

Fiji NGO Coalition on CEDAW Parallel Report (2017)

SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Consideration of the Fifth Periodic Report of Fiji Submitted
29 June 2016

69th CEDAW Session

Submission – The NGO Coalition on CEDAW Parallel Report (2017): The Fiji Women's Rights Movement (FWRM), together with the Citizen's Constitutional Forum (CCF), Diverse Voices and Action for Equality (DIVA) Fiji, femLINK Pacific, Fiji Disabled Peoples Federation, National Union for Commercial Factory Workers, Fiji Women's Crisis Centre (FWCC), Haus of Khamoleon, Pacific Sexual and Reproductive Health Centre, Pacific Disability Forum, and Soqosoqo Vakamarama iTaukei.

Submission Date: June 2017

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Fiji: 2017 NGO Coalition Parallel Report to the UN Committee on the Elimination of Discrimination Against Women

INTRODUCTION

The NGO Coalition on CEDAW's Parallel Report (2017) welcomes the opportunity to provide input from our research and programmatic efforts for consideration by the Committee on the Elimination of Discrimination Against Women in consideration of Fiji's Fifth Periodic Report, which was submitted on June 2016. Though Fiji has made progress with the adoption of a new Constitution (2013)¹ and holding its first election (2014) since the 2006 coup, compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been limited. The consequence of non-compliance by the Fiji government is that gender inequality permeates most sectors of society; few measures to develop women's social, economic, and political life have been adequately supported; and the continued pervasiveness of gender-based violence (GBV) throughout Fiji serves as the most visible manifestation of these systemic failures.

As Fiji moves towards the cusp of another election, it must show that a robust constitutional democracy has replaced all vestiges of authoritarian rule. As long as an "authoritarian military presence remains," women's political rights and participation, both at the local and national level, will continually be constrained.² In 2018, the Fijian elections will serve as a benchmark of whether women have the political agency and opportunity to engage at the political level or whether they will continue to be marginalised from public life.³

This Parallel Report will respond directly to the State's Report focusing on Articles 1, 2, 3, 5, 6, 11, 12, 14, and 16.

ARTICLE 1 – DISCRIMINATION (AS INTERPRETED BY GENERAL RECOMMENDATION 19)

Women continue to face wide gender disparities in Fiji. The World Economic Forum's Global Gender Gap Index of 2015 ranked Fiji as 121st out of 142 countries.⁴ In the last five years, Fiji's rank has declined from 108 to 121.⁵ The index looks at four key areas: Economic, Health, Political Empowerment, and Education. These results indicate that women's progress, specifically in the economic and political empowerment sphere are severely curtailed. The situation is even more dire when data on GBV is included.

National prevalence studies conducted by the Fiji Women's Crisis Centre (FWCC) in 2010/2011 using the World Health Organization (WHO) methodology found Fiji to have one of the highest rates of intimate partner violence in the world at 64.1%.⁶ Though the Fijian government has taken steps through the introduction of a new Constitution and Decrees (now renamed as Acts)⁷ since the last CEDAW review, its failure to take an integrated approach to address gender discrimination has left significant policy and implementation gaps that have negatively impacted women and girls.

1. Constitution (as referred by Concluding Observations ¶¶11, 17, 23)

In 2012, a Constitution Commission headed by international expert Yash Ghai, sought input from the public and civil society-led Fiji Women's Forum for the development of a new Constitution.⁸ These consultations resulted in many human rights features being introduced into the draft Constitution, including specific provisions for women's rights. However, the military regime objected to the draft put forth by the Commission and produced its own version that came into

force on 6 September 2013 without substantive public consultation.⁹

The resulting Constitution has not expressly adopted CEDAW's definition of "discrimination" and makes no explicit reference to women. Both the CEDAW Committee ("Committee") and women's rights NGOs agree that a general equality provision is insufficient to cover the intersecting structural factors that continually impede women's progress.¹⁰ The government had a unique opportunity to repair the historical marginalisation of women and attacks on women human rights defenders during the coup period; yet, it made no attempt to redress past human rights violations, include special measures, or offer specific protections to women as defined by CEDAW.¹¹

Fiji has not ratified the Optional Protocol for CEDAW, which would allow a woman a private right of action upon exhaustion of domestic remedies. This is further exacerbated by the Fiji Human Rights Anti-Discrimination Commission (FHRADC) and its predecessors' lack of independence and limited track record in addressing GBV and family law cases.¹²

In Fiji's Fifth periodic report to CEDAW (State report), the government argues that non-derogation principles in the Constitution and the broad equality provision in the Constitution are sufficient to ensure gender equality is protected.¹³ However, the very principles within the Constitution that the State relies on are undermined by limitations on the freedom of speech, assembly, and association,¹⁴ which have been further institutionalized within regressive legislation.¹⁵

2. Legislation (as referred by Concluding Observations ¶¶13, 21, 23)

For context, it is important to note that legislation (Public Order Act 2012, Media Industry Development Act 2010, Crimes Act 2009, and Domestic Violence Act 2009) issued via Decree referred from 2006 to 2014 were done so without parliamentary approval, without public consultation, and with provisions in the Constitution that bar the ability for courts or tribunals to challenge their validity.¹⁶ Though there are some progressive elements to the legislation, there are areas within the legislation and its implementation where discrimination persists and has an impact on gender equality.

a. Public Order Act 2012 (as referred by Concluding Observation ¶13)

Fiji's replacement of the heavily criticised Public Emergency Regulations 2009 with the Public Order Act only reinforced a Constitutional basis (section 20) for restricting freedom of association, assembly, and expression, in derogation of the international Bill of Rights and Fiji's obligations under international law. Under the Act, the government can justify refusal of a permit if any meeting or march could affect peace, public safety, and good order.¹⁷ Viewed together with the Media Industry Development Act 2010, these laws create a chilling effect on human rights defenders by criminalising free expression, assembly, and association,¹⁸ and specifically have been used to target women's rights organisations. For example: 1) FWRM planning retreat was shut down in 2011, where police detained FWRM staff for holding a private meeting on the basis of needing a permit, and 2) International Women's Day events led by FWCC were canceled in 2013.¹⁹ These are only a few examples that directly undermine the State's contention that "[t]here have never been any restrictions placed on any organisations with regards to engaging on issues pertaining to gender equality. . ."²⁰

b. Media Industry Development Act 2010 (as referred by Concluding Observation ¶13)

The passing of the Media Industry Development Act created an environment of forced self-

ensorship, which challenges the credibility of Fiji as a free and open democracy, and restricts the ability of women’s rights advocates to amplify their voice because it forbids publications that are against “public interest or order, or national interest, or which offends good taste or decency”²¹ Even though amended to remove fines for journalists, the “fear of fines remains for publishers, editors, and organisations that employ them.”²² Press releases from major women’s rights organizations that raise legitimate human rights concerns or illuminate the state’s violations are not published by the media.²³ Part of the problem is that journalists are required to obtain comments from government officials, which can delay or limit the publication or broadcasting of press releases. Furthermore, NGOs are not given a right to reply to statements issued by the government.²⁴ For the Fijian government and its people to move beyond authoritarian rule, legislation that seeks to maintain state control of important public functions erodes trust, weakens democratic institutions, and positions human rights defenders as agents against the state rather than partners working toward critical reform.

c. Crimes Act 2009 (as referred to by Concluding Observations ¶¶21, 23)

The Crimes Act has expanded the definitions of rape and sexual assault, added offences like trafficking of women and children, and specifies that reconciliation does not apply to domestic violence cases. However, there are inherent problems with the definition of “consent,” which only partially bans the requirement of proof of resistance in sexual offence cases.²⁵ The Act also allows for a defence to sex with children between 13 – 16 when there is a “reasonable cause to believe” that victim was 16 or older.²⁶

Furthermore, domestic violence cases are charged under the Crimes Act and the penalties imposed are captured under “Assaults,” which carry relatively light sentences with a maximum of one year for common assault and maximum five years for assaults causing actual bodily harm.²⁷ Where domestic violence cases are prosecuted (more often in instances where actual bodily harm has occurred), perpetrators only receive a sentence of 0.82 years on average.²⁸ The Sentencing and Penalties Act of 2009 provides an opportunity for judges to enhance punishment for domestic violence cases based on aggravating factors, but case law analysis on sentencing decisions shows that the act has not had a tangible effect on the final sentences imposed.²⁹

d. Domestic Violence Act 2009 (as referred to by Concluding Observations ¶¶21, 23)

On its face the Domestic Violence Act is a progressive piece of legislation, as it extends protections to “de facto” relationships and recognises the multiplicity of other family relationships.³⁰ It is also widely understood to cover same sex relationships. Moreover, a greater number of courts have jurisdiction to review domestic violence cases and there is increased flexibility in being able obtain domestic violence restraining orders (DVRO) as well as expanding police authority to investigate and prosecute domestic violence.³¹

Under section 14 of the Act, a presumption is created for officers to seek a restraining order when they believe an offence has been committed and the victim’s safety or wellbeing is at risk. A similar presumption against reconciliation is identified in section 11, yet, despite the clear language of the statute, police are deficient in applying for DVROs, magistrates are not issuing DVROs as part of the sentence, and magistrates/ judges routinely rely on reconciliation to reduce or suspend sentences for domestic violence cases.³²

Fiji still has not adopted a “comprehensive or integrated approach to legislative reform in the area of

violence against women [and girls] . . . because the changes do not address the full range of gender-based violence or the underlying systemic discrimination against women.”³³

i. Legal Aid

In making the Domestic Violence Act gender neutral, there have been several unintended consequences. For example, the Constitution guarantees effective remedies for persons who have experienced discrimination, which under CEDAW General Recommendation 19, includes violence against women and girls. The State claims that access to justice has been strengthened by Legal Aid.³⁴ Yet, men have used the Domestic Violence Act to remove their female partners from the matrimonial home by obtaining residential DVROs.³⁵ Husbands are better positioned to access the justice system because they have higher earning capacity, no restrictions on leaving the home, greater knowledge of the legal process, and benefit from favorable attitudes of law enforcement toward men.³⁶ Consequently, men have engaged Legal Aid before their spouses, effectively barring them from benefitting from one of the few viable means to access the courts.³⁷ The object and purpose of the Act is defeated because women are the vast majority of victims of domestic violence.

