



## Fiji Women's Crisis Centre

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# Submission for UPR on Fiji

## 1. Introduction

- 1.1 The Fiji Women's Crisis Centre ("**FWCC**") is a human rights organisation, established in 1984, which provides crisis counselling and legal, medical and other practical support services for women and children who are sufferers and survivors of violence.
- 1.2 The FWCC is also involved in public advocacy and community education on gender violence. The Centre's strategies are based on the conviction that violence against women is a fundamental human rights and development issue. The Centre's work addresses all forms of violence against women including sexual assault, beating, sexual harassment and abuse of children. The FWCC is also the current chair of the Fiji NGO Coalition on Human Rights.
- 1.3 The FWCC has consistently advocated for democracy, the rule of law and human rights throughout the course of its history. The protection of human rights requires accountable, democratic government, adherence to the Rule of Law and Constitutionality. Even though the Fiji Government has in 2013 promulgated a new Constitution, the lack of human rights protections in that Constitution, as well as the non accountable and non consultative manner in which it was prepared are matters of grave concern.
- 1.4 This submission deals with the issues encountered by the FWCC in its work in assisting victims of gender violence in Fiji, and focuses on recent legislation enacted by Fiji's interim military government in this area, as well as the application/interpretation of these decrees by the police, other government agencies and the judiciary. This submission also looks at other areas where the FWCC has encountered difficulties in promoting human rights in Fiji, including Freedom of Expression and Workers Rights.
- 1.5 The Fiji Women's Crisis Centre also endorses the recommendations made by the Citizens Constitutional Forum.

## 2. Legislation on Violence Against Women

- 2.1 While the interim military Government has issued decrees in the past four years which are relevant to gender violence, the FWCC has some issues with the legislation and its implementation.

### ***Crimes Decree 2009<sup>1</sup>***

- 2.2 The definition of rape has been extended in the Crimes Decree to include penetration of the anus and mouth by the penis, and penetration by other body parts and objects of the vagina.
- 2.3 However, there are shortcomings in relation to the definition of 'consent' in relation to sexual offences under the Crimes Decree. The definition provides only a partial ban on the requirement of proof of

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<sup>1</sup> Decree No.44 of 2009

resistance<sup>2</sup> in sexual offence cases. This clause has been interpreted by courts as requiring survivors of sexual assault to exhibit torn clothing and scream for help during the act of sexual violence. This has meant that courts have treated "date rape" with suspicion and women who are raped by men who they have a relationship with, or know socially, are now facing difficulties in establishing rape.<sup>3</sup>

2.4 The Crimes Decree also allows reasonable belief in age as a defence to consensual sex with children between the ages of 13 and 16. This is contrary to Article 2 and General Recommendation 19<sup>4</sup> of CEDAW. This places the onus (erroneously) on the minor to reveal her age rather than upon the accused to ascertain her age.

2.5 Prosecutors and police also display confusion and a lack of knowledge about their powers to charge perpetrators under different sections of the Decree where the age of the child is a factor.<sup>5</sup>

2.6 The criminalisation of Sexual Harassment is not explicitly expressed. While some forms of Sexual Harassment may be prosecuted as a criminal offences under section 213 'Indecently insulting or annoying any person' of the Crimes Decree, not all behaviours constituting Sexual Harassment would be captured under this section.

### ***Domestic Violence Decree***<sup>6</sup>

2.7 The Domestic Violence Decree is gender neutral. This has led to the manipulation of the Decree by men to obtain residential Domestic Violence Restraining Orders ("DVRO's) which remove their wives or partners from the matrimonial home. Men are better able to use the system, including DVRO's, for reasons which include their ability to access the police and justice system (due to their greater earning capacity and no restrictions on leaving the house), their greater knowledge of the law and legal processes and police and judicial attitudes which favour men.

2.8 Access to justice issues for women in Fiji mean that many women are unable to access DVROs. Women are often unaware of their legal rights and even where they are aware, are unable to access the police and courts due to lack of money to attend police stations, restrictions placed on their ability to leave the home and police attitudes which discourage reporting. Even where women are able to get to a police station, oftentimes their husbands have been there before them and have engaged Legal Aid, which means that Legal Aid is no longer available to the woman.

