

Human Rights and Anti-Discrimination Commission



Neither Greater nor Lesser but EQUAL: Dignity, Equality and Freedom for all in Fiji

What Are Human Rights?

Human rights is about the recognition and respect for human dignity.

Human dignity can only be achieved if everyone regardless of their race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, economic or social or health status, disability, age, religion, conscience, marital status, pregnancy or any other status is able to enjoy equal and inalienable rights.

All human rights are equal.

They are interrelated, interdependent and indivisible. Our general quality of life will only improve, for instance, if we all enjoy equal right to education, adequate housing, food, water, and health. To have equal access to education, adequate housing, food, water, and health can only be possible if our laws non-discriminatory. Only when our laws are non-discriminatory and we all have equal access to education, adequate housing, food, water and health, can we meaningfully participate in civil and political life on an equal basis. Conversely, our ability to meaningfully participate in the process of creating laws that are inclusive and nondiscriminatory is only possible if we have civil and political rights.

Human rights, therefore, are integral in creating a just society built on democratic principles of dignity, equality and freedom.

The basic rights guaranteed under the Fijian Constitution are drawn from internationally recognised human rights norms and principles such as the Universal Declaration for Human Rights. These rights are guaranteed by law which means that the state and all private actors within the state are legally obligated to protect and promote fundamental human rights and freedoms in both public and private spheres of life.





The State is legally obligated to take positive steps in facilitating the enjoyment of fundamental human rights and freedoms.

The Fijian Constitution provides for the establishment of a national human rights institution. Recognising the centrality of the principles of equality and non-discrimination, the Fijian Constitution provides for the establishment of the Human Rights and Anti-Discrimination Commission. The Human Rights and Anti-Discrimination Commission is working to support everyone in Fiji to enjoy equality before the law both in principle and practice.

Human rights, however, cannot be achieved by the state or the national human rights institution alone.

It will require the collective effort of the state, national human rights commission, civil society, private sector, religious organisations, communities and individuals. We must reach out to the most vulnerable in our society.



WHAT ARE MY RIGHTS?

The Fijian Constitution, through its Bill of Rights provisions, guarantees the following rights and freedoms:

- Right to Life The most fundamental human right of all is that every person has the right to life and no one can take that away.
- Right to personal liberty No one can have their personal freedom taken away, be arrested or detained without reason and such an action must always be consistent with the law.
- Freedom from slavery, servitude, forced labour and human trafficking
 - No individual can be owned by another person, forced to work in an exploitative condition and no one should be threatened or punished for refusing to work against their will and no one has the right to buy or sell another human being. The selling and buying and the movement of people for the purposes of forced labour or commercial sexual exploitation is illegal.
- Freedom from cruel and degrading treatment - No human being should be tortured physically, mentally or emotionally and everyone should be free from cruel, inhumane, degrading or disproportionately severe treatment or punishment.
- Freedom from unreasonable search and seizure - you have the right to be free from being searched or your property or possessions being searched or taken away by force unless there is a legal order from a court.
- Rights of arrested and detained persons Every person who is arrested or detained has rights. These include: the right to be told why you are being arrested or detained; the right to remain silent and told of the consequences of not remaining silent; right to speak to a lawyer including the services of Legal Aid Commission if you cannot afford a private lawyer; right not to be forced into making a confession; right to be kept separately from adults if you are under the age of 18; to be brought before a court within 48 hours; to be treated with dignity including the provision for food and medical services and be allowed to communicate with your immediate family.
- Rights of accused persons Every person charged with an offence has rights. These include: the right to be presumed innocent until proven guilty by a court of law; to be informed in a language that she or he understands the nature and reasons for the charge; to be given time and facilities to

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prepare a defence including access to witness statements; to be informed in advance of the evidence the prosecution will use and to have reasonable access to that evidence; to a public trial before a court of law; to have a trial begin and conclude without delay; to have the entire court proceedings carried out in a language that the person understands; right to remain silent during the trial, to not testify during the trial, not to be forced to give evidence against themselves in their own trial; not to have illegally obtained evidence used again themselves and the right to an appeal the decision of the court by a higher court.

