



**United Nations Human Rights Council
Universal Periodic Review: Fiji**

**Submission of the International Center for Advocates Against Discrimination (ICAAD)
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**Our Recommendations Are Endorsed By a Fijian NGO:
Women's Information Network Fiji (WINET Fiji)**

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Executive Summary

Drawing on ICAAD’s research, this submission highlights issues of structural discrimination that impact women and minorities. Furthermore, the research examines Fiji’s compliance with its international human rights obligations on the issues of: violence against women, women in the labor market, the unfair treatment of ethnic minorities, the LGBTIQ community, and religious freedom.

(I) About International Center for Advocates Against Discrimination (ICAAD)

(1) ICAAD uses a systems approach to combat structural discrimination against women and minorities globally. We identify gaps in the societal structures that marginalize vulnerable communities using a transdisciplinary approach that combines law, technology, and art. Our evidence based research utilizes teams of experts to identify specific structural discrimination policies, marshal resources and key partnerships, and provide strategic support of local NGOs with the aim of systematically uprooting discrimination within different societal sectors (e.g., legislative, judicial, law enforcement, health, faith, etc.).

(II) Women’s Rights Issues

(A) Violence Against Women (VAW)

(1) Systematic Discrimination:

(3) Although Fiji formally lifted its “state of emergency” on January 7, 2012,¹ human rights violations still persist. Despite Fiji having accepted Recommendation No. 5 from Norway regarding domestic violence and sexual offenses,² some of the most striking of those abuses pertain to sexual and gender based violence (SGBV). Fiji has one of the highest rates of violence against women in the world with 64% of women reporting physical or sexual violence by an intimate partner.³ This data only captures women who came forward to report these incidents; the actual frequency of physical or sexual violence is likely significantly higher.

(2) State Response:

(4) Fiji announced a Domestic Violence Decree of 2009 to enhance protections, including protective orders, for domestic violence survivors and utilize law enforcement in vindicating these protections.

(5) Fiji also instituted two major evidentiary changes for sexual offense cases with the Criminal Procedure Decree of 2009—corroboration is no longer required, nor is evidence of sexual history admissible, for these cases.⁴

(6) Fiji has also created Sexual Offenses Units (SOUs) to train law enforcement officials on properly interviewing survivors of sexual violence. There is anecdotal evidence that perpetrators of sexual violence in areas covered by an SOU face marginally higher rates of prosecution and conviction.⁵

(7) Moreover, some regional police and prosecution offices have formally instituted a “No-Drop” policy, which require investigation of domestic violence incidents and prohibit dropping criminal charges simply because the parties have reconciled.

(8) The Fijian government also instituted, and is currently expanding, a Zero Tolerance Violence Free Community Campaign. This campaign increases awareness of the causes and effects of violence, trains police officers on the Domestic Violence Decree and the No Drop policy, and provides economic empowerment and leadership training programs for women.⁶

(3) Remaining Challenges:

(9) Instead of utilizing the particularized Domestic Violence Decree of 2009, prosecutors have used the generic Crimes Decree of 2010 to charge perpetrators of VAW with “common assault.” Sentencing was also lax in these cases; sentences were often mitigated or suspended, as judges relied on the perpetrator being the “main income earner” to shorten sentences post-conviction, and bail was granted without a concomitant restraining order to protect survivors of VAW.⁷

(10) The efficacy of the SOUs has been undermined by a variety of defects in their structure and implementation. There are only four SOUs throughout the country, and they are severely underfunded. Moreover, because SOU officers only interview the survivors, rather than investigate the cases, local law enforcement officials remain untrained in dealing with survivors of sexual violence.⁸

(11) The “No Drop” policy and prohibiting law enforcement from relying on acts of reconciliation are merely internal policies for which violations are not actionable in court. Law enforcement officers still seek to reconcile the parties in order to reduce overall crime rates in their region.⁹ The latter practice (especially by the indigenous *i-Taukei*) is facilitated by the traditional custom known as *bulubulu*, in which an offending party offers a whale’s tooth, a gift, or compensation and asks for forgiveness in order to resolve disputes.¹⁰ This customary practice is particularly problematic in the realm of domestic violence, as the token of forgiveness is presented to the senior male family member rather than the victim.¹¹ Moreover, even though the Criminal Procedure Decree of 2009 clearly prohibits reconciliation to have an ameliorative effect in domestic violence offenses, the practice of *bulubulu* or reconciliation, as it is commonly understood and practiced by the non-indigenous population, has been considered a mitigating factor in sentencing for those offenses.¹²