3. Zero Tolerance Violence Free Communities (as referred to by Concluding Observations ¶¶21, 23)

In the State’s CEDAW report, they rely on anecdotal statements by the Police indicating that violence has been reduced in communities that have undergone training under the “Violence Free Community” programme started by the Ministry of Women in 2008.³⁸ However, one of the stated goals of the programme, “to mediate between the community and the police department so that the couple can undergo counselling (and) reconciliation” contravenes the stated objectives of the Domestic Violence Act focusing on prosecution for violence not reconciliation.³⁹ This is confirmed by victim/ survivors who report that they are encouraged to handle violence problems within the community, thereby making the violence invisible.⁴⁰ Another factor is the privileging of male authority as those nominated to work with police at the village level are “nearly always men.”⁴¹ Without a thorough and impartial evaluation of the results of the initiative, it is difficult to conclude that it is a successful model that should be further replicated.

ARTICLE 2 - ELIMINATING DISCRIMINATION (AS INTERPRETED BY GENERAL RECOMMENDATIONS 19, 21)

1. Fiji National Gender Policy (as referred to by Concluding Observations ¶17)

The Fiji National Gender Policy⁴² (“Policy”) was developed as part of the government’s strategy to implement the Women’s Plan of Action (“WPA” 2010-2019), and comply with Article 2. The Policy is comprehensive and was drafted in consultation with a wide range of stakeholders, and aims to conduct an analysis of the implementation of the Fiji Constitution, legislation and policies related to gender equality and gender-based discrimination, as well as create a monitoring and evaluation framework to strengthen data collection to assess domestic violence, trafficking, and exploitation trends. However, action on the policy is severely hindered by the lack of resources allocated to fulfilling its objectives. Only 0.01% of the national budget in 2013 was allocated to the Department of Women, which lacks the resources to recruit gender specialists and monitoring & evaluation officers to implement the Policy and achieve tangible results in practice.

The Policy includes other measures that while laudable, will not come to fruition without government support and investment. For example, the government has introduced a policy that 50 percent of board members serving in state-owned enterprises, public bodies and commissions

should be women.⁴³ However this target is far from the current reality, and reaching this target will likely require direct measures and resources to implement.

2. Women’s Plan of Action 2010-2019 (as referred to by Concluding Observations ¶¶17, 31, 41)

The Women’s Plan of Action (WPA) focuses on improving formal sector employment and livelihood, equal participation in decision making, women in the law, access to basic services, and elimination of violence against women and children.⁴⁴ While the WPA has driven some improvement, such as increased participation in hospital boards and village development committees, resourcing of the WPA has been stagnant and task forces previously engaged have become dormant. As such, gender mainstreaming efforts in government have slowed, there is a lack of gender disaggregated data and little improvement of services for the disabled.⁴⁵

Women’s human security continues to be at the forefront of concern, as women report economic insecurity, increased market prices of food, lack of access to clean water, agricultural failures due to environmental disaster, a lack of personal security, and family violence often caused by economic instability.⁴⁶ As women are the primary providers of food, water and fuel, especially in rural communities, the lack of economic and environmental security places “an undue burden of responsibility on women to manage the impact of these changes.”⁴⁷ Furthermore, “cultural and social barriers continue to prevent women from meaningfully participating in decision making resulting in the perpetuation of discrimination and the ongoing cycle of violence.”⁴⁸ In this context, efforts like those of the Ministry of iTaukei Affairs to reimpose Village Bylaws are problematic because they directly contradict “women’s right to equality and freedom from discrimination” and the government’s commitments to CEDAW and the Policy.⁴⁹

ARTICLE 3: MEASURE TO GUARANTEE COMPREHENSIVE ADVANCES BY WOMEN (AS INTERPRETED BY GENERAL RECOMMENDATION 6)

The national machinery is necessary for both implementation and monitoring the efficacy of laws and policies that affect the advancement of women and girls. The Fiji Women’s Federation (Federation) plays the role of implementing the National Policy and the Fiji Human Rights Anti-Discrimination Commission (FHRADC) functions as an independent monitoring body. Together, these entities are supposed to provide the appropriate checks and balances to ensure movement towards a gender equitable society. However, failures to coordinate with women’s rights NGOs and to promote the ability of women and girls to access justice, compromises the entire system and calls into question the sincerity of the State’s efforts.

1. Fiji Women’s Federation (as referred by Concluding Observations ¶17)

The ability for the Federation to meet its goals rests on adequate funding and resourcing to support the advancement of women and girls. As the cost of GBV is reaching 7% of Fiji’s GDP,⁵⁰ the resources dedicated to improving the lives of women and girls is wholly disproportional. Additionally, the Federation requires women’s rights NGOs to register and apply for permits.⁵¹ From the perspective of NGOs, unnecessary registration and permit requirements create unwarranted barriers to the effective implementation of gender equality programmes. These requirements mimic the Public Order Act, which was described earlier as having the effect of limiting freedom of expression, association, and assembly.⁵² For example, in November 2016, the Fiji Roads Authority twice rejected permit applications by the NGO Coalition on Human Rights to

march to celebrate Human Rights Day, an annually celebrated event.⁵³

2. Fiji Human Rights Anti-Discrimination Commission (as referred by Concluding Observations ¶¶15, 23)

Despite its important role as a national human rights mechanism, FHRADC's independence and credibility are still in question. First, it is still suspended from the Global Alliance of National Human Rights Institutions (formerly ICC) and Asia-Pacific Forum of National Human Rights Institutions owing to its inability to comply with the Paris Principles⁵⁴ adopted by U.N. General Assembly resolution in 1993.⁵⁵ Second, FHRADC is under the Office of the Prime Minister which plays a vital role in advising the President on who is appointed to the Commission.⁵⁶ For an institution that is meant to independently investigate human rights violations committed by the state or where the state has not done enough to prevent those violations, this creates a direct conflict of interest. Third, FHRADC is constitutionally forbidden from receiving, investigating, or challenging any complaints on the legality of the Acts introduced from 2006-2013, abrogation of the previous Constitution, and the 2006 coup.⁵⁷ Fourth, during the last CEDAW review, it was noted by the Committee that "little ha[d] been done to . . . prioritise gender and women's rights within its work."⁵⁸

FHRADC reported that they have received 703 complaints since 2013, but data on the types of complaints made and the cases that proceed forward is not transparent on their website, which only substantively provides a complaint form.⁵⁹ However, FHRADC states that it has taken on some GBV and family law cases.⁶⁰

ARTICLE 5: SEX ROLES & STEREOTYPES (AS INTERPRETED BY GENERAL RECOMMENDATIONS 3, 19)

Patriarchal cultural and religious norms persist and are deeply rooted in Fijian society. These norms perpetuate gender stereotypes that often lead to victim blaming and violence. This is exacerbated when individuals at the highest levels of government sanction these beliefs. For example, Dr. Luveni, currently Speaker of Parliament and former Minister for Women stated:

"We know exactly what our husbands don't like, yet we do it. Sometimes we women aggravate the situation; sometimes we know exactly what our husbands don't like and then we do it; what do you expect? So we women also really need to be aware that our husbands also have a temper."⁶¹

Overall, 72% of women have experienced physical, sexual, or emotional violence from an intimate partner in their lifetime.⁶² The violence also extends to non-partner physical and sexual violence, which 31% of women and girls have experienced in their lifetime.⁶³

When you also consider that 47% of women and girls are not reporting to formal agencies/authorities⁶⁴ because they lack trust in the justice system, a deep systemic problem is uncovered.⁶⁵ Rashida Manjoo, Special Rapporteur on Violence Against Women, describes GBV as intersecting circles comprised of: "structural, institutional, interpersonal, and individual factors."⁶⁶

The continued challenge the State faces is eliminating gender stereotypes, myths, and reconciliation practices that reinforce the idea of women's inferior position and erode trust in the State, including the courts. Societies' highest aspirations of justice and fairness should be reflected by the justice system, which safeguards the most vulnerable in society. However, clear evidence reveals that gender bias is thwarting accountability in domestic violence and sexual offence cases.

