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Fiji

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I. Introduction

A. Geography

1. The Republic of Fiji is an archipelagic state comprising more than 300 islands lying in the southwest Pacific between 15 and 22 degrees south latitude and between 172 degrees east and 177 degrees west longitude, astride the 180th meridian. The total land area of 7,055 square miles that makes up the Fijian Archipelago is scattered across some 250,000 square miles of water. Fiji enjoys a tropical climate which occasionally is traversed by tropical cyclones between November to April every year. Temperatures average 22 degrees celsius for cooler months (May–October) while November to April temperatures are higher with heavy downpours.

B. The people

2. Fiji is a pluralistic society. It is home to Fijians (57 per cent), Indo-Fijians (37 per cent), Europeans, Chinese, other Pacific islanders, and people of mixed racial descent (6 per cent). English is the *lingua franca*. The others are Fijian (*Bauan*) and Hindi. All three languages are taught in school as part of the curricula. Religion in Fiji has a strong influence on the lives of the people. 58 per cent of the populations are Christians, 33 per cent Hindus, 7 per cent Muslims and 2 per cent belong to other religions and/or are atheists.

C. History and government

3. Dutch Explorer, Abel Tasman in 1643 was the first European to sight, chart and name the group of Islands “*Feejee*”. Captain James Cook passed through in 1774 during his second expedition to the South Seas. Lieutenant William Bligh navigated through Fiji in 1789 and again in 1792 and is credited with charting many islands in the group.

4. In 1874 Ratu Seru Epenisa Cakobau, “*Tui Viti*”, together with other High Chiefs of Fiji signed the Deed of Cession on 10 October and ceded Fiji to Great Britain. Cession marked the commencement of a 96 year period of colonial rule and saw the arrival into Fiji of other races. Fiji gained independence from Great Britain on 10 October, 1970.

5. In 1987, Lt. Col. Sitiveni Rabuka, staged a military *coup d'état* and abrogated the 1970 Constitution. Fiji was declared a Republic and later (in 1990) promulgated the 1990 Constitution. In 1997 a new Constitution (Constitution Amendment Act 1997) was passed by the Fiji Parliament. The Fiji Labour Party (FLP) won the general elections in 1999 and led a Coalition Government under the Prime Ministership of Mr. Mahendra Pal Chaudhary for a year before they were overthrown and taken hostage by a George Speight led civilian takeover in 2000. This was followed by the purported abrogation of the 1997 Constitution. However, the Courts later declared that the 1997 Constitution remained the supreme law. In 2001 General Elections saw Fiji’s subsequent return to parliamentary democracy under the Prime Ministership of Mr. Laisenia Qarase in a *Soqosoqo Duavata Lewenivanua* (SDL) led Government.

6. The SDL government was returned to office in the 2006 General Elections. Based on the 1997 Constitution a multi- Party Cabinet, including the FLP was formed. On 5 December, 2006 H.E the President dissolved parliament and appointed a caretaker Government. On 10 April 2009, following a Court of Appeal decision overturning the previous High Court decision legalising the actions of the President, the 1997 Constitution was abrogated. A new legal order was established with the aim of creating a new

Constitution and elections under a non-racial, equal suffrage electoral system no later than 2014.

II. Methodology and consultation process

7. In accordance with UPR principles, the Ministry of Foreign Affairs, International Cooperation and Civil Aviation sought the views of relevant stakeholders for the drafting of this Report. A series of meetings took place and the following representatives participated: Mr. Sainivalati S. Navoti–Chairman (Ministry of Foreign Affairs), Mr. Setoki Mataitoga (Education), Mrs. Ruci Vuadreu, Mrs. Miriama Rokovutoro, Mrs. Jennifer Turaga (Health), Mr. Emosi Koroi (Public Service Commission), Mr. John Penjueli (Information), Mrs. Asena Raiwalui (Indigenous & Multi Ethnic Affairs), Mr. Sivoki Tuwaqa (Police), Ms. Vanessa Chang (Attorney General’s Chambers), Mr. Sadrugu Ramagimagi (Labour), Captain Navneel Sharma (Republic of Fiji Military Forces), Mr. Marika Ravula (Department of Immigration), Mr. Jo Ratumaitavuki (Defence), Dr. Tokasa Leweni, Ms. Judy Ham Suka (Women), Ms. Majorie Whippy, Mr. Inoke Dokonivalu (Social Welfare); Mrs. Swasti Chand and Mr. Wilfred Golman (Fiji Human Rights Commission).

8. 18 Non Governmental Organizations (NGOs) and Civil Societies were invited to the national consultation process. The following members participated: Mr. Joeli Nabuka (Fijian Teachers Association), Dr. Sitiveni Yanuyanutawa (Fiji National Council for Disabled Persons), Mr. Vijendra Prakash (Shree Sanatan Dharam Pratinidhi Sabha of Fiji), Mr. Diwan Chand (Shree Sanatan Dharam Pratinidhi Sabha of Fiji), Mr. Kamlesh Arya (Arya Pratinidhi Sabha of Fiji), Mr. A Qayyum Khan (Fiji Muslim League), Rev. Waisea Vulaono (New Methodist Church of Fiji), Ms. Evisake Kedrayate (YWCA), Mr. John Lee (YMCA), Adi Finau Tabakaucoro (Soqosoqo Vakamarama), Rev. Tevita Nawadra (Methodist Church of Fiji & Rotuma), and Rev. Akuila Yabaki (Citizen’s Constitutional Forum).

9. Stakeholders expressed a wide range of views on the status of the human rights situation in Fiji, concurring that Fiji is a country in political transition. They recommended that the Republic of Fiji ought to welcome this consultative and reporting process and treat it as an opportunity to declare the current status of human rights in Fiji and articulate actions to be taken to improve the situation and employ it as a benchmark for future human rights reporting.

10. The Government of Fiji concurs with the aforementioned recommendation and submits this Report as its first to the Human Rights Council with the hope and commitment that in areas found wanting, it will be improved upon in future reviews.