(12) In a case law survey undertaken by ICAAD, where *bulubulu* or reconciliation was considered in SGBV cases, 49% of the time “judges used reconciliation as a factor in mitigating the sentence.”¹³ Other factors taken into consideration in mitigating cases were “first time offender” and “sole bread winner” arguments, which often led to the outright suspension of the sentence. If we narrow the scope to magistrate judges, even after the passage of Domestic Violence Decree of 2009, 77.7% of the cases handled by magistrates used reconciliation as a form of mitigation.¹⁴ Accountability for SGBV cannot be continually undermined by perpetrators who use reconciliation as a tool subvert incarceration for their crimes.

(13) While the Decrees of 2009 that specifically impact women are more progressive than the legislation they seek to abrogate, they have not been codified in legislation by a democratically elected body, rendering the legitimacy and vitality of these changes questionable.

(4) Recommendations:

(14) Fiji must align its policies and practices with its obligations under international law¹⁵ by addressing discrepancies and promoting consistency in sentencing for crimes of SGBV. It is recommended that Fiji create guidelines that formally prohibit the use of reconciliation (traditional form or otherwise) as a mitigating factor for SGBV cases and permit the use of aggravating factors like the age of the victim or the threat of violence. It is imperative that Fiji also promote consistency in prosecutions and convictions of perpetrators by providing adequate funding for existing SOUs and training local law enforcement officials who actually investigate cases of SGBV.¹⁶

(B) Women in the Labor Market

(1) Systematic Discrimination:

(15) Although Fiji accepted Recommendation No. 30 from the Philippines regarding the discrimination against women in “all sectors of society,”¹⁷ Fijian women face an alarming probability of facing harassment in the workforce. In 2008, one report found that one in three women has been sexually harassed in the workplace, and such harassment exists in all sectors of the labor market.¹⁸

(16) On average, a significant gender wage gap of nineteen cents per dollar persists in Fiji, although younger women have achieved near parity with men in education and professional and higher paid positions.¹⁹ Furthermore, some women facing this economic deprivation and dependence on men are unconscionably forced into sex work.²⁰

(2) State Response:

(17) Fiji has instituted a National Policy on Sexual Harassment in the Workplace. The National Employment Centre Decree of 2009 establishes the National Employment Center and creates employer liability for sexual harassment inflicted upon persons who go through this Center to find employment.²¹

(18) The Fijian government has also issued the Employment Relations Promulgation, which affords women eighty-four days of maternity leave with full remuneration for the first three children and half the normal remuneration for additional children.²²

(19) Fiji set the national minimum wage at \$2.00 Fijian Dollars per hour, which the Labour Minister promoted as being a 50 cent increase for many agricultural workers.²³

(3) Remaining Challenges:

(20) The National Policy on Sexual Harassment is undermined by the fact that it was decreed rather than promulgated by a legislature of democratically elected representatives. Moreover, sexual harassment is still not a crime; it is merely a civil offense.²⁴

(21) The Employment Relations Promulgation has not been strongly enforced, as employers have claimed an inability to cover these additional costs. At the same time, women in lower-wage sectors like the garment industry are often non-unionized and unaware of their basic legal rights like maternity leave.²⁵

(22) The minimum wage has been criticized by the secretary general of the Trade Unions Congress for being 32 cents below the recommended rate, and thereby condemns many workers to live below the poverty line.²⁶ Because female workers are concentrated in lower-wage sectors, this policy disproportionately harms women.

(23) There have also been several reports of the Fijian government persecuting trade unions. Most recently, the Fiji Trades Union Congress President Daniel Urai and six other unionists were arrested and charged with participating in an illegal strike, banned from travel, and forced to report to the police once a week.²⁷

(4) Recommendation:

(24) Fiji must align its policies and practices with its obligations under international law²⁸ by making sexual harassment a punishable crime, enforcing maternity leave pay, and instituting a minimum wage that affords women an opportunity to rise above poverty, ideally through a legislative process with democratically elected officials.