1. Police (as referred by Concluding Observations ¶39)

The police have improved responsiveness to GBV cases -- from the creation of Sexual Offence Units (SOUs) to implementation of No-Drop policies where police are mandated to investigate thoroughly all domestic violence cases irrespective of whether reconciliation has taken place. Yet, even with these provisions in place, women who report physical or sexual violence have been charged with “giving false information to a public servant” as a means of intimidating and punishing them for being “bad women.”⁶⁷ In the case of *State v. Zoya Fazimun Nisha*, Case No. 1/14, 2/14, the “police had slapped her, pulled her hair and continued to hurl abusive language . . . [for] her initial report that she was raped by her ex-boyfriend.”⁶⁸

Part of the environment that allows for the dismissal of legitimate claims is the limited number of female police officers -- accounting for only 20% (as of 2014) of the regular police force.⁶⁹ This can be seen in the police’s reluctance to seek DVROs for victims and arrest perpetrators who are in violation of DVROs.⁷⁰ The idea that domestic violence cases are private and “not serious” still permeates the consciousness of many law enforcement officials.⁷¹ In an access to justice study conducted by FWRM, it was found that “only 50% women stated that they were advised to go to family law court” by the police.⁷²

2. Courts (as referred by Concluding Observations ¶¶21, 23)

The World Bank noted that Fiji has improved in women’s access to institutions and courts over the last few years.⁷³ Yet, it still ranks 92nd of 122 countries in the number of female judges on the appellate courts.⁷⁴ There is clear evidence that having women judges in gender discrimination cases leads to more equitable outcomes.⁷⁵ This information is critical when looking at GBV cases. In analysing Fijian court decisions, quantitative data reveals how contentious factors (defined as factors that discriminate against victim/ survivors when used to mitigate sentences in GBV cases, including gender stereotypes, rape myths, “breadwinner,”⁷⁶ and reconciliation) have severely curtailed justice for victims of domestic violence and sexual offences. In a randomised study of 145 Fijian cases (54 domestic violence, 87 sexual assault, and 4 murder cases that resulted from GBV) from 2000-2014, contentious factors led to a sentence reduction in 47% of all cases reviewed.⁷⁷

a. Domestic Violence (as referred to in Concluding Observations ¶21)

Within the same study, isolating domestic violence cases between 2011-2014 (once Domestic Violence Act was in effect), 63% of cases were reduced based on contentious factors, which includes both traditional reconciliation (*bulubulu*) and informal reconciliation practices. What is even more concerning is that 55% of domestic violence cases from 2011-2014 ended with fully suspended non-custodial sentences and only probation.⁷⁸

This data illuminates a problem with the State’s contention that misuse of *bulubulu* “to force reconciliation has been eradicated . . . and cannot be forced onto victims of rape or domestic violence.” Yes, police, prosecutors, and judges may not be imposing reconciliation on victim/ survivors as they were before the Domestic Violence Act, but judges are still allowing perpetrators to avoid accountability for serious crimes by relying on reconciliation and other contentious factors in their decision making.

b. Sexual Offences (as referred to in Concluding Observations ¶23)

The State has asserted that there are no reported cases of cultural practices being used to avoid imprisonment for rape, and there have been no non-custodial sentences for rape except when the

offender is a minor. This statement masks cases where an offender was a minor and committed a serious offence; for example, where a 17 year and 10 months old “boy” raped his 11 year old cousin twice.⁷⁹ The starting sentence in this case was set at 12 months. It was reduced by 4 months primarily because he was a juvenile, first time offender, and admitted guilt. The remaining sentence was suspended and the perpetrator received a non-custodial sentence.

This is not an isolated rape case that ended with a non-custodial sentence. In *State v Drose* [2012] FJMC 329, a 16-year-old boy was found guilty of attempted rape and rape of his younger sister. The court strained all reason when providing a reason to mitigate the sentence stating, “[h]e was overcome with lust and sexual curiosity as he had watched some pornographic movies, which led [him] to commit these offences.”⁸⁰ Of course, the judge in *Drose* was relying on another case as precedent, *State v T.V.K* [2011] FJHC 732. There, a 15-year-old boy raped a 6-year-old girl and received a non-custodial sentence. In both cases, the judges only imposed probation on the perpetrators until they were 18 years of age. The judges believed it was more important to be lenient to first time offenders who were minors than to duly consider the increased vulnerability of girls.

Girls are particularly vulnerable to sexual offences in Fiji. In a regional study that included Fiji, 58% of the victim/ survivors in GBV cases were under 18, with the highest concentration between 12-15 years of age.⁸¹ Former Judge and current Fiji's Permanent Representative to the United Nations in Geneva, Nazhat Shameem, stated:

“The best evidence of gender bias in my opinion is usually reflected in sentences. This is often because the judge may not be able to overrule assessors with ease, but can pass a sentence which reflects what a judge thinks of gender roles. Judges have a wide sentencing discretion. The approach of the courts in Fiji to adopt sentencing principles and the tariff approach, does not always prevent a judge from passing a sentence which reflects gender bias.”⁸²

Gender bias influencing decision making results in grossly disproportionate sentencing in domestic violence and sexual offence cases. While more GBV cases are being taken up in court than previously, and judges are taking account of the Domestic Violence Act, problems around gender bias in the judiciary are still quite severe.

ARTICLE 6: EXPLOITATION OF WOMEN (AS INTERPRETED BY GENERAL RECOMMENDATION 19, AND REFERRED TO BY CONCLUDING OBSERVATIONS ¶[25])

Exploitation of women is more common in Fiji in the form of unpaid or underpaid labour, but prostitution,⁸³ early marriage in exchange for money or gifts,⁸⁴ trading of children, and other forms of trafficking are also concerns.⁸⁵ Fiji is not a party to the 2000 UN TIP (Trafficking in Persons) Protocol. Exploitation largely affects Fijian youth, driven in part by challenging economic circumstances,⁸⁶ a larger than average youth population, and the fact that some parents, relatives, and elders use their socially and culturally inculcated positions of power to exploit women and children.⁸⁷ Many exploitative practices are indicative of a larger societal problem that women and children are commodities to gain wealth, land or power.⁸⁸ Women are also pressured into sex work by poor economic circumstances caused by “unemployment, divorce, desertion, failure of men to pay child maintenance, and lack of support from relations.”⁸⁹ Some estimates suggest “the number of sex workers per capita rivals Thailand.”⁹⁰ In one study, of 1,611 Fijian children interviewed who are engaged in child labour, 42% were girls. Of those interviewed, 104 children were engaged in

prostitution, 85% had experienced sexual abuse prior to commercial sex work, and 78% were girls.⁹¹ Many of the same reasons for engaging in sex work hold true as well for transgender sex workers, with the added dimensions of seeking a community that accepts them, or finding that they needed to engage in sex work as a second job because of a lack of formal employment available to them.⁹² Since the passage of the Crimes Decree 2009, there have been reports of illegal detention, harassment, torture, and humiliation of sex workers, both female and transgender, by police⁹³ and the military.⁹⁴

The role of Fiji as a transportation hub and lax visa requirements both play a part in trafficking in the country, as does forced labour being a major problem on fishing vessels in Pacific waters. The government increased efforts to train law enforcement in anti-trafficking efforts, and was prosecuting five trafficking cases in 2016, up from zero cases in 2015. It also “provided modest assistance to at least nine victims” in 2016.⁹⁵ Despite increasing “efforts to identify and protect trafficking victims,” the government “did not proactively identify victims of trafficking among vulnerable populations, such as women and girls in prostitution, foreign workers in spas, and crew members who transit through Fiji onboard vessels in Fiji ports.”⁹⁶ Furthermore, “some potential victims may have been deported as law violators”⁹⁷ and the government did not take “efforts to reduce the demand for commercial sex acts, forced labo[u]r, or child sex tourism.”⁹⁸

ARTICLE 11: EMPLOYMENT (AS INTERPRETED BY GENERAL RECOMMENDATIONS 17, 19)

1. Equal Opportunity in Employment (as referred to by Concluding Observations ¶31)

The labour force participation rate for women increased from 38% in 2007⁹⁹ to 47% in 2010, compared with 81% in 2010 for males.¹⁰⁰ Despite the improvements, this is the largest gender gap in any Pacific Island country.¹⁰¹ Indo-Fijian women have considerably lower labour participation rates than iTaukei, at 29% to 44% respectively.¹⁰² Employed women in Fiji remain underrepresented in management positions and experience more limited job opportunities than men.¹⁰³ In 2010, women comprised 29% of legislators, senior officials, and managers, 43% of professionals, and 35% of technicians and associated professionals.¹⁰⁴ The incidence of poverty for wage earners was 43% for women to 25% for men, and for the self-employed, 79% for women to 52% for men.¹⁰⁵ The effective unemployment rate for females in 2010 was 41%, and effective underemployment rate (for family workers/no pay) was 75%.¹⁰⁶ Unpaid work thus comprises a huge part of work activity in Fiji, with the hours dedicated to it converting to the equivalent work of 314,000 persons, only slightly less than the 370,000 Economically Active persons (as traditionally defined).¹⁰⁷ The value of Unpaid Household Work ranges between a conservative \$942 million or 17% of GDP, to \$1.8 billion or 33% of GDP, and the vast majority (76%) of the work is done by women, both economically active and not.¹⁰⁸ Given the nature of unequal power in gender relations and the traditional place of women in the home, unpaid work, such as care of property, family, and providing care to others decreases women’s agency, freedom, empowerment and autonomy.¹⁰⁹

