

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# FIJI: 5-POINT HUMAN RIGHTS AGENDA FOR ELECTION PARTIES AND CANDIDATES (2022)

Fiji's next elections are scheduled on 14 December 2022. For countries around the world, Amnesty International routinely publishes a human rights agenda for election candidates to highlight areas which the organization considers should be top of government leaders' priorities should they be elected. For example, Amnesty International published a human rights agenda for Australia and Malaysia in 2022, and for Fiji's previous elections. This document outlines five key human rights issues we are urging candidates, and therefore Fiji's future government, to prioritize.

## 1. FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION AND RIGHT TO INFORMATION

Freedom of expression remains subject to restrictions not justified under international human rights law. Most notably, provisions in the Crimes Act, the Public Order Act and the Media Industry Development Act require a substantial overhaul to be human rights compliant.

Freedom of peaceful assembly and association has also been compromised. For example, trade unions have been unable to receive police permits to carry out Labor Day marches for several years.<sup>1</sup>

Amnesty International is particularly concerned about ongoing targeting of people who are critical of government and its policies. Fiji's laws, policies and practices continue to suppress freedom of expression, especially when it comes to criticizing government policies. Amnesty International has highlighted cases where legal proceedings have been abused to silence journalists, non-governmental organizations, political opponents, and lawyers.<sup>2</sup>

In their 2022 World Freedom Report, Reporters Sans Frontiers (RSF)<sup>3</sup> highlighted that Fiji's authorities use discriminatory advertising practices by withholding ads and legal notices from those outlets regarded as critical of government. At the height of the pandemic, the Fiji Times was banned from distribution in certain areas because the government argued it is 'a non-essential service'. At the same time the Fiji Sun benefited from preferential advertising. This preferential treatment has a knock-on effect on the right to freedom of information for the public, who should be able to access government messages through a variety of media.

### EXAMPLES OF REPRIALS AGAINST GOVERNMENT CRITICS

In early 2022, the Vice-Chancellor, Professor Pal Ahluwalia of the University of the South Pacific was deported from Fiji after raising issues of corruption and nepotism at the Fiji-based campus of the regional educational institution.<sup>4</sup>

In July 2021, six members of parliament and three other high-profile politicians were arrested and detained by the police for questioning after criticizing a bill impacting indigenous land rights that was due to be debated in parliament. They were released without charge.<sup>5</sup>

In November 2022, Biman Prasad, leader of the National Federation Party, was charged with criminal sexual offences after he greeted a prospective candidate's wife with a hug and a kiss on the cheek. Police claim this action 'offended modesty', however the Department of Public Prosecutions intervened to drop the charges. Serious concerns have been raised about the prosecution, just over a month prior to elections.<sup>6</sup>

On 22 November 2022, lawyer Richard Naidu was convicted of contempt for scandalizing the court for pointing out a spelling mistake in a court decision on social media. Amnesty International has called on these proceedings to be

<sup>1</sup> See Fiji entry, Amnesty International, Report 2021/22: The State of the World's Human Rights, POL 10/4870/2022

<sup>2</sup> See Fiji entry, Amnesty International, Report 2021/22: The State of the World's Human Rights, POL 10/4870/2022

<sup>3</sup> Reporters Without Borders, 'World Press Freedom Index 2022', April 2022, [rsf.org/en/country/Fiji](https://rsf.org/en/country/Fiji)

<sup>4</sup> See Fiji entry, Amnesty International, Report 2021/22: The State of the World's Human Rights, POL 10/4870/2022

<sup>5</sup> Kelvin Anthony, 'Nine Fiji Opposition MPs arrested for criticism of land bill', The Guardian, 26 July 2022, <https://www.theguardian.com/world/2021/jul/26/nine-fiji-opposition-mps-arrested-criticism-land-bill>

<sup>6</sup> Marion Faa, 'Fiji's Top Cop and Public Prosecutor clash over decision to drop charges against Opposition MP ahead of elections', 10 November 2022, ABC News, <https://www.abc.net.au/news/2022-11-10/fijis-top-cop-public-prosecutor-clash-election-biman-prasad/101638696>

dropped and urges Fiji's next government to change contempt of court to bring it into line with international human rights law and standards on the right to freedom of expression. In particular, we note this form of contempt has been abolished in the UK, Canada and USA because it undermines the right to freedom of expression.<sup>7</sup>

