

Fiji



CEDAW Legislative Compliance Review

Legislative Compliance of Fiji

3.1 Overview

This Chapter examines Fiji's legislative compliance with CEDAW. The assessment of Fiji's legislation is based on the indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. Fiji ratified CEDAW on 28 August 1995 obliging it to work towards the modification of its constitution and legislation to accord with the articles of CEDAW. However, it is recognised that legislative compliance will be achieved through gradual and incremental change. In sum, Fiji has achieved full compliance with 49 of 113 indicators, partial compliance with 26 indicators and is non-compliant with the remaining 38 indicators. It should be noted however, that Fiji is in a time of significant legislative change and reform. Therefore, whilst the assessment of Fiji's compliance is based on the law in effect as at 30 December 2006, there are nevertheless several important areas relevant to CEDAW that are either already the subject of draft legislation before the Parliament or the subject of investigation.

The next section [3.2] provides a brief synopsis of the findings of the review of Fiji's legislative compliance with CEDAW. It is divided into sections corresponding with the main areas of interaction between the law and women's lives that have historically been the subject of discrimination. Following the synopsis is a series of tables each correlating with an article of CEDAW, the relevant indicators, the level of compliance achieved by Fiji (i.e. yes, no or partial compliance), the relevant legislation and finally where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the Fiji legislative review was conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

3.2 Synopsis of Findings

1. Article 1 (which defines discrimination) in conjunction with Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms in their constitutions including substantive equality and freedom from discrimination on grounds of sex, marital status, sexual orientation, HIV status and disability. The Constitution of Fiji guarantees the rights and freedoms of citizens in most of the areas required by CEDAW. However, whilst the Constitution guarantees men and women equality *before* the law it does not guarantee equal benefits or outcomes as required by CEDAW. The Constitution of Fiji, in compliance with CEDAW, contains an anti-discrimination clause that encompasses remedies for both direct and indirect discrimination on the grounds of gender, disability and sexual orientation amongst others.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. The Fijian Constitution establishes a Human Rights Commission which is empowered to facilitate the implementation of affirmative action programmes in line with the constitutional guarantee. Although not specifically targeted at the advancement of women, the Commission has the capacity to accelerate women's advancement in the areas nominated by the Constitution. Fiji also has a Ministry for Women, Culture and Social Welfare which plays a role in the advancement of women. However, it is not established by legislation which makes it

- vulnerable to removal in times of economic and political upheaval.
3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19 issued by the CEDAW Committee makes explicit that the definition of discrimination includes gender violence and recommends that 'sanctions, penalties and compensation' be introduced in relation to gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through legislative means. Fiji has legislated against sexual assault. Sexual assault laws in Fiji, however, provide inadequate protection for the range of sexual violations perpetrated against girls and women. All sexual offences except indecent assault require penile penetration which excludes many of the ways in which women are sexually violated. Indecent assault is the only offence for sexual violations that does not include penile penetration and imposes a sentence of only 5 years. All other sexual offences require penile penetration. The inclusion of different categories of 'defilement' for girls aged under 13 and girls aged 13 to 15 which imposes different sentences (life imprisonment for the former and 10 years for the latter) appear unjustified because sexual assault causes devastating harm to women and girls of all ages. The Sexual Offences Report 1999 prepared by the Fiji Law Reform Commission considers and recommends widespread changes to sexual assault law. Indeed, the draft sexual offences legislation prepared by the Fiji Women's Rights Movement, if adopted, will bring Fiji significantly in line with the indicators developed for Article 2 of CEDAW.
 4. Incest is a gendered crime since it is primarily perpetrated against women and girls by men in the context of unequal power relations. Criminalising all parties to an incestuous sexual encounter is contrary to CEDAW and may dissuade a victim of an incestuous sexual assault from reporting it for fear of being charged with an offence. In Fiji, in non-compliance with CEDAW, incest is an offence for a girl aged 16 years or above attracting a penalty of 10 years.
 5. Three discriminatory common law rules have historically made it difficult for prosecutions against sexual assault offenders to succeed and are contrary to CEDAW. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a common law rule which perpetuates the myth that a victim's previous sexual relationship with either the accused or others makes it more likely she consented. Corroboration (independent evidence such as that of a witness that connects the accused person with the crime) is a common law rule that requires a judge to advise the jury that it is dangerous to convict the accused on uncorroborated evidence. Proof of resistance is a common law rule which requires victims to establish that they physically resisted the perpetrator otherwise consent may be inferred. It is discriminatory because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator, and does not take into account how fear and power imbalances may immobilise the victim. Compliance with CEDAW requires that legislation prohibits the use of all three rules. In non compliance with CEDAW, Fiji, however, has *not* legislated against the use of prior sexual conduct the necessity for corroboration in sexual offence prosecutions or the requirement for proof of resistance by the victim.

6. The Fiji Penal Code provides a defence in sexual assault prosecutions for the accused to claim that he did not know the girl was not of legal age in all offences except the defilement of a girl under 13. This places the onus on the minor to establish her age rather than the perpetrator to ascertain age, and is non-compliant with CEDAW as a result. Consent is not available as a defence for sexual assaults on girls under 16, however, full compliance with CEDAW requires that consent is unavailable for girls 18 and under, the age CEDAW stipulates as the age of adulthood.
7. Minimum sentences and mandatory prosecution ensure that sexual violence against women is treated seriously. Fiji, however, does not have mandatory prosecution or minimum sentences for sexual assault offences. In addition, the legislation does not prohibit the customary practices of forgiveness from reducing sentences. Bail, which to comply with CEDAW should not be granted if there is any risk to a sexual assault victim, must be granted by the court unless previously breached.
8. Although General Recommendation 19 (which concerns violence against women) identifies domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, Fiji's Penal Code does not contain offences for domestic violence. Instead, women have to rely on the general assault provisions which are insufficient to encompass the breadth of situations in which women experience violence in their domestic lives. However, it should be noted that a series of consultative workshops culminating in three reports on domestic violence were conducted by the Fiji Law Reform Commission. The final report, published in 2005 contains a draft Domestic Violence Bill which, if adopted, will bring Fiji significantly in line with the domestic violence indicators developed for Article 2.
9. Infanticide refers to the killing of a child by its mother (in contrast to abortion which refers to the destruction of a foetus). Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. An offence of infanticide is contained in the Fiji criminal law legislation but it reduces a charge of murder to manslaughter, rather than replacing both murder and manslaughter with a separate offence and a corresponding less severe penalty. Further, the definition of infanticide is restricted solely to the effects of lactation and birthing. Such a view of the causes of infanticide has been largely discredited by research, which instead has linked such killings to post-natal depression caused also in part, by the social pressures of raising children.
10. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. The presence of a special measures provision in the Fiji Constitution is a positive step towards compliance with CEDAW. However, it is limited to education and training, land and housing, participation in commerce and in all levels of the public service.
11. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. In Fiji, the Constitution gives constitutional status to custom in relation to land. However, other customary practices do not have constitutional status and, coupled with strong anti-discrimination provisions gives women partial protection against

