

**OPENING STATEMENT AT THE INTERACTIVE DIALOGUE ON FIJI'S
2ND UNIVERSAL PERIODIC REVIEW AT THE HUMAN RIGHTS COUNCIL, BY THE
HONOURABLE AIYAZ SAYED-KHAIYUM, ATTORNEY-GENERAL AND MINISTER
FOR JUSTICE OF THE REPUBLIC OF FIJI, GENEVA, 29 OCTOBER 2014.**

Thank you Mr. Vice President

The Republic of Fiji is honoured and welcomes the opportunity to present its report in the second cycle of the Universal Periodic Review (UPR) to the United Nations Human Rights Council. Fiji is firmly committed to advancing and protecting the fundamental principles and values of universal human rights enunciated in the Universal Declaration of Human Rights whilst, cultivating an ethos of a responsible human rights culture.

Mr. Vice President, Fiji's understanding of human rights is broad, progressive, and based on our unique history, politics and our existence as a Small Island Developing State. In addition to those aspects of human rights included in the various international covenants, as incorporated in our domestic laws, Fiji sees an urgent imperative for this Council to address emerging human rights concerns for Pacific Islanders. These include, importantly, trans-border impacts of climate change such as displacement of persons and loss of sovereignty. There are also trans-border implications of asylum policies, and the need for such asylum policies to be unequivocally in line with the spirit and letter of the Refugee Conventions. Finally, Fiji sees the need for this Council to examine the human rights consequences of legally binding free trade agreements which restricts the ability of Small Island Developing States from implementing socio-economic rights that should be accorded high priority. Indeed, Fiji looks forward to discussions of such important issues not only in the Fijian context, but also internationally.

Having said this, Mr. Vice President, it is now my pleasure to introduce the Fijian delegation to the UPR which will participate in today's interactive dialogue and address the important questions and recommendations that you will put to Fiji. This delegation comprises of the Chief Justice His Lordship Justice Anthony Gates, the Director of

Public Prosecutions Mr. Christopher Pryde, the Permanent Representative to the Office of the United Nations in Geneva Her Excellency Nazhat Shameem Khan, the Chairman of the Media Industry Development Authority Mr. Ashwin Raj and other government officials. This delegation reflects the depth of Fiji's unwavering commitment to the protection, promotion and preservation of human rights. This new commitment has been propelled by the Honourable Prime Minister of Fiji, Josaia Voreqe Bainimarama who oversaw the new implementation of the Fijian Constitution that has unprecedented inclusion of social and economic rights in addition to the political and civil rights which have the capacity of transforming the lives of ordinary Fijians.

The Chief Justice, Director of Public Prosecutions and the Chairman of MIDA will address issues under their purview following my statement as Head of Delegation and Attorney-General and Minister of Justice.

The UPR outlines the normative and institutional framework and accounts for the promotion and protection of human rights in practice. In the first cycle of the review, 103 recommendations were made out of which the Fijian Government had accepted 97 recommendations. The current report articulates the progress made towards the implementation of these recommendations.

The Constitution of the Republic of Fiji, came into force on September 7 2014, is an expression of the will of the Fijian people. It enshrines fundamental principles and values such as a common and equal citizenry, secular State, the removal of systemic corruption, an independent judiciary, the elimination of discrimination, good governance, one person one vote one value and the elimination of the legal enforcement of ethnic voting - values that should be aspired to universally.

In a comprehensive and very progressive Bill of Rights, the Constitution has, for the first time, created the conditions for the realization of social and economic rights (in addition to civil and political rights) as human rights, where the State is legally obligated to the advancement, protection and promotion of these rights. It also recognizes the rights of

the indigenous Fijians - the iTaukei and Rotuman - and the ownership and protection of their land and their unique culture, tradition, customs and language.

Whilst Fiji has not acceded to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Cultural and Social Rights, the Constitution has a robust Bill of Rights which prescribes these rights for all Fijians and places an obligation on the State in securing and advancing these rights. These rights include access to courts or tribunals; executive and administrative justice; freedom of speech, expression and publication; freedom of assembly; freedom of association; employment relations; freedom of religion, conscience, belief; political rights; right to equality and freedom from discrimination; freedom from compulsory or arbitrary acquisition of property; rights of ownership and protection of iTaukei, Rotuman and Banaban Islander lands; the right to education; right to economic participation; right to work and a just minimum wage; right to reasonable access to transportation; rights of children; and the rights of persons with disabilities.

