

Fiji

1. Discrimination in the family

a) Overarching legal framework for marriage

Pursuant to the [Marriage Act Amendment] Decree, marriage shall be based on the consent of both spouses and solemnized by either the registrar general, district registrar, registered marriage officer and registered church minister (CEDAW, 2015). The Family Law Amendment Decree (2005, 2012) recognises de facto relationships and provides them with the same rights to property and spousal maintenance as those married under the civil law (CEDAW, 2015).

b) Child marriage

In 2009, the Marriage Act was amended, raising the legal age of marriage to 18 and removing minors' ability to marry without parental consent. Marriage registration is required. The Marriage Decree states that "any person who wilfully and unlawfully marries a person under the age of eighteen years induces any marriage officer or other person to solemnize marriage between parties when the person so acting knows that one of the parties to the marriage is a minor or abets or assists the principal offender knowing that a party to the marriage or intended marriage is a minor, shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding two years" (CEDAW, 2015). There is indication that young women from the Indo-Fijian community in particular have been sold into marriage with foreigners (Jalal, 2009, p. 15; WHO 2007).

c) Household responsibilities

The law does not cover the rights to be the head of household. According to the Family Law Act 2003, both parents are considered legal guardians of their children during marriage. The Act recognises that both parents have the same rights to apply for child custody and maintenance, as well as spousal maintenance (Art 86; CEDAW 2015). Fiji is a patriarchal society and so both women and her children will adopt the husband/father's family name and for iTaukei Fijians, if parents are legally married, their children's names must be registered under their father's traditional family units in a register kept by the Native Lands Commission called the "*vola ni kawa bula*" (CEDAW, 2015).

Analysis by the World Bank suggests that households headed by women who are married tend to have higher incomes than those who are divorced or never-married, possibly because the former receive remittances sent by partners who have migrated (ADB, 2015).

d) Divorce

The Family Law Act 2003 introduces no-fault divorce and provides for spousal maintenance when it is determined that one spouse is in need of support. The Family Law Act 2003 also provides both parents an equal right to custody, subject to the best interests of the child. Upon divorce, the court

can make property orders, which take into account, amongst other things, non-monetary contributions to the marriage (CEDAW, 2015).

e) Inheritance

Men and women have equal rights to inherit under the Inheritance (Family Provision) Act (Art. 3) and the Succession, Probate and Administration Act (Art. 6).

Indigenous iTaukei land inheritance traditions favouring patriarchal lineage often influences land inheritance practices to the exclusion of women. iTaukei Fijian women in rural areas are often unfairly prejudiced by Fijian traditional customs in marriage. Once married, an iTaukei Fijian women moves from her father's village to reside in her husband's village and during the wedding ceremony, her family presents a "*tabua*" (whales tooth) to her husband's family asking them to take good care of her. Once her husband dies, her family will again present another "*tabua*" to her late husband's family as in the iTaukei customs, she must return to her father's family. This makes them dependent on men throughout their lives, firstly, their father, then their husband, then, once they become widows, they depend on the goodwill of the male line in her father's family (CEDAW, 2015; U.S Department of State, 2016; ADB, 2015). Some Indo-Fijian families may also practice father to son inheritance, which also limits women's ability to inherit land and assets (ADB, 2015).

2. Restricted Physical integrity

a) Violence against women

Fiji has separate laws covering sexual violence (Crimes Decree Act 2009), domestic violence (Domestic Violence Decree 2009), and sexual harassment (Employment Relations Promulgation 2007 and Crimes Decree 2009). Domestic Violence Decree 2009 provides expanded authority to police to investigate and prosecute cases of domestic violence. The Crimes Decree 2009 improved definitions of sexual assault, rape, and other crimes of violence against women. Also includes offenses related to trafficking in women and children with increased penalties (ADB, 2015).

