

Republic of Fiji
Joint Submission to the UN Universal Periodic Review
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Joint Submission by Fiji Women's Rights Movement (FWRM) as coordinator of this process, Citizens Constitutional Forum (CCF), Fiji Women's Crisis Centre (FWCC), Haus of Khameleon, Rainbow Pride Foundation, Youth Champs for Mental Health, (YCMH), Reproductive & Family Health Association of Fiji (RFAF), Interfaith Search Fiji (ISF), Medical Services Pacific (MSP), Bua Urban Youth (BUY) and National Union of Factory and Commercial Workers (NUFCW).

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CONTEXT: DEMOCRACY, RULE OF LAW AND GOVERNANCE

1. The backdrop of this submission lies within the context of Fiji's fragile democracy and rule of law situation, as the issues highlighted are interlinked with the contextual realities in Fiji and has implications development and progress of individual citizens, private sector, public enterprise and as well as the nation as a whole.
2. Fiji's history of coups has periodically challenged and held to ransom democracy and rule of law. The current government is complicit in committing acts of treason in 2006 despite being declared illegal by the Fiji Court of Appeal and being dismissed in 2009. The then President was made to reappoint the current government from 2009 to 2014. This resulted in the abrogation of the 1997 Constitution and dismissal of the Court of Appeal and judiciary. The re-appointed government brought and confirmed to the bench existing and new judges, many of whom aligned themselves with the unelected government. Fiji adopted a new Constitution in 2013ⁱ without a proper, full and fair referendum and held its first election in 2014. Today, we have members of our current government who are immune from prosecution under Chapter 10 of the 2013 Constitution for all crimes associated with their act of treason in 2006.
3. As Fiji has completed another election in November 2018, it must show that a robust constitutional democracy has replaced all vestiges of authoritarian rule. Since the 2006 military coup, the regime has legislated numerous decrees without parliamentary due process. Legislation issued via Decree such as the Public Order Decree (2012), Media Industry Development Decree (2010) and others referred from 2006 to 2014 were done without parliamentary approval, public consultation, and with provisions in the 2013 Constitution that bars the ability for courts or tribunals to challenge their validity.¹ They allow for example, for the suspension of human rights and the arbitrary unlawful control of free speech at the whim of the State.
4. Viewed together with the Media Industry Development Decree 2010, these laws created a chilling effect on human rights defenders by criminalizing free expression, assembly, and association,² and specifically have been used to target women's and LGBTQI rights organisations.ⁱⁱ. These are only a few examples that directly undermine the State's

ⁱ "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).

ⁱⁱ For example, FWRM's 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 the International Women's Day events led by FWCC were

contention that “[t]here have never been any restrictions placed on any organisations with regards to engaging on issues pertaining to gender equality. . .”³

5. In 2016, the Parliament of Fiji and the President legislated an act called the ‘Revised Edition of Laws (Consequential Amendments) Act 2016⁴’ Section 107 (b) (i) states: ‘where any Decree was in force on 31 July 2016, the word “Decree” used with reference to any such Decree in the title or provisions of any written law or in any document or legal proceeding may be replaced with the word “Act”.’ Again this was done without any public consultation or awareness.
6. According to the Citizen's Constitutional Forum (CCF) the constitution largely does away with the checks and balances of past constitutions.⁵ CCF notes that the most striking feature is that the Prime Minister has been granted unprecedented power to appoint or remove, directly or indirectly, almost every commission or office. In addition to that, the Attorney General has also been given remarkable and wide-ranging powers, including influence over all judicial appointments.
7. Fiji has an extensive nongovernmental organization (NGO) network, which, largely operates without government interference. However, strict sedition laws, which criminalize criticism of the government, place sharp constraints on the range of initiatives that NGOs can undertake. NGOs have been critical of the Parliamentary Powers and Privileges Act⁶, which they claim criminalizes criticism of parliament and could further erode civic space⁷.
8. In terms of International commitments, Fiji is a State party to the following international human rights instruments - the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁸, and Convention on the Rights of Persons with Disabilities. It has also ratified the Convention on the Prevention of the Crime of Genocide and the Rome Statute of the International Criminal Court as well as the Refugee Convention (1951) and the Refugee Protocol (1967) and very recently ratified International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR)⁹. However, there are gap in