- Access to courts or tribunals Every
 person charged with an offense or involved in
 a civil dispute has the right to a fair trial before
 a court of law or an independent and impartial
 tribunal including the right to have their case
 determined within a reasonable time and in a
 language that the person understands.
- Executive and administrative justice
 - This right ensures that public officials in the discharge of their duties take a course of action that is lawful, based on reason, procedurally fair and reasonably prompt. Every person who is adversely affected by any executive or administrative action or decision has the right to be given written reasons for such an action or decision. Individuals have the right to appeal to a court of law or an independent tribunal to review such decisions or administrative actions.
- Freedom of speech, expression and publication Every person has the right to freedom of speech, expression, thought, opinion and publication. This includes the freedom to seek, receive and impart information, media freedom, freedom of imagination and creativity as well as academic freedom and freedom of scientific research. This freedom must never be used to incite violence or advocate hatred through hate speech. Hate speech is speech that encourages discrimination on the basis of race, religion, nationality, sex, sexual orientation, gender identity and other prohibited grounds of discrimination.
- Freedom of assembly Every person has the right to assemble, demonstrate and present petitions peacefully and unarmed. This right may be limited in the interests of public safety and national security as well as the orderly conduct of elections..
- Freedom of association guarantees the freedom to join or leave groups and be able to work together to achieve the things that its members collectively want such as the right to join a trade union to secure decent working conditions. No one can be forced to join or belong to an association against their will.



• Employment relations - guarantees the right to equality, non-discrimination and equal opportunities in employment and progression in career. Every person has the right to fair employment practices including humane treatment and proper working conditions. Every worker has the right to form or join a trade union and participate in union activities and programmes. Every employer has the right to form or join an employers' organisation and take part in its activities and programmes. Trade unions and employers have the right to bargain collectively.

· Freedom of movement and residence

- Every person has the right to freedom of movement and every citizen has the right to apply for and be issued a passport. Every citizen and every person lawfully in Fiji has the right to move freely throughout Fiji and to leave Fiji. Every citizen and every other person who has the right to reside in Fiji has the right to reside in any part of Fiji. Every person who is not a citizen of Fiji but is lawfully in Fiji has the right not to be expelled from Fiji except by an order from a court or law or the Minister responsible for immigration on a ground prescribed by law.
- Freedom of religion, conscience
 and belief Every person has the right to
 choose and practice the religion of their choice
 including the right to not be compelled to act in
 any way that is contrary to the person's religion
 or belief.
 - freedom including the right to form or join a political party, participate in the activities of or recruit members for a political party, campaign for political party, candidate or cause. Every citizen has the right to free, fair and regular elections. Every citizen who has reached the age of 18 has the right to be registered as a voter, to vote in any election or referendum as well as be a candidate for public office.
- Right to privacy every person has the right to personal privacy including the right to confidentiality of their personal information and communications and respect for their private and family life.
- Access to information every person
 has the right of access to information held by
 any public office and information held by any
 other person that may be required to exercise
 or protect their legal right. Every person has
 the right to correction of false or misleading
 information that affects that person.
- Right to equality and freedom from discrimination - Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.



A person must not be unfairly discriminated against either directly or indirectly because of his or her race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy or opinions or beliefs except if those opinions or beliefs involve harm to others and can impinge on the rights or freedoms of others.

Every person has the right of access, membership or admission, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, clubs, education institutions, public transportation services, taxis and public places. The proprietor of a place or service must facilitate reasonable access for persons with disabilities.

- Freedom from compulsory or arbitrary acquisition of property -Every person has the right not to be deprived of property by the State. For the State to be able to take away your property, it must be authorised by law. Only a written law may authorise the compulsory acquisition of property by the State for a necessary public purpose such as the building of roads or houses. The State must also provide the owner with an agreed compensation determined by a court or tribunal.
- Rights of ownership and protection of iTaukei, Rotuman and Banaban lands - The ownership of all iTaukei, Rotuman and Banaban land shall remain with the customary owners of that land and iTaukei land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except for a necessary public purpose. Any iTaukei land acquired by the State for a public purpose shall revert to the customary owners if the land is no longer required by the State.
- Protection of ownership and interests in land - All ownership of land, and all rights and interests in land leases and land tenancies that existed immediately before the 2013 Constitution came into effect continue to exist under the 2013 Constitution.

The State must ensure that all land leases and land tenancies provide a fair and equitable return to the landowners while protecting the rights of land lessees and land tenants including security and protection of tenure of land leases and land tenancies and terms and conditions of land leases and land tenancies which must be just, fair and reasonable.



All land lessees and land tenants have the right not to have their land leases or land tenancies terminated other than in accordance with their land leases or land tenancies.

All land that existed as freehold land before the 2013 Constitution came into effect shall remain as freehold land even if it is sold or purchased unless it is sold to the State or acquired by the State for a public purpose.