- customary law that discriminates against them on the basis of sex/gender.
12. Article 6 requires States Parties to suppress all forms of trafficking in women and the exploitation of women in prostitution and Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers from exploitation whilst also affording them the rights and protections of other workers. Criminalising sex work is therefore not desirable, however it is imperative that there are laws prohibiting the procuring and trafficking of women for sex work. Soliciting is a criminal offence in Fiji (for both men and women) denying sex workers both the right to lawful employment and the right to the same protections and employment conditions as other workers (such as regulated standards of occupational safety, standard rates of pay, parental leave, sick leave). Although there are a range of offences for procuring girls or women without their consent which provides some protection against exploitation, the sentences for these offences are uniformly only 2 years and insufficient for full compliance with CEDAW.
 13. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights to political representation for women has been achieved in Fiji. However, Fiji which currently has only 8 female members of parliament out of a total of 71 seats in the lower house and 5 out of 32 in the upper house, has not introduced special measures such as quotas to ensure higher numbers of women enter parliament and participate in the governance of their countries.
 14. Article 8 requires States Parties to ensure that women have equal opportunities to represent their governments at the international level. Although there is no legal barrier preventing women from representing their governments in Fiji, the low numbers of women who do so, necessitates for full compliance with CEDAW, the introduction of quotas to raise participation.
 15. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile. Fiji provides women with equal rights in all areas of citizenship and nationality and is in full compliance with CEDAW in this area. Women have equal rights with men when they marry a non-national, they can determine their children's citizenship and nationality on an equal basis with the fathers of their children and they have equal rights to acquire and obtain citizenship.
 16. Article 10 obligates States Parties to ensure women have equal rights and opportunities in education. The imposition of compulsory education is one means of ensuring that the educational needs of boys are not favoured over girls. Compulsory education has been gradually introduced in Fiji for females and males aged from 6-15, evidencing greater compliance with CEDAW. The Constitution and human rights legislation has also provided the opportunity for affirmative action to advance women in the area of education, in compliance with CEDAW. However, discrimination is still prevalent in schools where girls and women face expulsion because of their pregnant status. The absence of a prohibition on the expulsion of pregnant girls from school perpetuates such discrimination.
 17. Article 11 obligates States Parties to eliminate discrimination in employment. Women in Fiji have many of the same rights in employment

as men. However, despite the availability of a mechanism for affirmative action in employment entrusted to the Human Rights Commission, there are a number of aspects of employment law in Fiji which discriminate against women and fail to comply with CEDAW. The minimum standard for maternity leave is only 84 days paid at a rate of \$5 per day. There is no provision for nursing after childbirth during work hours, which denies women equal opportunity to continue their work service uninterrupted especially in the absence of any state or employer funded childcare. Finally, protection from dismissal ends upon the expiry of the approved maternity leave period, leaving women in precarious positions in relation to job security if they require (or choose) to take further leave.

18. The CEDAW Committee in General Recommendations 12 and 19 has identified sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Although the *Human Rights Commission Act 1999* makes harassment a ground of 'unfair discrimination' in employment this has not as yet been matched in the employment legislation. There is no specific protection from sexual harassment in either the public or the private sector. Although an action could be pursued in the criminal law for 'insulting the modesty' of girls and women in limited circumstances, this is unlikely to be pursued by many (if any) women in the workplace context. It should be noted however, that an Industrial Relations Bill is currently
- before Parliament, which if enacted will satisfy many of the indicators developed for Article 11.
19. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. Abortion is criminalised in Fiji with a penalty of 7 years and life imprisonment if it is performed at 28 weeks or more of pregnancy. Although abortion can be lawfully carried out to save a mother's life, women do not have access to safe abortion facilities as of right. The failure to decriminalise abortion and to provide safe accessible facilities for women who require abortions endangers their health and that of any child born subsequent to a failed abortion since research indicates that when a mother dies (including as a result of unsafe abortion) the chance of survival of all surviving children under 5 is significantly reduced.
20. Article 13(b) of CEDAW provides that women should be afforded equal rights to bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier to women in Fiji from accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, thus interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in Fiji preventing women from doing so.
21. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant role in the economic survival of their families and communities although they are frequently

disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires temporary special measures provisions to be incorporated into both the Constitution and legislation. Fiji has incorporated affirmative action provisions into legislation in relation to land and housing which may assist rural women.

22. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. Fiji expressly guarantees women equality before the law and there are no legal barriers to women's participation in court and tribunal processes, nor are women denied the right to conclude contracts and administer property.
23. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance. The recent introduction of the *Family Law Act* 2003 has culminated in Fiji's substantial compliance with many of the indicators in the area of family relationship breakdowns and the subsequent issues of maintenance and custody. However, the Act only applies to married persons and not de facto relationships, including same-sex relationships (despite a guarantee of non-discrimination on the basis of sexual orientation in the Fiji Constitution).
24. The CEDAW Committee in General Recommendation 21, has nominated 18 as the minimum age of marriage for both males and females. Fiji however maintains the existence of an unequal marriageable age of 16 for girls and 18 for males and, in the marriage of minors, privileges the consent of the father over the mother, in non-compliance with CEDAW. In compliance with CEDAW Fiji requires the registration of all marriages and bigamy is a criminal offence.
25. Fault based divorces, which require proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court proceedings. Divorce in Fiji is no longer based on fault based criteria and is therefore in full compliance with CEDAW.
26. The CEDAW Committee in General Recommendation 19(23) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships. The *Family Law Act* 2003 contains provisions for maintenance for children (including children born outside of marriage) and spouses after separation and divorce. Maintenance is based on the earning capacity of both parties, the needs of both parties and any children, the assets of both and the commitments of either especially other dependants, in compliance with CEDAW. The Act also provides for a restraining order in a wide variety of situations including home and work, although this is only available for married women.
27. In General Recommendation 21, which deals with equality in family relations, the CEDAW Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such

as raising children, caring for elderly relatives, and discharging household duties. The *Family Law Act* 2003 contains provisions for the division of marital property which takes account of both financial and non-financial contributions in full compliance with CEDAW.

28. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW. In compliance with CEDAW, custody determinations in Fiji prioritise the best interests of the child as the paramount consideration.
29. In General Recommendation 21, the CEDAW Committee states that the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence. Women in Fiji do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property since custom in relation to land is given constitutional status thereby giving men control of many aspects of land and property.
30. Article 16 requires that inheritance laws should apply equally to males and females. Inheritance laws are equal in the legislation, however, custom in relation to land has constitutional status and may discriminate against women.
31. A series of tables detailing Fiji's compliance with CEDAW is provided in the following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how Fiji's legislation does or does not meet the indicator.

Fiji: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including in the political, economic social, cultural, civil or any other field?	Partial	<i>Constitution (Amendment) Act 1997, s 22-40.</i> All citizens are entitled to the following fundamental rights. Life, liberty, freedom from servitude and forced labour, freedom from cruel or degrading treatment, freedom from unreasonable searches and seizure, protection of arrested or detained persons, rights of charged persons, access to courts or tribunals, freedom of expression, freedom of assembly, freedom of association, labour relations, freedom of movement, freedom of religion and belief, right to secret ballot, right to privacy, right to equality before the law, right to education, protection from compulsory acquisition of property.	The rights protected include many of those required by CEDAW and these are afforded equally to men and women. There is therefore partial compliance with this indicator but notable absences include: <ul style="list-style-type: none"> Substantive equality is not a guaranteed right. The right to the highest standard of physical and mental health attainable is not a guaranteed right.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	No		There is no express guarantee of substantive equality between men and women.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<i>Constitution (Amendment) Act 1997,</i> <ul style="list-style-type: none"> <i>s 37(2)(a).</i> A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her: actual or supposed personal characteristics or circumstances, including gender. But note: <ul style="list-style-type: none"> <i>s 37(7)(e).</i> States that no law in relation to adoption, marriage, divorce, burial, devolution of property on death or like matters as the personal law of any person or the members of any group is subject to an anti-discrimination action. 	Although the areas of marriage, adoption, divorce, burial, devolution of property are key areas of discrimination in women's lives, Fiji does not recognise the personal laws of any ethnic group in either the Constitution or other legislation. This exception therefore has little impact.
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	Yes	<i>Constitution (Amendment) Act 1997, 1997 s 37(2).</i>	
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	Partial	<i>Constitution (Amendment) Act 1997, s 37(2).</i>	

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	Yes	<i>Constitution (Amendment) Act 1997, s 37(2).</i>	
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	Yes	<i>Constitution (Amendment) Act 1997, s 37(2).</i> A person must not be unfairly discriminated against directly or indirectly.	This provision enables a person to contest discrimination in a situation when a rule appears to apply to a group of people in the same way but in practice places on particular members of that group a burden not faced by the majority. This recognises that discrimination does not always manifest in obvious or direct ways but may be disguised within policies or practices which appear to apply to all persons equally.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	<i>Constitution (Amendment) Act 1997.</i> <ul style="list-style-type: none"> • s 21. States that the Bill of Rights binds (a) the legislative, judicial and executive branches of government at all levels - central, divisional, local and (b) all persons performing the functions of any public office. • s 38(3). Applies to a 'law or an administrative action taken under a law'. 	
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	Partial	<i>Constitution (Amendment) Act 1997, s 38(4).</i> 'Every person has the right to access to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places'.	Coverage is limited to access to designated places and does not encompass all the places and persons in the community from whom and where discrimination against women can occur.
1.11 Are sanctions imposed for the breach of anti-discrimination provisions?	Yes	<i>Constitution (Amendment) Act 1997, s 14.</i> The High Court 'may make such orders and give such directions as it considers appropriate'.	
1.12 Are there specific domestic violence offences in the criminal law legislation (Penal Code)?	No	There is no specific domestic violence protection. Two offences in the <i>Penal Code [Cap 17] 1945</i> could be used in limited circumstances. <ul style="list-style-type: none"> • s 242. Common assault - 1 year imprisonment. 	These provisions do not embrace the variety of situations that constitute domestic violence and have low penalties. The provisions therefore fall