canceled in 2013 (FWRM UPR, supra note 8 at 3-4; Amnesty UPR, supra note 15 at 2). Additionally, It took more than a year for the regional network of LGBTQI organisations for the Pacific that is based in Suva, called the Pacific Sexual and Gender Diversity Network to receive its certificate of registration and officially get legally registered. This resulted in the organisation losing out on potential funding for its programme from the EU funded Non State Actors grant managed by the PIFS, Pacific Islands Forum Secretariat.

term of higher level of compliance to the abovementioned Conventions. For instance, Fiji's compliance with its obligations under the 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. And 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.¹⁰

9. It is important to note that the above political context is interlinked with not only developmental challenges that Fiji faces but also in terms of existing conditions of inequalities and discrimination. Only within the context of good governance, peaceful just and transparent rule of law and democracy can the potential of right to development be fully realized.

INTRODUCTORY EXECUTIVE SUMMARY

10. The Universal Periodic Review Civil Society Organization Working Group welcomes the opportunity to provide input for consideration by the Human Rights Council on Universal Period Review for Fiji's third periodic review. During the last review, Fiji accepted 113 recommendations from a total of 138 recommendation made.¹¹ Despite this progressive move, not much has translated into meaningful change on the ground. Instead, the State has engaged in activities that has led to further violations of human rights. The past four years has been challenging as Fijians continues to face violations related to access to justice, discrimination and civil and political rights.
11. This submission was compiled by Fiji Women's Rights Movement (FWRM), a legislative and policy reform organization which upholds the principles of feminism, democracy, good governance, multiculturalism and human rights. A consultative process led by FWRM was used to gather information, evidence and recommendations from diverse women's organizations as well as other civil society organizations working in the area of upholding human rights.
12. The women's human rights issues highlighted in the submission include the following;
Right to be Free from Violence, Fiji women and girls make up a large proportion of victims/survivors of sexual violence cases reported to the Police. Marginalized communities like Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) community remains at a greater risk of being subjected to violence despite the 2013 Constitution enshrining non-discrimination provisions based inter alia on sexual orientation.
13. Right of Access to Justice, it takes women on average of 868 days from the first incident of violence to access formal justice due to various factors such as cost in relation to filing fees, distance from their homes to formal justice sector agencies and complexities in relation to lack of awareness of the processes and the formal justice sector agencies available.
14. Freedom of Assembly, there have been incidents whereby permit to celebrate Human Rights Day March by the Non- governmental Organization Coalition on Human Rights and Pride March were denied.
15. Freedom of Expression, Cultural norms and practices still restrict women and transgender persons from fully practicing agency and autonomy in traditional settings where village bylaws are enforced to uphold I-taukei (indigenous) traditions. This leads to heavy moral policing of women, girls, trans and non-binary and gender diverse women.

16. Right to Health, whereby issues surrounding lack of information and support for mental health, improved access to services for sexual and reproductive health and rights particularly access to transgender and gender diverse health services are raised.
17. Right to Equality and Discrimination, incidents of discrimination based on Sexual Orientation and Gender Identity or Expression and lack of equal representation of women, trans and non binary people in leadership are discussed.
18. Employment Relations and Right to work and a just minimum wage, discusses the national minimum wage, unequal pay for equal work, individual contracts serving as a deterrent to workplace organizing, judicial processes employment related, unregulated maternity leave, maternity care –post leave, sexual harassment in the workplace and discrimination at workplace based on sexual orientation and gender identity and expression issues are raised.
19. Finally, Environmental Rights concerning improvement of Gender and Natural Disaster Management plans and implementation and lack of consultation during Relocation are discussed.
20. The submission ends with recommendations urging the State to ratify the remaining international instruments; Convention for the Protection of All Persons from Enforced Disappearance (CED), International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) and Geneva Conventions I, II, III, IV (1949) and Additional Protocol I, II and III (1977 and 2005).