Rights of landowners to fair share of royalties for extraction of minerals

- All minerals in or under any land or water, are owned by the State. However, the owners of any particular land (whether customary or freehold), or of any particular registered customary fishing rights shall be entitled to receive a fair share of royalties or other money paid to the State for extracting minerals from that land or the seabed in the area of those fishing rights. Fair shares will be determined by a written law taking into consideration the following:
- any benefits that the owners received or may receive as a result of mineral exploration or exploitation;
- the risk of environmental damage;
- any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing, or compensating for any environmental damage;
- the cost to the State of administering exploration or exploitation rights; and
- the appropriate contribution to the general revenue of the State to be made by any person granted exploration or exploitation rights.
- Right to education Every person has the right to early childhood, primary, secondary and further education. The State must also aim to achieve free education including the right to education for persons who were unable to complete their primary and secondary education. The Constitution also provides that conversational iTaukei and Fiji Hindi be taught as compulsory subjects in all primary schools.

Right to economic participation

- Every person has the right to full and free participation in the economic life of the State including the right to choose their own work, trade, occupation, profession or other means of livelihood.
- Right to work and a just minimum wage - Every person has the right to work and to a just minimum wage.
- Right to reasonable access to transportation - Every person to have reasonable access to transportation.





- Right to housing and sanitation Every person has the right to accessible and adequate housing and sanitation.
- Right to adequate food and water
 Every person has the right to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.
- Right to social security schemes Every person has the right to social security
 schemes, whether private or public, for their
 support in times of need, including the right
 to such support from public resources if they
 are unable to support themselves and their
 dependants.
- Right to health Every person has the right to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care. A person must not be denied emergency medical treatment.

The State must take reasonable measures within its available resources to achieve the progressive realisation of the right to education, economic participation, work and a just minimum wage, reasonable access to transportation, housing and sanitation, adequate food and water, social security schemes and health. If the State claims that it does not have the resources to implement these rights, it is the responsibility of the State to show that the resources are not available.

Freedom from arbitrary evictions

- Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after all of the relevant circumstances have been considered. No law may permit arbitrary evictions.
- Environmental rights Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations.
- Rights of children Every child has the right:
 - to be registered at or soon after birth, have a name and nationality
 - to basic nutrition, clothing, shelter, sanitation and health care;
 - to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child regardless of whether or not the parents



are, or have ever been, married to each other and whether or not the parents are living together or have lived together, or are separated;

- to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and
- not to be detained, except as a measure of last resort, and when detained, to be held—
 - . (i) only for such period of time as is necessary; and
 - . (ii) separate from adults, and in conditions that take account of the child's sex and age.

The best interests of a child are the primary consideration in every matter concerning the child.

Rights of persons with disabilities A person with any disability has the right to an
enabling environment so that he or she can
live a life of dignity, fully participate in society
reach his or her full potential. This includes the
right to reasonable access to all places, public

reach his or her full potential. This includes the right to reasonable access to all places, public transport, and information. The right to use sign language, Braille or other appropriate means of communication and to reasonable access to necessary materials, substances and devices relating to the person's disability.

LIMITATIONS

Rights come with responsibilities. Some rights and freedoms have limitations determined by law solely for the purpose of securing the due recognition and respect for the rights and freedoms of others as well as meeting the just requirements of national security, public order, morality and general welfare in a democratic society. These limitations must never be used to deprive you of your dignity, make you less equal or treat you differently and take away your freedom. They must prescribed by a written law, be reasonable, justifiable, proportionate and consistent with democratic values of dignity, equality and freedom.

HOW DO I CLAIM MY RIGHTS?

While it is the primary responsibility of the State and every person holding public office to respect, protect, promote and fulfil the rights and freedoms guaranteed in the Fijian Constitution, should you feel that your rights have been violated, you may approach the Human Rights and Anti-Discrimination Commission. Under the Fijian Constitution, the Human Rights and Anti-Discrimination Commission has the following responsibilities:

- Develop a culture of human rights in Fiji by promoting the protection, observance and respect for human rights in both public and private institutions;
- Educate the public about their rights and freedoms guaranteed under the Constitution;
- Monitor, investigate and report on the observance of human rights in all aspects of our lives;
- Make recommendations to Government in relation to existing and proposed laws to ensure compliance with human rights standards;
- Receive and investigate complaints about alleged abuses of human rights and take steps to address these violations including making applications to court for redress;
- Investigate or research human rights matters on its own initiative or on the basis of a complaint and make recommendations to improve the functioning of public and private institutions;
- Monitor compliance by the State to fulfil its obligations with respect to international human rights treaties and conventions.

WHY IS THE HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION IMPORTANT?

Not only does the Human Rights and Anti-Discrimination Commission have constitutionally mandated responsibilities, the Fijian Constitution also empowers the Commission to be independent of any direction or control of any person or authority except by a court of law or a written law.



