the Public Emergency Regulations and charged with unlawful assembly. In late October 2011, he was again detained and held for ten days under the emergency regulations before being charged with urging political violence under the Crimes Decree. On 4 November, the General Secretary of the Fiji Trades Union Congress Mr. Felix Anthony was also detained and held for seven days before being released without charge. Both men had just returned from Australia where they were raising concerns about the treatment of unions in Fiji.<sup>22</sup> In this regard, it is highlighted that Fiji at the 1<sup>st</sup> UPR review in 2010 had made a commitment, by supporting recommendation 75 of the 1<sup>st</sup> UPR cycle, “to put an immediate end to attacks, harassment, intimidation and detention with regard to journalists, critics and human rights activists”. **UNCT recommends ensuring the protection of journalists, human rights defenders and critics, and to promptly investigate incidents against them.**

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

41. ILO continues to consider serious violations of trade union and labour rights situation through the issuance of several decrees.<sup>23</sup>
42. On 29 July 2011, the Fiji Government issued the Essential National Industries (Employment) Decree.<sup>24</sup> This decree disallows professional unions from operating in certain wide ranging industries. The Decree also brings restrictions on industrial action which raises concerns that the human rights to freedom of association, including the right to form and join trade unions for the protection of workers’ rights, could be illegitimately restricted.<sup>25</sup> The new decrees have limited the powers of Trade Unions in Fiji to act on the interest of workers.<sup>26</sup>
43. The ILO’s governing body has repeatedly stressed that the government immediately allow the return to the country of the Direct Contacts mission,. The Government has responded that any return of a Direct Contact’s mission should only take place after the national elections in 2014. In November 2013 the ILO Governing Body considered a call for a Commission of Inquiry on Fiji. This call was deemed receivable and will be considered in March 2014.<sup>27</sup> **UNCT recommends the urgent and immediate return of the ILO Direct Contacts Mission in order to clarify the facts and assist the Government in finding - together with the social partners - appropriate solutions to the matters raised before the ILO supervisory bodies, including the legislative and practical application of freedom of association principles.**

## H. Right to social security and to an adequate standard of living

44. Fiji's 2013 Constitution provides for the right to social justice with an obligation on the State, subject to resource constraints, to make reasonable efforts to afford education including early childhood education, economic participation, work and to receiving a just minimum wage, housing and sanitation, adequate food and water, social security schemes and health services. However, halving poverty (*cf. 1<sup>st</sup> UPR cycle recommendations 96-99*) and reversing the spread of HIV-AIDS and other diseases by 2015 remains among challenges.
45. In March 2011, Fiji endorsed its first National Housing Policy which underpinned its commitment to "Affordable and Decent Housing for All" by 2020, through a fundamental policy shift from direct delivery of housing to one of enabling the housing sector as a whole to perform better. It places emphasis on improving the quality of life of people living in over 200 informal settlements nationwide. The policy's aim is to also protect the right to housing and sanitation, and to ensure freedom from arbitrary evictions.<sup>28</sup> The 2014 national budget committed \$22.5 million to "Housing", reflecting the Government's priority in providing access to affordable housing. **UNCT recommends to pay more attention to the specific conditions of access for women, children and persons with disabilities and to increase efforts to improve livelihoods.**
46. The 2013 "New Disaster Rehabilitation Housing Policy", has raised some concerns despite its good intentions. Whilst assistance is available to all whom earn less than \$20,000 a year are eligible for post-disaster help, if proof of security of tenure cannot be provided, households lose that eligibility. In other words, the most vulnerable of households are targeted but are made ineligible for this support offered through the Government.
47. The 2013 Constitution provides protection to landowners by enshrining their interests into the Bill of Rights, and the rights to fair share of royalties for extraction of minerals are also enshrined under the 2013 Constitution. Existing customary practices can allow for exclusion of women in the decision making process in accessing land and other types of property. Women's awareness of land laws should also be increased. **UNCT recommends strengthening efforts to ensure women's equal access to housing, land and property.**
48. In 2012, Fiji launched its National Climate Change Policy (NCCP) to provide a platform for coordination among sectors, and direction on national positions and priorities regarding climate change mitigation and adaptation. The NCCP puts forth twelve policy principles, which include "Equity and fairness"; "Gender considerations" and "Community ownership". Fiji is in the process of finalizing guidelines on internal relocation within the context of climate change. So far, the

government has initiated 2 pilot relocations which are being used as bench mark for any future village or community relocations.