RIGHT TO BE FREE FROM VIOLENCE

21. The prevalence of violence against women in Fiji is at 64% whereby women have experienced one or more types of violence in the form of either physical, sexual or emotional in their lifetime from their husbands or partners.¹² For sexual violence, the Office of the Director of Public Prosecutions reported, for the year of 2018, a total of 189 victims/ survivors were females and 15 victim/survivors were males.¹³
22. Additionally, Sexual harassment is also an ongoing issue, Fiji Women's Crisis Centre (FWCC) recorded a total of 106 cases of sexual harassment for the period of 2015 to 2018 from all their centers.¹⁴ The situation for women and girls is exacerbated by the lack of specific legislation on sexual harassment. The current Crimes Act only minimally addresses the issue under Indecently Annoying Any Person, Indecent Assault and Sexual Assault.

23. Persons living with disabilities and marginalized groups in Fiji such as the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) community remain at a greater risk of being subjected to violenceⁱⁱⁱ despite the 2013 Constitution enshrining non-discrimination provisions based inter alia on disability and sexual orientation and gender identity and expression.^{iv}
24. Fiji has a 'No Drop Policy' for criminal cases that requires the police and prosecutors to take the case to Court. A 2017 research by FWRM revealed that 60% of the women surveyed and who had sought assistance from the Police said that the Police told them to resolve the issue within the family or village or the Police did not take them seriously.¹⁵ The attitude of the Police in terms of how violence against women cases are dealt with exacerbates the situation in causing the women to remain in violent environment and continue suffering and in some cases to the point of losing their lives.
25. Due to entrenched patriarchy in Fiji, cases of violence against women are not adequately addressed.

Recommendations

26. Fiji to adopt a comprehensive or integrated approach to legislative reform in the area of violence against women, girls, trans and non-binary and gender diverse women to adequately address the full range of gender based violence together with underlying systemic discrimination against women of all diversities.
27. Affirmative action needs to be taken by the State in creating a special unit within the Police Force to combat violence against women of all diversities and other vulnerable or marginalized groups.
28. For the State to send strong messages about gender equality, non-discrimination and promoting tolerance and respect as a holistic approach to ending violence against women and marginalized groups.

ⁱⁱⁱ Sex work is criminalized in Fiji and according to the IBBS Study on sex work carried out in Fiji in 2012 and the *Risky Business* studies done before that, female and trans sex workers were often subjected to torture and cruel treatment by law enforcement officers when in custody.

^{iv} In two separate incidents, two tertiary students believed to be a gay man and a transwoman were violently murdered in September 2017 and May 2018 respectively. While there is a suspect in custody for the recent incident, the former case remains unsolved.

29. Resources to be allocated for funding for facilities and services for care of survivors of violence
30. Fiji Police to effectively implement the 'No Drop Policy' and ensure that those breaching the policy are taken to task in order to deter other Police Officers from breaching the Policy. Additionally, Fiji Police to emphasize the importance of the policy during in house trainings and ensuring that all understand this policy and the implementation mechanisms.
31. For the implementation of the offence of indecently annoying any person relating to women of all diversities which caters for sexual harassment, to be made more effective by the inclusion of a gendered approach and also recognizing hate as an aggravating factor for this crime to adequately address the issue.
32. Amend the Crimes Act to include a specific section on sexual harassment with harsh penalties.
33. Training all front-desk Police Officers on gendered approach as these officers are usually the first point of contact to the community.