III. Legal framework

A. Abrogation of the 1997 Constitution

11. His Excellency the then President of Fiji, Ratu Joseva Iloilovatu Uluivuda abrogated the 1997 Constitution on 10 April 2009 after the Court of Appeal ruling created a legal vacuum, a constitutional anomaly which would have also prevented the implementation of the reforms which were earlier mandated by him, to achieve a truly democratic state.

12. On 10th October, 2010 Fiji will celebrate the 40th year of its independence and the 40th anniversary of its membership of the United Nations. The people of Fiji embraced their independence, full of enthusiasm, excited by the prospect of deciding their own future

and believing that their communities as a whole would work together in order to achieve a better life for all.

B. The road to democracy and parliamentary rule “The Roadmap”

13. On 1st July 2009, the Prime Minister, Commodore Bainimarama announced his Government’s *Roadmap for Democracy and Sustainable Socio-Economic Development (RDSSED) 2009-2014* “the Road Map”. The Road Map intends to lead Fiji to a new Constitution, and elections based on equality, equal suffrage, human rights, justice, transparency, modernity and true democratic ideals as mandated by the President.

14. Work on the new Constitution will commence by September 2012. The basis for the new Constitution will be the ideals and principles formulated by the Peoples Charter for Change, Peace and Progress (“the Peoples Charter”), a document prepared following widespread consultations with, and input from, the people of Fiji. The Peoples Charter was adopted by the President of Fiji after the endorsement of the majority of the people of Fiji.

15. Consultation on the new Constitution will involve all the ordinary citizens of Fiji as well as civil society groups focusing on issues such as electoral reform, the size of the new parliament, the sustainability of a bi-cameral system, the term of office of a government and systems of accountability of government to the people. Fiji’s new Constitution will be in place by September 2013. The people of Fiji will have a year to become familiar with its provisions before elections are held in September 2014.

Critics

16. Critics of this time-line have asked why work on the new constitution will not commence before September 2012. The answer is very simple, at least to those who know and understand Fiji's history. Fiji has had a colonial history which created many anomalies and inequalities, the legacy of which resonates today. Consequently, Fiji’s post-colonial period has been punctuated with political instability. On each occasion that a new government has been voted into power, the old elite who benefited financially from the previous established government has been able to successfully destabilize the government and replace it with its own supporters and representatives. This was only possible because institutions of the State which were supposed to protect democracy and democratic values, colluded instead with the elite, to destabilize and replace the new government.

17. Fiji has suffered more than 20 years of mismanagement, corruption, and nepotism. Its infrastructure, judicial system and systems of accountability have all remained under-developed and unproductive. Many of Fiji’s finest brains have left the country to migrate, because they could see no future in a country governed by ethno-nationalism, corruption and greed. In order to ensure that democracy has a real chance of survival in Fiji's future, serious and principled reforms must be implemented to build roads, institutions and values.

18. Fiji seeks the support and understanding of its development partners and international community in its attempt to bring about meaningful and constructive institutional reforms. Fiji therefore invites the international community to engage with it, to visit and see the situation for themselves and to provide practical support and assist Fiji implement the reform initiatives that are in progress. It is the Government of Fiji’s fervent conviction that these reforms will usher in true and sustainable democracy and prosperity leading ultimately to the full realization and enjoyment of fundamental human rights and freedom by its citizens.

C. Protection of human rights

19. The abrogation of the 1997 Constitution does not affect the respect and enjoyment of fundamental human rights in Fiji nor does it affect the observance of the rule of law. Despite the absence of a Constitution and the lack of a published set of codified rules identifying and guaranteeing specific elements of human rights and freedom, Fiji submits that common law, existing laws, decrees and the protection of those rights under international law and international humanitarian laws to which Fiji is a party, continue to be applicable and are enforceable.

D. International human rights and related instruments

20. Fiji is a party to the following human rights and related instruments: The Slavery Convention 1926; the Protocol amending the Slavery Convention 1953; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956; the International Convention against the Taking of Hostages 1979; the International Convention for the Suppression of Terrorist Bombings 1997; the International Convention for the Suppression of the Financing of Terrorism, the International Convention for the Suppression of Acts of Nuclear Terrorism 2005; the United Nations Convention against Transnational Organized Crime 2000; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime 2000.

21. Fiji is also party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime 2000; the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime 2001; the Rome Statute of the International Criminal Court 1998; the United Nations Convention against Corruption 2003; the Convention on the Prevention and Punishment of the Crime of Genocide 1948; the International Convention on the Elimination of All Forms of Racial Discrimination 1966; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and the 1951 Convention relating to the Status of Refugee and the 1967 Protocol.

22. Fiji is a member of the following international organisations and for the purpose of carrying and meeting its international treaty and human rights obligations liaises closely with; the United Nations, UNESCO, WHO, ILO, UNIFEM, UNDP, UNESCAP, UNHCR, APO the Commonwealth, the Secretariat of the Pacific Community (SPC) and the Pacific Island Forum.

E. Legislative arrangements

Existing laws

23. The President on 10th April, 2009, issued the “Existing Law Decree 2009” stipulating that all “*Existing Laws in force immediately before the 10th day of April 2009 shall continue in force....*” “Existing Laws” means all written laws other than the Constitution Amendment Act 1997. This decree guarantees the continued existence of all

human rights related local laws existing in Fiji during and including the time of the abrogation of the Constitution.

F. Human rights legislation

The Human Rights Commission Decree 2009

24. On 12 May, 2009, the then President issued the Human Rights Commission Decree 2009 which repealed the Human Rights Act 1999. This Decree established the Fiji Human Rights Commission (FHRC), sets out the criteria for eligibility for appointment of Commissioners and gives the powers and functions of the FHRC. In addition to such other functions as are conferred on it by the Decree or any written law, the role of the FHRC is to educate the public about the nature and content of human rights, advise Government on matters affecting compliance with human rights and promote and protect human rights of all persons in Fiji.

