



**Statement by the Minister for Social Welfare, Women & Poverty Alleviation of the
Government of the Republic of Fiji Islands**

**46th SESSION OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS
OF DISCRIMINATION AGAINST WOMEN (UN CEDAW) COMMITTEE IN NEW YORK, 14TH JULY,
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1.0 INTRODUCTION

Madame Chairperson,

Greetings from the Government and the People of Fiji – Ni sa Bula Vinaka.

The Delegation from Fiji is indeed honored to be present today before this most august body. Please allow me to introduce the State delegation, Fiji's Ambassador to the UN, His Excellency Mr. Peter Thomson, the Director Women, Mrs. Salote Radrodro, Fiji's Deputy Permanent Representative to the UN, Mr. Luke Daunivalu and the Second Secretary to the UN, Mr. Esala Nayasi.

The total population of Fiji at present is approximately 860,000. Women comprise about 49% of that total. Through the Ministry of Women, the State continues to provide the support and strengthen partnership with relevant stakeholders for the development and the advancement of women in Fiji.

As this committee may be aware, Fiji has experienced a turbulent history since our independence in 1970, with interruptions to parliamentary democracy in the form of military coups, discouraging economic growth, and an over reliance on its agricultural sector that makes it vulnerable not only to political change but also to natural disasters.

Our country is not a wealthy one but we press towards the form of government and democracy which will suit our people and future generations best. We consider that we have made significant progress in the area of reforms which advance the equality of women, their protection from adverse and unfair discrimination, and which aim at the long term welfare for the vulnerable and disadvantaged in society.

~~This report on the State's second, third and fourth Periodic Reports has been prepared in consultation with more than 600 individuals, including non-government organizations. Annex 4 and 5 of the CEDAW State Report sets out the details of the consultation. Examples of non-government organizations which have been consulted in the preparation of this Report are Poor Relief Society, Fiji Women's Rights Movement, National Council of Women in Fiji, FemLink Pacific, Soqosoqo Vakamarama and numerous communities – based NGOs.~~

Thus, Fiji's CEDAW State Periodic Report is the result of a collaborative effort of the consultations made with stakeholders including government, non-government organizations, development partners and other relevant parties.

Madame Chairperson,

As I will highlight further in this presentation, the Fiji government values its partnership with civil societies and non-government organizations, and believes firmly, that all persons committed to advancing the human rights of women in Fiji, should join hands together irrespective of their political views, to take advantage of this period of reform to mould a better future for the women of Fiji. Indeed, the Department for Women has in May of 2010, established the Fiji Women's Federation, a unit of the Department for Women, to coordinate the programmes and the activities of registered women NGOs to achieve gender equality and empowerment of women.

The Federation aims to bridge the gap between the Department for Women and non-government organizations. Many developments have been made in relation to the strengthening of partnership and coordination of activities with women's organizations in

remote and rural communities through the Fiji Women's Federation. Furthermore, the Department for Women is working in partnership with development partners in supporting this initiative through the construction of women centers in the 14 provinces and semi-urban settlements in Fiji. These women's centers will establish the infrastructure for empowerment of women in the rural areas through enhancement of leadership skills and program management skills, and provide the venue for meetings, training activities, women's health clinics and other capacity building exercises. Managers of these Centers are represented at the National Women's Advisory Committee of the Department of Women.

Regrettably, some NGOs have declined to participate and be partners of the Federation. Nevertheless, the Department for Women continues to invite all interested parties to the initiative and hopes that the shared aim of furthering the Women's Plan of Action will overcome political affiliations.

1.1 Fiji & the Political System

Madame Chairperson,

Fiji's political history is summarized in our Report. One important development since the finalization of that Report is the abrogation of the 1997 Constitution on 10 April 2009. His Excellency the President abrogated the 1997 Constitution to allow the Government to implement the reforms aimed at entrenching a culture of equal opportunity as envisaged under the People's Charter. The State was re-established under Presidential Decree, which continues to respect the independence of the Judiciary and accountability institutions and the operations of other key arms of the State, except for Parliament.