There is an increase in women’s unpaid work and decrease in autonomy following natural disasters, like the recent Tropical Cyclone Winston.¹¹⁰ Events like this can disrupt life completely from ruining crops to making accessing the most basic needs challenging, especially for rural women.¹¹¹ Women tend to bear the biggest burden in recovery efforts, finding resources and providing day-to-day care for families; efforts that go unrecognised and seen as a woman’s duty.¹¹² These responsibilities further impede women’s ability to earn money through employment leaving families more reliant on food assistance.¹¹³ Women also face a heightened risk of GBV both during and in the aftermath of

disasters.¹¹⁴ Because they were not included in emergency planning, disaster relief efforts failed to account for their needs during TC Winston, resulting in sexual violence in evacuation centres.¹¹⁵ Reports of domestic violence and excessive drinking also increased following the disaster.¹¹⁶

It is important to note that the government's ageing policy, which reduced the age of retirement from 60 years to 55 years, adversely affects women, who earn less and also sometimes take leave to raise children and later reenter the workforce.¹¹⁷ Early retirement prevents women from accumulating a larger social pension, keeping insurance, and benefiting from other social protections. Women with disabilities are in an egregiously difficult position as "89% of people with disabilities are not employed," 42% of which are women.¹¹⁸

2. Pay Equity (as referred to by Concluding Observations ¶31)

The cost of living increased approximately 30% between 2005 and 2010, causing "a sharp reduction in Real Average Incomes...with much larger reductions in the rural areas than in urban areas."¹¹⁹ Employment discrimination against women becomes a larger concern in this context, where income disparity between men and women remains a significant with women earning "roughly 29% of all income earned during 2010-2011," despite their 47% labour participation rate.¹²⁰ There is a gap between men and women working in the same employment positions, with women earning 19% less,¹²¹ and being offered less opportunity for promotion. Furthermore, because of differences in personal income tax regulations, where tax provisions directly favor men, women may pay disproportionately higher taxes and therefore avoid entering into formal employment.¹²² While provisions for maternity leave have been implemented, granting 84 days of maternity leave,¹²³ paternity leave still remains only a concept embedded in the National Gender Policy.¹²⁴ If both parents aren't seen as primary caregivers, traditional gender roles only become more rigid and reinforce norms that are detrimental to women.

A local union survey revealed cases where pregnant women are terminated from private employers seeking to avoid maternity leave payments, and that women do not file complaints for fear of reprisal when seeking re-employment. Other issues of concern include social security contributions going missing, and employers failing to provide protective equipment and training where working with hazardous chemicals. Additionally, women comprise 90% of workers (appx. 5,400) in the Garment Industry, and are paid \$2.24 per hour under the Wage Regulation Order (2015), lower than the National Minimum Wage of \$2.32.¹²⁵

3. Sexual harassment (as referred to by Concluding Observations ¶31)

Sexual harassment remains "significant, widespread, varied in nature, and predominantly a repeated pattern" in the workplace. "Overall, the data reveals that the incidence of sexual harassment cuts across all workplace types and affects women from various socio-demographic groups."¹²⁶ In a survey of a 1,000 women, one in five (20%) reported experiencing sexual harassment in the workplace, with the incidence of harassment being particularly high for those in the hotel and food service industry.¹²⁷ This is an improvement from 33% of women reporting sexual harassment in 2002, but still an incredibly high incidence. The majority (82%) of sexual harassment complaints go unreported, including 75% of complaints involving forced nudity and 40% of sexual assault or incidents of rape. Encouragingly, there appears to be positive consequences from punitive action taken by employers in 71% of cases reported.¹²⁸

While the Employment Relations Promulgation 2007 (ERP) imposes a requirement that all employers establish “an internal written policy and grievance procedure on sexual harassment in the workplace,” only 62% of working women interviewed said their employer had a sexual harassment policy.¹²⁹ This was higher in the private sector than the public, at 70% and 57% respectively.¹³⁰ While some sexual harassment cases are handled by police and through criminal prosecution, the majority of cases are reported directly to the employee’s supervisor. Under the ERP, issues of sexual harassment are handled through internal grievance mechanisms first, then through mediation, and finally by the Employment Relations Tribunal.¹³¹ The Employment Relations Tribunal decided only 19 cases in 2016¹³² (down from 71 cases in 2015¹³³), zero of which concerned sexual harassment. Another issue of concern is that the ERP “does not apply to members of the Republic of Fiji Military Forces, the Fiji Police Force and the Fiji Corrections Service.”¹³⁴

4. Political Participation and Special Measures (as referred to by Concluding Observations ¶27)

Meaningful participation in local and national governance remains a challenge for women, despite there being a commitment for the past 40 years for there to be 30% women’s representation in decision making.¹³⁵ In the last parliamentary election, 17% of candidates were women, and 7 women are now members of parliament out of 50 (14% of seats).¹³⁶ Contrary to the State’s report, there has been no improvement in national representation -- in 2006, 13 women held 18% of seats in parliament.¹³⁷ Furthermore, concerns remain regarding meaningful participation when operating as a small minority.

According to a co-convenor of the Fiji Women’s Forum, a national consultation on women’s participation in national democratic processes, special measures to increase women’s political participation should not be temporary -- more women are needed “in parliament, in policy making bodies, in cabinet, as well as women participating at the lowest level of decision making.”¹³⁸ The import of women’s participation in democratic processes, while obvious, is even more apparent on the local level. For example, in advisory councils in Lautoka, out of 14 councillors, two are women. Positively these women have noticed, “the women in our community, they find it comfortable to approach us if they have got any problems – they are very comfortable to come to talk to us.”¹³⁹ They also relayed however, that as a result of being only two women on the team, “putting our issues across is a bit difficult to go through the other 12 men.”¹⁴⁰

ARTICLE 12: HEALTH (AS INTERPRETED BY GENERAL RECOMMENDATIONS 16, 24)

When looking at the Human Development Index for 2015, Fiji ranks 91st, falling within the mid-range globally and improving its standing since 2011 (ranked 100).¹⁴¹ The Index looks at health, education, and economic prosperity of a nation. Despite some progress, the total health expenditure for Fiji in 2014 was 3% of GDP, lowest among other Pacific Island Countries, and half of the global average (6%).¹⁴² As the Fijian population continues to move¹⁴³ from rural areas to urban centres, health systems must adapt to meet new challenges and can only do so if adequate resources are dedicated to them.¹⁴⁴

Often, even if access to health services are readily available, “39% of women feel they must ask permission from their intimate partner before seeking health care for themselves.”¹⁴⁵ The overall well-being of women and girls rests on their ability to make choices about their own health, including reproductive health. If women’s choices around having children, the number of children,

and spacing between when they have children are not made in an environment that is free from discrimination, regressive cultural norms, coercion, and violence, both their mental (i.e. postpartum) and physical health will often be compromised.

1. Sexual and Reproductive Health (as referred to by Concluding Observations ¶¶29, 33)

a. Access/ Delivery of Health Services (as referred to by Concluding Observations ¶33)

Sex-disaggregated data and gender analysis is essential for monitoring health service access and delivery, since men and women have different health concerns.¹⁴⁶ Any weakness in the access and delivery of health services has a disproportionate impact on women because they have “special needs for antenatal care, primary responsibility for monitoring and vaccinations of infants and young children, and greater care responsibility for other family members like the elderly.”¹⁴⁷ Fiji, like other Pacific Island nations has restrictive abortion laws.¹⁴⁸ Abortions are only legal when intended to save a woman’s life or if her physical or mental health are in danger.¹⁴⁹ When these services are denied, women and girls turn to unsafe abortions which are linked to increased maternal mortality.¹⁵⁰ Fiji’s Health Minister, Dr Sharma has said,

“Our laws need to address pregnancy with a lot more scope and vision. Some of our Pacific laws are very restrictive and we often see and hear of aborted fetuses in latrines, babies dumped at maternity units and orphanage doors — simply stated . . . many jurisdictions [including Fiji] fail to address medical termination of pregnancy.”¹⁵¹

Other gaps in health services include: facilities that are not properly equipped, poor coordination of services, and limited monitoring and evaluation, which leads to “poorly-informed policy formulation.”¹⁵² In rural areas, health centre staff are not adequately trained to provide voluntary confidential counseling and testing (VCCT), which is made more difficult by the lack of confidential counselling rooms.¹⁵³ Another challenge to adequate health care is that qualified doctors and nurses are choosing private practice, working in urban centres versus rural areas, being transferred to fill other vacancies, or emigrating.¹⁵⁴ Retaining properly trained medical professionals in both rural and urban areas is essential to accessing the health system, ensuring that specific sectors of the health system are not overburdened, and creating proper coordination between the different health centres. “One wom[a]n from a rural dwelling shared on how they have to walk half a day to the nearest clinic and sometimes when they reach there it is closed.”¹⁵⁵

b. Adolescent Reproductive Health/ Ministry of Health Strategic Plan Goals and Outcomes, 2011-2015 HIV/ STIs (as referred by Concluding Observations ¶¶29, 33)

High rates of teen pregnancy have a deleterious effect on young women and girls when it comes to education and career opportunities.¹⁵⁶ Adolescents often fear the stigma of seeking reproductive health services and are the least likely to get quality care.¹⁵⁷ This is further exacerbated when seeking health services and reproductive health education in rural areas or outer islands.¹⁵⁸ For example, there are reports of unmarried and young women who have been denied tubal ligation for birth control.¹⁵⁹ Even when a woman is married, health professionals may seek the husband’s consent though it is not mandated by law.