Women's rights in Fiji are consistent with the Convention on the Elimination of Discrimination against Women (CEDAW) which Fiji ratified in 1995. Our Constitution protects all Fijians from unfair discrimination including on the grounds of sex, gender identity and expression, pregnancy, marital status, culture, religion, social origin, conscience and social or health status. These grounds that I have just read out are all new grounds and weren't in any of the previous Constitutions.

Furthermore, in ensuring access, equality and inclusivity, the Constitution has been translated into the iTaukei and Hindi languages. For the first time in our history, our Constitution has also been translated in the Braille language in English and iTaukei and, is currently being translated in the Hindi language.

Fundamentally, the Constitution establishes the principle that every Fijian is equal. It does not define or divide Fijians by ethnicity and bestows the title of 'Fijian' on every citizen while equally recognizing their different cultures.

We acknowledge that Mexico and Belgium have expressed an interest in Fiji's progress on ratifying international instruments on human rights, and that the UK and Mexico have asked specifically about the ratification of United Convention Against Torture (UNCAT). The UNCAT, ICCPR and ICESCR, although not ratified, have been incorporated into Fiji's domestic law and which in fact goes beyond the requirements of these international instruments and are applied directly by the Fijian judiciary. The ratification of these international instruments will be the prerogative of the newly elected Parliament which is provided under the Constitution of Fiji.

Fiji was one of the first States to ratify the Rome Statute of the International Criminal Court, and its commitment to the ICC is steadfast. Accordingly, I am pleased to report that it has aligned its domestic legislation with the provisions of the Rome Statute through its Crimes Decree which provides for offences on crimes against humanity. There is now full complementarity between the Rome Statute and the Crimes Decree and Fiji will continue to do its best to keep current with the amendments to the Rome Statute.

Fiji is proud to have successfully conducted general elections on 17 September with 84.6 per cent of the registered voters exercised their constitutional right to vote, and a record low percentage of 0.75 per cent of invalid ballots. The low percentage of invalid votes and high voter turnout demonstrates the enthusiasm of the electorate, the strength of the new electoral system and the effectiveness of civic education programs conducted through the Electoral Commission. The preliminary statement by the 92-member Multinational Observer Group made up of 17 countries and co-led by India, Australia and Indonesia declared the elections were credible and reflective of the will of the Fijian people.

Mr Vice President, it is noteworthy that more women than ever stood as candidates in the 2014 elections.

Indeed Mr. Vice President apart from the changing attitudes and legal improvements propelled by Government in the past 8 years, the new electoral system which allows for

proportional representation through an open list encouraged political parties to field more women candidates. This has resulted in an unprecedented 14% of the members of Parliament being women. The Parliament has commenced its sittings with our first woman Speaker of Parliament and first woman leader of the Opposition. As matter of fact Mr. Vice President the Secretary General of Parliament and the Secretary to Cabinet are also women. Indeed all women members in the government side of Parliament are ministers or assistant ministers.

Mr Vice President,

In relation to the death penalty, Fiji has abolished the death penalty in relation to all criminal offences by an amendment to the Penal Code in 2001. While there are no specific Fijian laws setting out the death penalty, the death penalty indirectly remains in the Military Code by virtue of the applicability of the UK Army Act 1955. However, the death penalty has never been implemented since at least independence some 44 years ago. In the next session of Parliament in the new year the Military Code will be amended as a matter of priority to remove the reference of death penalty altogether, albeit it is there indirectly.

In relation to allegations of assault in police custody, where evidence of such assaults have been shown to be sufficient for prosecution as determined by the Director of Prosecutions, such persons have been prosecuted and some are currently serving terms of imprisonment for such acts. While acts of assault in police custody have taken place previously, which im sure is not uncommon in other countries also, our new legal framework in particular under the new Constitution, allows us to take steps to ensure that police procedures are modernized and made more transparent. Indeed these steps have already commenced.