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> • s 245. Assault causing actual bodily harm - 5 years imprisonment. 	well short of compliance with this indicator.
1.13 Is stalking a criminal offence?	Partial	<i>Penal Code [Cap 17] 1945, s 330.</i> Anyone who threatens injury with intent to cause alarm commits an offence of criminal intimidation.	This is insufficient to incorporate the variety of stalking behaviours experienced by women.
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Partial	<i>Family Law Act 2003,</i> <ul style="list-style-type: none"> • s 202(a). The court can grant an injunction for the personal protection of a party to the marriage. • s 202 (b). An injunction to prevent one party from entering marital home or home in which other party lives or from a specified area where home is. • s 202 (c). An injunction restraining a party from the place of work. • s 202(f). An injunction relating to the use or occupancy of the matrimonial home. 	Restraining orders are available in a range of circumstances however, they are only available to married persons.
1.15 Is there mandatory prosecution for domestic violence offences?	No		Mandatory prosecution ensures that domestic violence is treated seriously.
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<i>Penal Code [Cap 17] 1945.</i> There are a range of sexual offences with varying penalties. <ul style="list-style-type: none"> • s 149. Rape - life imprisonment. • s 151. Attempted rape - 10 years imprisonment. • s 153. Abduction of girl under 18 with intent to have carnal knowledge – misdemeanour. • s 154 indecent assault - 5 years imprisonment. • s 155. Defilement (consent no defence) of girl under 13 - life imprisonment. • s 156. Defilement of girl 13 and under 16 (consent no defence) - 10 years imprisonment. 	Although the rape and defilement of a girl under 13 is treated seriously, the lighter sentence for defilement of a girl aged between 13 and 16 implies that a sexual assault is not as serious if the girl is older. This is discriminatory. The absence of more expansive categories of offences to cover the range of violations experienced by women makes the regime inadequate.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	No	<i>Penal Code [Cap 17] 1945, s 183.</i> Not necessary to prove the actual emission of seed but carnal knowledge complete upon proof of penetration.	Penetration is confined to penile penetration and does not include the range of ways that women can be sexually violated.
1.18 Is there an offence of incest for girls and women? If there is an offence of incest for girls and women then there is no compliance with this indicator.	No	<i>Penal Code [Cap 17] 1945, s 179.</i> Any female 16 or over who with consent permits her grandfather, father, brother or son to have carnal knowledge commits an offence – 10 years imprisonment.	There is an offence of incest in the Code which means that women and girls over 15 can be charged with an offence. Therefore there is no compliance with this

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			<p>indicator. These offences are discriminatory because:</p> <ul style="list-style-type: none"> No girl under 18 should be charged with any sexual offence and consent should be irrelevant. An offence of incest against women and girls fails to recognise the power imbalance between girls and women and male relatives. Incest is typically perpetrated by men against girls and women in non-consensual and coercive circumstances.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	No	<i>Penal Code [Cap 17] 1945.</i> The terms carnal knowledge, indecency, insulting modesty and defilement are used throughout the sexual assault offences.	These terms impart an understanding of women and girls as 'damaged' by the offences rather than reflecting the invasion of personal integrity that sexual assault involves.
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Partial	<i>Penal Code [Cap 17] 1945, s 149.</i> Does not constitute consent if obtained 'by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband.	Although a range of coercive situations are defined, they do not encompass the full range of circumstances in which women do not give free consent. In particular threats to third parties should be included. The list should be non-exhaustive.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No		The use of prior sexual history to establish consent is discriminatory as it perpetuates a view that a previous relationship or history of promiscuity makes it 'more likely' that a woman consented to the act in question.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.22 Is there a legislative prohibition on requirement for corroboration?	No		Corroboration is difficult for sexual assault victims to establish as there are rarely any witnesses. Corroboration is not required for other offences and it is discriminatory to view sexual assault victims as unreliable witnesses.
1.23 Is there a legislative prohibition on the requirement for proof of resistance?	No		Sexual assault victims may not be able to physically resist an armed or threatening perpetrator.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No	<i>Penal Code [Cap 17] 1945.</i> <ul style="list-style-type: none"> • s 153. Abduct unmarried women under 18 to have carnal knowledge - defence honest and reasonable belief 18 or above. • s 154. Indecent assault on girl under 16 - defence honest and reasonable belief 16 or above. • s 156. Defilement of girl between 13 and 16 - defence honest and reasonable belief 16 or above. 	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. The defence is available for all offences relating to girls under 18 and therefore there is no compliance with this indicator and CEDAW.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Partial	<i>Penal Code [Cap 17] 1945.</i> Consent is not a defence for girl under 16.	Full compliance with the indicator requires that consent is not a defence in relation to any girl under 18.
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator.	Yes		To be compliant with this indicator, men should not be exempted from being prosecuted for marital rape. If the Penal Code contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Penal Code does <i>not</i> exempt husbands from prosecution for marital rape and Fiji is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.28 Is bail unavailable for sexual offences if risk to victim?	Partial	<i>Bail Act 2002.</i> <ul style="list-style-type: none"> • s 3. Court should grant bail unless previously breached. If under 18 bail must be granted unless serious offence (more than 5 years penalty). • s 8. A police officer must not grant bail if the offence is serious (more than 5 years penalty). 	Many sexual offences are categorised as 'serious', (i.e. attract a sentence of over 5 years) and police cannot grant bail. However, even if the offence is serious, there is a presumption that the court should grant bail unless there has been a previous breach by the perpetrator. Therefore the rights of the perpetrator are prioritised rather than the safety of the victim. There is no special provision for sexual offences.
1.29 Are there minimum sentences for sexual offences?	No	<i>Penal Code [Cap 17] 1945.</i> No minimum sentences for sexual offences.	The failure to have minimum sentences for sexual offences enables courts to issue sentences that do not reflect the severity of sexual offences.
1.30 Is there a provision in the criminal legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<i>Criminal Procedure Code [Cap 21] 1945, s 160(b).</i> Court can order compensation to be paid to victim.	
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	Partial	<i>Penal Code [Cap 17] 1945, s 205.</i> Where a woman by any wilful act or omission causes the death of her child under the age of twelve months, when her mind was disturbed because she had not fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child a charge of murder shall be replaced by manslaughter.	A charge of infanticide should be a replacement offence for <i>both</i> murder and manslaughter with a much lighter sentence to recognise the societal pressures that might lead a mother to kill her child.
1.33 Does the definition of infanticide include environmental and social stresses?	No	As above.	Research suggests that women who kill their children do so in part because of the environmental and social stresses

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			of raising children. Basing infanticide solely on the perceived hormonal and biological weaknesses that women suffer during childbirth and lactation does not comply with this indicator.