A World Health Organisation study of young people between the ages of 15-24 found that less than half (49%) of boys/ men and 30% of girls/ women used a condom during their last sexual

encounter.¹⁶⁰ Part of the problem is that purchasing contraceptives requires a parent for those between ages of 16-19.¹⁶¹ Whether it's embarrassment or being labeled promiscuous,¹⁶² this barrier to obtaining contraceptives puts boys and girls at significant risk for unwanted pregnancies, and contracting sexually transmitted infections (STIs), including HIV. Unfortunately, “[b]oth women and men have expectations that “trust”, “love” and “faith” will prevent HIV and STI transmission.”¹⁶³ The consequence of this is that 38% of women under the age of 25 tested positive for chlamydia,¹⁶⁴ which “contribute[s] to significant morbidity, impacting on pregnancy outcome and fertility.”¹⁶⁵

STIs are extremely high among young women and there are multiple barriers that inhibit effective treatment, including: limited confidentiality at the community level (close-knit communities),¹⁶⁶ availability of STI drugs only at specialised centres and only through a doctor, and transportation costs (rural areas or outer islands).¹⁶⁷ It is important to note that Fijians who are infected with HIV, the iTaukei population has the highest rate at 81% with Fijians of Indian descent coming in at 13%.¹⁶⁸

2. Legislation (as referred to by Concluding Observations ¶33)

Fiji is one of the few PICs with high prevalence rates of HIV infection at 0.1% (15-24 years old).¹⁶⁹ This underscores the importance of the HIV/ AIDS Act 2011, which aims to destigmatise and create a rights-based approach to prevent its spread.¹⁷⁰ Despite this positive approach, in some cases, the HIV/ AIDS Act is undermined by the criminalisation of sex work under the Crimes Act.¹⁷¹ Female and transgender sex workers have lost confidence in accessing health services because of “snide remarks and bad treatment by staff” and a lack of confidentiality about their work, which they attribute to the Crimes Act.¹⁷²

These implications are far reaching, since men who have sex with men (MSM) and transgender (TG) populations have a higher prevalence rate of HIV (0.7 - 2.0%) than the national average.¹⁷³ In a study of 212 MSM and TG, respondents (65.7%) had significant knowledge around HIV transmission, but that didn't necessarily lead to safer sexual behavior.¹⁷⁴ Furthermore, participants did not feel comfortable with going to health clinics to get tested. Only 10.5% of all the respondents had an HIV test in the past year and knew the result, mainly due to stigma and discrimination.¹⁷⁵

3. Violence Against Women & Girls (as referred to by Concluding Observations ¶33)

One of the biggest risk factors to women's health is intimate partner violence. 30% of ever-partnered women have been injured in their lifetime.¹⁷⁶ Barriers that exist for women to talk about physical or sexual violence include: lack of privacy in the healthcare setting, lack of confidentiality, lack of empathy from health workers, long wait times, and health professional not asking the husband or partner to leave while doing the assessment.¹⁷⁷ Additionally, post exposure prophylactics (PEPs) for rape survivors are non-existent in rural areas.¹⁷⁸ The downstream effect of this is that women may not qualify for PEP because they exceed the 72 hour time-frame, which could have a significant impact on a woman's physical and mental health.¹⁷⁹ Violence against women and girls has also increased the vulnerability of women to HIV/AIDS.

ARTICLE 14: RURAL WOMEN (AS INTERPRETED BY GENERAL RECOMMENDATIONS 16, 19)

1. Population of Rural Women and Girls (as referred to by Concluding Observations ¶35)

Generally, problems faced by urban women and girls are more amplified for those living in rural areas. This includes concerns for food security and reliable access to water; difficulty in obtaining access to justice,¹⁸⁰ health care, and education; and decreased personal safety and economic security. Rural persons who are working are twice as likely to be in poverty as urban working persons, and rural females have the highest incidence of poverty, at 61% to 43% for rural men.¹⁸¹ Most rural women are “subsistence workers with no or negligible cash incomes, unpaid homemakers or officially unemployed.”¹⁸²

During a CEDAW consultation, 95% of rural participants believed there were inherent conflicts between human rights, religion, and culture.¹⁸³ While FHRADC is responsible for human rights education and training, it appears not to be undertaking any activities to address or mitigate this perception of conflict. In fact, the State’s report places the onus on rural women to shift from being victims of discrimination and violence to agents of change;¹⁸⁴ and that training will help rural women “become equal partners in decision-making and contribute to the rural sector development.”

In contrast, policies like the Village Bylaws seek to “ensure that traditional leadership is upheld, respected, and protected” and reinforce patriarchal leadership structures in contravention of CEDAW.¹⁸⁵ Following a circulation of a draft of the Village Bylaws which included a women’s dress code, there were reports of public flogging and other physical violence directed at young women by village headmen.¹⁸⁶ Furthermore, the State report acknowledges problematic customary practices in relation to marriage of rural iTaukei women whereby they are made “dependent on men throughout their lives.”¹⁸⁷ Some women can become disenfranchised from their rights to customary land, “other than those permitted by their fathers or husbands.”¹⁸⁸ Rural women cannot become equal partners in decision making unless measures are taken to ensure that customary practices do not contravene women’s rights.

An additional concern impacting rural women is that the cost of food has risen dramatically, as household incomes grew 51% for urban households and only 10% for rural households between 2003 and 2009.¹⁸⁹ An aggravating factor is the intensification of natural disasters and climate change affecting the agricultural sector and ruining crops. In the aftermath of TC Winston, rural families found themselves relying on markets to purchase food supplies, changing their diet from traditional crops to bread, butter, rice, lentils, and canned food, and eating twice a day instead of three times or sharing much smaller portions.¹⁹⁰ Subsistence farmers on leased land, many of whom are Fijian farmers of Indian descent,¹⁹¹ are particularly vulnerable to the impacts of climate change and disasters in addition to facing other challenges.

2. Government Rural Development Policies and Programmes (as referred to by Concluding Observations ¶¶35, 42)

While the government has made investments to reduce poverty, eliminate violence, and economically empower rural women, there is limited disaggregated data to showcase the efficacy of the investments.¹⁹² This is unsurprising given the insignificant budget dedicated to the WPA and lack of formalised monitoring and evaluation procedures.¹⁹³ As previously mentioned, rural women are the most affected by natural disasters, but are often not included in development and planning. While some efforts to engage rural women by NGOs have resulted in networks of rural women leaders, the government has not taken a similar proactive approach.

3. Rural Water and Sanitation Policy

The government claims in its State report that by 2010 the “remaining unimproved water source is 5 percent” and that 95% of water sources in rural areas have been improved.¹⁹⁴ However, medical

centres and hospitals in parts of Fiji have been affected by water and power cuts.¹⁹⁵ The government encouraged rural families to sustain backyard farms in the aftermath of TC Winston in 2016, but some rural women reported that unreliable water sources made it impossible to do so.¹⁹⁶

4. Rural Education (as referred to by Concluding Observations ¶29)

Many of the improvements to infrastructure the State report mentions are sorely needed to promote quality education. While Primary and Secondary school education may be free in Fiji, one of the primary concerns expressed by many rural women is the peripheral cost of education for their children.¹⁹⁷ Clothing, shoes, and other school requirements are large expenses for families earning little per week (e.g. \$50-\$60 FJD/week for a working person), especially for those with multiple children. The rate of school enrolment for females is considerably lower in rural than urban areas, at 71% to 84% for senior secondary (16-18) and for tertiary levels (19-22) at 20% to 43%. Women express that it is difficult to obtain employment, and that children are not being enrolled in further education because parents cannot afford it.¹⁹⁸

ARTICLE 16: MARRIAGE & FAMILY LIFE (AS INTERPRETED BY GENERAL RECOMMENDATION 21)

1. Marriageable Age / Arranged Marriage (as referred to by Concluding Observations ¶¶21, 39)

The State has taken the appropriate steps in amending the Marriage Act to reflect the marriageable age as 18 years of age for both males and females in Fiji, consistent with CEDAW. As the State correctly cites the UN High Commissioner for Human Rights, “child marriage is rooted in unequal gender status and power relations that result in the perpetual subjugation of girls.”¹⁹⁹ Recognising the shift in policy, the State must vigorously ensure that child marriages do not occur, and if they do, that they are promptly annulled and those responsible charged under the Crimes Act.