49. The Environment Management Act came into force in 2005 to ensure people's sustainable and equitable access to biodiversity and natural resources such as water, food and energy sources but gaps remain in the framework and its implementation. A review of Fiji's Mineral Bill is on-going and can provide opportunities to provide clarity with respect to peoples' rights in relation to participation, information, work, health, environmental degradation and possible displacement. The review also provides an opportunity to address the risks for abuse and corruption by authorities. **The UNCT recommends that the UN Guiding Principles on Business and Human Rights be used as a basis for relevant legislative and policy development.**
50. In 2011, 87 per cent of the total population in Fiji had access to safe drinking water and basic sanitation which was an increase from 74 per cent in the year 2000. Access to adequate water supply and sanitation is of fundamental importance to health. Lack of adequate water contributes to diarrheal diseases and illness, especially in children.

## **I. Right to health**

51. The Government has made significant progress in improving the health and well-being of women and children. It has a well-developed health system based on the primary health care concept and long-established hierarchy of services from village health worker to specialist hospital. UNFPA's report on 20 years of progress on the International Conference on Population and Development (ICPD +20) indicates that Fiji has made significant progress in the areas of promoting sexual and reproductive rights. Fiji is for example an early achiever in terms of ensuring skilled birth attendance care for pregnant women (100 percent, 2010). However in order to support women's rights to choice and attention should be given to increasing the contraceptive prevalence rate (32 in 2010) in order to reduce unmet need for contraceptives (50%). With approximately 12% of the population between 15-19 years of age, it is significant that adolescent fertility rate has decreased from 90 births to women 15-19 years/1000 in 1990 to 44 births/1000 in 2011. **UNCT recommends strengthening the legal and policy framework with respect to the protection of the right to health, ensuring that marginalised segments of the population especially young persons, older persons and persons with disabilities have access to sexual and reproductive health services.**
52. From 1990 to 2010, the Under-5 Mortality Rate (U5MR) fell by 44% from 30 to 17/1000 live birth, the Infant Mortality Rate (IMR) decreased 40% from 25 to 15/1000 live birth and the maternal mortality ratio by 37%. However, the 2015 target is to reduce both IMR and U5MR to 5.5% and 7% respectively. Geographic location is a critical factor in new-born survival because it determines how quickly medical assistance can be obtained when there are complications during pregnancy and childbirth. Deaths in the first week of life now account for 40% of under-5 deaths. Under-5 mortality is significantly higher in the Eastern and Northern Divisions, where the remoteness of villages and lack of easily accessible health services are contributing factors. Reproductive, maternal, new-born, child and adolescent health are firmly embedded in Health Outcomes 3, 4 and 5 of the Fiji National Health

strategic Plan, 2011-2015. Immunization coverage is high, including 94% measles vaccine coverage in 2012 and no outbreak since 2006. Further efforts could be concentrated on the infant particularly the newborn through a focus on the health of the mother and her child through pregnancy, childbirth and the early post natal period.