Violence against women is a major issue for Fiji (CEDAW, 2015). In May 2017, the Government's formal body to address violence against women, the Ending Violence against Women Taskforce, gathered to draft a new interagency National Service Delivery Protocol for Responding to Cases of Gender Based Violence (UN Women, 2017). Until this protocol is finalised, the government has been coordinating with the Fiji Women's Crisis Centre (FWCC) to provide domestic violence services. "Four women's crisis centres operate in country. The centers offered counseling and assistance to women in cases of domestic violence, rape, and other problems, such as a lack of child support (U.S. Department of State, 2016)."

b) Domestic violence

Under the Domestic Violence Decree of 2009, the definition of domestic violence includes physical and sexual violence, as well as emotional and financial abuse. The law also removed prior requirements for reconciliation procedures before cases could be brought to court (CEDAW, 2015). The law also identifies domestic violence as a specific offense and entails a "no-drop" policy,

whereby investigation is pursued even if victims withdraw accusations (U.S. Department of State 2016).

The Ministry for Women, Children, and Poverty Alleviation does fund a 24-hour toll free domestic violence helpline managed by the Fiji Women's Crisis Centre (UN Women, 2017).

i-Taukei women may be subjected to coercion by family members to withdraw complaints and to utilize traditional *i-bulubulu* ceremonies of reconciliation (ADB, 2015). However, while such policies are in place to continue investigations, recent research has found that women may not report violence to police but rather to women's organizations: for example, the Fiji Women's Crisis Centre (FWCC) received 1 075 new domestic violence cases in 2014, compared to 123 cases reported to authorities (ADB, 2015). Nevertheless, crimes such as rape and child sexual abuse are much more likely to be reported to authorities than dealt with by the FWCC (ADB, 2015).

c) Rape

Rape is criminalised under the Fiji Crimes Decree of 2009 (Crimes Decree, Art. 207 (1)). Sentences carry a maximum of 10 years imprisonment for attempted rape and life imprisonment for rape, and these cases must be tried in the High Court. The Crimes Decree 2009 does not require proof of penetration for the charges of sexual assault, indecent assault, and indecent harassment, but does require penetration for the charge of rape. The law does allow for aggravated circumstances such as the threat of harm or force and the number of assailants (gang rape). There are no reported cases of the use of cultural practices to avoid a prison term for rape cases (CEDAW, 2015).

d) Sexual harassment

The Human Rights Commission Act 2009 prohibits sexual harassment and workers may file sexual harassment complaints Under the Employment Relations Promulgation (2008), whose findings are enforced through the Employment Tribunal and Court.

A 2016 study commissioned by the Fiji Women's Rights Movement found 20% of women had experienced sexual harassment in the workplace. However, it was noted that this was a decrease from the 33% incidence found in a similar study from 2002 (FWRM, 2016, p.1).

e) Female genital mutilation

There is no evidence to suggest that female genital mutilation is an issue in Fiji.

f) Abortion

The Crimes Decree 2009 criminalises abortion. Exceptions include abortions carried out by an authorized medical professional in the case of incest, rape, severe medical conditions of the fetus or mother. The law also allows an authorised medical professional to perform the procedure if the woman's pregnancy is causing "serious danger to her physical or mental health." The law does not require the approval of the father in the case of abortion.

More

In Fiji, women have access to free contraceptives and family planning services at public hospitals and clinics. However, according to the 2015 ADB Fiji Country Gender Report, young and unmarried women often encounter disapproval when they seek out family planning services and public hospitals in rural areas, often refuse to perform tubal ligation surgery on unmarried women. Additionally, hospital staff often require a husband's consent before operating on a married woman, even though the law only requires the women's consent (ADB, 2015).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women in Fiji have the same legal rights as men to inherit and access land and non-land assets regardless of their marital status (CEDAW 2015, pp 47-48). In the event of divorce, the Family Law Amendment Decree 2012 allows for the consideration of a spouse's non-financial contributions to a marriage when considering the distribution of property and asset.

Women are often excluded from the decision-making processes concerning *iTaukei* (indigenous) communal land, which makes up the majority of land holdings in Fiji (80%). While women are entitled to a share of proceeds from the distribution of *iTaukei* land lease, this right is rarely recognised (U.S. Department of State, 2016; CEDAW, 2015; ADB, 2015). While Fijian women may be able to legally own land, customary inheritance rights often prevent this by requiring permission from husbands or fathers (ABD, 2015).

b) Secure access to formal financial resources

Section 19 of the Human Rights Commission Decree prohibits any form of unfair discrimination directly or indirectly, amongst other areas include, the participation in, or the making of an application for a partnership, the provision of goods, services, or facilities, including facilities by way of banking, or insurance, grants, loans, credit or finance and the provision of land, housing or other accommodation (CEDAW, 2015). No formal laws exist barring access to credit, but banks have, in the past, required husbands to act as loan guarantors for women (Cotula, 2006). Men also tend to have greater access to these services, as they are more likely to be able to provide collateral for lending. Women, in contrast, tend to work in low-paying, less secure fields, limiting their financial resources and access to credit (ADB 2015; ForumSec 2007; Pacific Women 2016).