In a study done on violence against women in iTaukei villages, there were findings that maintaining communal harmony had led to cases where girls who had been raped were arranged to marry their rapist. In this scenario, the village chief would coordinate conversations with the boy and his parents which “generally results in the couple being married.”²⁰⁰ Similarly, there has been reporting of “young girls being forced into marriage by their families living in a community outside Lautoka City” mainly because of financial and cultural considerations.²⁰¹ FWCC noted that the cases they see are mainly from Fijians of Indian descent, traditionally-bound families, and low income families.²⁰² There have even been cases of young adults in their 20s having the courts step in to annul arranged marriages because the young woman did not “enter freely into marriage.”²⁰³

2. Family Law Act 2003 (as referred to in Concluding Observations ¶39)

The Family Law Act, and its subsequent amendments, has been recognised to be one of the more progressive approaches to addressing family life and was the product of decades of advocacy from women’s rights NGOs. Nonetheless, almost 15 years since its passage, there has been no comprehensive review to monitor and assess the implementation of the Act.²⁰⁴

The key to understanding the efficacy of this legislation is whether access to justice has improved for

women and what barriers still remain. There are still several implementation gaps that organisations like FWRM and FWCC have identified, including: 1) gender sensitive training for Department of Public Prosecution (DPP), Police Prosecution, lawyers representing clients, frontline Legal Aid staff, and frontline judicial staff; 2) design of family law facilities that take into consideration children, lactating mothers, women with disabilities (i.e. wheelchair, hearing impairment),²⁰⁵ and elderly women; and 3) gender-disaggregated data that is coordinated with police, corrections, DPP, and the Family Law Court.

Some of the major concerns related to Family Courts are delays in maintenance payments and tracking of that data,²⁰⁶ serving timely DVROs,²⁰⁷ and property settlements. The lengthy delays perpetuates the notion that these cases aren't important and may also lead to re-victimisation of women as they choose to reconcile with their abusive partners.²⁰⁸ For example, FWCC has researched cases that started in 2000/ 2001 and were finalised in 2013 while other cases that started in that same time period were never heard.²⁰⁹ According to the Chief Registrar, the number of applications to the Family Court have increased from 5000 (2009) to almost 15,000 (2014),²¹⁰ but this is likely only a fraction of the number of potential cases, since survey data shows that only 5% of women choose Family Court as their primary mechanism to resolve issues.²¹¹ As greater awareness of the Family Law Court system becomes available, the courts will have to proactively respond to the potential influx of new cases, which warrants a thorough review of the existing gaps, so that access to the courts remains a viable option.

RECOMMENDATIONS & QUESTIONS FOR THE STATE PARTY

ARTICLE 1 – DISCRIMINATION

- Amend the Public Order Act 2012 and Media Industry Development Act 2010 to protect freedom of speech, assembly, and association.
- What steps is Fiji taking to adopt a comprehensive and integrated approach to legislative reform in the area of violence against women and girls?
- Require the existence of a “unequivocal and voluntary agreement” and proof by the accused of steps taken to ascertain whether the victim/ survivor was consenting.
- Perpetrators of both domestic violence and sexual offences must receive custodial sentences that reflect the gravity of the crime. Sentencing guidelines for domestic violence and sexual offences should be graded based on harm and ensure consistency in outcomes.
- What are the data-driven evaluation results from the Zero Tolerance Violence Free Communities programme?
- Remove the gender neutral language of the Domestic Violence Act because it masks the disproportionate impact on women and enables men to manipulate the system for their benefit.
- Ratify the Optional Protocol for CEDAW.

Article 2 - Eliminating Discrimination

- Increase the budget and provide more resources to implement, monitor, and evaluate Fiji’s National Gender Policy and Women’s Plan of Action.
- Promote and engage in gender mainstreaming activities in government, schools, and private institutions.
- Technical support for data collection systems need to be strengthened and data disaggregated by sex, area (rural, urban), race/ethnicity, religion, age, sexual orientation etc.

Article 3: Measure to Guarantee Comprehensive Advances by Women

- Ministry of Women, Children, and Poverty Alleviation should remove barriers that limit freedom of expression, association, and assembly because of registration and permit requirements.
- The Fiji Human Rights Anti-Discrimination Commission (FHRADC) must take steps to comply with the Paris Principles and seek re-certification from the Global Alliance of National Human Rights Institutions by establishing sufficient independence from the State.
- What steps is FHRADC taking to provide disaggregated data on the complaints it has received?

Article 5: Sex Roles & Stereotypes

- Conduct and publish studies on the effectiveness of police policies (i.e. no-drop policy) and legislation (Domestic Violence Act 2009) in the prosecution of GBV cases.
- Recruit greater numbers of female police officers, military personnel, and corrections officers. Continue to emphasise the important and expanded responsibilities given to police under the Domestic Violence Act 2009 while adequately funding²¹² the Fiji police force.
- Judicial training must include lessons on explicit and implicit (i.e. gender stereotypes) bias and how it impacts judicial decision making, specifically in domestic violence and sexual offence cases.
- Expressly forbid the use of formal (*bulubulu*) and informal reconciliation practices as a means for mitigating or suspending sentences in domestic violence and sexual offence cases.

Article 6: Exploitation of Women

- Increase efforts to investigate, prosecute, convict, and punish traffickers, especially for those involved in prostitution and exploitation of rural or impoverished women and children, and to employ strategies to reduce the demand for forced labour and commercial sex acts.
- Decriminalise sex work under the Crimes Act 2009.
- Accede to the 2000 U.N. Trafficking in Persons Protocol

Article 11: Employment

- Take special measures to ensure gender equality and gender-mainstreaming in all levels of political, social, and economic participation.
- Increase resources to implement the Women's Plan of Action especially in relation to increasing women's employment opportunity and wage parity.
- Include women in disaster management planning and ensure that evacuation centre designs account for women and children's needs.
- Reinstate the age of 60 for retirement, and ensure that other measures are taken to address age and gender discrimination in the labor market.
- Amend Employment Regulations Promulgation 2007 to include paternity leave and the recognition of both men and women as caretakers, and provide avenues to redress claims where women lose employment because employers do not wish to pay for maternity leave.
- The government should enforce its policy requiring written policies and procedures to address sexual harassment in the workplace, and remove exemptions for law enforcement, military, and corrections. It should also ensure that mechanisms to address complaints, such as the Employment Relations Tribunal, are functioning and accessible.

Article 12: Health

- What steps is Fiji taking to retain medical professionals (physicians and nurses) who have the requisite technical expertise, and to ensure that health systems in rural areas have the necessary staffing, medicine, and equipment to deliver essential services?
- Comprehensive sexual and reproductive health education (starting from primary school),

access to contraceptives (without cost or parental permission), and progressive legislation (legalising abortion) are essential to removing both the stigma associated with sexual and reproductive health and the downstream effects of high rates of STIs (including HIV), teenage pregnancies, and unsafe abortions.

- Post exposure prophylactics (PEP) for rape survivors must be accessible in rural areas.
- Voluntary Confidential Counselling and Testing (VCCT) must be accessible at health centres.

Article 14: Rural Women

- Increase resources to implement the Women’s Plan of Action to combat poverty, eliminate violence, and empower rural women, and include rural women in the design, planning, and implementation of local development strategies.
- What data is available from the Government’s on rural development programmes for women and girls?
- Promote existing grants and assistance programmes to rural communities, as many women are unaware of resources available to them.
- Employ monitoring and evaluation strategies to evaluate the government’s rural development programmes and assist in strategic planning, and promote educational programmes for rural women, including on human rights.
- Greater emphasis must be given to the use of community radio (e.g. femLink Pacific) to counteract harmful stereotypes, present positive models of gender equality, and provide disaster awareness (especially to rural and outer island areas).

Article 16: Marriage & Family Life

- Child and “arranged marriage” (where the woman did not freely enter into marriage) must be strictly prohibited.
- When will a comprehensive review of the Family Law Act 2003 (and subsequent Amendments) take place?
- Family Law Courts must continue gender sensitive training for all frontline staff, lawyers representing clients, police, and prosecutors.
- Gender-disaggregated data must be coordinated between police, corrections, DPP, and Family Law Courts.
- Eliminate delays regarding the issuance of DVROs, ensure timely litigation of family law matters, and monitor and enforce maintenance payments.

ACKNOWLEDGEMENTS

The NGO Coalition thanks the International Center for Advocates Against Discrimination (ICAAD) and We Rise Coalition for their support.

