

UNITED NATIONS

UNIVERSAL PERIODIC REVIEW -FIJI

FIJI NATIONAL CIVIL SOCIETY - JOINT SUBMISSION¹

Background and Context

Lesbian, gay, bisexual, transgender, queer and intersex people are among those experiencing highest state and societal levels of violence, marginalisation and state and non-state discrimination, on the basis of their sexual orientation, gender identity, expression, intersecting with all other various identities including people with disabilities, women, young people, the aged, people living in remote and rural areas, those experiencing poverty and hardship or with limited socio-economic resources including land, those experiencing environmental disasters, climate change and extreme weather, etc.

Fiji's new constitution (2013) is the only one in the Pacific islands region (outside Australia and Aotearoa/NZ) to specify protection from unfair discrimination on grounds of sexual orientation and gender identity or expression. However, currently the Constitution limits these rights to non-discrimination and not positive realisation of universal human rights, and specifically preventing them from being applied in cases of marriage, adoption, and inheritance, thus violating the principle of universality and non-discrimination. These restrictions on LGBTQI rights may be due to religious sensitivities but should not be applied if Fiji is declared to be a Secular State as per the 2013 constitution.

Until the crimes decree was reviewed by the military-led government in 2010, homosexuality was a crime between consenting adults, although there was a non-discrimination clause in the Fiji Bill of Rights under the 1997 Constitution, and jurisprudence that had already over-turned use of the archaic British colonial-derived penal code some years prior (Ref: *McCoskar v The State*, access: <http://www.paclii.org/fj/cases/FJHC/2005/500.html>). In 2012 the then Fiji Constitutional Commission (subsequently removed before completion of their term) also submitted a draft constitution to the military government under which lesbian, gay, bisexual, transgender, queer and intersex people were accorded human rights and legal protection. That version of the Draft Constitution was ultimately rejected by the Military Government and another version lacking the peoples consent and endorsement was adopted. The current constitution only refers to protection against unfair discrimination and limits such provisions very specifically and with limited text as to drawdown.

So despite the Constitutional inclusion, there has been little substantive State advancement of human rights and legal drawdown for people in Fiji with diverse and non-heteronormative sexual orientation and gender identity and expression, except where there has been some small and limited legal challenge and jurisprudence established - Legal challenge is of course a difficult path to change in a time of rising poverty and widening inequalities, and especially for LGBTQI and other people facing intersectional marginalisation, discrimination and violence in Fiji.

Additionally, in a Pacific small-island social space where there is still considerable traditional and social stigma and marginalisation including from state and non-state establishments and institutions, on the rare occasions when the media reports on violence, abuse or discrimination they often do not report using a diversity lens. They fail to take into account the sexual orientation or third gender/transgender or other identity of the victim. The small-scaled island social space also means that it is still very difficult for many LGBTQI people to openly and publicly challenge these discrimination in public for fear of family, faith-based, workplace, friends and other backlash, though the numbers are growing, as is the civil society range of responses.

¹ The following civil society groups in Fiji have submitted this input: Oceania Pride, Diverse Voices and Action for Equality, Drodrolagi Movement, Haus of Kameleon, Pacific Rainbow Advocacy Network, Rainbow Pride Foundation Limited, and Survival Advocacy Network.

The authorities do not, to our knowledge, disaggregate ANY development and human rights data systematically on the basis of sexual orientation and gender identity except for localized collection of data in HIV/STI Testing Hubs. Nor do we have State-coordinated multidimensional indicators of poverty for example, that would show up other socio-economic realities for people with diverse sexuality, despite our long-term anecdotal evidence showing us the intense violence and discrimination, and the devastating effects on LGBTQI people. The data is limited but the realities very clear.

All of the diverse LGBTQI-led and focused organisations in this submission, including those working on transgender, LBTI, MSM, LGBTQI issues, and from other frames agree strongly that from all our long-term knowledge and anecdotal evidence, there are significant number of cases of violence, discrimination and marginalisation of LGBTQI people in Fiji. There is rape (attempted and committed) including to sanction and punish non-heteronormative sexuality, to force change in sexual behaviour; there are clear media-recorded cases of systemic homophobic bullying in male dominated schools, rape and physical assaults in schools and elsewhere, homophobic based violence and bashing, large numbers of homeless young LGBTQI people, there are many young internally displaced LGBTQI people living in shared and transient housing after being forced out of family homes, despite no adequate youth and women's shelters to accommodate them. There are mental health and other associated risks for young people facing such homophobia and transphobia. In the past we have also had some major national faith-groups organised and marching in public places to condemn homosexuality. The lack of such of late is not necessarily because of better societal acceptance and respect for our human rights, it is that most public gatherings in the past years since 2006, have been prevented by the emergency standing order of the then Military-led government.