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<sup>2</sup> Section 206, Crimes Decree of Fiji (Decree No. 44 of 2009)

<sup>3</sup> See, for example ***State v Khan [2011] FJMC 93; CRC 511.2009 (26 August 2011)***, where the fact that the Complainant's underwear was not torn was commented on by the Judge as one of the factors establishing consent.

<sup>4</sup> Adopted by the CEDAW Committee. Makes explicit that the definition of discrimination include gender violence and recommends that 'sanctions, penalties and compensation' be introduced in relation to gender based violence.

<sup>5</sup> ***State v Mateo Matavura***, Criminal Case No.: HAC 347 of 2011. In this case the accused was acquitted of one count of rape of his 15 year old niece, on the basis that the accused had a "romantic relationship" with the complainant, and consent was thus deemed to have been given. The prosecution failed to look at other relevant sexual offences prescribed under the Crimes Decree such as the offence of *defilement*. Under the Crimes Decree, a child that is below the age of 13 years is incapable of giving consent. This rule also applies to children above the age of 13 and below the age of 16 (s.215 of the Crimes Decree), where the accused only has a defence if the accused had reasonable cause to believe that the complainant was above the age of 16. The prosecution did not take into account the fact that the accused was a close relative of the complainant and that the accused would have had knowledge of her age, and hence the "reasonable belief in age" defence would not apply.

<sup>6</sup> Decree No.44 of 2009

### 3. Implementation of VAW legislation by the Police and the Judiciary

- 3.1 The problems with implementation of VAW legislation in Fiji shows up the inherent shortcomings in the legislation, and the organs of state which are mandated to provide protection against gender violence, particularly the police and the judiciary.

#### *Police*

- 3.2 The Police are still extremely reluctant to move against perpetrators who breach DVRO's. Reasons given for non attendance on complaints by women about breach of DVRO's include no transportation, no money for taxi or bus fare (to attend at the victim's residence or to arrest the perpetrator). On many occasions, complaints are not recorded by the police, or if perpetrators are brought in, they are released as the crimes against domestic partners are seen as "not serious". Police also delay the service of DVRO's on perpetrators for the same reasons as above.
- 3.3 Women are also given the run around by police, who require medical certificates from women even where the DVRO is being sought for threatened violence. On the other hand, it is our experience that the police are generally very quick to apply for DVRO's against women where complaints are made by husbands against their wives.
- 3.4 Police attitudes towards women generally are also very regressive and judgmental. Many clients report being told by Police that they are "bad women" for reporting against their husbands. Victims of rape are treated with distrust if thought to be immoral or "bad". There is also re-victimisation of women who make complaints, with Police recently charging 4 FWCC clients who reported sexual and physical violence to the Police.

***State v Zoya Fazimun Nisha, Case No. 1/14, 2/14:*** In this case the accused had lodged complaints to the police that she had been raped, however the police were of the view that because she was alleged to have dated more than one man they accused her of lying and hence, charged her with 'Giving false information to a public servant.' She was remanded in custody for over 72hours before being produced in court and bailed on \$2000 surety.

These cases included one case where the Police charged a woman, who had been "flashed" repeatedly by her neighbour, for swearing at the neighbour, while claiming they could not do anything against the man who had exposed himself, since he was exposing himself in his own compound. In another case, a woman who had complained of breach of a DVRO, supported by a medical report, was charged with giving a flae statement, and had her child taken away from her. In the case of *State v Zoya Fazimun Nisha*, our client alleges that police had slapped her, pulled her hair and continued to hurl abusive language at her while she was being interrogated for allegedly giving false information about her initial report that she was raped by her ex-boyfriend.

#### *Judiciary*

- 3.5 The Judiciary continues to give mixed messages about gender violence. While some established judges have started to give appropriate and lengthy sentences to offenders who commit rape and sexual assaults against

women and children, other newly appointed judges appear to be turning back hard fought for advances in the punishment of sexual offending. For instance, comments by judges recently on issues such as date rape<sup>7</sup> and corroboration<sup>8</sup> are of grave concern.

- 3.6 Judges have commented on issues such as the women's previous relationship/acquaintance with the accused as somehow establishing consent.

### ***Social Welfare and Legal Aid***

- 3.7 Women who leave relationships because of violence also report facing difficulties with accessing assistance from the Department of Social Welfare and Legal Aid. Women are often unable to engage Legal Aid since the perpetrator of violence gets to Legal Aid first, and the lawyers will not act for both parties. Accessing assistance from the Department of Social Welfare is also cumbersome, with women facing unnecessary red tape, particularly being made to provide documentary evidence (often at a cost). Additional funds need to be allocated to Social Welfare and Legal Aid so that the assistance provided to women is meaningful and effective, and women are not forced to remain in violent relationships for lack of economic and legal assistance.