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- ¹ “Following Fiji’s Court of Appeal decision in April [2009], ruling that the actions of Fiji’s military in December 2006 were unlawful and unconstitutional, the military regime has . . . abrogated the 1997 Constitution.” Coalition of Women’s NGOs for the CEDAW Shadow Report, *3rd and 4th Combined Periodic Report to the Committee on the Elimination of Discrimination against Women*, at 9 (2010) [hereinafter “NGO Coalition Report”].
- ² Nicole George, *Lost in Translation: Gender Violence, Human Rights and Women’s Capabilities in Fiji in Gender Violence & Human Rights: Seeking Justice in Fiji, Papua New Guinea & Vanuatu*, at 105 (2016), <http://press-files.anu.edu.au/downloads/press/n2168/pdf/book.pdf?referer=2168>.
- ³ *Id.* at 105.
- ⁴ World Economic Forum, *Global Gender Gap Report* (2015), <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=FJI>.
- ⁵ Fiji Women’s Rights Movement (FWRM), *Giving Women a Fair Go! How Gender Equality is Faring in Fiji? An Analysis of Fiji in the Global Gender Gap Index*, at 2 (2016), <http://www.fwrn.org.fj/images/fwrn/publications/analysis/Giving-Women-A-Fair-Go-.pdf>.
- ⁶ Fiji Women’s Crisis Centre (FWCC), *Somebody’s Life, Everybody’s Business! National Research on Women’s Health and Life Experiences in Fiji (2010/2011)*, at 2 (2013) [hereinafter “FWCC Somebody’s Life”], <http://fijiwomen.com/wp-content/uploads/2014/11/1.pdf>. The statistic refers to violence faced in a lifetime.
- ⁷ Revised Edition of the Laws (Amendments) Act No. 31 of 2016.
- ⁸ FWRM, 2nd *Universal Periodic Review of Fiji*, at 5 (14 March 2014) [hereinafter “FWRM UPR”].
- ⁹ *Id.* at 5.
- ¹⁰ NGO Coalition Report, *supra* note 1 at 20.
- ¹¹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1249 U.N.T.S. 13, at Art. 4 (18 Dec. 1979).
- ¹² CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Fiji*, CEDAW/C/FJI/CO/4, ¶15 (30 July 2010) [hereinafter “Concluding Observations”]. During the last CEDAW review, no gender claims had been put forth to the FHRC.
- ¹³ Fiji State CEDAW Report, *5th Periodic Report: Fiji*, CEDAW/C/FJI/5, at 8 (29 June 2016) [hereinafter “State CEDAW Report”].
- ¹⁴ Fiji Const., Sec. 17(3), 18(2), 19(2) (2013), <http://www.paclii.org/fj/Fiji-Constitution-English-2013.pdf>.
- ¹⁵ FWCC, *Submission for UPR on Fiji*, at 6 (12 March 2014) [hereinafter “FWCC UPR”]; Amnesty International, *Submission for the UN Universal Periodic Review*, at 2 (2014) [hereinafter “Amnesty UPR”].
- ¹⁶ Fiji Const., Sec. 173(3), 174 (4).
- ¹⁷ Public Order (Amendment) Act No. 1 of 2016, at Sec. 6, <http://www.fiji.gov.fj/getattachment/Law-Regulations/Other-Relevant-Laws/Public-Order-Amendment-Decree-2012.pdf.aspx>.
- ¹⁸ Amnesty UPR, *supra* note 15 at 3.
- ¹⁹ FWRM UPR, *supra* note 8 at 3-4; Amnesty UPR, *supra* note 15 at 2.
- ²⁰ State CEDAW Report, *supra* note 13 at 6.
- ²¹ Media Industry Development Act No. 29 of 2010, at Sec. 8(e), <http://www.fiji.gov.fj/getattachment/5765b9b4-1b96-4f0d-afc1-3a80e0e2a316/Decree-No-29---Media-Industry-Development-Decree-2.aspx>.
- ²² Citizens Constitutional Forum (CCF), *Amendments to Media Decree Does Not Resolve the Issue of Media Censorship* (9 July 2015), <http://news.ccf.org.fj/amendments-to-media-decree-does-not-resolve-the-issue-of-media-censorship>.
- ²³ FWCC UPR, *supra* note 15 at 5.
- ²⁴ Radio New Zealand, *Fiji’s Media Decree to Stay* (19 May 2015) (“Critics of the decree say provisions such as the requirement for balance are being used as a tactic by the government to shut down negative stories - so if it decides to not give a response, the story doesn't get published.”), <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/201754966/fiji's-media-decree-to-stay>.
- ²⁵ See *example State v Khan* [2011] FJMC 93 (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).
- ²⁶ Crimes Act, Act No. 44 of 2009, at Sec. 215, [http://www.fiji.gov.fj/getattachment/604e31fc-c7b1-41a0-9686-71377917b6eb/Decree-No-44---Crimes-Decree-2009-\(pdf\).aspx](http://www.fiji.gov.fj/getattachment/604e31fc-c7b1-41a0-9686-71377917b6eb/Decree-No-44---Crimes-Decree-2009-(pdf).aspx).
- ²⁷ *Id.* at 274(1), 275.
- ²⁸ International Center for Advocates Against Discrimination (ICAAD), *Analysis of Judicial Sentencing Practices in Sexual &*

Gender-Based Violence (SGBV) Cases in the Pacific Island Region, at 48 (2016), <https://icaad.ngo/wp-content/uploads/2015/12/ICAAD-Analysis-of-Judicial-Sentencing-Practices3.pdf>.

²⁹ See *infra* Article 5(a) of this report.

³⁰ Domestic Violence Act, Sec. 2 (2009),

<http://www.judiciary.gov.fj/images/dvro/Domestic%20Violence%20Decree%202009.pdf>.

³¹ *Id.* at Sec. 12-15.

³² ICAAD, *supra* note 28 at 48; Nazhat Shameem (Ambassador and fmr. Fijian Judge), *The Domestic Violence Decree 2009: Fiji*, at 2 (14 June 2012), http://www.fijileaks.com/uploads/1/3/7/5/13759434/naz_on_the_domesticviolence-decree2009.pdf.

³³ FWCC Somebody's Life, *supra* note 6 at 17.

³⁴ State CEDAW Report, *supra* note 13 at 8.

³⁵ Nalini Singh, Executive Director of FWRM, interviews Police Commissioner Brigadier General Sitiveni Qiliho (29 March 2017).

³⁶ FWCC UPR, *supra* note 15 at 3.

³⁷ *Id.*

³⁸ State CEDAW Report, *supra* note 13 at 9-10.

³⁹ FWCC Somebody's Life, *supra* note 6 at 16.

⁴⁰ Ravai Vafo'ou, *Violence Free Community Initiative Needs More Work*, Fiji TV Online (2 July 2014) ("Women are saying that they report to the turaga-ni-koro or the village committee and often they are told don't bring the shame to the village you know we have to keep the reporting down so therefore we will fix it up in the village . . ."), <http://fijione.tv/violence-free-community-initiative-needs-more-work/>.

⁴¹ George, *supra* note 2 at 105.

⁴² Ministry of Social Welfare, Women and Poverty Alleviation, *Fiji National Gender Policy*,

<http://www.fiji.gov.fj/getattachment/db294b55-f2ca-4d44-bc81-f832e73cab6c/NATIONAL-GENDER-POLICY-AWARENESS.aspx>.

⁴³ Josefina Cutura et. al., *Women in Business in Fiji*, at 3 (2007),

<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan038192.pdf>.

⁴⁴ State CEDAW report, *supra* note at 13.

⁴⁵ Asian Development Bank (ADB), *Gender Statistic: The Pacific and Timor-Leste*, at 1 (2016) [hereinafter "ADB Gender Statistic"]; see also femLINK, *Women's Human Security First: Communicating Gender Inclusive Transformative Development*, at 13 (April 2017) [hereinafter "femLink Human Security"].

⁴⁶ femLink, *Women: Peace, Human Security, Development Report*, at 9-10 (2014) [hereinafter "femLink Peace"],

http://www.femlinkpacific.org.fj/images/PDF/Policy/CommunicatingCEDAW_HSUdate_September2014.pdf.

⁴⁷ femLink Human Security, *supra* note 45 at 11.

⁴⁸ *Id.* at 10.

⁴⁹ FWRM, *Review & Recommendations of Draft Village By-laws*, at 3 (2017) [hereinafter "FWRM Village By-laws"].

⁵⁰ Asian Development Bank (ADB), *Fiji: Country Gender Assessment 2015*, at 3 (2016) [hereinafter "ADB Gender Assessment"].

⁵¹ Concluding Observations, *supra* note 12 at ¶17.

⁵² *Id.*

⁵³ Litia Cava, *Application to March Rejected Twice*, Fiji Times (26 November 2016),

<http://www.fijitimes.com/story.aspx?id=379802>; see also FWRM Press Release, NGOCHR: *Celebration of Human Rights is Not an Inconvenience* (Nov. 2016), <http://fwr.org.fj/news/media-releases/67-all-category/news/press-releases/448-ngochr-celebration-of-human-rights-in-not-an-inconvenience>.

⁵⁴ Principles Relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

⁵⁵ Global Alliance of National Human Rights Institutions (GANHRI), Chart of the Status of National Institutions: Accreditation Status as of 26 May 2017, http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf; FWRM UPR, *supra* note 8 at 4.

⁵⁶ State CEDAW Report, *supra* note 13 at 12.

⁵⁷ Fiji Const., Sec. 154, 173(4).

⁵⁸ Concluding Observations, *supra* note 12 at ¶14.

⁵⁹ Fiji U.S. Embassy Report, Fiji Human Rights Report, at 17 (2016) [hereinafter “U.S. Embassy”], https://fj.usembassy.gov/wp-content/uploads/sites/180/2017/03/Fiji_HRR_2016.pdf.

⁶⁰ Fiji Human Rights Commission, *A Submission by Fiji Human Rights Commission to the Committee on the Elimination of Racial Discrimination*, at 4 (2012); Radio New Zealand, *Fiji’s Human Rights Commission Talks Complaints* (14 Dec. 2015), <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/201782566/fiji's-human-rights-commission-talks-complaints>.

⁶¹ Arieta Vakasukawaqa, *Sometimes Women Aggravate It*, Say Dr. Luveni, Fiji Sun (18 May 2016), <http://fjिसun.com.fj/2016/05/18/sometimes-women-aggravate-it-says-dr-luveni/>.

⁶² FWCC Somebody’s Life, *supra* note at 6 at 2.