RIGHT OF ACCESS TO JUSTICE

34. It takes women experiencing violence an average of 868 days before going to Police or Court to resolve these issues.¹⁶ This is an unfortunate reflection of the status of women's access to justice. Meaningful access to justice does not end at providing free legal services but requires eradicating various forms of barriers to access to justice such as cost, distance and complexity of the judicial system and processes.
35. A 2017 FWRM research states that the cost of accessing justice is high in comparison to the average income earned by Fijian women. In relation to the High Court, fees are double the average income of women in Fiji. Eight (8) out of 10 women rate lack of financial means as important, very important and critical in deciding when visiting Police and Court to seek assistance.¹⁷
36. Women trying to access justice are effectively deprived where the law and justice services are far away from where they stay and where the magistrate circuit courts are infrequent. Support services are also less accessible when the barriers of distance and costs of travel are combined or if their partners or other family members prevent them from seeking the services.¹⁸

37. Additionally, women in remote or island communities are still unaware of their legal rights and Police Officers in rural areas are influenced by traditional leaders which hinders women's access to justice.¹⁹
38. Decriminalize sex work and train police officers on respecting and upholding the rights and dignity of all those held in custody.^v

Recommendations

39. Fiji Judiciary to display fee waiver information at the Court Registries.
40. The State to allocate funds to assist women from low income households accessing formal justice through the Ministry of Women, Children and Poverty Alleviation
41. Fiji Judiciary to have regular circuit court sittings and utilize technology by having video court sittings.
42. Ministry of Women, Children and Poverty Alleviation to work with NGOs in Fiji to educate the women and men about domestic violence and their legal rights, in all three major languages used in Fiji.

FREEDOM OF ASSEMBLY

43. In 2016, the Non- Governmental Organization Coalition on Human Rights (NGOCHR), was denied permit for Human Rights Day March²⁰. This was because Fiji still had laws such as the Public Order (Amendment) Decree (as it was known then) which limited the right to freedom of assembly, requiring applications for permits and allowing the appropriate authority to refuse the same²¹. The Fiji Roads Authority granted a permit after consistent pressure from the public, partner CSOs and political parties highlighted their concerns in the social media as well as in the mainstream media.²²
44. Additionally, in 2018, Fiji made history by holding the first Pride March in the Pacific to commemorate the International Day Against Homophobia, Biphobia and Transphobia (IDAHOBt).^{vi23}

^v There are no means for legal redress for sex workers to access justice in Fiji

^{vi} In previous years the applications for permits were denied. Such demonstrations are crucial in order for LGBTQI persons to create and raise awareness about the rights of LGBTQI persons and the continuing challenges they face as a vulnerable group.

Recommendation

45. The State to uphold the Constitutional rights of Human Right's Defenders who play a crucial role in raising critical human rights issues.

FREEDOM OF EXPRESSION

46. Cultural norms and practices still restrict women and transgender persons from fully practicing agency and autonomy in traditional settings where village bylaws²⁴ are enforced to uphold I-taukei (indigenous) traditions. This leads to heavy moral policing of women, girls and members of the LGBTIQ community.²⁵ Such practices are in contravention of the right to freedom of expression enshrined in the Constitution.

Recommendation

47. The State must ensure that the rights of women, girls and members of LGBTIQ community in terms of bodily autonomy, agency and integrity are fully recognized, respected and protected in compliance with Fiji's Constitution and its international human rights obligations under CEDAW and other conventions to which Fiji is a state party.

RIGHT TO HEALTH

Mental health

48. Mental health survivors in Fiji are a particularly disempowered and vulnerable group, subjected to forms of violence that are often undocumented. They face stigma, discrimination and isolation, and lack access to information about their rights and how to exercise them as well as legislation that is in place to protect them.²⁶ Directly related to mental health issues is the emerging concern of suicide. The Fiji Police annual report provides in 2017 that the rate suicides among women has increased, from 39% in 2014 to 46% in 2015 and 2016 and 41% in 2017.²⁷ Although, there has been a slight decrease from the high rates of 2015, the rate remains high.

Recommendation

49. Information regarding mental health and suicide prevention to be decentralized and disseminated especially in the maritime areas.
50. Revival of community mental health programs like peer education program and as it was a means of empowering people dealing with mental health issues.
51. Mandatory compliance of National Mental Health and Suicide Prevention Policy
52. Incorporation of mental health education in the school curriculum to create awareness about mental health issues including having trained counsellors in schools.