## **4. Freedom of Expression - Free Media**

- 4.1 In June 2010, the Interim Government enacted the Media Decree<sup>9</sup>, which creates a Media Council to regulate media content and imposes local ownership conditions. While the Military has removed the censors that it posted in every newsroom after the abrogation of the Constitution in 2010, the fear of consequences which has been raised by the sceptre of the Media Decree has led to a great deal of self censorship by the media when reporting any issues deemed controversial, including human rights abuses, Government corruption and abuse of political and government authority.
- 4.2 The FWCC's press releases on these issues are routinely ignored by the mainstream media, and only comments relating to domestic violence, or issues considered "women's issues" are printed.
- 4.3 The local ownership conditions of the Decree have also been used by the Government to impose draconian fines and license conditions on the Fiji Times and Fiji TV.
- 4.4 The military also monitor postings on social media, with one documented case of a person been taken to the army camp and questioned for posting a comment on Facebook which was deemed critical of the regime.

## **5. Reproductive Health Rights**

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<sup>7</sup> *State v Khan* [2011] FJMC 93; CRC 511.2009 (26 August 2011)

<sup>8</sup> *State v Prasad* 2011 [2011] FJHC 622; HAC 101.2011(20 September 2011)

<sup>9</sup> Decree No. 29 of 2010

- 5.1 Access to reproductive healthcare for women is still an ongoing issue for women in Fiji. Women are often discouraged from accessing reproductive healthcare particularly contraceptives. This is mainly due to the religious and gender prejudices that women have experienced from healthcare workers i.e. Doctors, Nurses. Government does not permit gender sensitisation training of medical workers and needs to work on institutional attitudes as a matter of priority.

## 6. Worker's Rights

- 6.1 The Essential National Industries (Employment) Decree 2011<sup>10</sup> [ENI Decree] critically restricts worker's rights in Fiji. The ENI Decree severely restricts the rights of workers in several industries, including in the Sugar, Tourism, Banking and Aviation sectors. These industries employ thousands of workers, which include some of the lowest paid and most vulnerable sectors in Fijian society.
- 6.2 The ENI Decree restricts workers in these industries from entering into collective agreements, promoting a biased system of non-professional bargaining agents to represent workers. The ENI Decree also includes strong sanctions against legally striking workers, and takes away workers recourse against unfair dismissals and unfair practices by Employers. Workers in these industries have no recourse to the Employment Court, or any right of appeal against Employer decisions, including summary dismissals, forced retirements and redundancies.
- 6.3 The ENI Decree undermines ILO Conventions No. C87 Freedom of Association and Protection of the Right to Organise Convention 1948 and No.C98 Right to Organise and collective Bargaining Convention 1949, both of which Fiji has ratified.
- 6.4 The Fiji Government Constitution of 2013 enshrines this regressive anti-worker legislation into the Constitution and further limits workers rights under section 19 'Freedom of Association' and section 20 'Employment relations' of the Bill of Rights.

## Recommendations

1. **Gender specific Domestic Violence Legislation.**
2. **Government commitment to ensure training of all police officers and judicial officers on gender violence.**
3. **Government commitment to ensure training of all police officers on dealing with victims of sexual violence.**
4. **An end to militarisation of the Police Force.**
5. **Appropriate facilities in all police stations for women, including for housing of women in custody.**
6. **Amendment of Crimes Decree to remove "reasonable belief in age of children" as a defence to consensual sex with children under the age of 18.**
7. **Amendment of Crimes Decree to impose total ban on requirement of proof of resistance in sexual assault cases.**
8. **Increase in budget allocation for the Department of Social Welfare and Legal Aid.**

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<sup>10</sup> Decree No. 35 of 2011.

9. **Change in Legal Aid rules to allow representation of women in DVRO and Family Law cases even where the perpetrator (Husband) is represented by Legal Aid in criminal proceedings.**
10. **Review of the Media Decree.**
11. **Repeal of the Essential National Industries Decree.**
12. **Review of the 2013 Constitution to remove limitations on human rights, including workers rights.**