## 2. TORTURE AND OTHER ILL TREATMENT

Fiji has ratified the Convention Against Torture (with some notable reservations on the definition of torture) but has failed to incorporate it fully into national law. Among the main concerns are immunities provided for security forces and obstacles to reporting abuses – such as the lack of an independent body to hear complaints against the police and the military. Under the Optional Protocol on the Convention Against Torture, which it has also ratified, Fiji should also allow complaints to the UN Committee when domestic remedies have been exhausted.

Amnesty International has documented several cases where extra judicial punishment has been meted out by the security forces – sometimes resulting in severe injury and death. Sadly, such cases continue to be reported in spite of the introduction of the first hour procedure (ensuring early access to legal advice for detainees), more regular prison inspections and recent legal proceedings bringing a degree of accountability (see examples below).<sup>8</sup> A combination of lengthy delays and lack of punishment commensurate with the gravity of the crime sufficient to deter future violations and a lack of appropriate remedies, raises concerns about whether there is a genuine commitment to improve accountability of the security forces.<sup>9</sup>

Figures from Fiji's Department of Public Prosecutions in 2020<sup>10</sup> reported 400 charges of serious crimes that were laid against military or police officers from May 2015 to April 2020 (ranging from theft or corruption to rape and manslaughter). These figures make it clear that there is an ongoing need to address accountability for Fiji's security forces.<sup>11</sup>

### CASES OF POLICE BRUTALITY AND ACCOUNTABILITY

In May 2022, a police officer was suspended after video footage emerged of a violent assault of a bus driver during an arrest in the town of Labasa. The police officer was suspended pending an investigation.<sup>12</sup>

Some earlier cases – in which sentences were only handed down this year - highlight the delays in seeking justice. For example, on 28 November 2012, lowene Benedito, was beaten and sexually assaulted by two military and three police officers while restrained in the back of a truck. The incident was captured on a phone camera and uploaded to YouTube. Fiji's Prime Minister initially expressed his support for the officers involved.<sup>13</sup> Three years later, in October 2015, two military and three police officers were finally charged. In August 2022 (almost 10 years after the incident), some of the officers were sentenced to four years' imprisonment.

In August 2014, Vilikesa Soko and Senijeli Boila were raped and assaulted by officers in connection with a robbery. Soko died in hospital as a result of his injuries. Nine officers (both military and police) were convicted in 2016 and sentenced to a four to six-year non-parole period. Charges of manslaughter over Soko's death were dropped.<sup>14</sup> Two of the officers were also involved in the earlier assault of Benedito but they received no additional penalties,<sup>15</sup> and may be eligible for parole this year. The lack of punishment commensurate with the gravity of the crime and sufficient to deter future violations, and the delay in the Benedito case, raises questions as to whether torture and ill-treatment is taken seriously by the authorities.

## 3. PROMOTING GENDER EQUALITY AND ENDING VIOLENCE AGAINST WOMEN

Violence against women remains unacceptably high, in spite of attempts to address it. For example, in its Universal Periodic Review before the UN Human Rights Council in 2019, Fiji acknowledged while laws are in place to tackle violence against women, people need to feel more comfortable reporting cases to the authorities and noted that it would

7 Amnesty International and CIVICUS, Fiji: Contempt proceedings over highlighting spelling mistake inject climate of fear, 9 August 2022, <https://www.amnesty.org/en/wp-content/uploads/2022/08/ASA1859342022ENGLISH.pdf>

8 See: 'Working Group Report of the Universal Periodic Review: Fiji', UN Human Rights Council, 23 December 2019, reference: A/HRC/43/8, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/352/16/PDF/G1935216.pdf?OpenElement>

9 Amnesty International, Beating Justice: How Fiji's Security Forces Get Away with Torture, 2016, ASA 16 5149/2016, <https://www.amnesty.org/en/documents/asa16/5149/2016/en/>