25. The FHRC has the powers and duties to increase general awareness of human rights by making public statements and educating the public and public officials, to coordinate human rights programs and act as a source of human rights information, receive representations from members of the public on any matter affecting human rights, inquire generally into any procedure or practice whether governmental or non-governmental, if it appears that human rights are, or may be, infringed, make recommendations to the Government on the desirability of legislative, administrative or other action so as to give better protection to human rights; promote better compliance with standards laid down in international instruments on human rights; encourage the ratification of international human rights instruments and where appropriate, recommend the withdrawal of reservations entered to those instruments.

26. FHRC's other functions include advising Government on its reporting obligations under international human rights instruments and, without derogating from the primacy of the Government's responsibility for preparing those reports, advise on the content of the reports; make recommendations on the implications of any proposed law or any proposed policy of the Government that may affect human rights. The FHRC also investigates allegations of contraventions of human rights and allegations of unfair discrimination, of its own motion or on complaint by individuals, groups or institutions on their own behalf or on behalf of others; resolve complaints by conciliation and refer unresolved complaints to the courts for decision. It renders advise on any human rights matter referred to it by the Government having regard to the available resources and priorities of the Commission; publish guidelines for the avoidance of acts or practices that maybe inconsistent with or contrary to human rights; take part in international meetings and other activities on human rights; and co-operate with other national, regional and international human rights bodies.

IV. Promotion and protection of human rights

A. Implementation of international human rights obligations

Cooperation with treaty bodies

27. Fiji is fully cognizant of its obligation to cooperate with human rights treaty bodies and special procedures, and in that respect it supports the work of OHCHR. Fiji continues within its capacity to fulfil its treaty body reporting obligations and has submitted its CEDAW, CRC and CERD reports in 2008.

B. Equality and non-discrimination

1. Equality before the Law

28. Common Law and International Laws to which Fiji is a party guarantees Fiji citizens the right to equality before the law. They are guaranteed the right not to be unfairly discriminated against, either directly or indirectly, or on the ground of their actual or supposed personal characteristics of circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others.

2. The Human Rights Commission Decree 2009

29. Part 3 of the Human Rights Commission Decree 2009 sets out the areas where unfair discrimination is prohibited in Fiji. These include the making of an application for employment, or procuring employees for an employer, or procuring employment for other persons. The Decree also prohibits unfair discrimination in employment; participation in, or the making of an application for participation in a partnership; the provision of an approval, authorisation or qualification that is needed for any trade, calling or profession; the provision of training, or facilities or opportunities for training, to help fit a person for any employment;

30. The Decree also prohibits discrimination in membership, or the making of an application for membership, of an employers' organisation, an employees' organisation or an organisation that exists for members of a particular trade, calling or profession (but does not apply to access to membership of a private club or to the provision of services or facilities to member of a private club). It also prohibits unfair discrimination in the provision of goods, services or facilities, including facilities by way of banking or insurance or for grants, loans, credit or finance; access by the public to any place, vehicle, vessel, aircraft or hovercraft which members of the public are entitled or allowed to enter or use; the provision of land, housing or other accommodation; access to, and participation in, education.

31. The Government of Fiji has moved to erase the requirements of references to race or ethnicity from the names of public institutions, public documents and application forms. This includes Immigration documents and other official documents requiring the filling of personal particulars and information.

C. Rights of indigenous peoples

1. Governance

32. The Ministry of Indigenous Affairs is responsible for overseeing the affairs of Indigenous Fijians (i Taukei) and Rotumans. National legislations governing the Ministry includes the Fijian Affairs Act [Cap. 120]; Fijian Development Fund Board Act [Cap. 121]; Native Lands Act [Cap. 133]; Native Lands Trust Act [Cap. 134]; part of the Fisheries Act [Cap. 158]; and Fijian Trust Fund Act (2005). The Ministry is also responsible for oversight of the Fijian Administration including: the Bose Levu Vakaturaga (BLV)- Great Council of Chiefs, the Fijian Affairs Board, the Fijian Development Fund Board, all Provincial Councils (14), all Tikina (District) Councils (190), all Village Councils (1163), and the Native Lands Trust Board administer indigenous land on behalf of the 5280 Landowning Units. The Fijian Administration under the Fijian Affairs Act is responsible for the good governance and well being of 57 per cent of Fiji's population and is entrusted with the administration of 87 per cent of the nation's natural resources (land).

2. Culture, language and knowledge

33. The Native Land and Fisheries Commission has addressed 10 Customary Titles disputes and has registered 8,957 *i Taukei* in the Register of Native Land-owners “*na i Volani kawa Bula*” (VKB) for the year 2009. The social structure of the *i Taukei* is headed by the Vanua (215), then the *Yavusa* (Tribes) (1390), *Mataqali* (Clans (5280)) and *i Tokatoka* (Sub-clans/Families) (9979)).

34. The Institute for *i Taukei* Language and Culture’s (IILC) conducts the Cultural Mapping Programme which places Fiji as the 1st Country in the Pacific to enact UNESCO International Convention on Intangible Cultural Heritage. To date, the programme has covered the province of *Tailevu* and *Lomaiviti*. A second major achievement by the Institute was the adoption of new spelling system in the *i Taukei* Monolingual dictionary. The Institute’s commitment is to cover all the provinces by 2012 on the Cultural Mapping Programme; formulation of the Legislation on the protection of Traditional Knowledge and expression of culture under the Intellectual Property Right by 2010; documentation of all *Vanua* dialects by 2012, and devising revitalization programmes through educational and awareness programmes on the *i Taukei* language and culture.

3. Education

35. The Indigenous Affairs Education Unit (IAEU) has been challenged to address the increasing demand for tertiary education assistance for the *i Taukei* over the years. The ratio for overseas scholarship and local scholarship award is currently on 30:70. In 2008, 1737 new scholarships were awarded on merit and the percentage of the awards distribution to the 14 Provinces were 16 per cent – *Lau*; 14 per cent – *Tailevu*; 12 per cent – *Cakaudrove* ; 8 per cent – *Kadavu* ; 7 per cent – *Lomaiviti* ; 6 per cent – *Rewa* ; 5 per cent – *Naitasiri*; 5 per cent – *Namosi* ; 5 per cent – *Ra*; 5 per cent – *Macuata* ; 5 per cent – *Ba*; 4 per cent – *Rotuma* ; 4 per cent – *Nadroga* ; 3 per cent – *Bua* and 1 per cent – *Serua* .