(25) Fiji must also remove laws that restrict the efforts of trade unions to organize and assemble, and it must put more resources and budgetary allocation to strengthen the enforcement of labor laws.

(III) Minority Rights Issues

(A) Situation of Ethnic Minorities

(1) Systematic Discrimination:

(26) Despite having accepted Recommendation No. 86 from Slovakia regarding the reestablishment of a democratically elected government as a result of “genuine dialogue with all ethnic communities,”²⁹ racial and ethnic discrimination persists due to longstanding tensions between indigenous Fijians and Indo-Fijians.³⁰

(2) State Response:

(27) In 2009, the government criminalized genocide via Section 77 of the Crimes Decree, and it also defined “unfair discrimination” for which the Fijian Human Rights Commission can institute proceedings in Part 3 of the Human Rights Commission Decree.³¹

(28) The Fijian government in July of 2009 mandated that all Fiji nationals would be designated as “Fijians” rather than having an identification with a particular ethnic background.³²

(3) Remaining Challenges:

(29) The Human Rights Commission Decree of 2009 makes racial discrimination an “unfair” civil matter and thus does not create criminal liability. Furthermore, it grants broad discretion to the Commission regarding which matters to investigate, thereby undermining its applicability at all when the Commission “has before it matters more worthy of its attention” or when “the resources of the Commission are insufficient for adequate investigation.” Perhaps most problematically, the Commission cannot investigate complaints of discrimination stemming from a government decree.³³

(30) Racial divides within the population between indigenous Fijians and Indo-Fijians persist despite all Fiji nationals being formally named “Fijians.” Moreover, Fiji has been affirmatively dismantling perceived indigenous institutions, including the Methodist Church and the Great Council of Chiefs of the “iTaukei” Fijians in an attempt to secularize and harmonize the national political influence. However, it has done so without a free and open debate including the relevant stakeholders.³⁴

(4) Recommendation:

(31) Fiji must align its policies and practices with its obligations under international law³⁵ by implementing legislation prohibiting racist organizations and amending its legislation to include racial motivation as an aggravating circumstance for crimes. Moreover, although the creation process for the new Constitution has concluded, Fiji must increase transparency in the political process to allow for participation by racial and ethnic minorities.

(B) Situation of the LGBTIQ Population

(1) Systematic Discrimination:

(32) While Fiji accepted Recommendation No. 37 from the Netherlands regarding the promotion of the right to freedom of expression,³⁶ antagonism against LGBTIQ groups persists in Fiji. For example, on May 17, 2012, law enforcement officials revoked a permit that had previously been granted to Oceana Pride for a march celebrating the International Day against Homophobia and Transphobia.³⁷ Discrimination also persists at the individual level, as evidenced by the prevalence of homophobic bullying in Fijian schools.³⁸

(2) State Response:

(33) Fiji’s new 2013 Constitution explicitly prohibits discrimination on the basis of sexual orientation and gender identity.³⁹

(34) The Crimes Decree of 2010 simultaneously removed the criminalization of adult consensual homosexual conduct and criminalized male-on-male rape.⁴⁰

(3) Remaining Challenges:

(35) While the Constitution exists to combat discrimination based on sexual orientation in employment, there are no such protections for the LGBTIQ population in other areas of social and political life, and specific limitations have been imposed in the Constitution.⁴¹

(36) Furthermore, despite the prohibition on discrimination based on sexual orientation in the Constitution, the Marriage Act since 2002 has expressly prohibited same-sex marriage. It defines marriage as “the voluntary union of one man to one woman to exclusion of all others.”⁴²

(4) Recommendation:

(37) Fiji must align its policies and practices with the principles in international law⁴³ by extending legislative protections against discrimination based on sexual orientation so that it is not an empty constitutional guarantee, and by fostering a political climate that includes LGBTIQ groups as legitimate participants.