Changes that have resulted as a consequence of the abrogation of the Constitution are more apparent than real. For instance, although the Bill of Rights in the 1997 Constitution was removed, the Human Rights Commission Decree (No.11) 2009 was

promulgated. Unfair discrimination is outlawed if committed on any of the prohibited grounds of discrimination and likewise sexual harassment is declared to be harassment on prohibited grounds. Furthermore, the Decree creates a complaint and investigation process vested in the Commission, and complaints can be enforced in the High Court by way of civil proceedings. Remedies include declarations, restraining orders and damages.

Thus, the abrogation of the Constitution has not removed the right to gender equality, nor has it removed the right of ordinary persons to challenge discrimination before the Human Rights Commission and the Courts.

Other developments since April 2009 include the re-establishment of the Judiciary, the promulgation of the Domestic Violence Decree, the Crimes Decree, Criminal Procedure Decree and the proposed promulgation of the HIV and STIs Prevention, Care and Support Decree 2010.

I have read the Shadow Report, written by unnamed persons, and the views of such persons, on Fiji's commitment to CEDAW. It is clear, on a perusal of that document, that the focus of it is not Fiji's commitment to CEDAW but on political issues most of which have no relationship with CEDAW. The Fiji Government is the first to admit with sincerity and humility our shortcomings with regard to our international obligations.

Madame Chairperson,

We do not pretend today, that we have no work to do to further the advancement of women in Fiji. However, many of the allegations made in the Report are not substantiated by any evidence, and appear to be motivated by political animosity rather than a genuine desire for reform.

Non-government organizations exist for reform. Their ability to forge partnerships with government bodies, irrespective of their political views, determines their success. On

the admission of the Shadow Report itself, the NGO community in Fiji is divided. Most NGOs relevant to Women are prepared to work with government in the reform process.

Indeed, effective women's NGOs will recognize and adopt strategies for advancing women's issues by lobbying whichever government is in power, disregarding the politics of the situation. It appears that the Shadow Report is the work of only one fraction of the NGO community and can in no way be considered representative of all the NGOs relevant to Women in Fiji. More importantly, the Shadow Report cannot be said to represent the views of the women of Fiji.

Indeed, the Report is silent on its consultation process, its membership and its authorship. Nor do we know who funds the NGOs concerned and what the political affiliations of the funders are. The same reticence applies to the reference to the Report by the United Nations Special Rapporteur on Violence Against Women, which report fails to particularize information sources of women activists who were allegedly taken up to the Military camp for human rights abuses.

Because of the lack of particularity and information about the alleged abuses, it has been very difficult for the Department for Women to investigate although all efforts were made to check on the allegations. As a result of our queries, the Human Rights Commission on 28th May 2009 confirmed that there were no complaints received from women's rights defenders in relation to the findings of the UN Special Rapporteur.

Indeed, when the Human Rights Commission came to know of the complaints through the media, complaint forms were posted to prominent women's rights activists inviting them to lodge complaints. However, no complaint forms were received despite the receipt of other complaints made on behalf of women alleging other non-political discrimination which were then processed and dealt with.

However if the same activists are also authors of the Shadow report, then on their own admission the fact that they have played a political role must be taken into account in considering what weight should be put on this highly political document.

Regrettably, I draw to your attention also that the Shadow Report is outdated and fails to refer to a number of important reforms adopted by my government. It is also sadly inaccurate on a number of important issues. One example is that it refers to the Fiji Independent Commission Against Corruption (FICAC) and states that the High Court had ruled that FICAC is illegal and unconstitutional by referring to a decision of the civil appeal court.¹

In fact there was no such decision. Instead the High Court ruled that until the legality of the Bainimarama vs. Qarase case is determined by the High Court, FICAC had the same power of investigation and prosecutions, as private prosecutors, and that the DPP in Fiji does not have exclusive powers to prosecute.²

In actual fact, there has been no ruling that FICAC is illegal, and thus the statement in the Shadow Report that the office charged with the prosecuting of all crimes is the DPP, is incorrect. Indeed, the right to privately prosecute has always been preserved in Fiji.

1.2 Important Reforms

Since the filing of the State Report and the Shadow Report, Madame Chairperson, there have been significant legal and institutional reforms affecting the women in Fiji.