4. Resources

36. The resources in the *i Taukei* community are communally owned by either the *Yavusa*, *Mataqali* or *Tokatoka*. A significant area of native traditional fishing grounds remains un-surveyed and poses a major obstacle to the *i Taukei*’s drive in investment and economic and social development.

37. For better utilization of indigenous lands under sugar cultivation, the Government has set up the Committee on Better Utilization of Land (CBUL) to negotiate with landowners the extension of expiring land leases. Through subsidy, Government topped up land rentals received by landowners to 10 per cent of UCV. To date, out of the 5,464 expired leases the CBUL has successfully negotiated the renewal of 4,139 leases.

5. Commercial

38. The Ministry of Indigenous Affairs’ Centre for Appropriate Technology Development (CATD) since 2007 has been conducting business training programmes aimed at indigenous rural youths assisting them in setting up micro, small and medium business enterprises. This initiative is part of the Government’s policy of promoting the participation of indigenous Fijians in business. This is a cost sharing scheme, with Government contributing 90 per cent and trainees contributing the remaining 10 per cent of the fees. Over 100 new businesses out of the initial pool of 130 trainees have been established and it constitutes a success rate of over 70 per cent successful start up in new businesses since 2007. Further initiatives being established through the CATD includes a resource based cost sharing 8 day training programme conducted in villages and settlements aimed at improving livelihood and setting up of small businesses.

6. Future direction – indigenous institutions

39. Fiji supports the UN Declaration of the Rights of Indigenous Peoples and under its “Roadmap for Democracy and Sustainable Socio-economic Development 2009 -2014” the key deliverables are: well governed indigenous institutions that effectively execute their mandated role of improving the well being and governance of the indigenous people; Protection And Management of indigenous Culture And Heritage For Current And Future Generation; Effective, Enlightened And Accountable Traditional Leadership; and Proper Land use planning And Management to Support Economic Development.

D. The rights of women

40. Government, over the years has made known its intentions to work towards achieving active participation of women in all aspects of society. These are documented not only in previous *Development Plans* but more importantly in the current Roadmap for Democracy and Sustainable Socio-Economic Development (RDSSSED) 2009–2014 and in the State’s 2008 CEDAW Report.

41. In addition, Government has made commitments to seven major international agreements and programmes of action on gender equality and the advancement of women and has identified key issues to be addressed by being party to the following: the Beijing Platform for Action 1995, CEDAW, the MDG3, the UNESCAP Biwako Millennium Framework for Action 2003; the Commonwealth Plan of Action for Gender Equality 2005–2015 and the Pacific Platform for Action 2005–2015.

1. Reporting obligations

42. Fiji’s has met its international obligation by fulfilling a number of CEDAW Legislative indicators: the Family Law Act 2003, the Employment Relations Promulgation 2007, the Domestic Violence Decree 2009 and the Crimes Decree 2009.

2. Women’s Plan of Action (WPA) (2009–2018)

43. The WPA aims to provide direction for actions to be taken by government, its development partners, other stakeholders and NGOs to promote gender equality and reduce inequality and discrimination against women in all sectors. The WPA reflects critical areas of action and government’s commitment to the following areas of concern: Formal Sector Employment and Livelihoods; Equal Participation in Decision-Making; elimination of Violence Against Women and Children; Access to Services and Women and the Law.

44. Fiji recognises that there remains a need to improve the status of women at work, in the home and the community through expanding their choices and providing a conducive environment for their progress and well being. The 2009–2019 WPA is aimed at providing them with such opportunities.

3. Formal sector employment and livelihoods

45. The WPA provides economic strategies for women focusing on assisting them in the informal and formal employment sector. Livelihood interventions reflect the broad economic status of women, their participation and contribution to the overall economic development of the nation.

4. Equal participation in decision making

46. The Government of Fiji has endorsed MDG number 3 “*to promote gender equality and empowerment of women*”. Although successive Governments had a policy of having at

least 30 per cent representation since 2003, representation of women in decision making bodies in the public sector continues to be a major challenge.

5. Elimination of violence against women and children

47. Commitment by Government at the 4th WAMM Conference in Beijing – 1995, agreed to the adoption and implementation of national legislations to end violence against women and to work actively in ratifying all international agreements that relate to violence against women. Government in its commitment has implemented the Domestic Violence Decree and the establishment of Zero Tolerance Violence Free communities to address this area of concern.

E. Protection of victims of trafficking in persons and people smuggling

48. In response to the respective UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and The Protocol against the Smuggling of Migrants by Land, Sea and Air, Fiji has criminalized both the act of Trafficking in Persons and People Smuggling by incorporating it into the Immigration Act 2003 and the Crimes Decree 2009. Under Part 5 of the Immigration Act, a victim of trafficking or smuggling is not liable to criminal prosecution in line with the requirements of the respective protocols. In terms of capacity building, Fiji is member of the Pacific Immigration Director Conference (PIDC) and the Bali Process, a regional consultative process for the Asia and Pacific Region. Fiji is making every effort to strengthen the three Pillars required to effectively combat Trafficking in Persons which is Prevention, Protection and Prosecution.

F. Refugees Status Determination (RSD)

49. In 1972, by succession, Fiji became a party to the 1951 Refugee Convention and its 1967 Protocols. For the first time under Part 6 of the Immigration Act 2003 a Refugees Status Determination process had been incorporated into Fiji's Immigration Laws. Fiji's Refugee Status Determination process requires the Permanent Secretary to be guided by the Refugee Convention when determining a Refugee Claim as at Part 6, Section 41 of the Immigration Act 2003. Fiji works in close cooperation with the Regional UNHCR office in Canberra in terms of capacity building and technical assistance. The principle of non-refoulement as required under Article 33 of the Convention is duly observed by immigration officers when asylum is sought at the border. Fiji has 5 cases that are currently being processed under the Fiji RSD system. Fiji's Refugee Status Determination process is work in progress and will continue to be improved to meet international best practices.

