



FIJI WOMEN'S CRISIS CENTRE
PO Box 12882, Suva, Fiji
E-mail: fwcc@connect.com.fj
Ph: (679) 3313 300 Fax: (679) 3313 650
www.fijiwomen.com



Fiji Women's Crisis Centre Submission to the United Nations Periodic Review on Violence Against Women: Fiji

Executive Summary on Violence Against Women

The Fiji Women's Crisis Centre (FWCC) is an autonomous, multi racial non-governmental organization established in 1984. The Fiji Women's Crisis Centre is committed towards the elimination of violence against women in Fiji and the Pacific through the provision of crisis counseling and support services to women and children who are survivors of violence and advocating for policy and legislative changes through lobbying, training and networking and institutional support. The FWCC firmly believes in working under the rule of law, democracy and human rights.

A human rights framework and approach provides the best response to addressing violence against women. Under a human rights approach a woman's right to life, security and liberty is directly linked to her right to employment, political participation, access to justice and freedom of expression.

The FWCC would like to bring the immediate attention of the Human Rights Council to Fiji's current situation where the country has been subjected to an undemocratic, military-backed regime since the coup of December 2006. Commodore Frank Bainimarama assumed control and appointed himself as interim prime Minister and since 2006 there have been increased appointments of military personal and apologists into the civil service and judiciary. Following the illegal takeover of government in 2006, there have been significant human rights violations perpetuated by the military backed regime and the police.

In 2008, Fiji assured Pacific Forum leaders in Tonga that it would hold elections by March 2009. However elections have been moved to 2014 and there has been no guarantee that elections will be held in 2014. In the absence of a democratic government, Fiji's progress in terms of laws and polices on violence against women have stalled. There is a crucial need for the return to democracy and the rule of law, so that work can continue to introduce changes in the legislature with relation to women's human rights.

The following report illustrates to the Council how Fiji's situation has halted collaborative efforts towards ending violence against women on a national level under a democratic framework, how the situation has temporarily disabled democratic legislative changes, criminal provisions needing immediate changes by parliament, women's access to justice, police's inadequate response to violence against women and media censorship.

- A) **Violence against women and Fiji's Political environment** (*Right to take part in government, right of equal access to government and the right of the people to choose their government, freedom from arbitrary arrest and detention*)

Prior to the illegal December 2006 coup, there existed in Fiji an environment which recognized human rights and, in particular, women's human rights. These rights were enshrined in Bill of Rights Chapter in Fiji's 1997 institution, which embodied international principles of human rights.

Closely following the takeover, women human rights' defenders were amongst people who were illegally detained at military posts where they were subjected to torture and inhuman treatment by senior military officials.

On April 9th 2009 Fiji's Court of Appeal ruled that the takeover of Fiji's democratically elected government by the Military on December 2006 was illegal and contrary to the Fiji Constitution. On April 10th 2009 the President purported to abrogate the 1997 Constitution. All constitutional officers, including the entire judiciary was terminated. Since then there has been a stranglehold on the fundamental rights of the people of Fiji. There have been restrictions and violations of people's freedom of movement, freedom of expression and freedom from cruel and degrading treatment.

Respect for the rule of law and democracy is of utmost importance for the promotion and protection of human rights and women rights in Fiji. The FWCC is concerned that without the respect of the rule of law and democracy women's human rights will further deteriorate.

Military and police efforts are focused on suppressing and controlling the fundamental freedoms of Fiji's people. These actions have had a direct effect on the vulnerability of women and their vulnerability to violence.

Recommend to interim government to:

- 1) Restore the 1997 Constitution.
- 2) Immediately return the country to democratic rule by holding free and fair elections.
- 3) Stop all promulgations of decrees.
- 4) Respect the rule of law and the independence of the judiciary.
- 5) Fully observe the rights of women.

B) Violence Against Women and the Law (*Equality and protection before the law without discrimination*)

i) *Penal Code Provision on common assault (Section 244), Assault Occasioning Actual Bodily Harm (section 245), Assault Causing Grievous Bodily Harm (section 224)*

Criminal assault of women in the home are categorized as common assault with the maximum sentence of 1 year imprisonment, assault occasioning actual bodily harm with a maximum of 5 years and assault causing grievous bodily harm with the maximum penalty of life imprisonment. Although their maximum sentences ranges from 1 to 5 years to life imprisonment, the sentences are lenient and perpetrators are commonly given a suspended sentence, warning or fine.