There is a large discrepancy in access to productive and financial resources between woman who reside in rural and urban Fiji. Women in rural communities are subject to more traditional gender norms and have fewer opportunities than women in urban communities to work independently from their families (ADB, 2015, p. 7).

c) Workplace rights

Fiji has ratified ILO Equal Remuneration Convention (No. 100) which ensures equal pay for equal work and ILO ILO Discrimination in Employment and Occupation Convention (No. 111) which

prohibits discrimination based on gender, maternity status, and family responsibility (ILO Database, n.d.).

The 2016 Employment Promulgation Amendment expanded equal protection in the workplace to gender identity, health status, and pregnancy (U.S. Department of State, 2016). Women in Fiji are entitled to 12 weeks of paid maternity leave if they can provide their employer a note from a registered medical practitioner certifying the possible date of birth (Employment Relations Promulgation 2007, Secs. 101(1) and 101(2)).

According to the Fiji Women's Rights Movement, economic participation and opportunity is the greatest challenge to gender equality in Fiji (FWRM, 2015, p. 3). Women continue to be a minority in the workplace and earn less than half of the income of men (ADB, 2015). Labor force participation also varies by ethnicity, as 53% of i-Taukei women were employed outside compared with 37% of women of Indo-Fijian women (ADB, 2015).

4. Restricted Civil liberties

a) Citizenship rights

The Constitution guarantees women the same rights as men to acquire, change, or retain nationality status (Section 5:4), to move freely within Fiji or to leave Fiji (Section 21:3) and to apply for passports (Section 21:2). However, married/divorced women are required to provide marriage/divorce certificate respectively, while the same stipulation is not applied to married/divorced men (Government of Fiji, n.d.).

The Citizenship of Fiji Decree 2009 ensures women the right to confer nationality on their children or their foreign spouse, register for marriage or birth of a child, and apply for passports and other travel documents for their minor children. The Family Law Act of 2003 recognises the role of both partners in marriage, divorce, and childhood custody decisions when deciding legal guardianship.

b) Voting

Women and men have equal voting rights at the national level (Constitution of the Republic of Fiji, Section 23).

c) Political voice

The law does not mandate gender quotas at either national or sub-national levels. Some women act as chiefs within customary Fijian traditions, but the Great Council of Chiefs (*Bose Levu Vakaturaga*) has also been disbanded. CEDAW reports highlighted that women's real and meaningful political participation is lacking. Cultural, religious and family pressures make this participation difficult (Jalal 2009). Special measures other than legal quotas to promote women's political participation remain absent (i.e. reserved parliamentary seats for women) (FWCC, 2015).

Strong women's rights organisations have, since the 1980's, played critical roles in supporting women's political voice in Fiji and the region.

d) Access to justice

Fijian laws governing access to justice are framed in gender neutral terms, including Section 26 of the constitution which "guarantees equality between women and men before the law and both have the legal protection, treatment and benefit of the law" and Section 15(2) stating that all parties to civil matters have the right to access the courts "or an independent and impartial tribunal...within a reasonable time."

It has been shown that women's access to justice can be impeded through customary law or traditional and religious practices simultaneously. For example, within both indigenous and Indo-Fijian communities, emphasise reconciliation has sometimes been taken into account as a mitigating factor in domestic violence cases (U.S. Department of State, 2016). The use of customary laws and other practices thereby weakens' women's access to justice.

More

The Fiji National Gender Plan (2014) sets the objective to promote and protect the human rights of women, with a special focus on gender-based violence. The plans includes the monitoring and review of legislation and regular collection of sex-disaggregated data (ADB, 2015). According to the 2016/17 national budget, the government of Fiji would provide funding of around USD 0.2 million to NGOs working in the interests of women and children around the country. However, that funding is not specifically earmarked for activities to address violence against women (Fiji National Budget 2016).

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