10 Fiji's Office of the Director of Public Prosecutions, 'Statistics on offences committed by the police 2015-2020', November 2020, [https://uploads.guim.co.uk/2020/11/09/ODPP\\_statistics\\_on\\_offences\\_committed\\_by\\_Police\\_2015-2020.pdf](https://uploads.guim.co.uk/2020/11/09/ODPP_statistics_on_offences_committed_by_Police_2015-2020.pdf)

11 Joshua McDonald, 'A spotlight on police brutality in Fiji', The Diplomat, November 2020, <https://thediplomat.com/2020/11/a-spotlight-on-police-brutality-in-fiji/>

12 Marian Faa, 'Police officer suspended after bus driver arrest', ABC News, May 2022, <https://www.abc.net.au/news/2022-05-18/fiji-police-officer-suspended-after-bus-driver-arrest/101076002#:~:text=A%20police%20officer%20in%20Fiji,the%20island%20of%20Vanua%20Levu.>

13 Fiji's Interim PM says he will stand by men in video', ABC News, 8 March 2013, <https://www.abc.net.au/news/2013-03-08/an-fiji-leader-says-he-will-stand-by-men-in-video/4562078>

14 'Fiji DPP asked why manslaughter charges dropped', ABC News, 4 November 2015, <https://www.abc.net.au/pacific/programs/pacificbeat/fiji-dpp-asked-why-manslaughter-charges-dropped/6912988>

15 Talebula Kate, 'Military and police officers in Benedito Case Cop Jail Terms', Fiji Times, 11 August 2022, <https://www.fijitimes.com/military-and-police-officers-in-benedito-case-cop-jail-terms/>

move towards a National Prevention Action Plan aimed at changing patriarchal attitudes that contribute to violence against women.<sup>16</sup>

More must be done to raise awareness, work towards targeted prevention and ensure that women can access justice systems, health care and psychosocial support when they do experience violence and harassment. Additionally, Fiji's future government must work to ensure gender equality and maximize women's public and political participation in line with its commitments under the Convention on the Elimination of Discrimination Against Women (CEDAW), which Fiji has ratified. Women's representation in Fiji's parliament has grown significantly in recent years to around 20% in 2020 but it remains below the global average.<sup>17</sup>

In some professions, such as journalism and politics, women report experiencing high levels of harassment and discrimination – this in turn creates barriers to women's full realization of equality and participation in public and political life. A study released in March 2022 by Fiji Women's Rights Movement working in conjunction with the University of the South Pacific, found that two thirds of female journalists reported experiencing sexual harassment, mostly verbal or through gestures directed at them, either at the workplace or while reporting.<sup>18</sup> Another study pointed out that prevalent cultural norms and stereotyped gender roles inhibit women from more equal participation at the political level.<sup>19</sup>

In 2022, a High Court case heard a legal challenge to a new electoral law that required women who wished to continue to vote under their married name, to formally change their name on their birth certificate.<sup>20</sup> As at the time elections were called and voter registration closed in November 2022, there was no decision on the case. As a result, there are concerns that the law creates practical obstacles for women voters. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW, which Fiji has ratified) requires states to take all appropriate measures to eliminate discrimination against women - including in the political and public life of the country and ensure women are able to vote on equal terms with men (Art 7).

#### **4. UPHOLDING THE RIGHTS OF PEOPLE BASED ON SEXUAL ORIENTATION AND/OR GENDER IDENTITY**

Although Fiji has the only Constitution in the world protecting people from discrimination on the basis of gender expression, LGBTI people continue to be marginalized and face stigma, discrimination, and violence because of their sexual orientation and/or gender identity. This in turn makes it harder for LGBTI people to access employment, education, health care and adequate housing.<sup>21</sup>

The social and economic marginalization experienced by this community has been exacerbated by the Covid-19 pandemic. LGBTI people report being stigmatized and targeted by police during curfews (that have been used as public health measures during the pandemic and tropical cyclones), or under laws that criminalize sex work and related activities.<sup>22</sup>

Fiji's laws do not comprehensively protect and provide remedies for all forms of discrimination, nor is there legal recognition of same sex marriages or civil unions. There is poor understanding of trans related health, limited access to hormone replacement therapy and no legal framework for gender recognition.<sup>23</sup>