1.2.1 Economic Reforms

Madame Chairperson,

One of the decisions made by the Fiji Government was to remove VAT from basic food items in 2006. Those affected by such decisions are the most vulnerable in society, in particular the women and children. Another important economic reform with direct impact on women was the Wages Regulations Order 2009 which was promulgated in

¹ Civil Appeal No. ABU0077 of 2008S.

² State v Inoke Devo – HAC177 of 2007

July 2009. Minimum wages rose by 20% from their existing levels for 10 industries and the implementation of the order rests with the Wages Council.³

Also relevant to women's access to the labour market is the Employment Relations Promulgation 2007, which brought about much fairer employment practices. In addition to maternity leave benefits, there are comprehensive provisions addressing annual leave and bereavement leave for women and girls with disabilities. The Promulgation requires that where an employer employs 50 or more people, 2% of that employer's workforce must be reserved for those with disabilities. Fiji has of course ratified the ILO Convention 159, which calls for decent work for people with disabilities.

1.2.2 Economic Rights

There are areas in relation to women that we admit a great deal of work still needs to be done. For instance, in successive national poverty reports, women are invariably found to be the most vulnerable and the most affected by poverty. The Department for Women has been allocated a special budget dedicated for the WPA, NGOs and the Cottage Industry to promote the advancement of women. Moreover, 90% of beneficiaries of the Micro-Finance Scheme at the National Center for Small and Micro Enterprises Development are women.

Fiji remains a patriarchal society and culturally driven attitudes of the subordination of women continue to disadvantage women in the most fundamental ways. A move to improve in this area is addressed in the Strategic Framework for Change that makes it mandatory for women's representation in all Village Committees, which is an effort to elevate women's social status in the community.

The best laws in the world can be passed to encourage greater access of women to loans, development programmes and poverty alleviation projects. However it is in the implementation of these laws that such projects may fail.

³ The 10 industries include (i) Printing trade; (ii) Wholesale & Retail trade (iii) Hotel and Catering trade (iv) Garment industry (v) Sawmill & Logging industry (vi) Road transport (vii) Building and Civil and Electronic Engineering trade (viii) Manufacturing industry (ix) Mining and Quarrying industry, and (x) Security Services.

We accept that Fiji needs to work harder on institutional strengthening and ensuring laws and regulatory frameworks are implemented to achieve greater economic empowerment for women. We do not plead lack of funding or resources to justify our under achievement.

1.3 Legal Developments

With respect to legal developments, significant achievements have been made by my country in this area.

For many years, women's rights activists lobbied for changes in the law in relation to Domestic Violence, Sexual Assault, Prostitution, Human Trafficking, the evidence of women and children in Court, Sexual Harassment and child abuse. Changes that they had lobbied for have now been enacted in the Domestic Violence Decree, the Crimes Decree, the Criminal Procedures Decree, the Employment Relations Promulgation and the Child Welfare Decree.

All these decrees were passed in the last 12 months with the exception of the Employment Relations Promulgation 2007 (ERP). We note that the authors of the Shadow Report refer only to the ERP and not to these important legal developments which have emerged subsequently. We also note that the Shadow Report states that they do not recognize the Decrees because they have not been passed through the Parliamentary process.

Yet with respect, these are the laws which are currently administered in Fiji and through which the ordinary women who are the victims of violence can effectively access the courts to protect themselves and their children.

Apart from the passing of these laws, workshops have been held to train the Judiciary, Prosecutors, the Police, and Legal Aid Lawyers on the extent of the Laws and the need to implement them in a gender sensitive and enlightened way. Our information from the Fiji Human Rights Commission and the Judiciary on the willingness of the courts to

issue Restraining Orders under the Domestic Violence Decree and for instance, to stop questioning on previous sexual history in rape cases, is encouraging.

These laws are extensive in their ambit. For example, rape is now triable only in the High Court and will no longer be prosecuted in the Magistrates Courts by lay Police Prosecutors. Corroboration is abolished. Questioning on the previous sexual history of a victim of sexual assault is limited and will only be allowed with the leave of the Court.