53. The National Strategic Plan provides strategic policy, planning and implementation guidance for a multi-sector response to HIV and AIDS. Since 2004, the Government has assumed the responsibility of providing Anti Retro Viral drugs (ARV) free of charge for all those in need of treatment. As a result of an increasing focus on prevention of mother to child transmission (PMTCT), 67% of Ante Natal Clinic (ANC) attendees received HIV testing and counselling services in 2010, up from 44 % in 2008. **UNCT recommends improving routine and active surveillance systems and strengthen national capacity to plan, implement and monitor & evaluate national HIV programme activities and shift focus to targeted interventions, including for the adolescent and young key affected populations.**
54. While the prevalence of HIV in Fiji remains low in general population (below 1 %), available data shows that there has been a steady increase in the HIV positivity rates (proportion of HIV infections among total HIV tests) among ANC attendees, indicating a growing acceleration of HIV prevalence in the country. High STI rates coupled with limited knowledge, low condom use, poor risk perception and limited availability of health services for young people in rural and remote areas, indicate that risk and vulnerability factors still persist and those might adversely impact the HIV situation in Fiji. Information<sup>29</sup> shows that there is increased prevalence of 1.5% across all sex workers and 1.8% in transgender sex workers. **UNCT recommends further expanding prevention activities and the availability and accessibility of sexually transmitted infections (including HIV) testing for pregnant women the general population, by introducing innovative approaches for scaling up testing through rapid HIV testing in points of care as well as through CSOs and shifting to provider initiated testing and counselling approach for pregnant women.**

## **J. Right to education**

55. Education is made compulsory up until form 6 level under the Fiji Education Act. There were in 2013 some 985 recognized Early Childhood Education (ECE) centres in the country. These centres are assisted by the Government through salary grants, building funds and materials such as teaching and learning resources. In 2007, the Ministry for Education developed an ECE policy.
56. While literacy status of adult women and men in Fiji has improved drastically, there are still gender disparities in adult literacy rates remain wide in both urban and rural areas. Youth literacy rates shows declining gender disparities, however there are concerns that secondary enrolments still lags behind that in primary enrolments and that boys experiencing higher drop-out rates. Some advances are likely given recent amended examination requirements and diversified secondary degree certification.
57. Due to the absence of ECE data management systems, the average age of ECE enrolment cannot be ascertained. Moreover, available information on the ECE centres does not give an indication of issues related to access, delivery and the quality of the

programmes. Another concern is the lack of information on ECE centres in rural areas. **UNCT recommends the development of a data management system for ECEs to help the Government with the development of new and enhancement of existing laws and policies (data collected should include information relating to access, delivery and quality of programmes).**

58. The Education Act stipulates compulsory education up to 15 years old, but the Education policy makes it compulsory for students to attend school up to form 6 (age 17). Tuition Fees Free Grant is provided for primary up to form 7 (age 18) level. There has been a significant increase of the Education budget by 27% in the 2014 Budget. The biggest increase is on Tuition Fees Free Grant for children in primary and secondary schools aiming to make fees truly free. No School is allowed to charge any kind of school fees or school levies from 2014. Poverty faced by families affect the enrolment of children at all levels of education. The Government has introduced various incentives (including bus-fare subsidy and school zoning) to encourage school attendance and retention. The Government should continue to work towards providing an environment that is all-inclusive (including children with disabilities and special needs) and aligns with its Education For All policy. **UNCT recommends increasing assistance to ECE in rural areas and outer islands to ensure that children are not deprived of essential quality primary education preparedness. It is suggested that the formula of distribution ensure that disadvantaged small rural and remote school get an equitable share of the Tuition Fees Free Grant.**

#### **K. Persons with disabilities**

59. The lack of awareness and understanding of the challenges and needs of persons with disabilities in Fiji means these persons and their families face prejudice, discrimination and rejection. Persons with disabilities often face extreme poverty. Disability adds to the risk of poverty and conditions of poverty increase the risk of disability. **UNCT recommends regular trainings and awareness programs for teachers in both mainstream and private schools in teaching and protecting the human rights of children with disabilities in the school system.**
60. The Government introduced a Poverty Benefit Scheme which provides support to persons with permanent disabilities through monthly cash allowance and food vouchers. The Government supports special schools (privately run) by providing grants and paying teacher salaries. Such schools for Special Needs are located in the major centers – Suva, Lautoka and Labasa. In addition, the Government pays for teacher aides and sign language interpreters in secondary schools. Since the mid-1980s, the Ministry of Health has had a system of Community based Rehabilitation Assistants (CRAs) who work in most parts of Fiji. The CRAs' role is to detect and identify disabilities, manage disabilities and the rehabilitation of persons with disabilities. **UNCT recommends a need to upgrade training for Community based Rehabilitation Assistants, with special funding from the Government, to better identify and rehabilitate persons with disabilities.**