G. Right to life, liberty and security

50. All citizens of Fiji are guaranteed the right to life under Common and International law, as well as under the Universal Declaration of Human Rights.

51. Authorities holding a person who has been arrested or detained must promptly take all reasonable steps to inform his or her spouse, partner or next-of-kin of his or her arrest or detention. Every person who is arrested for a suspected offence has the right: to be informed promptly in a language that he or she understands that he or she has the right to refrain from making a statement; to be brought before a court no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter; and to be released from detention on reasonable terms and conditions pending trial, unless the

interests of justice otherwise require. A person who is ordered to be detained pending trial is, so far as practicable, kept apart from convicted persons. A detained child is, so far as practicable, kept apart from adults, unless that is not in the child's best interests.

H. Right to freedom of opinion and expression

52. Every person in Fiji has the right to freedom of speech and expression, including: freedom to seek, receive and impart information and ideas; and freedom of the press and other media. However, the Public Emergency Regulation 2009 (PER) places certain limits on these rights in the interest of national security, public safety and public order.

1. Media freedom and the Public Emergency Regulation (PER) 2009

53. The Ministry of Information liaises with a host of media organisations which can be considered whole or partial instruments for the advancement of human rights. These are as follows; the Commonwealth Broadcasting Association; the Asia-Pacific Broadcasting Development Authority; the Pacific Islands News Association; CEDAW Committee, UNESCO, IFLA, ICA, PIBA, PARBICA, SEAPAVA, PRIDE, the Fiji Media Council and the Media Watch.

2. Status of media freedom

54. Recent history has shown that the Fiji media industry have not been responsible and balanced in their coverage, and have contributed towards a negative and confrontational political and socio-economic environment. Following the abrogation of the 1997 constitution, there emerged a need for preventative measures that addressed security concerns that threatened the nation. These measures materialized in the form of the Public Emergency Regulation 2009 (PER). Under Section 16 of the PER, the Permanent Secretary for Information is empowered to prohibit the publication or broadcast of any story, feature or news item deemed a threat to the law and order situation. The PER are reviewed each month and a decision is made whether to extend the PER for a successive period of thirty days by the President.

3. Restrictions on overseas media personnel

55. There is currently a ban in place on certain foreign media personalities. This ban, which has been enforced simply because of the sensational and unbalanced reports that have emanated from these individuals, however, does not apply to the media agency which these personalities work for. Hence, other reporters from these agencies are permitted to enter the country to cover stories, and in fact many have been granted interviews with top Government officials including the Prime Minister.

56. Since the implementation of the censorship exercise, there has been a marked shift from negative journalism to positive journalism. This is supported by ongoing research as well as anecdotal evidence that are been gathered by the Ministry. Ultimately, however, the media in Fiji remains free to disseminate news and programmes albeit with the restrictions mentioned.

57. A draft Media Promulgation Decree which has considered media censorship laws and practices in countries such as Singapore, China, Australia, New Zealand and is being developed. Once ready, it will be submitted to Cabinet for its approval.

4. Steps taken to improve media relations

58. To ensure that the media restrictions are not prolonged unnecessarily, and that responsible and balanced journalism is encouraged by the media editors and owners,

Government has and continues to undertake various measures that include the following: the posting of censorship teams to media establishments to ensure that stories printed or broadcast are balanced and devoid of inflammatory content. The Ministry of Information has made submissions and proposals to the media council to encourage media owners to review the salaries of journalists to ensure that it is commensurate with the standard required of them. The Government has arranged through AIBD for scholarships to be available for media training, submitted a written proposal to the 2009 Media Review team that offered to provide a facility for the training of journalists. Government is also drafting a media law that will ensure that responsible journalism is practiced and a Freedom of Information Decree that guarantees public access to government documents.

5. Areas needing assistance

59. While Government would like to assist the media industry in every way conceivable, its resources however are not unlimited. It therefore needs assistance to ensure that the media in Fiji provides the level of journalism and media coverage that encourages national unity and harmony, and which is conducive to the development of real and sustainable democracy in Fiji. Areas of possible assistance are as follows: the provision of funds for the effective operation of the media council executive body as per Government's submission and the findings of the media review team; the provision of a permanent office and staff for the smooth administration of the media council's affairs; the establishment of an association of journalists to protect and promote their interests; upgrading of the salaries of journalists to a level commensurate with the kind of responsible and balanced journalism required of them; increased training to improve the capacity of journalists.

I. Rights to freedom of religion or belief

60. Every person in the Fiji has the right to freedom of conscience, religion and belief and the right, either individually or in community with others, and both in public and in private, to manifest his or her religion or belief in worship, observance, practice or teaching albeit under Common and International Law. This right extends to the right of religious communities or denominations to provide religious instruction as part of any education provided by them, whether or not they are in receipt of any financial assistance from the State.

J. Administration of justice and the rule of law

1. Independent judiciary

61. Fiji has a functioning independent judiciary. The Administration of Justice Decree 2009 came into force on 10 April, 2009 established the following Courts and vests them with the judicial power of the State: the Supreme Court, which is the final appellate Court; the Court of Appeal; the High Court; and such other Courts as may be established by law. The President makes appointments to the following Judicial Offices: Judge of the High Court; Justice of Appeal of the Court of Appeal; Judge of the Supreme Court; Master of the High Court; Chief Magistrate; Resident Magistrates; and such other judicial offices, as the President may deem fit.

2. Jurisdiction of the High Courts

62. The High Court of Fiji has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under the Administration of Justice Decree or any other law. The High

Court has jurisdiction, (subject to the conferral by written law of rights of appeal and to such requirements as may be prescribed by law), to hear and determine appeals from all judgments of subordinate courts. The High Court also has jurisdiction to supervise any civil or criminal proceedings before a subordinate court and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the subordinate court.