53. Review the current mental health provisions for rehabilitation and consider after care rehabilitation provisions.

Sexual and Reproductive Health and Rights (SRHR)

54. SRHR continue to be an issue of concern for women and members of the LGBTQI community. Fiji has very high rates of cervical cancer, the leading cause of mortality for all cancers in Fiji in the last decade²⁸; and breast cancer rates have been on the rise. Also of concern, are the high number of teenage pregnancies, which in 2016, according to the National Substance Abuse Advisory Council, totaled 1,456 cases.²⁹ Sexually Transmitted Infections, other cancers of the reproductive system and contraceptive access are other causes of concern. The current provisions for sexual and reproductive health is inadequate for women living with disabilities as they continue to face challenges in accessing maternal and child health services.

Recommendations

55. Increased allocation of resources focusing on issues related to SRHR.
56. Review and strengthening of SRHR and Comprehensive Sexuality Education for young people in and out of schools.
57. Improving access to free sexual and reproductive health information, diagnostic tests, hospital care and treatment for cervical, breast and other reproductive cancers.
58. Priority to be given in having either Medical professionals trained in sign language or having provisions for sign language interpreters at hospitals to assist women with disabilities in accessing health services.

Access to Transgender and Gender Diverse Health Services

59. The LGBTQI community in Fiji face difficulty in various forms such as stigma, discrimination in accessing health services for HIV. Transgender people are also unable to access hormone replacement therapy locally as it is not a service provided by any public health facility.^{vii}

^{vii} The rights to recognition before the law, self-determination, autonomy and privacy are set out in binding international human rights treaties including conventions that Fiji has signed and ratified. Legal Gender Recognition addresses the impact that eligibility or procedural requirements have on undermining transgender people's right to recognition before the law, stating that no one should be forced to undergo medical procedures, including surgeries, sterilization or hormonal therapy, as a requirement for legal gender recognition. In addition, it notes that "No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity "

Recommendations

60. Develop health policies to ensure that necessary resources are dedicated for trans and gender diverse persons health including provision for hormonal treatment and gender reassignment surgeries with the relevant training and upskilling of health personnel to provide these services including training health personnels to provide LGBTQI friends health services to reduce stigma and discrimination.

Water, Sanitation and Hygiene (WASH)

61. WASH is pertinent to maintaining good health and wellbeing. In a study conducted in 2017 in Fiji, it was found that generally WASH facilities in schools, workplaces and public places are of high standard, however, lack necessities such as soap, toilet paper and safe and discrete disposal options for sanitary materials. Women working in informal workplaces such as market vendors face greater challenges in managing menstruation at work as they share sanitation facilities with members of public and these facilities are at times locked, unclean, requires payment of a fee, and lack toilet paper and safe and discrete disposal systems.³⁰

Recommendation

62. The State to ensure that facilities provided in relation to WASH are better maintained particularly public toilet facilities to ensure that they meet the needs of the workers who are using them, and improved in terms of accessibility after hours, without cost and with safe and discrete disposal systems³¹ as well as have provisions for menstruation management.

RIGHT TO EQUALITY AND FREEDOM FROM DISCRIMINATION

Discrimination based on Sexual Orientation and Gender Identity or Expression (SOGIE)

63. In 2015, the Fiji High Court decided on a case whereby a transgender born as male sought orders to have her birth certificate altered to identify as a female. The court dismissed the application citing that the issue was not discrimination against the sexual orientation, however, the powers of the Registrar of Births, Deaths and Marriages did not allow for such a change despite her undergoing sex reassignment surgeries.^{viii} Despite the Court citing that the issue was not of discrimination based on sexual orientation, her Constitutional right of non-discrimination based on gender identity was breached when the Court failed to recognize her as a woman.

^{viii} The Court had added that through the surgery the medical professionals are only able to artificially create female organs but the person does not become a female.