#### **L. Indigenous peoples and minorities**

61. Indigenous Fijians, officially known as iTaukei since 2010, make up 57.3 per cent of the population; Indo-Fijians account for 37.6 per cent; and the remaining 5.1 per cent is composed of European, Chinese, Rotuman and other Pacific Island communities.<sup>30</sup>
62. Specific protection of the ownership of iTaukei, Rotuman and Banaban Lands, protection of ownership and interests in land, is provided for in the 2013 Constitution. As regards the *State Lands (Amendment) Decree 2013*, the State Lands Act allows the Minister for Lands to exchange portions of State Land for portions of iTaukei land or for portions of private freehold land. This exchange can only be done following consent of the iTaukei Land Trust Board in the case of any iTaukei land, or the consent of the registered owner of private free hold and the consent of Cabinet. This provision saw the abuse and alienation of iTaukei land being converted to private freehold land by first converting it into State land and then into private freehold land. The Act was in 2013 amended to ensure that any iTaukei land which is converted to State land cannot be further converted into private freehold land.

#### IV. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

63. The United Nations Development Assistance Framework for the Pacific 2013-2017 addresses Fiji and other Pacific Islands Countries under five thematic areas: environment and disaster management; gender equality; inclusive economic growth-poverty reduction; basic services; and governance and human rights. The OHCHR Regional Office for the Pacific, other UN system and regional partners, stand ready to continue to support national efforts to further the promotion and protection of human rights in Fiji.

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#### ENDNOTES

- <sup>1</sup> UN Pacific, [www.pacific.one.un.org/index.php?option=com\\_content&task=view&id=103&Itemid=154](http://www.pacific.one.un.org/index.php?option=com_content&task=view&id=103&Itemid=154).
- <sup>2</sup> See UN document A/HRC/14/8/Add.1, p. 2.
- <sup>3</sup> OHCHR Regional Office for the Pacific presentation at the Attorney-General's Conference, 6-7 December 2013, Sigatoka, Fiji, available at <http://pacific.ohchr.org/docs/AG15thAnnualConference2013.pdf>.
- <sup>4</sup> UN Secretary-General read-outs, see <http://www.un.org/sg/offthecuff/index.asp?nid=3079>.
- <sup>5</sup> UN High Commissioner for Human Rights, Press Release, see <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11753&LangID=E>.
- <sup>6</sup> UN High Commissioner for Human Rights, Press Release, see [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11753&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11753&LangID=E).
- <sup>7</sup> Resident Coordinator Annual Report 2013, available at <http://www.undg.org/rcar2013.cfm?fuseaction=N&ctyIDC=FIJ&P=1754>.
- <sup>8</sup> Fiji Constitution 2013, see [www.fiji.gov.fj/Govt--Publications/Constitution.aspx](http://www.fiji.gov.fj/Govt--Publications/Constitution.aspx).
- <sup>9</sup> Resident Coordinator Annual Report 2013, available at <http://www.undg.org/rcar2013.cfm?fuseaction=N&ctyIDC=FIJ&P=1754>.
- <sup>10</sup> See HRI/CORE/FJI/2006 and its Addendum 1 and 2, available at <http://www2.ohchr.org/english/bodies/coredocs.htm>.
- <sup>11</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS), "Fiji first Pacific Island nation with colonial-era sodomy laws to formally decriminalize homosexuality", press release, 4 March 2010.
- <sup>12</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS) 2006, [http://data.unaids.org/publications/irc-pub07/jc1252-internguidelines\\_en.pdf](http://data.unaids.org/publications/irc-pub07/jc1252-internguidelines_en.pdf).
- <sup>13</sup> See UN document A/HRC/14/8/Add.1, p. 2.
- <sup>14</sup> OHCHR Press Briefing Note 8 March 2013, see <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13098&LangID=E>.