⁶³ *Id.* at 3.

⁶⁴ ADB Gender Assessment, *supra* note 50 at 71. If we separate out domestic violence reporting it would be significantly lower at 15%. Shahani Mala, *Only 15% Report Cases Of Domestic Violence To Police*, Fiji Sun Online (11 July 2016), <http://fjिसun.com.fj/2016/07/11/only-15-report-cases-of-domestic-violence-to-police/>.

⁶⁵ “In 2014, the Fiji Women’s Crisis Centre (FWCC) handled 1,075 new cases of domestic violence at their five locations across the country. In comparison, only 232 new cases were reported to the police.” ADB Gender Assessment, *supra* note 50 at 71.

⁶⁶ Human Rights Council, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/20/16, at ¶28 (May 23, 2012) (prepared by Rashida Manjoo), http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf.

⁶⁷ FWCC UPR, *supra* note 15 at 4. During the time of the FWCC’s Report, 4 of their clients had reported that the police charged them with an offence when they reported physical or sexual violence.

⁶⁸ *Id.*

⁶⁹ ADB Gender Assessment, *supra* note 50 at 78.

⁷⁰ FWCC UPR, *supra* note 15 at 4.

⁷¹ *Id.*

⁷² *Id.* at 9.

⁷³ World Bank, *Women, Business and the Law: Getting to Equal*, at 8 (2016), http://wbl.worldbank.org/~/_media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf.

⁷⁴ *Id.* at 19.

⁷⁵ *Id.* “[I]n cases involving sex discrimination or sexual harassment, plaintiffs were twice as likely to win when a woman was on the panel deciding the cases.” *Id.*

⁷⁶ Courts use the “breadwinner” argument to justify that the family would be destitute if a custodial or longer sentence results. When used, this functions as a mitigating factor and leads to significant sentence reduction and even a full suspension of the sentence. ICAAD, *supra* note 28 at 11.

⁷⁷ *Id.* at 48.

⁷⁸ ICAAD, *supra* note 28 at 48 (that percentage comes from isolating the cases listed in the report from 2011-2014); NGO Coalition Report, *supra* note 1 at 34 (“courts rarely award custodial (prison) sentences that reflect the seriousness of the crime . . .”).

⁷⁹ *State v T.G.* [2013] FJHC 660.

⁸⁰ *State v Drose* [2012] FJMC 329.

⁸¹ ICAAD, *supra* note 28 at 6.

⁸² Nazhat Shameem, *Gender, Justice, and Judges: Fiji Judiciary Criminal Law Workshop for Judges and Magistrates*, at 4 (14 June 2012).

⁸³ Sharon Bhagwan Rolls et. al., *Pacific Perspectives on the Commercial Sexual Exploitation and Sexual Abuse of Children*, at 11, 28 (2009). (Young girls can often get engaged in prostitution because of parental neglect, boredom, or a desire for access to money or material items like smart phones.)

⁸⁴ *Id.* at 11.

⁸⁵ See generally U.S. Department of State, *Trafficking in Persons Report* (2016), <https://www.state.gov/documents/organization/258876.pdf>.

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- ⁸⁶ 28% of Fijians live below the poverty line, and many more live just above it. Asian Development Bank, *Basic Statistics 2017* (April 2017), <https://www.adb.org/publications/basic-statistics-2017>.
- ⁸⁷ U.S. Department of State, *supra* note 85 at 169-170.
- ⁸⁸ Rolls, *supra* note 83 at 20. (“Unequal power in gender relations is manifested in the way men and boys have dominance over women and girls through customs and laws in a number of countries in the Pacific, which determine that wives and children are owned by fathers or the nearest male relative.”).
- ⁸⁹ *A Human Rights Report on Trafficking in Persons, Especially Women and Children: Fiji*, at 2 (2010), <http://www.protectionproject.org/wp-content/uploads/2010/09/Fiji.pdf>.
- ⁹⁰ Karen McMillan et. al., *Sex Workers and HIV Prevention in Fiji - after the Fiji Crimes Decree 2009*, International HIV Research Group, at 6 (2011) [hereinafter “Karen Crimes Decree”], https://sphcm.med.unsw.edu.au/sites/default/files/sphcm/Centres_and_Units/Fiji_Crimes_Decree.pdf.
- ⁹¹ Secretariat of the Pacific Community (SPC), *Beijing +20: Review of the Progress in Implementing the Beijing Platform for Action in Pacific Island Countries and Territories*, at 103 (Feb. 2015).
- ⁹² Karen McMillan et al., *Risky Business: Sex Work and HIV Prevention in Fiji*, at 11 (2010).
- ⁹³ Karen Crimes Decree, *supra* note 90 at 6.
- ⁹⁴ *Id.* at 14-18.
- ⁹⁵ *Id.*
- ⁹⁶ *Id.*
- ⁹⁷ *Id.*
- ⁹⁸ *Id.*
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- ¹⁰⁰ Narsey, W. *Fiji Women and Men at Work and Leisure*, Fiji Bureau of Statistics at ix (Oct. 2013) [hereinafter “Women and Men at Work”].
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- ¹⁰⁵ *Id.* at xii.
- ¹⁰⁶ *Id.* at ix and x.
- ¹⁰⁷ *Id.* at x.
- ¹⁰⁸ *Id.*
- ¹⁰⁹ femLink, *Women’s Weather Watch: Protection and Human Security Report Update*, at 3 (2016) [hereinafter “femlink Weather Watch”], http://www.femlinkpacific.org.fj/images/PDF/Policy/WWW_ProtectionAndHS_Update.pdf.
- ¹¹⁰ Live and Learn & CARE, *Rapid Gender Analysis, Tropical Cyclone Winston: Fiji*, at 8-12 (March 2016), https://www.sheltercluster.org/sites/default/files/docs/ll-care_tcwinston_rapidgenderanalysis.pdf; *see also* Ministry of Women, Children and Poverty Alleviation et. al., *Fiji Tropical Cyclone Winston Snapshot* (1 Apr. 2016), https://www.humanitarianresponse.info/system/files/documents/files/protection_cluster_snapshot_1st_april_2016_draft.pdf.
- ¹¹¹ Government of Fiji, *Post-Disaster Needs Assessment, Tropical Cyclone Winston*, at 102 (20 Feb. 2016) [hereinafter “Cyclone Winston”], [http://reliefweb.int/sites/reliefweb.int/files/resources/Post%20Disaster%20Needs%20Assessments%20CYCLONE%20WINSTON%20Fiji%202016%20\(Online%20Version\).pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Post%20Disaster%20Needs%20Assessments%20CYCLONE%20WINSTON%20Fiji%202016%20(Online%20Version).pdf).
- ¹¹² *Id.* at 34, 50-51; *see generally* femLink Weather Watch, *supra* note 109.
- ¹¹³ femLink Weather Watch, *supra* note 109 at 9.
- ¹¹⁴ Cyclone Winston, *supra* note 111 at 103.
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and lowers the retirement age to 55 from 60. The nurses who stand to lose their jobs because of the new retirement age policy include established and un-established staff in all major hospitals and clinics around the country.” *Id.* at 81.

¹⁵⁵ FWRM Ageing, *supra* note 117 at 20.

¹⁵⁶ ADB Gender Assessment, *supra* note 50 at 33. Instances of pregnant girls not being allowed to return to school is common.

¹⁵⁷ *arrow*, *supra* note 148 at Access to Abortion.

¹⁵⁸ *Id.* at Adolescent Fertility; Concluding Observation, *supra* note 12 at ¶33.

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¹⁶⁰ ADB Gender Assessment, *supra* note 50 at 34.

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¹⁶² Fiji Ministry of Health, *Fiji Adolescent Health Situational Analysis*, at 21 (2016) [hereinafter “MoH Situational Analysis”].

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¹⁷⁹ *Id.*

¹⁸⁰ Information Provided by the Government of Fiji on the Follow-Up to the Concluding Observations of the Committee (CEDAW/C/FJI/CO/4), ¶¶ 5.10-5.13 (2012).

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¹⁸² NGO Coalition Report, *supra* note 1 at 97.

¹⁸³ State CEDAW Report, *supra* note 13 at 35.

¹⁸⁴ State CEDAW Report, *supra* note 13 at 4.

¹⁸⁵ FWRM Village By-laws, *supra* note 49 at 2.

¹⁸⁶ *Id.*; *see also* Radio New Zealand, *Some Fiji Villages Ignoring Human Rights* (30 June 2015), <http://www.radionz.co.nz/international/pacific-news/277607/some-fiji-villages-ignoring-human-rights>.

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¹⁸⁹ 5th State CEDAW Report, Republic of Fiji, December 2015, at Table 2,

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FJI/INT_CEDAW_ADR_FJI_24464_E.pdf

¹⁹⁰ femLink Weather Watch, *supra* note 109 at 8.

¹⁹¹ State CEDAW Report, *supra* note 13 at 35.

¹⁹² State CEDAW Report, *supra* note 13 at 36, *see also* NGO Coalition Report, *supra* note 1 at 72 (Female garment workers in Tax Free Zones often receive in-house training and earn less than FJ \$80 per week); *see also* Article 1, Sec. 3 herein.

¹⁹³ NGO Coalition Report, *supra* note 1 at 37.

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