#### **5. INCLUSIVE RESPONSES TO DISASTERS AND THE CLIMATE CRISIS**

Fiji is particularly vulnerable to the impacts of the climate crisis, which have significant consequences for human rights. These impacts include sea-level rise, increasing ocean acidification, coral bleaching, rising sea and air temperatures, more intense tropical cyclones, storm surges, droughts, and changing rainfall patterns. The rights to food, clean water, adequate housing, health care, education and employment are typically disrupted during extreme weather events made

16 'Working Group Report of the Universal Periodic Review: Fiji', UN Human Rights Council, 23 December 2019, reference: A/HRC/43/8, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/352/16/PDF/G1935216.pdf?OpenElement>

17 'Pacific women representation in parliament highlighted in IPU publication', Parliament of the Republic of Fiji, 20 November 2020, <https://www.parliament.gov.fj/pacific-women-representation-in-parliament-highlighted-in-ipu-publication/>; and 'SGD Indicator Dashboard: Fiji', UN Women, [https://data.unwomen.org/data-portal/sdg?annex=Gender%20Equality&finic%5B%5D=SG\\_GEN\\_PARL&flocat%5B%5D=1&flocat%5B%5D=242&fys%5B%5D=2018&fyr%5B%5D=2020&fcdmx=sex&fcdmfc%5B%5D=Female&fcdmgr=Female&tab=line](https://data.unwomen.org/data-portal/sdg?annex=Gender%20Equality&finic%5B%5D=SG_GEN_PARL&flocat%5B%5D=1&flocat%5B%5D=242&fys%5B%5D=2018&fyr%5B%5D=2020&fcdmx=sex&fcdmfc%5B%5D=Female&fcdmgr=Female&tab=line)

18 'Prevalence and impact of sexual harassment on female journalists: A Fiji Case Study', Fiji Women's Rights Movement and University of the South Pacific, March 2022, [https://www.fwrmm.org.fj/images/fwrmm2017/PDFs/research/FWRM-USP\\_Prevalence\\_and\\_Impact\\_of\\_Sexual\\_Harassment\\_on\\_Female\\_Journalists\\_A\\_Fiji\\_Case\\_Study.pdf](https://www.fwrmm.org.fj/images/fwrmm2017/PDFs/research/FWRM-USP_Prevalence_and_Impact_of_Sexual_Harassment_on_Female_Journalists_A_Fiji_Case_Study.pdf)

19 'Qualitative research report on violence against women in politics in Fiji, Papua New Guinea and Solomon Islands', National Democratic Institute and FemLink, 19 January 2021, <https://www.ndi.org/publications/violence-against-women-politics-fiji-papua-new-guinea-and-solomon-islands>

20 'Seven women challenge Fiji electoral law discrimination over name changes', Asia Pacific Report, 31 December 2021, <https://asiapacificreport.nz/2021/12/31/seven-women-challenge-fiji-electoral-law-discrimination-over-name-changes/>

21 Amnesty International, Fiji: 6-Point Human Rights Agenda for Election Candidates, November 2018, ASA 18/9350/2018

22 Amnesty International, Pandemic or not, we have the right to live: The urgent need to address structural barriers to undermining transgender people's rights across Asia and the Pacific Islands, 14 November 2022, <https://www.amnesty.org/en/documents/asa01/6197/2022/en/>

23 Asia Pacific Transgender Network, 'Gender recognition in Fiji', 26 April 2022, <https://weareaptn.org/resource/legal-gender-recognition-in-fiji-a-legal-and-policy-review-in-the-context-of-human-rights/>

more intense by climate change. People are likely to face frequent temporary displacement and increasing hardship with each successive severe weather event.<sup>24</sup>

Fiji has formally committed to undertake a “gender and human rights-based approach to adaptation planning”, explicitly mentioning the full involvement of low-income and otherwise disadvantaged groups, including LGBTI people, in decision-making. Fiji’s National Climate Change Policy explicitly mentions that “an inclusive approach will be used to ensure that policy design, activities and investments take into account the differing needs and vulnerabilities of all social groups”. In spite of this, many feel they have been ‘left behind’ by a lack of inclusive engagement and consultation in decisions that affect them.<sup>25</sup>

