

Women's Rights to a Clean and Healthy Environment in Fiji

A legal briefing

April 2023



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1. An Overview of Fiji's Environment

The islands of Fiji provide one of the world's most outstanding tropical marine environments, attracting growing numbers of tourists and marine resource users from around the world every year. Fiji comprises of around 844 highlands, cays and islets, occupying an area of around 1.3 million sq. km. The extent and remoteness of its shallow tropical marine habitats, from oceanic reefs to near-shore fringing reefs, mangrove forests, sea grass beds, lagoons, estuaries and deep oceanic drop-offs, make it an area of high marine biodiversity, with many species unique to Fiji. Fiji is also home to the Great Sea Reef, the third longest barrier reef in the world. Fijians have important traditional relationships with the sea, reflected in their lifestyles, customs, traditional knowledge and history. Around 80 per cent of the population live on the coast and rely heavily on marine resources for food, livelihoods and cash income.¹

2. Establishment of the right to a healthy environment

The right to a healthy environment aims to protect the elements of the natural environment by empowering a human being to live a dignified life which includes the preservation of basic human rights such as the right to life, clean water, food, etc.²

Environmental issues are the harmful effects of human activities on the environment. These include but are not limited to pollution, overpopulation, waste disposal issues, climate change impacts, and natural disasters. Various environment protection programs are being implemented at the individual, organizational and government levels with the aim of establishing a balance between our needs and the environment, which remains a tenuous relationship.³

The UN General Assembly adopted Resolution A/76/L. 75 recognizes the right to a clean, healthy and sustainable environment as a human right. Over the years it has become apparent that the harm caused by environmental degradation impinges on a person's enjoyment of human rights. Under the international human rights norms and practices, States are obligated to design and implement laws, policies and practices that respect, protect and fulfill human rights including the right to a clean, healthy and sustainable environment.

Fiji, to a certain extent, has laws and policies that are expected to address gender issues in the contexts of disaster risk management, climate change and relocation plans. The right to clean and healthy environment for women in Fiji is protected under Section 40 of the 2013 Fiji Constitution (which has yet to be tested in a Fijian court), the Environment Management Act 2005, Climate Change Act and national policies.⁴ While the laws and policies of Fiji requires the inclusion of women in decision making processes, however in reality this has to be practiced.

1 Mamanuca Environment Society, Fiji's Natural Environment available at <https://mesfiji.org/resources/environment/fijis-natural-environment>

2 IUCN, (2021), *The Right to a Healthy Environment*, IUCN available at <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>

3 *Environmental Issues and Solution* (2020) available at <https://byjus.com/biology/environmental-issues-solutions/>

4 See <http://www.paclii.org/countries/fj.html>

The purpose of this paper is to analyse Fiji's environmental laws, policies and practices against the backdrop of women's right to a healthy environment. Further this paper considers whether Fiji's environmental laws, policies and practices comply with Fiji's international legal obligations.

3. Overview of key legal frameworks in Fiji and internationally

3.1 Bill of Rights under the Fiji 2013 Constitution and international human rights instruments

Chapter 2 of the 2013 Fiji Constitution sets out the Bill of Rights which requires the Fijian government to respect, protect and fulfill the human rights of all Fijians. Fiji has ratified various international human rights treaties which it is obligated to domesticate into law, policies and practices. Fiji's constitutionally entrenched Bills of Rights adds weight to its domestication. Some of these international human rights instruments include the Convention on the Elimination of Racial Discrimination (CERD); Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention Against Torture and other Inhuman or Degrading Treatment or Punishment (UNCAT); Convention on the Rights of Persons with Disabilities (CRPD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵

3.2 International environmental instruments

Fiji has ratified a large number of multilateral environmental agreements, including the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the United Nations Convention on the Law of the Sea, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury. Fiji was the first country in the world to ratify the Paris Agreement.⁶

The United Nations General Assembly recognises the importance of gender equality under Goal 5 and the right of access to justice for women under Sustainable

5 Fiji is not yet party to any of the optional protocols to these treaties that would allow for persons access to justice through an international complaint (communications) mechanism: the (first) Optional Protocol to the ICCPR, the Optional Protocol to the ICESCR, the Optional Protocol to the CEDAW, the Optional Protocol to the CRC on a communication procedure; or the Optional Protocol to the CRPD (it has signed, but not ratified this last instrument). It is also not party to the Optional Protocol to the UNCAT (on preventive mechanisms) or the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