64. In spite of the Fiji Constitution having specific equality and non-discriminatory provisions, there have been instances of discrimination based on sexual orientation and gender identity or expression. In a 2017 report, it was revealed by the Fiji Human Rights and Anti-Discrimination Commission that they have received complaints from LGBTQI persons who have faced discrimination in the areas of employment, housing or access to health care.³² A recent publication *Down By The River* discussed the particular experiences of violence suffered before and after Tropical Cyclone Winston LGBTQI persons, including being blamed for the natural disaster and being isolated from the community because of their sexual orientation or gender identity or expression.³³

Recommendations

65. That cases of discrimination on the grounds of sexual orientation or gender identity or expression be seriously dealt with taking into consideration the Constitutional right to equality and freedom from discrimination in line with human rights standards highlighted in the Yogyakarta Principles, which must be fully recognized and implemented including legal recognition for gender diverse persons.

66. Strengthen the implementation of the laws on crimes against members of the LGBTQI community and citing of hate as an aggravating factor with harsh penalties.

67. National Policies and Plans related to Disaster Risk Management to include components of addressing the issue of violence against members of the LGBTQI community during times of natural disasters.

Women in Leadership

68. Women continue to hold fewer leadership positions in comparison to men. In early 2018, it was disclosed that only 13 of the 105 directors from the 19 companies listed under South Pacific Stock Exchange are women.³⁴ ^{ix}From the 56 women, 10 got elected into Parliament, 5 as part of the government and 5 as part of the opposition, increasing the percentage of women from 16% in 2014 to 20%.³⁵

69. Fiji's government has three tiers inclusive of national, local and provincial.^x However, since the adoption of the 2013 Constitution, a review of the local government is underway³⁶ and as such no elections have been held to date contravening the principles of democracy and good governance.

Recommendations

^{ix} In 2014, a total of 44 women ran for elections compared to 205 men, from that 7 won seats in the Parliament. For the 2018 general elections, out of the 235 candidates standing for elections 56 are women, making up 24% of the total number, this is a slight increase from previous elections.

^x Local government caters to councils either as city or town councils.

70. Introduction of temporary special measures in not only Parliament, political parties but also public services to increase the number of women in decision making positions
71. State to expedite the process of review of the Local Government and facilitate the local government elections.

EMPLOYMENT RELATIONS AND RIGHT TO WORK AND A JUST MINIMUM WAGE

National Minimum Wage

72. The minimum wage for unskilled workers has been an ongoing issue. The national minimum wage was previously set at \$2.32, the Fiji Trades Union Congress issued a statement that the minimum wage was condemning workers to extreme poverty and exploitation.³⁷
73. A survey conducted by the NUFCW in 2015 and 2016^{xi} disparity in the wages paid to workers in the textile and footwear industry with the minimum being \$1.86 which was well below the then minimum wage of \$2.24.³⁸
74. The minimum wage was increased to \$2.68 in 2017, however, The Fiji Trades Union believe that in order to live with dignity and enjoy a decent standard of life, \$2.68 is not sufficient.³⁹ The textile clothing and footwear industry which employs 80% women threatened a job loss of 7000 should there be an increase in the minimum wage rate.⁴⁰

Recommendation

75. State to review the national minimum wage taking into consideration the poverty line, cost of proper housing and increase the minimum wage in order for workers to enjoy a decent life.
76. That the minimum wage for workers in textile and footwear industry take into consideration the skilled workforce

Unequal Pay for equal work

77. In relation to equal pay for equal work done, gender pay gap still exists. In 2014, the Fiji Bureau of Statistics in their Annual Employment Survey provided that the average weekly wage by major occupation was FJ\$150.30: \$174.30 (per week), female: male ratio.⁴¹ This is a clear indication that women are being paid less for equal amount of work carried out.

^{xi} The survey found that of 283 workers who worked in seven different Textiles and Footwear factories in Suva the wage rate ranged from \$1.86 being the lowest paid employee to \$3.04 for the highest paid waged employee in this industry. Two small private companies that employed less than 20 people paid \$1.86 per hour for workers irrespective of the different types of work one did in the factory. This was well below the minimum wage at the time of \$2.24 per hour, which was the wage rate that the larger factories were using to pay everyone regardless of the type of work and skills one had in the textile or footwear industry

Recommendation

78. State to address the gender pay gap by having specific language in the National Wage Policy and the effective implementation of the same within all sectors.