The dynamics of criminal assault in the home are very different from common assault. However, this is not reflected in the sentences given to husbands who perpetrate physical violence against their wives. The 'main income earner' or 'sole bread winner' argument are consistently used in Court to obtain lighter sentences for men who are violent towards their partners.

ii) *Penal Code Provision on Rape (Section 149)*

The definition of rape in Fiji's Penal Code is limited to forced penile vaginal penetration. It does not take into account other forms of rape which women have been and continue to be vulnerable to.

The FWCC client reports, substantiated reports from the media and other Court hearings clearly show that women continue to be sexually violated in many other ways in addition to the narrow definition of rape in the Penal Code.

iii) *Penal Code Silent on Marital Rape (Section 149)*

Marital rape is not specifically mentioned as a crime in the Penal Code. However, there is nothing in the definition of the rape offence to exempt husbands from being prosecuted. As there has not yet been a prosecution of a husband for raping his wife, courts in Fiji have not yet ruled on the issue. Although husbands appear not to be exempt, FWCC firmly believes that specifically including marital rape as a crime better protects women who are in violent sexual relationships with their partners.

iv) *Forced sex with minors (Sections 155, 156)*

Defilement continues to be categorized as having sex with girls not of consenting age. The penalty in the Penal Code varies according to the age of the girl. Having sex with older girls, not of consenting age carries a lesser penalty. The maximum penalty for having forced sex with girls under 13 is life imprisonment and if the girl is over 13, the maximum sentence is 5 years.

v) *Corroboration on Sexual Offences*

The corroboration rule for sexual offence cases was removed by a Court of Appeal judgment in *State v Balelala 2004*. The case ruled that the corroboration rule was discriminatory and the judgment made direct reference to CEDAW. Ideally, this development should be confirmed by legislation to prevent any reversion to the previous rule. To date, there has been no legislative action in this regard.

vi) *Domestic Violence Decree 2009*

Prior to the illegal takeover of Fiji's democratically elected government there had been preparations and drafting of the Fiji Domestic Violence Bill. Fiji Law Reform Commission was working with FWCC as well as other women's organizations on the proposed Domestic Violence Bill. It has recently been reported that a Domestic Violence law has been promulgated by decree. Irrespective of the intentions with which the law was introduced, such reforms must occur within a democratic process.

Recommend to interim government to:

- 6) To work within a democratic frame work when changing and introducing legislation on violence against women.
- 7) Return the country to democratic rule to allow and provide the legal environment for new legislation or the amendment of existing laws.
- 8) Return the country to democratic rule so that parliament may:
 - i) *Increase the penalty on violence against women assaults*
 - ii) *Broaden the definition of rape so that it encompasses other forms of rape including rape by use of objects.*
 - iii) *Make specific mention that husbands are not immune from prosecution for sexual violence perpetrated against their wives.*
 - iv) *Increase the sentences of defilement for girls over 13. Parliament must look into these provisions with greater sensitivity and without any discrimination on the basis of age against young girls who are the victims in these offences.*
 - v) *That the rule of corroboration be abolished by legislation through Parliament.*
 - vi) *Start legislative work on a specific legislation on violence against women.*

- 9) Refrain from making further changes to laws relating to violence against women without proper parliamentary proceedings.

C) **Violence against women and Access to Justice** (*Right to competent tribunal for human rights violations*)

Following the purported abrogation of the 1997 Constitution, the President purported to terminate the appointments of all Constitutional officers, including the Judiciary. The delay in the reappointment of judges and magistrates had an immediate effect on the functioning of the Court. Delayed hearings and applications particularly affected women who were seeking protection orders from the Court.

The limited number of magistrates has resulted in reduced hearings per jurisdiction. Reappointed magistrates share jurisdictions on different days and this limits the number of cases which can be heard per jurisdiction for the Family Court. During the reappointments and reshuffling many women, including FWCC clients were given later dates to return for their hearings.