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	Yes	<ul style="list-style-type: none"> • <i>Constitution (Amendment) Act 1997, s 42.</i> Establishes a Humans Rights Commission. • <i>Human Rights Commission Act 1999, Part IV, s 17.</i> Gives the Commission the power to investigate unfair discrimination (on any of the protected grounds in the Constitution) in a range of areas including employment, provision of goods and services, access to and participation in education, provision of training, provision of land and housing. 	Although not specifically aimed at monitoring the implementation of law and policy for the advancement of women, the Commission has the capacity to investigate discrimination on the ground of sex in a range of areas.
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		Fiji has a Ministry for Women, Social Welfare and Poverty Alleviation. Although the Ministry has some power to monitor implementation of non-discriminatory law and policy for the advancement of women it is not established by legislation. It is therefore more easily subject to removal in times of economic or political upheaval and there is therefore no compliance with this indicator.

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	Partial	<i>Constitution (Amendment) Act 1997, s 44.</i> Special measures for all categories of persons who are disadvantaged in equality of access to education and training, land and housing, participation in commerce and in all levels and branches of service of the State.	The special measures provision enables affirmative action only in the areas specified and therefore does not cover the breadth of situations in women's lives in which they experience discrimination.
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, HIV status and disability?	Partial	<i>Constitution (Amendment) Act 1997, s 44(4).</i> A person taking special measures does not discriminate against another person on all grounds protected in the Constitution.	The Constitution does not protect women from discrimination on the basis of either marital status or HIV status.

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	Partial	<i>Constitution (Amendment) Act 1997, s 6(b).</i> Preserves the ownership of Fijian land according to Fijian custom.	The Constitution does not guarantee the precedence of equality over custom law. However, the presence of strong anti-discrimination provisions in the Constitution and the absence of express recognition of custom other than in relation to Fijian land means there is partial compliance on this indicator.

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	No	<i>Penal Code [Cap 17], s 168.</i> Any common prostitute who loiters or solicits in a public place, any person who solicits for immoral purposes - \$50 fine or 3 months imprisonment.	The legislation criminalises sex work by both males and females. Criminalising the act of soliciting punishes sex workers for their occupation, denying them the right to choose their employment and is non-compliant with the indicator and with CEDAW.

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	Penal Code [Cap 17] 1945 <ul style="list-style-type: none"> • s 166, s 167. Male or female who lives off the earnings of prostitution - misdemeanour. • s 169. Using premises for prostitution - misdemeanour. • s 170. Operating a brothel - fine up to \$100,000 or 5 years imprisonment. 	The legislation criminalises living off sex work or operating brothels. Although applicable to both males and females criminalising those who aid and abet prostitution does not assist women who work in this field to carry out their work in a non-exploitative and protected environment.
6.3 Is it a criminal offence to procure any woman or girl under 18?	Partial	Penal Code [Cap 17] 1945, s 171. Induces a woman or girl by false pretences to permit any man to have unlawful carnal knowledge - 10 years.	Although providing some protection from exploitation, the offence excludes situations where girls or women who are induced into prostitution against their will by threat, drugs or other means of coercion.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Sex workers should be entitled to all the rights and protections of other workers.
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	Constitution (Amendment) Act 1997, s 55. Universal suffrage.	
7.2 Is there equal eligibility for political representation?	Yes	Constitution (Amendment) Act 1997, s 58, s 6 (f). Every citizen has the right to be a candidate in free and fair elections.	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament currently only 8 women out of 71 hold seats in the lower house and 5 out of 32 in the upper house in the Fiji parliament. Quotas, which have raised numbers of women in parliament in other countries, may assist in achieving substantive equality in this area.

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women, without political interference?	No		The Charitable Trusts Act 1945 enables organisations to register but the purpose of the organisations are limited to non-political 'charitable' work.

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have an equal opportunity to represent government at international level and participate in the work of international organisations?	Partial		There are no legal barriers to representing government at international level and participating in the work of international organisations. However, few women represent government at the international level and the introduction of a quota system would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution (Amendment) Act 1997, s 8, s 10, s 12, s 13.</i> <i>Citizenship Act 1998, s 19, s 21, s 22.</i>	
9.2 Does marriage to a non-national or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage, then there is full compliance with this indicator.	Yes	<i>Constitution (Amendment) Act 1997, s 14.</i> <i>Citizenship Act 1998, s 21(6).</i> Although cannot have dual citizenship can regain citizenship if renounce other citizenship.	To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizens upon marriage and therefore there is full compliance with this indicator and with CEDAW. The legislation also provides a non-discriminatory means of