(IV) Religious Freedom Issues

(1) Systematic Discrimination:

(38) While Fiji has accepted Recommendation No. 44 from Italy regarding the guarantee of freedom of religious exercise and belief,⁴⁴ the country remains mired in restricting religious practice. For example, the Fijian government requires some religious organizations to obtain preapproval via a permit process in order to hold meetings.⁴⁵

(2) State Response:

(39) In 2012, the government “lifted the four-year restriction on annual meetings of the Methodist Church and demonstrated improved respect for and protection of the right to religious freedom.”⁴⁶ Moreover, the government no longer requires permits for Hindu temples that are not registered with a particular Hindu religious body, and it lifted a requirement that adherents acquire a permit for all church meetings other than regular Sunday services.⁴⁷

(40) During the constitutional reform process, although some groups called for the establishment of Christianity as the national religion, the draft Constitution as of December 2012 provided for separation of church and state.⁴⁸

(3) Remaining Challenges:

(41) Despite improvements in removing obstacles to the free exercise and assembly of religious groups, some permit requirements persist. Moreover, because “[m]ost indigenous Fijians are Methodists or members of the Assemblies of God denomination some other religious denominations, particularly New Pentecostals, face hostility in attempting to “establish[] congregations in villages and on outer islands.”⁴⁹

(4) Recommendation:

(42) Fiji must comply with its obligations under the principles international law⁵⁰ by removing bureaucratic obstacles to Fijians’ rights of assembly and free exercise of religion, and by instituting educational initiatives to combat hostility toward non-mainstream religions.

¹ U.S. DEPT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: FIJI 1, *available at* <http://www.state.gov/documents/organization/204413.pdf>. The “state of emergency” was formally replaced by a Public Order Amendment Decree that maintained restrictions on political activity, particularly freedom of speech and assembly.

² UNIVERSAL PERIODIC REVIEW (UPR), Database of UPR Recommendations: Fiji (2010), <http://www.upr-info.org/database/>.

³ Press Release, *Violence Against Women in Fiji Touches all Aspect[s] of Women’s Lives, Survey Finds*, THE JET (Jan. 31, 2013), *available at* <http://thejetnewspaper.com/2013/01/31/violence-against-women-in-fiji-touches-all-aspect-of-womens-lives-survey-finds/>.

⁴ Criminal Procedure Decree 2009, Div. 6, sections 129–30, http://www.pacii.org/fj/promu/promu_dec/cpd2009201/.

⁵ COALITION OF WOMEN’S NGOS FOR THE CEDAW SHADOW REPORT, SHADOW NGO REPORT ON FIJI’S SECOND, THIRD AND FOURTH COMBINED PERIODIC REPORT TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 28 (July 2009) [hereinafter COALITION CEDAW SHADOW REPORT], *available at* http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/FJ/FWRM_UPR_FJI_S07_2010_Fiji_WomensRightsMovement_a_nnex1.pdf.

⁶ Press Release, *Ministry Aims to Expand Coverage on Violence Free Initiative*, THE FIJIAN GOVERNMENT (Dec. 27, 2013), *available at* <http://www.fiji.gov.fj/Media-Center/Press-Releases/MINISTRY-AIMS-TO-EXPAND-COVERAGE-ON-VIOLENCE-FREE-.aspx>