Hence there is no reason that such occurrences could not recur and the protections are still not in place to adequately protect and defend the human rights of LGBTQI people. Additionally, where the law and its mechanisms is supposed to protect its citizens, far too often we also know that members of the LGBTQI community are intimidated, harassed, bullied and discriminated by the state authorities themselves, including Fiji Police, Fiji Military Forces and Fiji Prisons authorities. This includes many kinds of sexual-based discriminations, not just on the basis of SOGI, but of one's perceived occupation - whereby those perceived as sex workers, many transgender, are regularly harassed and targeted for heightened discrimination and violence.

Successive governments in Fiji since Independence in 1970 have done almost nothing to protect, promote or realise the universal gender equality and human rights of the LGBTQI community, bar some limited Constitutional change. This has additional consequences for LGBTQI human rights defenders and their organisations, including those that wish to be registered as charitable institutions/ Non-government organisations (NGOs). There is already considerable strain on the everyday running of such organisations, and without adequate state and non-state support to carry out critical community, national and wider work. State-led and other development consultations do not generally actively include LGBTQI organisations except on selective areas of work including HIV and AIDS, and even there the ability to substantively and consistently engage is limited, as is real decision-making. LBT women's groups are generally excluded from government-led consultations and networks.

Constitutional Recognition on-Discrimination on the basis of sexual orientation and gender identity

Firstly, we do acknowledge past and current governments of Fiji since the passing of the 1997 constitution for ensuring that there is explicit reference to protection from discrimination on the basis of sexual orientation and gender identity in the highest law of the land, the Constitution. We call explicitly for all legislation, laws, policies and practices to be made consistent with such Constitutional law and adequate resources allocated to support its implementation. We further call on government to create a separate portfolio and resource pocket specifically for LGBTQI under the Social Welfare or Women ministry to demonstrate its commitment towards equal citizenry and being inclusive.

We also take the opportunity to point out that in nine Pacific countries and territories male-to-male sexual relations are still illegal. Two States also have criminal offences for so called 'cross-dressing' while simultaneously maintaining many positive social practices that acknowledge some of the traditional cultural, social and economic roles played by third gender persons in their societies. The need for human rights consistency and universality and legal consistency

is a large part of the work for the LGBTQI advocates in all Pacific States and in solidarity, to ensure human rights and social justice for all.

It is also abundantly clear that none of these substantive positive human rights changes will occur if we continue to see the marginalisation of LGBTQI groups from decision making processes. The local and national groups must be included to work together with the government, civil society organisations and other stakeholders to ensure that proper development, implementation and monitoring measures are put in place to ensure the safety and protection of all people of Fiji, including all people with diverse non-heteronormative sexual orientation, gender identity, gender expressions, and for intersex people and others.

The groups here therefore welcome the interest of the Human Rights Commission members, and specifically those of the Universal Periodic Review Committee. We call strongly for the following as minimum mention in your deliberations and actions:

State Duty Bearer enforcement of the Non-discrimination clause in the Fiji Constitution

To ensure that all violations of the non – discrimination clause in the Fiji Constitution are subject to prompt, transparent, public, effective and impartial investigations, and that through a consistent and reviewed system, perpetrators are brought to justice in proceedings which meet international recognised standards of human rights and fairness; This must explicitly include provisions for dealing with abuses of those in state, political, faith-based, civil service and other public office;

To ensure that victims of all types of sexual and gender based violence, harassment and discrimination are provided with full reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;

Full, transparent, independent and inclusive review of all Fiji legislation, laws and policies that are contradictory to the non-discrimination clauses of the Fiji Constitution, and also identifying key gaps and possibilities for advancement of human rights and rule of law regarding the universal rights of LGBTQI people in Fiji.

Addressing discrimination, harassment and bullying in state institutions, including health and education facilities

Put in place legislative, policy and process measures such that those who face violence and discrimination are able to seek justice, and introducing a zero tolerance policy of homophobic bullying in education and health systems, at all levels.

Third gender on official documents

Recognize transgender communities and allow a third gender to be included in all official documents such as National Identity cards, passports, travel documents, censuses/surveys, etc.

Recognition and adoption of the Yogyakarta principles

To ensure that LGBTQI people in Fiji live free from fear of discrimination and enjoy full and universal human rights and freedoms, the Yogyakarta Principles can be used as a 'Guiding principles' document to implement legislation, policy and practice reforms based on international human rights standards, and with drawdown into national and local government policies and programmes. The LGBTQI groups in Fiji remain ready and willing to work with all State and non-state actors on such tools, with high level engagement, all staff and community consultations as required.