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			protecting women who renounce their citizenship to join their husband in another country.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes	<i>Constitution (Amendment) Act 1997, s 16, s 12(7). Citizenship Act 1998, s 25.</i>	
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<i>Constitution (Amendment) Act 1997, s 10, s 12. Citizenship Act 1998, s 21.</i>	
9.5 Do women have an equal right to obtain a passport?	Yes	<i>Passport Act 2002, s 3.</i>	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	<i>Constitution (Amendment) Act 1997, s 39(1).</i> Every person has the right to basic education and equal access to educational institutions.	This provision provides a constitutional guarantee of equal access to education.
10.2 Is there legislation that creates special measures for the advancement of women in education?	Yes	<ul style="list-style-type: none"> <i>Constitution (Amendment) Act 1997 s 44.</i> The Parliament must provide equality of access to all categories of persons who are disadvantaged to education and training. <i>Human Rights Commission Act 1999, s 21.</i> Provides for affirmative action in relation to 'access to and participation in education' on any protected ground in the Constitution (includes gender, disability and sexual orientation). 	The legal capacity for affirmative action in the area of education is established by these provisions.
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Compulsory Education Regulation 1997</i> made pursuant to the <i>Education Act [Cap 262] 1978, s 22.</i> <ul style="list-style-type: none"> <i>Compulsory Education (Rakiraki and Cakaudrove) Order 1997.</i> <i>Compulsory Education (Eastern and Macuata/Bua) Order 1998.</i> <i>Compulsory Education (Nausori, Nadroga/Navosa and Ba/Tavua) Order 1999.</i> 	These orders provide for the gradual achievement of compulsory education throughout Fiji for females and males aged 6-15.
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Compulsory Education Regulation 1997</i> made pursuant to the <i>Education Act [Cap 262] 1978, s 22.</i>	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> • <i>Compulsory Education (Rakiraki and Cakaudrove) Order 1997.</i> • <i>Compulsory Education (Eastern and Macuata/Bua) Order 1998.</i> • <i>Compulsory Education (Nausori, Nadroga/Navosa and Ba/Tavua) Order 1999.</i> 	
10.5 Is family life (reproductive and sexual education) compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Partial	<p><i>Human Rights Commission Act 1999.</i></p> <ul style="list-style-type: none"> • s 17(1). Provides it is unfair discrimination to directly or indirectly differentiate against or harass any other person on the ground of sex, sexual orientation and disability in employment, the making of an application for participation in a partnership, or in the provision of approval for any trade or calling, provision of training • s 38. Sanctions include declaration of discrimination, making void and unenforceable anything that constitutes unfair discrimination, restraining order, damages, specific performance, and any other relief. <p><i>Constitution (Amendment) Act 1997.</i></p> <ul style="list-style-type: none"> • s 44. Parliament must provide equality of access to all categories of persons who are disadvantaged to training and participation in commerce and in all levels and branches of service in the state. • s 140(c). In relation to recruitment, promotions and management of state service men and women equally should have adequate and equal opportunities for training and advancement. <p><i>Public Service Act 1999.</i></p> <ul style="list-style-type: none"> • s 4(6). Must provide a working environment free from discrimination. 	These provisions cumulatively provide legal protection for many workers from discrimination on the grounds of gender, sexual orientation and disability. These rights, however, are not enshrined in the <i>Employment Ordinance</i> .

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	<p>Constitution (Amendment) Act 1997, s 44. Provides for the introduction of special measures for disadvantaged groups so as they can access to education and training, participation for commerce and in all levels and branches of state service. This may have the effect of advancing women in employment in some contexts.</p> <p>Human Rights Commission Act 1999, s 21. Provides for affirmative action on any prohibited ground in the Constitution (which includes gender, sexual orientation, and disability) in the areas listed in s 17 which include: employment, training for employment, provision of services goods or facilities including facilities by way of banking or insurance or for grants, loans, credit or finance.</p>	
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<ul style="list-style-type: none"> • Employment Ordinance [Cap 92] 1965. No sick leave or recreational entitlements for any worker. Employee includes domestic servant but the Labour Department has ruled this excludes all domestic workers in private dwellings. • Workers Compensation Act [Cap 94] 1965, s 2. Does not apply to casual worker or outworker. • National Provident Fund Act [Cap 219]. Exempts domestic workers from participating in the superannuation fund. 	Although many women workers are provided with equal conditions of work, the exclusion of domestic workers, casual workers and outworkers in the various employment laws impacts predominantly on women who are typically employed in such jobs. They are therefore unable to access the range of working conditions provided to other workers.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Partial	<ul style="list-style-type: none"> • Penal Code [Cap 17] 1945, s 154(4). An offence to 'insult the modesty' of any girl or woman with words or object. • Human Rights Commission Act 1999, s 17. Sexual harassment is unfair discrimination and can be direct or indirect. It is unfair discrimination to sexually harass in a range of employment related areas including: the making of an application for employment, employment, provision of approval for trade, calling or profession; application for membership of employer or employee organisation excluding private clubs. 	This provision could be used in relation to sexual harassment but it is limited in its scope and is unlikely to be used by many women.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> <i>Public Service Act 1999, s 6.</i> An employee must treat everyone with respect and courtesy and without coercion or harassment of any kind. 	Although not specifically aimed at addressing sexual harassment, this provision could be used by employees in some circumstances.
11.5 Does the definition of sexual harassment encompass the breadth of unwanted behaviours?	No		None of the possible legal avenues noted above in 11.4 in relation to sexual harassment incorporate a definition that accords with the breadth of harassment and behaviours women can experience in the workplace.
11.6 Does the legislation contain an equal pay provision?	No		No legislative guarantee of equal pay for men and women doing the same job.
11.7 Does the legislation contain pay equity provisions?	No		
11.8 Does the legislation provide for an equal retirement age?	Partial	<i>Public Service Act 1999, s 14.</i> Equal retirement age for all workers.	Although an equal retirement age is specifically guaranteed in the public service, no similar guarantee is contained in the <i>Employment Ordinance [Cap 92]</i> 1965 to protect non public service workers.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment then there is full compliance with this indicator.	Partial	<i>Employment Amendment Act 1996, s 65.</i> The Minister may after consultation with the Labour Advisory Board prescribe conditions for the employment of women on night work in any industrial undertaking. Night work means between 6pm to 6am.	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. Although there is no specific legislative restriction on women's employment, the Minister has the legal capacity to place restrictions on night work for women but not for men. Therefore compliance with this indicator and with CEDAW is partial.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.10 Does the legislation provide for health protection during pregnancy?	No	<i>Health and Safety at Work Act 1996, s 9.</i> Employers have a general duty to ensure the health and safety at work of all workers.	Although there is a general duty to provide medical care, there is no particular responsibility on employers to provide health protection for pregnant workers.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Partial	<i>Employment Ordinance [Cap 92] 1965.</i> <ul style="list-style-type: none"> • s 74. With a medical certificate entitled to 42 days paid leave prior to confinement and 42 days after confinement. • s 74(2). If worked not less than 150 days during previous nine months entitled to allowance of \$5 per day. • Up to 3 months total leave with a medical certificate but over 84 days not paid. 	Maternity leave provisions do not meet the standards recommended by the ILO.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Partial	<i>Employment Ordinance [Cap 92] 1965, s 79.</i> Cannot be dismissed during approved leave period of 84 days or up to 3 months with a medical certificate.	In the absence of the provision of (unpaid) extended leave to care for young children, many women without childcare facilities are likely to lose their employment.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	No	<i>Penal Code [Cap 17] 1945</i> <ul style="list-style-type: none"> • s 172. Any person who administers poison or noxious thing or any other means with intent to procure abortion -14 years. • s 173. Any woman with intent to procure her own abortion - 7 years. • s 174. Supply drugs or any thing to with intent to procure abortion - 3 years. • s 221. An offence to kill unborn child capable of being born alive (28 weeks or more) - life imprisonment. <p>But</p>	These provisions are discriminatory to women because: <ul style="list-style-type: none"> • The criminalisation of abortion denies women access to safe medical facilities and encourages the use of unsafe methods and facilities. • The criminalisation of abortion restricts