Prostitution continues to be an offence but also criminalized is the conduct of the clients of the sex workers and the owners of premises where prostitution is being carried out. The maximum sentence on the first offence of prostitution is only \$500 fine. However, the offence for human trafficking where the sex worker is the victim and not the accused, carries a maximum penalty of 12 years imprisonment and 20 years for aggravated trafficking. The focus of the Crimes Decree is therefore the punishing of those who sexually exploit women.

In conjunction with this Law, the Department for Women is working on a programme to provide opportunities for alternative livelihood for sex workers. Fiji has also established a unit called the Transnational Crimes Unit in the Fiji Police Force to investigate trafficking in adults and children.

Since the 1st of February this year when the Crimes Decree came into force, we now have extensive laws on Human Trafficking for the first time. The Transnational Crimes Unit accepts that there is a potential evidential link between the Trafficking of persons, money laundering and other offences such as drug trafficking, which has an international dimension.

The US State Department Report in Human Trafficking in June 2010 recognized the Fiji Government's sincere efforts in passing laws on Human Trafficking which targets the sexual and economic exploitation of women and children. The Report, in removing Fiji from Tier 3 of the categories of countries in the World, states that the Crimes Decree has passed laws which criminalized human trafficking and impose stringent penalties on

offenders. The Report also recognizes Fiji government initiatives in training law enforcement officials on these laws.

The Crimes Decree also implements to a large extent, Fiji's international obligations under the Rome Statute of the International Criminal Court. It creates offences of crimes against humanity, war crimes and genocide. Each of these three offences can be committed by means of torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and sexual violence.

These provisions implement the complementarity requirements under the Rome Statute. Also significant is that the Crimes Decree no longer provides for an offence of sodomy, unless such sodomy is non consensual or committed with a child. Thus, the Fiji Government decided to give effect to one of its local High Court decisions on this subject.⁴

In doing so, Fiji gives effect to the provisions to the Human Rights Commission Decree protecting persons from discrimination on the basis of their sexual orientation. I also wish to draw the attention of the Committee to Section 65 of the Crimes Decree which makes it a criminal offence to make a hate speech which will incite dislike or hatred towards any community.

Other important provisions include the Child Welfare Decree which requires doctors and other professionals to report suspected child abuse to the Permanent Secretary for Social Welfare and Section 295 of the Criminal Procedure Decree which provides for the protection of vulnerable witnesses in Court.

These are important developments designed to assist women to gain greater access to justice and to use their legal powers to ensure that those who commit acts of violence against them are brought to justice. The Sentencing and Penalties Decree 2009 requires Judges and Magistrates to follow a careful sentencing process. Section 4

⁴ Nandan v McCoskar, Criminal Appeal HAA 85 & 86 2005

subsection (3) of the Decree specifically requires the Court in sentencing offenders for Domestic Violence to take into account special considerations in relation to the victim. This includes the effect of violence on the emotional, psychological and physical wellbeing of their children, and any evidence that the offender has accepted the responsibility for the violence, has made amends to the victim, and whether he poses any further threat.

The reforms are therefore intended to assist in achieving equal justice from the point of access to the justice system to the sentencing process. Of course, I accept that the proof of the pudding is in the eating and the proof of the law is in the implementation. For instance, the Domestic Violence Decree gives women or representatives of women the right of audience before all the Courts in Fiji in order to make an application for a Restraining Order, whether or not they have a law degree.

Women NGOs have attended training organized by the Department for Women to assist them to make such applications. Time will tell whether women are prepared to use these laws to their advantage.

Nevertheless, the initial response from the Judiciary and the Prosecution is positive. Both institutions have taken the initiative to organize their own training on these new provisions.

It is also noteworthy, Madame Chairperson, that although the Bill of Rights part of the 1997 Constitution has been abrogated, with its constitutional protection against torture, the new Criminal Procedure Decree prescribes for the first time protections for persons who are arrested by the Police or any other persons with powers of arrest, such as the right to be protected from greater force than is reasonable to prevent escape. The Decree also prohibits search of intimate private parts and provides for a right to be searched with decency. All searches of arrested persons can only be conducted by officers of the same gender.