Mr. Vice President

The autonomy and independence of State institutions is guaranteed under the Constitution. The Human Rights and Anti-Discrimination Commission will now serve as the predominant enforcement body for the Bill of Rights guaranteed under the

Constitution. The Constitution provides for the independence of the Commission in its functions and in the exercise of its authority and powers, including administrative autonomy and control over its own budget and finances. Furthermore, Parliament must provide adequate funding and resources for the Commission to effectively exercise its powers and perform its functions and duties. Section 45 of the Constitution empowers the Commission to enforce and monitor the compliance of human rights instruments ratified by the Government. The Commission is further constitutionally empowered to bring proceedings before the Courts. These powers are essential to the development of a dynamic human rights culture. We look forward to working with the OHCHR and our development partners to facilitate capacity of the Commission and ensure compliance with the Paris principles.

A number of States, including the Netherlands, United Kingdom, Germany and Spain, have asked about the steps Fiji has taken to end discrimination and violence against women.

Fiji acknowledges the challenge that violence against women poses both at the legislative level and at community level in Fiji. Huge progress has been made in putting in place a legislative framework in this regard. These efforts include new provisions in the Crimes Decree for the offence of rape and sexual assault based on the Australian model, abolition of corroboration and questioning on previous sexual history, providing for special measures for vulnerable witnesses, the passing of the Domestic Violence Decree, judicial training, the approving by Cabinet of the National Gender Policy which aims to mainstream gender, removing systemic discrimination against women in employment practices and laws and providing for recruitment and promotion on merit and merit alone, gender training of the civil service, and increasing the participation and visibility of women in all spheres of life. These measures will only be meaningful if all stakeholders involved play a part in shaping society's attitudes towards zero tolerance for discrimination and violence against women.

Importantly, the effective implementation of the Domestic Violence Decree requires the training and preparation of police, civil society, judiciary and prosecutors. The Domestic

Violence Decree also enables and empowers civil society organisations to be part of the implementation process by giving the civil society organisations the power to represent victims in court. Consequently, it is important that civil society organisations which are specifically empowered to represent women under the Domestic Violence Decree understand the relevant legislative provisions and undergo training on the same. Other stakeholders have done so and continue to receive ongoing training, as we accept that attitudinal barriers are the hardest to overcome.

Mr. Vice President,

The Fijian Public Service policy is now one that is based on meritocracy. The Fijian Government has done away with discriminatory policies for the public services put in place by previous governments. Our experience of such policies was that rather than addressing the ostensible inequalities, these policies only further advanced an elite agenda and clique. In light of this experience, all appointments in the public service are now made on the basis of qualification and performance alone. The public service is currently undergoing reforms which will ensure that the systemic prejudice based on race, ethnicity, gender identity and religion is eliminated.

Mr Vice President

Please now allow me to ask the Chief Justice of the judiciary of Fiji, His Lordship Justice Anthony Gates, to address matters pertaining to the judiciary.

I will now ask Director of Public Prosecutions Mr. Christopher Pryde to address matters pertaining to the administration of the criminal justice system.

I will now ask Chairman of MIDA to address matters pertaining to media freedom.

SUMMING UP BEFORE Q&A

Mr. Vice President

We thank you for giving us the opportunity to present our report with regards to the protection, promotion and preservation of human rights in Fiji. We look forward to a productive and constructive conversation and are now very pleased to accept questions from the floor.

CLOSING

Mr. Vice President, we thank you very much for this interactive dialogue, we have heard your concerns and we trust that our responses have shown you the progress we have made.

Mr. Vice President, Fiji has come a long way since the last cycle, including extensive reforms that go beyond the requirements of international instruments; making us compliant even without ratification. However, we do recognize that ratification also helps develop new partnerships and international cooperation and we therefore remain committed to ratify those instruments. We recognize that the dynamics of human rights and its implementation is such that invariably a lot more can always be done. Fiji has a new landscape through our Constitution and new parliament. We have a fresh opportunity to start a new era of implementing human rights in Fiji in a tangible and holistic manner. The new discourse and implementation of rights must be conducted on the basis of fact and law, and engagement with all parties must be in a constructive manner. Not based on the whims of domestic, regional and international political considerations.

After all Mr. Vice President, we are not here to simply present Fiji's report, but to ensure that that this entire process and engagement will help all of us to provide tangible benefits and make substantive changes to positively impact the lives of individual Fijians.