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> • s 221(1). Not an offence if in good faith for the purpose of preserving the life of the mother • s 234. A surgical operation to save a mother's life in good faith and with reasonable care that has the result of aborting the foetus is lawful. 	<p>women's autonomy and right to choose if and when they have children.</p> <ul style="list-style-type: none"> • The serious penalty for women who procure their own abortion after 28 weeks (life imprisonment) fails to account for the reasons why women may choose to abort. <p>Note, however, that abortion is lawful if conducted to save a mother's life.</p>

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes	<i>Social Justice Act 2001, Schedule.</i> Enables affirmative action to provide cash allowances and relief supplies in relation to widows, solo parents and deserted women.	There is only a limited social security system in Fiji.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes	<i>Human Rights Commission Act 1999,</i> <ul style="list-style-type: none"> • s 17. Unlawful to discriminate in 'the provision of goods, services or facilities including facilities by way of banking or insurance for grants, loans credit or finance' on the basis of gender. • s 21. Provides for affirmative action on any prohibited ground in the Constitution (which includes gender, sexual orientation, and disability) in the areas listed in s 17 which includes provision of services goods or facilities including facilities by way of banking or insurance or for grants, loans, credit or finance. <i>Constitution (Amendment) Act 1997, s 44(1).</i> Parliament must provide programs to achieve equality of access to participation in commerce.	
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legislative barrier preventing women from participating in recreational activities, sports, and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	Partial	<i>Human Rights Commission Act 1999, s 21.</i> Provides for affirmative action on the basis of gender in relation to the areas in s 17 which include the provision of land, housing or any other accommodation.	Many women in Fiji live in rural communities and it is crucial that Fiji incorporates special measures into either the national constitution or legislation to advance substantive equality. The legislation <i>does</i> permit the introduction of affirmative action programs to assist rural women towards <i>de facto</i> equality in some of the areas where discrimination is experienced, in partial compliance with CEDAW.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution (Amendment) Act 1997, s 38.</i> 'Every person has the right to equality before the law'.	
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	<i>Constitution (Amendment) Act 1997, s 29(1)</i> Every party to a dispute has the right to have the matter determined by a court of law or an independent and impartial tribunal.	
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		No legal barrier to women's equal rights in courts and tribunals at all stages.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes		No legal barrier to women's equal right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	<i>Succession, Probate and Administration [Cap 60] 1970, s 7.</i>	
15.6 Is there legislation nullifying all contracts and instruments that limit women's legal capacity?	No		No specific legislation that has this effect.
15.7 Do women have an equal right to choose residence and domicile?	Yes		No legal barrier to women's equal right to choose residence and domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Yes	<i>Family Law Act (2003) s 32(2)(d)(i)</i> . Marriage is void if consent was gained by duress.	
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Yes	<i>Family Law Act (2003) s 32(2)(d)(i)</i> . Marriage is void if consent was gained by duress.	
16.3 Is there an equal minimum age of 18 for marriage?	No	<i>Marriage Act [Cap 50] 1969, s 12</i> . Minimum age for males is 18 and the minimum age for girls is 16.	The CEDAW Committee has recommended 18 for males and females as the minimum age for marriage.
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Marriage Act [Cap 50] 1969, s 12</i> . Marriage is null and void if either party is not 16.	
16.5 Does the legislation require registration of marriage in official registry?	Yes	<i>Marriage Act [Cap 50] 1969, s 25</i> .	
16.6 Does the legislation prohibit bigamy?	Yes	<i>Penal Code [Cap 17] 1945, s 185</i> . Bigamy is a criminal offence - 5 years imprisonment.	
16.7 Do women have an equal right to choose a family name?	Yes		There is no legal barrier preventing women from choosing a family name.
16.8 Is the consent of both parents equal in marriage of minors?	No	<i>Marriage Act [Cap 50] 1969</i> 13. (1) If either of the parties to a proposed marriage is under the age of twenty-one years, such marriage shall not be performed without the prior consent of- (a) the father of such party; or (b) in the event of the father being dead or out of Fiji, the mother of such party.	
16.9 Are both spouses equal in ownership, acquisition, management, administration, enjoyment and disposition of property?	No	<i>Constitution (Amendment) Act 1997, s 6(b)</i> . Preserves the ownership of Fijian land according to Fijian custom.	The legislation does not guarantee equality to both spouses in ownership, acquisition, management, administration, enjoyment and disposition of property. Land tenure is instead based on custom (which is guaranteed by the Constitution) where women are not fully equal in ownership, acquisition, management, administration, enjoyment and disposition of property.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Yes	<p>Family Law Act 2003. Court can make an order for maintenance for the child.</p> <ul style="list-style-type: none"> • s 88. The court may make any order it thinks proper. It must consider the financial support necessary for the maintenance of the child. • s 90. The court must have regard to the age of the child, the manner in which the child is being educated or trained, any special needs of the child. • s 91. The income, earning capacity, property and financial resources of parties and commitments to support themselves and others. • s 157. Court can make an order for maintenance of spouse. The court must consider the age and state of the parties, the income, financial resources and property, the commitments of each to themselves and others, the eligibility of either for an allowance, pension or benefit, whether it would enable the other party to train and therefore increase their earning capacity, the extent to which the person whose maintenance is under consideration has contributed to the earning capacity of the other, if either party is cohabiting the financial circumstances of that situation. • s 66 (4). Court can make an order for custody. When making a parenting order the court must regard 'the best interests of the child as the paramount consideration'. 	<p>These provisions provide for the assessment of maintenance for spouses and children based on the recommended criteria in the indicator. The provisions are therefore in full compliance with CEDAW.</p> <p>The interests of the child are paramount and thus the legislation is in full compliance with CEDAW.</p>
16.11 Is there legislation to enable women to occupy the marital home when property settlement is not possible or in situations of domestic violence?	Yes	<p>Family Law Act 2003,</p> <ul style="list-style-type: none"> • s 118. An injunction can be issued to prevent a party from entering the marital home either for personal protection of a parent or child or at the discretion of the court. • s 202(f). Provides for an injunction relating to the use or occupancy of the matrimonial home. 	
16.12 Does the legislation provide for the restitution of conjugal rights? If the legislation does not provide such an order then there is full compliance with this indicator.	Yes		<p>To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for</p>