6 See the Report on the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/43/53/Add.1) para. 8, available at <http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20report%202020.pdf>

Development Goal No.16 which provides targets for attaining peace, justice, and strong institutions. To achieve this, Goal 16.3 identifies as a target the promotion of the rule of law at the national and international levels and ensuring equal access to justice for all. The COVID-19 pandemic has had a significant impact on almost all the Sustainable Development Goals (SDGs), leaving no country unaffected. It has caused a shift in political agendas, but also in lines of research.⁷ At the same time, the world is trying to make the transition to a more sustainable economic model. The detrimental economic impacts of COVID-19 threaten to exacerbate poverty and inequality, particularly gender inequality, in PICs and compromise the region's ability to sustain progress towards the SDGs.⁸ Robust institutions are critical to adjudicate and enforce the rule of law in a non-discriminatory manner, and to ensure that men and women have equal access to justice systems and remedial action. Further, Goal 16.b emphasizes the promotion and enforcement of non-discriminatory laws and policies as requisites for sustainable development.⁹

Gender equality is a cross-cutting issue and it is relevant to all SDGs, the 'stand-alone' goal on gender equality - Goal 5 - provides that 'ending all forms of discrimination against women and girls is not only a basic human right, but it is also crucial to accelerating sustainable development.' Global commitment to achieving this goal requires women to receive equal treatment and benefits to men, including legal entitlements, both to uphold their individual rights and to strengthen their communities and societies.¹⁰

3.3 Right to a Clean and Healthy Environment

On 28 July 2022, the UN General Assembly adopted a resolution¹¹ by a near-unanimous vote (161 in favor, none against and eight abstentions) recognizing the right to a clean, healthy and sustainable environment as a self-standing universal human right. The Resolution "recogniz[ed]...the importance of gender equality, gender responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment."

Indeed, all other human rights relate to and are impacted by the environment for example, the right to life, protected under article 6 of the ICCPR,¹² and the right to health, protected under article 12 of the ICESCR, are necessarily directly engaged

7 Martín-Blanco C, Zamorano M, Lizárraga C, Molina-Moreno V. "The Impact of COVID-19 on the Sustainable Development Goals: Achievements and Expectations". *Int J Environ Res Public Health*. 2022 Dec 5 Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9739062/>

8 Min Y and Perrucci F "Impact of COVID-19 on the SDG progress: a statistical perspective" *United Nations Department of Economic and Social Affairs Av*

9 International Commission of Jurists, Enhancing Women's Access to Justice Programme Document October 2017

10 Ibid

11 UN DOC A/76/L.75

12 See UN Human Rights Committee, General Comment 36 on article 6 of the International Covenant on Civil and Political Rights, UN Doc CCPR/C/GC/36/, paras 26 and 62.

by the environment, including climate change.¹³ As the Human Rights Committee put in respect of State obligations to protect the right to life:

“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.”¹⁴

4. Regional Initiatives on Gender and the Environment

Pacific Island Countries (PICs) have supported various regional declarations and instruments aimed at creating a stronger legal and policy framework around specific human rights and gender issues. The 2012 Pacific Leaders Gender Equality Declaration,¹⁵ adopted at the Pacific Islands Forum, was reaffirmed by leaders in 2015. The Pacific Leaders’ Gender Equality Declaration¹⁶ emphasizes the need to implement specific national policy actions to increase women’s participation in all levels of leadership and decision making. Specific commitments include:

- the adoption of measures, including temporary special measures, such as legislation to establish reserved seats for women;
- political party reforms aimed at accelerating women’s full and equal participation in governance reform and women’s leadership at all levels of decision making; and
- advocacy for increased representation of women in private sector and local-level governance boards and committees, such as school boards and produce market committees.

