

## **STATEMENT**

### **UPR Pre-session on Fiji**

**Geneva, 11<sup>th</sup> October 2019**

**Delivered by:** Rainbow Pride Foundation

#### **1- Presentation of the Organisation**

This statement is delivered on behalf of the Rainbow Pride Foundation, a not-for-profit LGBTQI-led organisation in Fiji that advocates for the human rights of LGBT persons so that they are respected and are able to live with dignity, free from discrimination, persecution, and violence; and where their human rights are upheld. The Rainbow Pride Foundation have participated in UPR processes at the national level since 2014.

#### **2- National consultations for the drafting of the Joint CSO submission**

The Rainbow Pride Foundation made contributions to three different UPR submissions, these include the following: 1. Joint CSO UPR Working Group which was submitted by the Citizens Constitutional Forum 2. Gender Group of the Joint CSO UPR Working Group which was submitted by the Fiji Womens Rights Movement and 3. Joint submission between the RPF and the ISHR on security and protection of Human Rights Defenders which was submitted by the ISHR. Both submissions that were made under the ambits of the Joint CSO UPR Working Group were developed through consultations that started way back in 2014 after Fiji's last UPR.

#### **3- Plan of the Statement**

This statement addresses the following issues: (1) Violence, discrimination and stigmatization of Lesbian, Gay, Bisexual, and Transgender community despite the 2013 Constitution enshrining non-discrimination provisions based inter alia on sexual orientation and gender identity and expression. (2) Security and Protection of Human Rights Defenders

#### **4- Statement**

##### **i. Violence, discrimination and stigmatization of Lesbian Gay Bisexual and Transgender community**

###### **A. Follow-up to the previous reviews**

The Fiji Constitution recognizes every person as equal before the law and that no one should be subjected to unfair discrimination but there have been occurrences of citizens being discriminated due to their sexual orientation or gender expression. Some members of the LGBTIQ community faced a lot of discrimination and experienced violence after Tropical Cyclone Winston in 2016 as documented in a publication called Down By The River.

In the 2<sup>nd</sup> UPR cycle, Germany and Chile made specific recommendations pertinent to protecting the rights of marginalized minority groups like the lesbian, gay, bisexual and transgender

communities by taking concrete measures. This included transposing international instruments into domestic law into “domestic law strengthening among others legislative protection from gender violence and all forms of discrimination, particularly against women, children and on the ground of sexual orientation”. Both recommendations were supported by government.

Two members of the LGBTQI community who were university students were brutally murdered recently on separate occasions – the first on September 2017 and the second on May 2018 and we strongly believe that hate was an aggravating factor in both cases. Hate is currently not recognized as an aggravating factor for offences related to the discrimination and violence against LGBTQI community in Fiji.

Social discrimination continues to be experienced by the LGBTQI community in Fiji on a daily basis despite constitutional protections under the Bill of Rights in the 2013 Constitution. LGBTQI persons have faced discrimination when accessing health care, housing or when employed or seeking employment. The FHRADC received complaints from LGBTQI persons who have faced discrimination concerning the aforementioned as revealed in a 2017 report.

## **B. New developments since the first review**

The LGBTQI community in Fiji have approached the Fiji Police Force to follow-up on progress of investigation on both murders. While a suspect is in custody for the May 2018 murder and have been produced in court a couple of times, there is currently no movement in investigation of the September 2017 case due to lack of leads to a suspect. As part of the broader discussions with the Police Force, they have agreed to work closely with the LGBTQI community in addressing issues they faced within the force. This will include SOGIESC sensitization trainings of their senior and mid-level managers. Police recruits training curriculum includes a human rights component and a specific session on SOGIESC which is usually facilitated by the OHCHR Pacific office in collaboration with DIVA for Equality (an LBT organisation).

To address social discrimination, a lot of work has been carried out by LGBTQI organisations and its allies in Fiji to promote SOGIESC Inclusion in various development spaces from womens rights, climate and ecological justice, faith-based spaces, and humanitarian and disaster risk reduction spaces.

## **C. Recommendations**

We therefore urge that the protection and promotion of SOGIESC rights are made prominent issues in the upcoming UPR. We therefore recommend that the Government of Fiji:

- a. Legislate to Address Hate Crimes against the LGBT Community
- b. Enactment of an Anti-Discrimination or Equality Legislation to address social discrimination faced by the LGBTQI community.
- c. The State is to strengthen the implementation of laws on crimes and discrimination against the LGBTQI community.

d. Disaster Risk Management policies should include addressing the issue of violence against members of the LGBTIQ community during natural disasters.<sup>24</sup>

e. Health care workers should be sensitized on transgender rights therefore health policies should be strengthened to be inclusive of the needs of gender diverse persons.

## **II. Security and Protection of Human Rights Defenders**

### **A. Follow-up to the previous reviews**

During the last Universal Periodic Review (UPR) of the Republic of Fiji in October 2014, Fiji accepted 112 of 138 recommendations. Three of those related to the protection of human rights defenders (HRDs). One called for the rights to freedom of expression, association, and assembly to be protected. Another called for steps to be taken to ensure a safe and enabling environment for HRDs. While conditions have improved, and HRDs now operate in a relatively free environment; the rights to freedom of expression and assembly continue to be limited and more remains to be done to ensure an enabling environment for HRDs.

### **B. New developments since the last review**

While Fiji has an extensive NGO network, laws such as the POAD and the Media Industry Development Decree (MIDD) (discussed further below) can limit Government criticism, placing constraints on initiatives NGOs undertake.

The Rainbow Pride Foundation expressed concern that resources for civil society organisations (CSOs) are scarce, putting additional strain on their functioning. CSOs tend to be understaffed with heavy reliance on volunteers.

We welcome Fiji's ratification of the International Covenant on Civil and Political Rights in August 2018, as pledged when elected to the Human Rights Council in October 2018.

At the Human Rights Council in June 2010, Fiji pledged that the Government would improve its human rights situation. However, in February of 2018 the former UN High Commissioner for Human Rights Zeid Ra 'ad Al Hussein stated that civil society groups have been facing a 'narrow civic space and the suppression of dissenting voices.' Further, in December 2018, UN Special Rapporteur on human rights and the environment visited Fiji. The rapporteur reported that he 'heard concerns expressed by environmentalists and human rights activists about being threatened... some mentioned government actions that made them feel intimidated'. He called on Fiji to welcome environmentalists and human rights activists with open arms, for their voices are vital to a healthy democracy.

### **C. Recommendations**

In order to address the issues faced by human rights defenders, we make the following recommendations to the Government of Fiji:

- Demonstrate strong, high-level political support for HRDs through public statements by State officials that recognise their important and legitimate work.

- Refrain from criminalising the legitimate activities of HRDs and repeal all laws and policies that restrict their activities and fundamental rights to freedom of expression, assembly and association, including sections of the Public Order Act Amendment Decree (POAD), the Media Industry Development Decree, the 2014 Electoral Decree and the Online Safety Bill.
- Enact laws and policies that give full force and effect to the UN Declaration on Human Rights Defenders, including through a specific national law on the recognition and protection of defenders.
- Investigate and hold security forces accountable for the torture and ill-treatment of detainees.
- Incorporate sexual orientation into anti-discrimination laws and their enforcement to help to reduce targeting and harassment of LGBTI HRDs.

Thank you for your attention.