<sup>15</sup> Fiji Women Crisis Centre National Research: Somebody's Life, Everybody's Business, available at [http://www.fijiwomen.com/index.php?option=com\\_content&view=article&id=227&Itemid=126](http://www.fijiwomen.com/index.php?option=com_content&view=article&id=227&Itemid=126). See also [http://www.fijiwomen.com/index.php?option=com\\_content&view=article&id=225:survey-indicates-possible-drop-in-violence-against-women&catid=41:press-releases&Itemid=89](http://www.fijiwomen.com/index.php?option=com_content&view=article&id=225:survey-indicates-possible-drop-in-violence-against-women&catid=41:press-releases&Itemid=89).

<sup>16</sup> Resident Coordinator Annual Report 2013, available at <http://www.undg.org/rcar2013.cfm?fuseaction=N&ctyIDC=FIJ&P=1754>. See also [http://pacific.ohchr.org/docs/HR\\_Pacific\\_v7\\_July\\_25.pdf](http://pacific.ohchr.org/docs/HR_Pacific_v7_July_25.pdf).

<sup>17</sup> Fiji ratified the Hague Convention on Inter-Country Adoption in 2012.

<sup>18</sup> The High Court of Fiji at Suva, ACTION NO: HBC 195 OF 2012

<sup>19</sup> UN High Commissioner for Human Rights, Press Release, see [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11753&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11753&LangID=E).

<sup>20</sup> Public Order Act 1969, (Fiji), sections 8, 9 and 10.

<sup>21</sup> OHCHR Regional Office for the Pacific, see <http://pacific.ohchr.org/docs/OHCHR%20Pacific%20-%20Op-ed%20by%20Matilda%20Bogner%20on%20World%20Press%20Freedom%20Day,%203%20May.doc>.

<sup>22</sup> See [www.pacific.one.un.org/index.php?option=com\\_news&Itemid=45&task=view&id=264](http://www.pacific.one.un.org/index.php?option=com_news&Itemid=45&task=view&id=264).

<sup>23</sup> Resident Coordinator Annual Report 2013, available at <http://www.undg.org/rcar2013.cfm?fuseaction=N&ctyIDC=FIJ&P=1754>. See ILO NORMLEX (<http://www.ilo.org/dyn/normlex>) for documentation of the Conference Committee of the application of Convention No. 87 in Fiji and the Committee's conclusions, as well as the ILO Governing Body's determination of the admissibility of the article 26 complaint (with the complaint in annex), the Committee on Freedom of Association's review of recent allegations and outstanding recommendations, and the urging for acceptance of the direct contacts mission.

<sup>24</sup> Essential National Industries (Employment) Decree 2011, (Decree No. 35 of 2011), Republic of Fiji Islands Government Gazette, Vol 12, No. 78.

<sup>25</sup> OHCHR Regional Office for the Pacific, Op-Ed 16 December 2011, see [www.pacific.one.un.org/index.php?option=com\\_news&Itemid=45&task=view&id=264](http://www.pacific.one.un.org/index.php?option=com_news&Itemid=45&task=view&id=264).

<sup>26</sup> Resident Coordinator Annual Report 2013, available at <http://www.undg.org/rcar2013.cfm?fuseaction=N&ctyIDC=FIJ&P=1754>.

<sup>27</sup> Resident Coordinator Annual Report 2013, available at <http://www.undg.org/rcar2013.cfm?fuseaction=N&ctyIDC=FIJ&P=1754>.

<sup>28</sup> 2013 Constitution, section 39 (1-2).

<sup>29</sup> IBBS 2013

<sup>30</sup> Fiji Islands Bureau of Statistics, Key Statistics 2011, '1.2A Census Population of Fiji by Ethnicity : 2007 census', <http://www.statsfiji.gov.fj/Key%20Stats/Population/1.2%20pop%20by%20ethnicity.pdf>.