Individual Contracts- Deterrent to workplace organizing

79. Despite State undertaking to respect ILO conventions 87 and 98 the workers in Fiji are subjected to individual contracts that allows the employer at will to terminate the contract without cause and this has further led to some employers only providing short term contracts stripping the employees from any benefits which they otherwise would be entitled to. Such contracts deny the workers from having an effective voice at workplace and forces them to accept any terms and conditions.^{xii} Additionally, it has a ripple effect in terms of the workers being unable to plan their families and secure loans and other essential commitments.⁴²

Recommendation

80. State to promote and ensure fair bargaining for workers and scrapping all individual contracts reverting to the contracts with full tenure.

Employment related - judicial process

81. The employment cases referred for mediation and employment tribunal on average takes a substantial amount of time before it is heard. Cases relating to unlawful termination of employment^{xiii} on average has taken more than 12 months before it was heard.⁴³

Recommendation

82. State to review the current judicial system in relation to employment and formulate system which expedites the process in order for swift hearing of cases.

Unregulated Maternity Leave

83. Women working in informal employment endure challenges relating to maternity leave as most often their leaves are unregulated and they tend to face discrimination when applying for maternity leave. Due to the unregulated nature^{xiv}, women then are subjected

^{xii} The short term contracts also affect the pension fund contributions of workers and because of its short term nature many workers are unemployed 3 or more times in a year, so each time his 3 months contract expires, no income is received and no pension fund contribution is paid too. So the worker immediately suffers due to unemployment and also when they retire due to limited funds.

^{xiii} Workers employment are terminated because of joining the Union. Over 30 cases for NUF CW members are pending in the Tribunal Court and this was reported in January 2018. The Tribunal must take into account that the longer the case is solved, the more hardship the worker and his/her family will face due to no source of income.

^{xiv} Many of these unfair practices occur in unorganized or non-unionized sectors. In the Wholesale and Retail sector some women workers are asked to stay home as soon as their pregnancy begins to show and they are told to reapply after they give birth. Some women hide their pregnancy because they fear of losing their job and some end up having miscarriage because they are given duties that are inconsiderate of their pregnancy.

to unfair and unjustifiable dismissals once employers have knowledge of their pregnancies.⁴⁴

Recommendation

84. Effective implementation and monitoring of National Employment Policy particularly relating to maternity leave.

Maternity Care- Post Leave

85. The Employment Relations Act is limited in promoting maternity care post leave in terms of safe and decent workplace for lactating mothers this puts forward challenges for lactating mothers in continuing breastfeeding⁴⁵ and returning to work. The implication of this is either loss of employment or the child going without breastfeeding which is essential for their growth.

Recommendation

86. State to ensure that workplaces are breastfeeding-friendly and to create provisions for affordable child caring support and family friendly worktime arrangements.

Sexual Harassment in the Workplace

87. Sexual Harassment in the workplace remains an issue, in a follow up study on Sexual Harassment in the Workplace Survey in 2016, revealed that one in five women face sexual harassment in the workplace with high incident in the food, beverage and hospitality in the western division. Although the incidence of sexual harassment in the workplace has decreased the findings of the research reveal links to economic development.⁴⁶ The Employment Relations Promulgation of 2007 explicitly provides that employers are to develop and maintain a policy to prevent sexual harassment at workplace⁴⁷, the follow up research found that of the total women interviewed, 22% said that their employer does not have a policy and a further 16 % claimed that they did not know if there was a policy or not in their workplace.⁴⁸

Recommendation

88. State to ensure through Ministry of Employment for greater enforcement of sexual harassment policies in public and private sector.