3. Jurisdiction of Court of Appeal

63. The Court of Appeal has jurisdiction to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by law. Appeals lie to the Court of Appeal, as of right or with leave, from other judgments of the High Court in accordance with such requirements as prescribed by law.

4. Jurisdiction of Supreme Court

64. The Supreme Court has exclusive jurisdiction to hear and determine appeals from all final judgments of the Court of Appeal. An appeal may not be brought from a final judgment of the Court of Appeal unless: the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or the Supreme Court gives special leave to appeal. In the exercise of its appellate jurisdiction, the Supreme Court has power to review, vary, set aside or affirm decisions or orders of the Court of Appeal and may make such orders (including an order for a new trial and an order for award of costs) as are necessary for the administration of justice.

5. Legal profession

65. The conduct of the affairs of the legal profession in Fiji is governed by the Legal Practitioners Decree 2009 which came into force on 22nd May 2009. The Decree establishes *inter alia* a new Independent Legal Service Commission to hear complaints made against lawyers. While this is a new concept for Fiji, the purpose behind the setting up of such a Commission is not new and it is modelled on other jurisdictions that have independent legal commissions such as New South Wales and Queensland.

66. One of the more common complaints and prosecuted breaches of human rights in Fiji is the right to a fair trial. In most instances, complaints are made against lawyers for delaying the hearing of cases. Complaints made to the Fiji Law Society have not been dealt expeditiously causing disenchantment and disillusionment with the legal profession and public in general. Perception of a lack of independence also surfaced when complaints against lawyers are heard by their fellow lawyers. The establishment of the Independent Legal Services Commission enables due process, transparency and independence.

6. Access to courts or tribunals

67. Every person in Fiji charged with an offence has the right to a fair trial before a court of law. Every party to a civil dispute has the right to have the matter determined by a court of law or, if appropriate, by an independent and impartial tribunal. Every person charged with an offence and every party to a civil dispute has the right to have the case determined within reasonable time. The hearings of courts (other than military courts) and tribunals established by law are open to the public. Every person charged with an offence, every party to civil proceedings and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands. Every person charged with an offence and every party to civil proceedings has the right to follow court proceedings in a language that he or she understands. If a child is called as a witness in criminal proceedings, arrangements for the taking of the child's evidence must have due regard to the child's age.

K. Rights to participate in public and political life

68. Every person in Fiji has the right to assemble and demonstrate with others peacefully. They also have the right to freedom of association including joining political parties. However, these rights are not absolute as they can be limited through laws enacted in the interests of national security, public safety, public order, public morality or public health; for the purpose of protecting the rights and freedoms of others; or for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service.

L. Rights to work and to just and favourable conditions of work

1. Labour relations

69. Under the Employment Relations Promulgation 2007 (ERP), workers in Fiji have the right to form and join trade unions, and employers have the right to form employers' organisations. Workers and employers have the right to organize and bargain collectively. Every person has the right to fair labour practices, including humane treatment and proper working conditions.

70. The Ministry for Labour, Industrial Relations and Employment (MLIRE) is responsible for overseeing labour relations in Fiji. Fiji has been a member of the International Labour Organization (ILO) since 1974 and to date has ratified a total of 30 ILO Conventions including the 8 core labour standards (Conventions 29, 87, 98, 100, 105, 111, 138, and 182).

2. Fiji labour policy

71. MLIRE is committed to building Fiji's labour market as a collective responsibility with other stakeholders to facilitate economic growth and future prosperity. Particularly, the MLIRE embraces the principle that healthy, safe, fair, productive and harmonious workplaces are critical and necessary components for achieving the objective of the PCCPP of "Building a Better Fiji".

72. MLIRE has focused its strategy on establishing an enabling and sustainable environment created through progressive policies, laws, programmes and actions. MLIRE is reforming all outdated labour policies, legislations, institutions and administration systems with the aim of providing a progressive business environment that promotes flexibility in wage setting, stable employment relationships, progressive health and safety standards, better workers compensation system, improved terms and conditions of employment, speedy and effective conflict resolution system and good faith bargaining that will enhance productivity.

73. In reforming the labour policies, the MLIRE adopts the 'Fundamental Principles and Rights at Work' enshrined in the eight (8) 'core' ILO Conventions and other Conventions ratified by Government. It also ensures that these policies comply with the good governance principles. The strategic positioning of these new labour policies and institutions will also promote and facilitate trade and employment creation locally due to the World Trade Organization's (WTO's) insistence on core labour standards compliance as an important precondition to international trade in a democratized world.

3. Employment Relations Promulgation 2007 (ERP)

74. The ERP came into force on 1st October 2007 but its implementation date was deferred to 2nd April 2008 to allow workplace adjustments. It introduced a framework for

the conduct of employment relations based on the understanding that employment is a human relationship involving issues of mutual trust, respect, confidence and fair dealing, not simply a contractual and economic one.

75. The ERP covers a very wide range of labour matters such as the fundamental principles and rights at work, the Employment Relations Advisory Board, compliance officers and their powers, contracts of service, protection of wages, holidays and leave, hours of work, equal employment opportunities (EEO), children, maternity protection, redundancy, employment grievances/disputes, registration/rights/liabilities of trade unions, collective bargaining, strikes and lockouts, essential services and the disputes resolution institutions.

4. Health and Safety at Work Act, 1996(HASAWA)

76. The purpose of HASAWA is to promote good health and safety standards in Fiji's workplaces, protection of workers and non-workers alike. It provides for the concept of the "duty of care" principle and facilitates the promotion of proactive risk management culture which emphasizes the creed that "those who create the risks in the workplace and those who work with them have the primary responsibility to solve them" rather than relying on the prescribed remedies.