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- ⁷ AMNESTY INTERNATIONAL, FIJI: SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 46TH SESSION 8–13 (July 2010) [hereinafter AMNESTY CEDAW], *available at* http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_Fiji_Cedaw46.pdf; *see, e.g., Maharaj v. State* [2010] FJHC 467.
- ⁸ COALITION CEDAW SHADOW REPORT, *supra* note 5, at 28.
- ⁹ *Id.* at 33–34.
- ¹⁰ SALLY ENGLE MERRY, TENSIONS BETWEEN GLOBAL LAW AND LOCAL SOCIAL JUSTICE: CEDAW AND THE PROBLEM OF RAPE IN FIJI 9 (2004).
- ¹¹ SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE, THE UNIVERSITY OF CHICAGO PRESS 123 (2006).
- ¹² THE INT’L CTR. FOR ADVOCATES AGAINST DISCRIMINATION (ICAAD), THE ROLE OF CULTURE IN SHAPING JUDICIAL OPINIONS IN SEXUAL & GENDER BASED VIOLENCE (SGBV) CASES: FIJI CASE LAW SURVEY (Jul. 10, 2013), *available at* <http://www.icaadglobal.org/mediaItem.php?id=160>.
- ¹³ *Id.* at 1.
- ¹⁴ *Id.* at 2.
- ¹⁵ *See, e.g.,* Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46; 1249 UNTS 13; 19 ILM 33, Art. 3 (1980).
- ¹⁶ *See generally* ICAAD VAW, *supra* note 15.
- ¹⁷ UNIVERSAL PERIODIC REVIEW (UPR), Database of UPR Recommendations: Fiji (2010), <http://www.upr-info.org/database/>.
- ¹⁸ COALITION CEDAW SHADOW REPORT, *supra* note 5, at 78.
- ¹⁹ *Id.* at 74.
- ²⁰ LECHUGA FOUND. (FIJI) & SEXUAL RIGHTS INITIATIVE, REPORT ON FIJI: 7TH ROUND OF THE UNIVERSAL PERIODIC REVIEW 2 (2010).
- ²¹ National Employment Centre Decree 2009, Part 2, § 12–13. For other employees, employer liability for harassment is created by the Employment Relations Promulgation 2007, Part 9, § 76.
- ²² Employment Relations Promulgation 2007, Part 11, § 101.
- ²³ *Fiji Minister Defends Minimum Wage*, RADIO N.Z. INT’L (Feb. 3, 2014, 8:18 AM), <http://www.radionz.co.nz/international/pacific-news/234976/fiji-minister-defends-minimum-wage>
- ²⁴ COALITION CEDAW SHADOW REPORT, *supra* note 5, at 78.
- ²⁵ *Id.* at 73, 78.
- ²⁶ *Fiji Minister Defends Minimum Wage*, *supra* note 23.
- ²⁷ *Fiji Union Arrests Criticised as Heavy Handed*, RADIO AUSTRALIA, Jan. 13, 2014, <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/fiji-union-arrests-criticised-as-heavy-handed/1246984>.
- ²⁸ CEDAW, *supra* note 15, at Art. 11.
- ²⁹ UNIVERSAL PERIODIC REVIEW (UPR), Database of UPR Recommendations: Fiji (2010), <http://www.upr-info.org/database/>.
- ³⁰ CITIZENS’ CONSTITUTIONAL FORUM, NGO ALTERNATE REPORT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION FOR THE REPUBLIC OF FIJI 8 (2012) [hereinafter CCF CERD REPORT]
- ³¹ *Id.* at 12.
- ³² *Id.* at 16.
- ³³ *Id.* at 13.
- ³⁴ *Id.* at 9.
- ³⁵ Convention on the Elimination of Racial Discrimination (CERD), 660 UNTS 195; G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014, Arts. 15,20 (1966).
- ³⁶ UNIVERSAL PERIODIC REVIEW (UPR), Database of UPR Recommendations: Fiji (2010), <http://www.upr-info.org/database/>.
- ³⁷ U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: FIJI 25, *available at* <http://www.state.gov/documents/organization/204413.pdf>. The “state of emergency” was formally replaced by a Public Order Amendment Decree that maintained restrictions on political activity, particularly freedom of speech and assembly.
- ³⁸ *Id.*
- ³⁹ CONSTITUTION OF THE REPUBLIC OF FIJI Sept. 6, 2013, art. 26(3)(a).
- ⁴⁰ *Id.*
- ⁴¹ *Id.*
- ⁴² Marriage Act [CAP 50] art. 15.
- ⁴³ *See* International Covenants on Civil and Political, Economic, Social, and Cultural Rights, 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368, art. 26 (1967). The U.N. General Assembly has announced that “everyone” is entitled to the rights enshrined in these documents. U.N. General Assembly, Statement on Human Rights, Sexual Orientation and Gender Identity, U.N. Doc. A/63/635 (Dec. 18, 2008).

⁴⁴ UNIVERSAL PERIODIC REVIEW (UPR), Database of UPR Recommendations: Fiji (2010), <http://www.upr-info.org/database/>.

⁴⁵ U.S. DEP'T OF STATE, FIJI 2012 INTERNATIONAL RELIGIOUS FREEDOM REPORT 1, *available at* <http://www.state.gov/documents/organization/208442.pdf>.

⁴⁶ *Id.* at 1.

⁴⁷ *Id.* at 2–3.

⁴⁸ *Id.* at 3.

⁴⁹ *Id.*

⁵⁰ Although Fiji has neither signed nor ratified the International Covenant on Civil and Political Rights (ICCPR), which explicitly protects the freedom of religion in Article 18, the foundational principles establishing a basic freedom of thought and conscience can also be found in the Universal Declaration of Human Rights in Article 18.