Discrimination at workplace based on sexual orientation and gender identity

89. Transgender people also have reported incidences of discrimination in the area of employment to the Fiji Human Rights and Anti- Discrimination Commission.⁴⁹

Recommendations

90. State to address the issue of employment discrimination faced particularly by transgender people and update Employment Promulgation Act to include prohibition of

discrimination on the grounds of gender identity and expression. ^{xv} specifically affecting members of the LGBTQI community and persons living with disabilities.

GENDER AND NATURAL DISASTER MANAGEMENT

91. In the past few years Fiji has been hit by a number of Tropical Cyclones. In 2016, severe Tropical Cyclone Winston which was a category 5 had struck the islands. The following serious issues relating to gender arose during the natural disaster⁵⁰:

- There was a rise in cases of Sexual and Gender Based violence
- Cases of Sexual and Gender Based violence were reported in informal and formal evacuation centers and this was attributed to “inappropriate accommodation, overcrowding, lack of adequate lighting and safety measures”
- There were concerns raised on issues such as “lack of privacy, overcrowding, a lack of police presence and oversight of centers, a lack of safe water and access to hygiene materials”.
- In the Post Disaster Assessments Needs Report by the Government of Fiji in 2016, in its analysis of the recovery and reconstruction needs by sector, the allocation for Gender was the lowest at \$ 2 million out of the total \$1957.8 million.⁵¹

92. Additionally, members of the LGBTQI community were blamed for natural disasters and experienced violence and isolation before and after Cyclone Winston.⁵²

93. Although psycho-social support cluster was set up for natural disaster for Cyclone Winston⁵³, there remains a lack of adequate support in terms of first aid during and post natural disasters.

94. During times of natural disasters, elderly people and people living with disability face discrimination in terms of accessing evacuation centers and receiving appropriate care.

95. Fiji experienced two more cyclones in 2018 in a span of a month. Similar issues relating to 2016 arose. The Rapid Gender, Protection and Inclusive awareness found the following issues⁵⁴:

- Pre-existing cases of domestic violence increased due to alcohol and drug abuse leading to psychological impact on children
- In parts of maritime areas toilet facilities were destroyed leading to women travelling to long distance.
- Sanitation and sexual reproductive health needs were unmet

^{xv} Currently it only has legal protections on the basis of sexual orientation. This must be expanded so that it is consistent with the Constitution.

- Not all evacuation centers are disability accessible or have adequate privacy for women and girls

Recommendations

96. State to ensure implementation of a gender sensitive natural disaster management plan and policy.
97. State through the National Disaster Management Office to evaluate all the evacuation centers in terms of accessibility, lighting, security and provide greater policing of the evacuation centers during imposed disaster context.
98. State to consider the gender aspects while allocating grants in relation to post natural disasters in their post disaster reconstruction efforts.

Relocation

99. Relocation of villages due to climate change present women with challenges in terms of economic empowerment, prior to the relocation of the women of the community of Vunidogoloa fished everyday however at the new site they have to walk a distance of a mile and half away and due to their age or disapproval of their husbands they are now more dependent on their husbands.⁵⁵

Recommendation

100. State to involve women in consultation in the planning of relocation of villages so they are not disempowered in any way.

OVERALL RECOMMENDATIONS

101. State to ensure the ratifications of the following international instruments:
 - Convention for the Protection of All Persons from Enforced Disappearance (CED)
 - International Convention on the Rights of All Migrant Workers and Members of their Families (CMW)
 - Geneva Conventions I, II, III, IV (1949) and Additional Protocol I, II and III (1977 and 2005)

ENDNOTES

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- ³ State CEDAW Report, supra note 13 at 6.
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- ⁶ http://www.paclii.org/fj/legis/consol_act_OK/ppapa379/
- ⁷ <https://freedomhouse.org/report/freedom-world/2018/fiji>
- ⁸ Fiji has reservations to the UN Convention Against Torture particularly regarding the definition of torture and access to remedies
- ⁹ <http://www.fwrn.org.fj/news/media-releases/67-all-category/news/press-releases/516-ngochr-ccpr-and-cescr-for-fiji>
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