HOW HAS THE HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION FULFILLED ITS CONSTITUTIONAL MANDATE?

- Inspection of evacuation centres in areas severely affected by Tropical Cyclone Winston to assess urgent human rights needs in the wake of natural disaster and determine whether these centres meet minimum human rights standards.
- Made applications to court as amicus on the unlawful detention of children as well as human rights conditions in places of detention.
- Conducted gender based violence and human rights training for the Fiji Police Force in collaboration with the Fiji Women's Crisis Centre and UNDP.
- Celebration of the International Day Against Homophobia, Biphobia and Transphobia.
- Submissions to relevant Parliamentary Standing Committees on the following Bills: Rights of Persons with Disabilities Bill, Information Bill, Parliamentary Powers and Privileges Bill and Adoption Bill.
- Monitored places of detention including police cell blocks, corrections facilities, the Department of Immigration safe house and hospitals.
- Intervention on human trafficking.
- Intervened to uphold the rights, including the right to assembly of five opposition members of parliament and activists.
- Intervention on police brutality calling for independent investigations and accountability.
- Provision of a "Human Rights Wall" in police stations outlining the rights of arrested and detained persons.
- Pilot project on the implementation of the First Hour Procedure (early access to justice) and video recording of caution interviews to address concerns of police brutality in collaboration with the Fiji Police Force, the Judiciary, the Office of the DPP and the Legal Aid Commission.
- Advise to representatives of civil society on issues of freedom of expression, assembly and association.
- Successfully encouraged Fiji to co-sponsor the resolution on National Institutions for the Promotion and Protection of Human Rights at the 33rd Human Rights Council in Geneva.
- Successfully encouraged Fiji to vote for the UN Independent Expert on Sexual Orientation and Gender Identity at the UN General Assembly in New York.

WHO CAN LODGE A COMPLAINT?

Any person has the right to lodge a complaint to the Commission including complaints on behalf of other persons about an alleged human rights violation.

All complaints are dealt with strictest confidentiality.

The Commission may hear or seek additional information from any person whom the Commission considers of assistance in the investigations.

Before investigating any matter within its jurisdiction, the Commission must inform the following parties the Commission's intention to investigate-

- the complainant;
- the person alleged to be aggrieved (if not the complainant);
- the person to whom the investigation relates; and
- in relation to an investigation relating to a department the person holding or performing the duties of the office

The Commission will investigate any complaint received by it. However, the Commission may decide to defer or discontinue an investigation for the following reasons:

- · complaint is not within the jurisdiction;
- compliant is trivial, frivolous, vexatious or not made in good faith;
- complainant, or a person acting on his or her behalf has brought proceedings relating to the same matter in a court or tribunal;
- complainant has available another alternative remedy;
- the complainant does not have sufficient interest in the complaint;
- the person alleged to be aggrieved does not want the complaint to be investigated;
- the complaint has been delayed too long to justify an investigation;
- the resources of the Commission are insufficient for adequate investigation.



WHAT HAPPENS WHEN YOU LODGE A COMPLAINT?



Complaint is received



Acknowledgement

An acknowledgement within 7 working days



Assessment of Complaint

An assessment within 21 working days



Within Jurisdiction

HRADC will investigate the matter

Out of Jurisdiction (HRADC will refer the complainants matter to another agency for their necessary action)

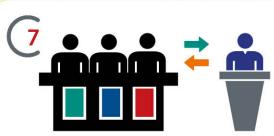


Investigations within Jurisdiction

Further information is obtained if necessary



Conciliation



NO RESOLUTION

Proceedings in Court (HRADC legal team will take matter to Court or the complainant on their own brings proceeding before the High Court).

Or



WHAT HAPPENS AFTER AN INVESTIGATION?

After completing an investigation, the Commission must inform the parties of the result of the investigations.

If the complaint has substance, the Commission will act as a conciliator and use its best endeavours to effect a settlement between the parties in relation to the complaint.

If the complaint does not have substance, the Commission must inform the complainant of his or her right to bring civil proceedings before the High Court.

HOW TO LODGE A COMPLAINT?

You can lodge a complaint via:

POSTAGE

The Director

Human Rights and Anti-Discrimination Commission

Private Mail Bag

General Post Office, Suva

HAND DELIVERY

The Director

Human Rights and Anti-Discrimination

Commission

Ground Floor, Naibati House

9 Goodenough Street, Suva

CALL THE COMMISSION

Landline: (679) 3308577

Mobile: (679) 970 9894

Fax: (679) 3308661

E-mail: info@fhradc.org.fj

ACCESS THE COMPLAINTS FORM ONLINE

www.fhradc.org.fj