Recommend to interim government to:

- 10) Restore the 1997 Constitution in order to re-validate judicial officers.
- 11) Not interfere with the independence of the judiciary.
- 12) Adhere, respect and subject itself to the decisions of the Courts which have been made against them and should any be made against them.

D) **Violence against Women and Law Enforcement**

In attempts to present an image of a crime-free Fiji, the Police have attempted to present an image of fewer crimes being reported, however the experiences of FWCC in the community indicate that members of the public are reluctant to report crimes due to the lack of response by the police and the many disincentives posed by the police.

i) **Police No Drop Policy** (*Right to equal treatment and protection from the law, freedom from torture, cruel, inhuman and degrading treatment*)

The No Drop policy was first established in 1995 under Police Commissioner Savua. The policy disallowed the Police to drop charges in cases of assault, even if the complainant withdraws her complaint. Basically this would mean that once a case was filed it would ultimately end up in Court.

The policy was introduced mainly due to the fact that a huge number of women withdraw their complaints of domestic criminal assault. Greater sensitivity and understanding about gender stereotypes and gender inequality enabled the Police to understand why many cases are dropped or withdrawn.

Recommend to interim government to:

- 13) To reinforce the No Drop Policy as one which specifically recognizes violence against women and how many women continue to be victims of on going cycles of violence.
- 14) To promote awareness on the importance of the No Drop Policy and violence against women.

ii) **Religious Fundamentalism within the Police Force** (*Right to life, liberty and security of person, Right to equal protection before the law, freedom of movement, freedom of religion*)

The Police have embarked on an unconventional Christian “Crusade” as a means of crime prevention and response. The attendance of officers (female/male) is compulsory at these crusades. The Police who already have limited resources have consistently engaged in this Crusade over the past months. Logically this reduces the number of officers who are patrolling or operating from stations to respond to cases of violence against women. This Christian crusade is in partnership with a fundamentalist movement called the New Methodists. The head of the New Methodist is the brother of the current Police Commissioner. The Police Commissioner was a former senior military officer.

The manner in which service is provided by the police must accommodate people of all religious backgrounds and the crusade has gone to the extent of answering phone calls with Christian religious messages. Having officers and police stations promoting only a certain faith can increase the barrier that women already face when they are subjected to violence.

Women’s freedom of movement has been restricted by messages from the police saying that women should stay indoors at night and not freely move around. This reinforces cultural stereotypes of women and follows a protectionist approach.

Christian crusades promote traditional gender roles of women and reconciliation and this is reflected in police statements and attitudes. The promotion of reconciliation of couples by police officers is in contradiction to the existing No Drop Policy. This religious strategy impacts the way police respond to violence against women cases. Insensitive approaches and promoting reconciliation rather than charging the perpetrators of violence can be fatal for women in violent relationships.

Recommend to interim government to:

- 15) To immediately end the crusade.
- 16) Stop all forms of radical evangelism within the stations, police posts and in the community.
- 17) That the Police take into utmost consideration the religious backgrounds of other women accessing the services and protection of police.
- 18) That the police take into account the religious freedoms of women within the police force.

E) **Violence against Women and the Public Emergency Regulations (PER) (Freedom of opinion and expression)**

Following the purported abrogation of the 1997 Constitution and the promulgation of the PER, there has been heavy censorship of the media and there continues to be threats against media personnel. On numerous occasions since April 2009, the FWCC has been approached by various media agencies to voice their views on the political situation. FWCC firmly believes that the advancement of women’s rights must be done within a human rights approach which fully recognizes the rule of law and democracy. These views and opinions have not been published due to heavy media censorship, which exists under the Public Emergency Regulation. This restriction does not allow human rights organizations that address women’s rights and the political situation in Fiji to freely engage with the media.

Recommend to interim government to:

- 19) To revoke the existing Public Emergency Regulations.
- 20) Lift all existing censorship of the media.
- 21) Respect the rights and freedom the people of Fiji.

The Fiji Women’s Rights Movement and the Citizens Constitutional Forum have informed FWCC that they fully endorse the above recommendations. FWCC endorses the recommendations of CCF and FWRM.