The Judges Rules which provides for the questioning of persons in custody, remain as part of our laws and where the Police breach the laws on arrest, search, seizure and questioning, any evidence obtained thereby is excluded from the trial. Civil proceedings are also available for human rights breaches of these laws. The common law on the admissibility of evidence, false imprisonment and malicious prosecution continue to be preserved by the Courts and form the basis of civil litigation regularly.

A new offence of torture as a crime against humanity is created for the first time by the Crimes Decree. Furthermore, during the aftermath of 2006, three men were killed in military and police custody. The police and soldiers responsible were investigated, tried, convicted and sentenced for either murder or manslaughter.⁵ The police officers who were responsible for killing a man who was a suspect are currently serving life imprisonment for murder.⁶

In no way do the laws in Fiji tolerate or ignore acts of torture. Although the new changes in the law accord good protection against torture, Fiji accepts that the best protection will be constitutional protection. Therefore with the drafting of the new Constitution Fiji will be ready to consider ratifying the Convention against Torture.

Madame Chairperson,

There are significant changes of the law in Infanticide. Under the old Penal Code, in order for a woman to be found guilty of infanticide rather than murder, a psychiatrist had to certify that she was suffering from post natal depression when she killed her child. Facts from cases before the courts showed that women were killing their babies not because of mental illness but because of social factors such as poverty, religious intolerance and cultural patriarchy. Thus the majority of women who are currently serving life terms at the women's prison are serving for murder rather than infanticide because of the way the law was drafted under the Penal Code.

⁵ Criminal Case No.: HAC 165 OF 2007

⁶ State v Lole Vulaca and Others

The Crimes Decree redefines infanticide allowing the court to consider social factors which lead to the death of the baby. This in turn, if it leads to convictions for infanticide rather than murder, will allow the courts to impose more humane sentences such as probation orders and community work orders.

The law on abortion under Penal Code gave very little protection to women who requested abortion. The doctors who conducted abortions were not required to counsel their patients nor were there any restrictions on the age of the foetus which might operate as a cut off point for legal abortion. The new Crimes Decree does not legalize abortion. However it does provide much stricter guidelines for doctors to follow before they are permitted to conduct an abortion and the Decree requires counseling of the patient by a doctor other than the doctor who conducts the abortion. Once the foetus is more than 20 weeks old, an abortion can only be conducted in a Ministry of Health facility and only when two medical practitioners have agreed that the mother or child has a severe medical condition that justifies the procedure. This balance between the right to life and the discretion to terminate on medical grounds is one which reflects Fiji's society with its religious and ethical convictions.

Lastly, His Excellency the President who is a former UNAIDS Special Representative to the Pacific on HIV and who is currently Fiji's Special Representative on HIV, has personally and publicly assisted in efforts to ensure that laws and practices in relation to HIV and AIDS in Fiji are non-discriminatory. Fiji has drafted a HIV and STI Prevention, Care and Support Decree 2010 which has gone through a consultation process with interested stakeholders.

Of this proposed Decree, UNAIDS Pacific Coordinator, Mr. Stuart Watson said: *"the thing that pleases us the most about the HIV Draft Decree is its focus on human rights principles and as such provides for the recognition of the Universal standards and public international laws applicable to the protection of rights and that standards and laws applied to the fullest extent..."*

Clearly the proposed Decree will be non-discriminatory and enlightened in its scope.

1.4 Women's Development

Madame Chairperson,

The Department for Women continues to pursue its role as the primary advisor to government on women's development and gender issues in Fiji. With this we ensure that partnerships are strengthened with our key stakeholders in promoting gender equality for the advancement of women and primarily to ensure that discriminatory practices against women are reduced or eliminated. Now that Cabinet has endorsed the implementation of the new Women's Plan of Action 2010-2019, the Department is determined to implement the areas of concern, namely:

1. Formal Sector Employment & Livelihood;
2. Equal Participation in Decision Making;
3. Elimination of Violence Against Women and Children;
4. Access to Basic Services;
5. Women and the Law.