5. Workmen's Compensation Act [Cap. 94]

77. This law provides for the payment of compensation by all employers on injuries or death related to work.

6. National Employment Centre Decree, 2009 (NEC)

78. The Government of Fiji has established a "one stop shop" agency (the NEC) to actively engage Fiji's unemployed in meaningful economic activities. To consolidate, facilitate, coordinate and monitor all current employment promotion and small business creation activities with the aim to boost employment creation and productivity both in the formal and informal sectors, locally and overseas.

7. Employment in the public service

79. The Public Service Commission (PSC) makes appointments, removes persons and takes disciplinary actions against holders of public offices. Employment Policies in the Fiji Public Service are governed by the *State Services Decree 2009*, the *Public Service Act 1999* and the *Public Service (General) Regulation 1999*. These policies are further specified and clarified under the *General Orders (GO) 1993* (now being reviewed and will be published early 2010). Government wage earners are governed by the *Terms and Conditions for Government Wage Earners, 2009*, (currently under reviewed and to be published in December, 2009). Areas which may not be covered in any of these instruments mentioned above are covered by the ERP.

80. There are 20,692 Civil Servants. Of these, 10714 (52 per cent) are males and 9978 (48 per cent) are females. 12885 (63 per cent) are Indigenous Fijians, 7239 (35 per cent) Indo-Fijians, 482 (2 per cent) Others, 85 (0.4 per cent) Expatriates and 1 (0.004 per cent) European. The Government of Fiji reduced the retirement age of civil servants from 60 to 55 effective April 2009.

81. To ensure good public administration, a special Disciplinary Tribunal has been established to hear and adjudicate cases against Civil Servants. Moreover, current recruitment policy puts emphasis on the best candidate, with gender and ethnicity given due consideration for a balance.

M. Right to social security and to adequate standard of living

1. Poverty alleviation

82. The Department of Social Welfare has been administering the Poverty Alleviation Program (PAP) since 1994. The PAP was initially designed to assist recipients of the Family Assistance scheme build homes and have seed money for income generating projects. Over the years the eligibility criteria has expanded to cater for ex-prisoners, youths and relief assistance to families of fire victims. In September 2009 the criteria was revised to exclude ex-prisoners from the scheme. The scheme operates on partnership between reputable voluntary organizations and the Department providing funding and the contracted organization implementing the approved project.

83. The following categories of people qualify for assistance under the Poverty Alleviation Program: Recipients of Family Assistance Allowance, Care and Protection Allowance, After Care Fund, Fire Victims Allowance; and Youths at Risk (Group Projects). The maximum amount allocated for housing and income generating projects is \$5,000. For Group Projects the maximum allocation is \$20,000.

2. Juvenile care and protection

84. Under the *Juvenile Act*, children under the age of 17 years deemed to be at risk are placed into the care of the Director of Social Welfare. The Department of Social Welfare administers the Care and Protection Allowance which is a cash grant of \$30 – \$60.00 per child given to families and guardians supporting juvenile children other than their own. No allowance is paid in respect of children kept at government institutions such as the Boys Centre and Girls Home.

85. However, an allowance of \$60.00 per child is paid if they are placed in an approved place of safety such as St Christopher's Home operated by the Anglican Church, Dilkusha Home and Veilomani Boys Home both under the Methodist Church of Fiji and the Treasure Home in Ba, an approved Assemblies of God Home of Compassions. As a means of keeping children close to their communities, there have been a few children placed in community based centres such as Salvations Army Care Center and the Nadroga, Navosa Counseling Center.

86. Amount of payment varies from the different categories of children that need financial assistance for their care. The recent C&P places an average rate of payment in the following categories: \$40.00 per child (Secondary School); \$30.00 per child (Primary School); \$25.00 per child (Non – School); \$60.00 per child with disabilities; \$60.00 per child at a Residential facility.

3. Family Assistance Scheme (FAS)

87. The FAS is a programme that supports disadvantaged individuals and families through direct financial assistance. Those who can qualify for assistance include the chronically ill, widow/widower, deserted spouse, elderly, permanently disabled, prisoner dependents and single parent. This assistance supports families who do not have sufficient money for their daily needs. The minimum allowance per month per household is \$60.00.

88. A new initiative is being pursued this year in providing food vouchers to families eligible under the Family Assistance Allowance and who fall under the category of chronically ill, permanently disabled and the elderly. The \$30 food voucher will be distributed monthly for the whole year. Government has allocated a budget of \$7.4 million for this scheme.

N. Right to health

89. Health is a basic human right as articulated in Article 25(1) of the Universal Declaration for human rights. Fiji has a well developed and comprehensive health care delivery system with services accessible to both men and women throughout the nation. However despite efforts to improve health outcomes, a review of health indicators suggests that Fiji is lagging behind in achieving MDG. The base structure of the health system consists of three Divisions, namely Central/Eastern, Western and Northern. Each Division has a central referral hospital. There are 3 Divisional hospitals, 3 specialized hospitals, 16 Sub-divisional hospitals, 3 area hospitals, 1 private hospital, 77 Health centres, 104 nursing stations and 3 Old people's homes. Around 300 village health workers operate at community level. Women have equal access to health care system as men.

90. The Ministry of Health (MoH) is undergoing a reform with the vision of "*A healthy population in Fiji that is driven by a caring health care delivery system*". The MoH staff establishment is 3, 296 out of which 405 are medical and 1, 825 are nursing positions. The doctor population ratio is 1:2300 and nurse patient ratio is 1:500.

91. With the migration and resignations of doctors and nurses there is always shortage of health professionals. In 1998 the MoH introduced the Nurse Practitioner programme to address the doctor shortage in Fiji particularly in rural areas. The thirteen month programme entailed clinical and basic physician practice. These practitioners usually work in rural areas where there are no qualified doctors.

1. Major health problems

92. As part of Government's intervention to reduce anaemia in pregnant women, the MoH introduced iron fortification of flour in 2004 amongst other measures. Apart from those interventions, all mothers attending antenatal clinics are provided with iron and Folic acid supplements. Lifestyle diseases are also a major health concern. In the past three years, diabetes was very common among both men and women.