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	Yes	<i>Family Law Act 2003, s 30(1)</i> . Can apply for dissolution on the grounds that the marriage has broken down irretrievably after 12 month separation.	The legislation provides for fault-free divorce in full compliance with the indicator.
16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	<i>Family Law Act 2003, s 9</i> . The Court has a duty to give consideration to the possibility of reconciliation. If the judge believes there is a reasonable possibility of reconciliation can adjourn the hearing, interview in chambers and nominate a marriage counsellor.	To be compliant with this indicator, there should not be a duty on the court to promote reconciliation between estranged spouses. The legislation does impose a duty on the court and is discriminatory and non-compliant with CEDAW because it removes women's choices or reduces their autonomy to choose to leave a relationship.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	Yes	<i>Family Law Act 2003, s 162</i> . The court must take into account the financial contribution and improvement to property by both parties, non-financial contribution made to the improvement of the property, the contribution to the welfare of the family including in the capacity of homemaker or parent. The court must also take into account the age and state of health of the parties, the income and financial resources of the parties, whether one party has care of children, the commitments of both parties to support themselves and any children, the financial resources available to either party who is cohabited with another person and any other circumstances.	The non-financial contribution of either party is to be considered and the legislation specifically identifies the work of homemaker and parent. This recognises that such work contributes equally to the income and assets of the family. This is in full compliance with the indicator.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.16 Does the legislation provide for the payment of child support after divorce based on need?	Yes	<i>Family Law Act 2003</i> , <ul style="list-style-type: none"> • s 88. The court may make any order it thinks proper. It must consider the financial support necessary for the maintenance of the child. • s 90. The court must have regard to the age of the child, the manner in which the child is being educated or trained, any special needs of the child. • s 91. The income, earning capacity, property and financial resources of parties and commitments to support themselves and others. 	
16.17 Does the legislation provide for the payment of maintenance for ex spouse based on commitments, income, earning capacity, and assets?	Yes	<i>Family Law Act 2003, s 157</i> . Court must consider the age and state of the parties, the income, financial resources and property, the commitments of each to themselves and others, the eligibility of either for an allowance, pension or benefit, whether it would enable the other party to train and therefore increase their earning capacity, the extent to which the person whose maintenance is under consideration has contributed to the earning capacity of the other, if either party is cohabiting the financial circumstances of that situation.	
16.18 Is custody and access to children based on the best interests of child regardless of relationship of parents?	Yes	<i>Family Law Act 2003, s 66 (4)</i> . When making a parenting order the court must regard 'the best interests of the child as the paramount consideration'.	
16.19 Does the legislation provide damages for adultery? If there is no provision for damages then there is full compliance with this indicator.	Yes		To be complaint with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.20 Do women have an equal right to guardianship, wardship, trusteeship and adoption?	Yes	<i>Adoption of Infants Act [Cap 58], 1967.</i>	
16.21 Does the legislation recognise de facto rights including same-sex on the same basis as marriage?	No		The new family law regime excludes de facto relationships leaving women in such relationships without rights to property or maintenance after separation. Same-sex rights are also not recognised despite a constitutional guarantee of non-discrimination on the basis of sexual orientation.
16.22 Does the legislation provide an order for establishing parentage?	Yes	<i>Family Law Act 2003, s 138.</i> The court can order parentage testing procedure.	
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	Yes	<i>Family Law Act 2003, s 100.</i> Proper contribution towards maintenance of the mother in relation to the birth, reasonable medical expenses and if child stillborn funeral expenses. The court must take account of the income, earning capacity, property and financial resources of both parties, commitments of both to themselves and others.	
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	Yes	<i>Family Law Act 2003,</i> <ul style="list-style-type: none"> • s 88. The court may make any order it thinks proper. It must consider the financial support necessary for the maintenance of the child. • s 90. The court must have regard to the age of the child, the manner in which the child is being educated or trained, any special needs of the child. • s 91. The income, earning capacity, property and financial resources of parties and commitments to support themselves and others. 	
16.25 Does the legislation provide for equal inheritance laws?	Partial	<i>Succession, Probate and Administration Act [Cap 60] 1970.</i>	Inheritance is equal in the legislation. However, Fijian custom in relation to land has constitutional status and may lawfully discriminate against women.
16.26 Is there legislation requiring the court to apply CEDAW and CRC to domestic family law when relevant?	Yes	<i>Family Law Act 2003, s 26 (e).</i> A court exercising jurisdiction under this Act must, in the exercise of that jurisdiction, have regard to CROC (1989) and CEDAW (1979).	