As the primary advisor to government on women's development and gender issues, the Department makes certain that the strategic objectives of the 5 Areas of Concern of the Women's Plan of Action 2010-2019 (WPA) are implemented effectively.

2.0 Social Developments – Women in Decision making, Education and Rural Women

2.1 Women in Decision Making

Fiji's target of having 30% representation of women in all boards and committees is slowly progressing. The Minister for Women is a member of the Fiji National Security Council. At community level, since 2008, more than 300 women, mostly in rural areas, became members of Hospital Boards introducing them to sitting at decision making bodies. Women are also represented in all spheres of the civil service. In accordance with the UN

Security Council Resolution 1325, Fiji continues to value the significant contribution and the role of our women serving in UN Peace Keeping missions in Iraq, Sudan, Afghanistan and the Multinational Forces Observers (MFO) in Sinai.

In addressing gender-related issues more effectively and the assurance of equilibrium gender composition in decision making bodies, Cabinet has now endorsed the incorporation of Sex Disaggregated Data in all Government's policy documents. This institutional mechanism will be the way forward for the State to strengthen and ensure that gender disparities are addressed in Fiji.

Additionally, there are plans to address women representation in Parliament under Fiji's new Constitution to be developed in preparation for the General Elections in 2014.

2.2 Education Developments

Madame Chairperson,

In advancing the issues on women, the Government realizes that formal education is fundamental to its understanding. This is the reason the Government places great emphasis in the education of our children. Currently there is 99% school enrolment in Fiji. To sustain this high level, Government has put in place certain measures including:

- Free tuition up to the twelfth year of education, paying for daily transport to school for children whose parents earn below \$15,000 annually;
- Working progressively to provide free text books to cover all primary school children by the year 2012.
- To ensure quality education, teachers are required to register every three years after satisfying a criterion that encourages continuing education and good health.

It is significant that Fiji now has three Universities to provide students with more opportunities for tertiary education. Student enrolment in these Universities reflects a higher female population.

2.3 Rural Women

The Department for Women have its commitments towards the development of rural women through various economic empowerment programmes such as income generating projects, NGO Grants and Cottage Industry Projects. The Access of Basic Services Action Plan of the Women's Plan of Action 2010-2019, provides the direction in strengthening institutions in areas such as Health, Education and Training, Water Supply and Sanitation. This will ensure that rural women have access to these basic services and that Government under the Roadmap have made commitments in promoting Equal Opportunities and Access to Basic Services, Livelihoods and Markets. This year, women in agriculture have been intensely promoted to mainstream women into the export sector.

3.0 OPTIONAL PROTOCOL – CEDAW

Madame Chairperson,

As indicated in our responses to the list of issues, Cabinet has deferred the ratification of the Optional Protocol in April 2009. It is felt that at this time of reform, Fiji must now focus on strengthening laws and institutions which allow for the making of complaints of unfair discrimination within our borders. Consistent with this view is the Human Rights Commission Decree which specifically provides for the establishment of the Commission, for investigating complaints and for the prohibition of unlawful discrimination on the grounds of gender.

Any such discrimination should be dealt with by the Commission, by the Police (if the matter is also a criminal offence) and by the Judiciary. These institutions will not be

strengthened if they are not tested by the making of complaints, by investigation in an impartial process and their adjudication by an independent Judiciary.

In this period of institutional strengthening and of law reform, Cabinet will reconsider the ratification of the Optional Protocol after every effort has been made nationally to deal with discrimination cases that arise.

4.0 CONCLUSION

We accept however that Fiji will continue to need assistance in the full implementation of the spirit of CEDAW.

Fiji is sincerely committed to fulfilling its obligations to CEDAW and we acknowledge that no battle on this front can be fought without a partnership of civil society groups, both nationally and internationally.

In that regard, we continue to fervently hope that such partnerships can be forged through positive dialogue and constructive discussions. It is at this time when Fiji is experiencing a period of legal, social, political and cultural change that reforms can be forged within the spirit of CEDAW.

It would be a mistake for interested parties and persons to fail to take advantage of this important period in our history.

I thank you Madame Chair for your patience and indulgence and look forward to a fruitful dialogue.

Thank you.