2. Reproductive health

93. All health centres and nursing stations provide antenatal, post-natal services, family planning services immunization and growth checkups for children. All these services are provided free of cost. Women are encouraged to attend health facilities for antenatal and postnatal checkups, attend family planning clinics, and have pap smears and breast examinations. UNFPA supports the training programmes on Reproductive Health.

3. Family planning and contraception

94. Contraceptives have been available cost free for more than 40 years through the MoH as well as Civil Society Organizations. The emphasis is on the socio-economic and maternal health benefits of spacing children through the use of contraceptives. Vasectomy through awareness programmes is progressively becoming a viable option. Family planning is purely on voluntary basis and there are no legal or cultural barriers for women and men in accessing contraceptives.

4. Sexually Transmitted Infections (STIs)

95. Fiji has a relatively high incidence of common STIs like Syphilis and Gonorrhoea. This is a concern because it reflects the level of high risk sexual behaviour that still exists in the community. STIs are prevalent in the 20–29 years age group with an alarming increase in teenagers attending STI clinics. For STI, syndromic management is followed up at all Health Centres and laboratory tests are conducted at hospitals.

5. HIV/AIDS

96. Fiji is still a low HIV prevalent country but this could change if we do not respond to the epidemic faster. Fiji has a cumulative figure of 303 HIV positive cases (1989 – June, 2009). This may be an under reported figure due to a number of factors like insufficient surveillance and the reluctance of people to undergo tests for fear of stigma and discrimination. Fiji has passed the slow burning stage of the disease and is currently in the explosive proliferation stage. Amongst those infected, age groups Fijians comprise 81 per cent, Indo Fijians 13 per cent and Others 6 per cent Women comprise 43 per cent of total infection with heterosexual being the main form of transmission.

6. Mental health

97. The *Mental Health Treatment Act* provides the legal and regulatory framework for mental health treatment in Fiji. In essence the legislation restricts the scope of operation of the only mental institution in Fiji. The Act does not provide rehabilitation and other preventative measures to mitigate and reduce the incidence of mental illness. The legislation is currently under review by the Fiji Law Reform Commission. There is a need to address rehabilitation and reintegration following hospital treatment as well as advancements in treatment in the past 30 years.

98. Mental illness is stigmatized in Fiji. Mental health care is part of primary health care but the actual meaningful treatment of serious mental disorders is not readily available. Mental health is a concern with the increasing number of patients admitted to St Giles Psychiatric Hospital. Drug related mental illnesses are also taken care of at Saint Giles Hospital (Inclusion of Drug addicts admitted).

O. Rights to education and participation in cultural life

99. Education is a basic human right and critical to improving living conditions and reducing poverty. This underlying principle reaffirms the Government's commitment to improving access and providing equal opportunity to education for all irrespective of gender, ethnicity, culture, beliefs, disability, socio economic circumstances and geographical isolation. There is progress evident in these areas however, much still needs to be done in improving the quality of access and ensuring that policies and programs continue to promote a school environment that will support the safety, health, and care for all children.

100. The Ministry of Education (MoE) administers and manages education policies and delivery of educational services in Fiji. It provides curriculum frameworks, policy guidelines and directions, and qualified teaching personnel that support all schools in the delivery of quality education for students. The core business of the MoE is delivery of education and training services specifically to: schools, pre-schools and training centres, students in the years of compulsory schooling and those participating in Forms 5, 6 and 7 studies including vocational education and training programmes, teaching personnel, school management and controlling authority.

101. The MoE has corresponding responsibilities for: the provision of services to the Minister, Statutory Agencies, Cabinet and Government, the management of resource planning and policy development related to education and training, the provision of programme support to education and training institutions, the regulation and recognition of education and training providers and accreditation of programme delivery, accounting for the resources allocated by government to the Fiji Islands education system. The MoE is also charged with responsibility for ensuring that standards in education are met and maintained

and the human, physical and the financial resources allocated to education by the government are appropriately directed and expended.

102. Location of schools in the far flung islands and in the remote areas of the large islands gives rise to accessibility issues. Whilst telecommunications is available to most parts of Fiji, actual travel is still difficult and inconsistent to many areas. This creates a major challenge to education delivery.

1. School management

103. 98 per cent of schools are operated and managed by non government organizations. These include church groups, cultural groups and communities. Of the 906 schools and about 760 kindergarten centres, government owns and operates only a very small number. However almost all teachers are government paid and registered kindergarten centers are provided a salary grant for the teachers as well as grants for infrastructure upgrades and equipment. There is a growth in the number and range of private schools in Fiji. These offer international curriculum as well as those focused on religious beliefs. A number are specialist language schools offering international language training

2. Disadvantage index

104. The recognition for the different levels of disadvantage in our schools across the country has led to the development of a disadvantage index. The index incorporates issues of social, economic, location and remoteness. The aim is to provide equity in assistance based on this index to provide greater assistance to schools that are highly disadvantaged.

3. Enrolment, retention and dropouts

105. As access to education is almost 100 per cent, the focus is now shifting to improving the quality of access. There is considerable effort required in trying to retain students once enrolled in schools and to push them into higher education. It is becoming critical to establish attendance as a measure of quality in educational access. The survival rate of students between class one and Form 6 is about 61 per cent. The dropout rate has decreased a lot in recent years. The effort to reduce dropout rates has accompanied the drive to make the curriculum more responsive to the needs of students. The 13 curriculum is designed not only to make learning meaningful but also interesting. This, it is hoped will lead to a reduction in dropouts.

4. Examinations performance

106. Performance in examinations is still an important yardstick for measuring the quality of a school and the public judges a school on the basis of their performance in external examinations. The examinations at the secondary level are used to screen students who may not be able to manage higher level studies. The Fiji Islands Literacy and Numeracy Assessment [FILNA] continues to gain momentum as a diagnostic tool to improve teaching.

5. Zero tolerance policy

107. The MoE is committed and determined in its efforts to eliminate abuse against children and has introduced the zero tolerance policy. Teachers who have been implicated in such incidents have been disciplined or prosecuted.