Guarantee of human rights to freedom of expression, and freedom to politically organise and freedom of association

In the past years permits to celebrate and advocate on the International Day against Homophobia and Transphobia (IDAHOT) have been denied. This day is significant to the LGBTQI movement as well as the people of Fiji, and we urge the government to allow movements to celebrate this day in whichever way they wish including in public spaces. It is an integral part of creating a culture of democratisation, inclusion, acceptance and awareness of the LGBTQI movement. The government could also consider making this a nationally recognised day on the official national calendar, for consistency with the Fiji Constitution.

Government must revise its criteria for registration under the Charitable Trust Act to allow not-for-profit organisations, associations and networks advocating for the rights of LGBTQI to register as a legal entity.

Re-establishment of the Fiji Human rights and Anti-Discrimination Commission as an Independent body

In order to monitor the above, the Fiji Human Rights Commission (FHRC) MUST be in place, resourced and enabled as an independent statutory organization able to fully and freely represent those who think have been wronged based on their sexual orientation and gender identity, by state and non-state actors. The FHRC must encourage and assist victims and organised groups working against homophobia and transphobia to report, document and analyse for policy such incidents, and actively assist victim/survivors to seek justice. This will also encourage more and correct national and regional media reporting of such incidents; This requires representation of LGBTQI organisations on this and other national decision making bodies.

Strengthen national, regional and global measures to counter discriminatory societal attitudes against LGBTQI people, including through:

Recognising and tackling intersecting and structural drivers of inequalities, and multiple forms of discrimination based on gender, age, class, caste, race, ethnicity, place of origin, cultural or religious background, sexual orientation, gender identity and expression, occupation, health status and abilities. This involves reviewing and reforming existing laws, policies and practices that sanction and criminalise consensual sexuality and reproduction.

Creating a national human rights institution with the objective to prevent discrimination and to give legal advice to all required partners, and including those experiencing violence, discrimination and human rights violations as a result of their sexual orientation, gender identity and expression;

Implementation of affirmative action measures against SOGI discrimination within and by the Fiji Human Rights Commission, across the public and private sector, faith-based and civil societies, and in partnership with all LGBTQI organisations and groups in Fiji;

Implement a National Campaign against discrimination on the basis of sexual orientation, gender identity and expression, and promote awareness through mass media, consultations in schools and communities, and with the widest involvement of LGBTQI people;

Develop and implement a Human Rights and Comprehensive Sexuality Education curriculum that includes LGBTQI issues, sexual and gender based violence, gender equality and universal human rights without discrimination (HRC SOGI Resolutions of 2011 and 2014 (Add ref numbers), CSW57/58, CPD47, APPC6, Moana Declaration 2013, Pacific Leaders Declaration on Gender Equality, etc) and emphasizes values and principles such as inclusion and acceptance for diversity.

To close, we also call for the strongest human rights and accountable development model - locally, nationally, regionally and globally for all people including lesbian women, bisexual and trans* people, and queer and intersex people, without discrimination:

To ensure that LGBTQI people in Fiji live free from fear of discrimination and enjoy full and universal human rights and freedoms, the State as duty bearer must develop and implement a development model that is based on human rights, and that will work for all people, of all ages and identities and firmly rooted in international human rights principles and obligations, including non-retrogression, progressive realisation, as well as the fulfillment of the Cairo ICPD Program of Action and subsequent processes and outcomes, the Beijing Platform for Action and subsequent processes and outcomes. Also regulations on extraterritorial obligations of States, as well as in their own territories. This also requires states to have ratified and implemented international human rights treaties, including on economic, social and political human rights, and multilateral environmental agreements. Any sustainable development framework Post 2015 must aim for social inclusion and sexual and gender equality, human security and sustainable peace, and the fulfillment of human rights for all. It also requires reviewing the current security paradigm of investing heavily in militarized peace and security; respecting the secularity of States; reversing the current model of over-consumption and production to one of sustainable consumption, production, and distribution; and ensuring a new

ecological sustainability plan including respect for planetary boundaries and ecological sustainability. LGBTQI people must have all rights respected, and this means healthy bodies, societies, States and planet.

ends.

Date: 03 October 2014

Place: Fiji

Endorsed by the following organisations and individuals:

Oceania Pride

Diverse Voices and Action (DIVA) for Equality

Drodrolagi Movement

Haus of Khameleon

Pacific Rainbows Advocacy Network

Rainbow Pride Foundation Limited

Survival Advocacy Network Fiji