## CASE STUDY: DAULOMANI SAFE HOME

Daulomani Safe Home is a small community near Lautoka. Some of its residents who identify as gay or transgender described the impacts of the climate crisis on them including food insecurity, frequent temporary displacement to emergency shelters, having to rebuild their homes after cyclones, impact on employment and education and harassment by authorities during curfew hours. While they have experienced varying levels of government support, many feel the voices of people of diverse sexual orientation and/or gender identity were not always included in formulating disaster risk responses – leaving them less able to recover from such disasters when they do occur. Edwina Biyau and other residents want greater opportunities to be included in decisions at levels of government that affect their lives and livelihoods, particularly when it comes to climate adaptation, resilience and disaster response.

For more details on this case study, see Amnesty International report, ‘Any Tidal Wave Could Drown Us: Stories from the Climate Crisis’ (2022).<sup>26</sup>

## RECOMMENDATIONS

Amnesty International urges political parties and candidates to publicly commit to respect, protect and fulfill its human rights obligations as outlined in this document. In particular, we urge Fiji’s future government to:

- Ensure that the rights to freedom of expression, peaceful assembly and association are fully guaranteed in national laws, policies and practices, consistent with international human rights law.
- Repeal the provisions of the Constitution, Crimes Act, Public Order Act, and Media Industry Development Act and any other laws that may be used to criminalize peaceful expression, assembly and association and bring them in line with international human rights law and standards.
- Ensure that people, including human rights defenders, activists, trade unionists, politicians, lawyers and academics do not face arbitrary arrest, detention, threats, reprisals, harassment or legal proceedings for peacefully carrying out their work, or merely for criticizing government policies.
- Ensure there is a mechanism for thorough, independent, impartial, effective and transparent investigation into cases of deaths in custody, and torture and other ill treatment by the police and security forces and that punishment is commensurate with the gravity of the crime and sufficient to deter future violations.
- Immediately withdraw reservations to the Convention Against Torture and promptly adhere to the Optional Protocol to the Convention Against Torture and ensure that both are fully incorporated into national laws.
- Develop a comprehensive strategy to address violence against women including by raising awareness, using targeted prevention measures, and ensuring that women can access justice systems, health care and psychosocial support when they do experience violence.
- Take all necessary steps to ensure women can fully and equally participate in all aspects of public and political life, including by removing any barriers to their participation.
- Ensure adequate protection and remedies against gender discrimination and sexual harassment in workplaces.

<sup>24</sup> Amnesty International, ‘Any Tidal Wave Could Drown Us: Stories from the Climate Crisis’, 3 November 2022, <https://www.amnesty.org/en/documents/ior40/6145/2022/en/>

<sup>25</sup> Amnesty International, ‘Any Tidal Wave Could Drown Us: Stories from the Climate Crisis’, 3 November 2022, <https://www.amnesty.org/en/documents/ior40/6145/2022/en/> and Amnesty International, ‘Fiji: 6-Point Human Rights Agenda for Election Candidates’, ASA 18/9350/2018, November 1, 2022, <https://www.amnesty.org/en/documents/asa18/9350/2018/en/>.

<sup>26</sup> Amnesty International, ‘Any Tidal Wave Could Drown Us: Stories from the Climate Crisis’, 3 November 2022, <https://www.amnesty.org/en/documents/ior40/6145/2022/en/>

- Ensure equality and non-discrimination in laws, policies and practice for all people regardless of their sexual orientation, gender identity, expression and/or sex characteristics and that people are able to fully realize rights to employment, education, health care and adequate housing.
- Ensure that transgender people can obtain legal recognition of their gender through accessible and transparent procedures based on self-determination, while preserving their right to privacy. Governments should make sure that all documents are issued with correct gender markers and gender-related information stored in state-run registries is updated.
- Ensure transgender, gender diverse, and LGBTI people are not discriminated against while accessing healthcare services.
- Ensure the meaningful engagement and inclusive consultation with people on disaster risk responses, climate adaptation and mitigation efforts and ensure marginalized individuals are not further disadvantaged by such initiatives.