13 See UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN DOC. E/C.12/2000/4, 11 August 2000 para 34

14 General Comment 36, supra, at para. 62.

15 Pacific Islands Forum Secretariat, Pacific Leaders Gender Equality Declaration, 2012 Available at <https://www.forumsec.org/2012/08/30/plged/>

16 The Pacific Leaders Gender Equality Declaration is undergoing review with Forum member countries facilitated by the Pacific Islands Forum Secretariat <https://www.forumsec.org/2022/11/28/statement-sg-puna-on-16-days-campaign-to-end-violence-against-women-and-girls/>

In 2018, Forum leaders endorsed the Boe Declaration on Regional Security, which applied an expanded concept of security, inclusive of human security, humanitarian assistance, environmental security and regional cooperation in building resilience to disasters and climate change. In the same year, the Forum Leaders endorsed the first Quadrennial Pacific Sustainable Development Report and committed to ensuring that sustainable development in the region is achieved in a way that recognizes the Pacific region's rich culture, national circumstances and oceanic resources.¹⁷

The Framework for Resilient Development for the Pacific (FRDP) is a single integrated regional framework on climate change and Disaster Risk Management (DRM) that succeeded two separate regional frameworks on DRM and climate change. It provides voluntary guidance to governments and other stakeholders toward the three goals of: (1) climate resilience; (2) low-carbon sustainable development; and (3) more robust disaster preparedness, response, and recovery.¹⁸

The global framework's priority actions include the objective of "[s]trengthen[ing] capacities at all levels of government, administration and community through inclusive gender analysis, responsive decision-making systems and human rights-based approaches to ensure effective delivery of development initiatives". It also aims to remain consistent with other regional approaches, including the *Pacific Leaders' Gender Equality Declaration 2012* and the *14th Triennial Conference of Pacific Women*. In its Outcomes and Recommendations Statement of the Conference in April 2021, the Conference and Ministerial statement focused on three priority areas. These included women's economic empowerment, gender-based violence, and gender-responsive climate justice. In addition, the statement emphasized a four crosscutting themes: women in leadership and decision-making; crises and disasters; sex, age and disability-disaggregated data (SADDD) and statistics; and intergenerational dialogue to ensure the perspectives of Pacific youth are heard.¹⁹

4.1 Demographic, social, environmental landscape in Fiji

Fiji has a diverse population, which is reflected in gender relations in different social, economic, racial, ethnic and religious groups. As per the Fiji Bureau of Statistics data released in 2007 showed ethnic groups iTaukei 56.8 percent (predominantly Melanesian with a Polynesian admixture), Indo-Fijian 37.5 percent, Rotuman 1.2 percent, other 4.5 percent (European, part European, other Pacific Islanders, Chinese) and religion as Protestant 45 percent (Methodist 34.6 percent, Assembly of God 5.7percent, Seventh Day Adventist 3.9 per cent, and Anglican 0.8 per cent), Hindu 27.9 per cent, other Christian 10.4 percent, Roman Catholic 9.1 percent, Muslim 6.3 percent, Sikh 0.3 percent, other 0.3 percent, and none 0.8 percent.²⁰

17 Pacific Island Forum Secretariat, *Sustainable Development* Available at <https://www.forumsec.org/sustainable-development/>

18 Pacific Resilience Partnership, *Framework for Resilience Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management (FRDP) 2017 -2030*. Available at <https://www.resilientpacific.org/en/framework-resilient-development-pacific>

19 Pacific Community, *14th Triennial of Pacific Women and 7th Meeting of Pacific Ministers for Women, 2021* Available at <https://hrsd.spc.int/sites/default/files/2021>

20 Fiji Bureau of Statistics, *2007 Census of Population and Housing* Available At <https://www.statsfiji.gov.fj/statistics/2007-census-of-population-and-housing.html>

Fiji is one of the rapidly developing countries in the world (ranked 98 in UNDP's Human Development Report 2019, having a high Human Development Index of 0.724 as per 2018 data). These developments are bound to impact the country's environment in multiple ways. Such changes to the environment are primarily caused or driven by forces that are predominantly social, economic, geographical, technological or cultural in nature.²¹

The main causes of change in Fiji's environment include, population growth and urbanization, economic growth and globalization, geography and locational context, technological development, traditional values and ethnicity, and climate change. Climate change demands special attention especially in the context of small island developing countries, such as Fiji Islands. The mentioned causes create 'pressures' on the natural environment of Fiji, thereby altering the state of the environment.²²

With each passing decade, the country has been at the receiving end of the adverse effects of global warming and extreme weather events. The hardest hit came in the form of the 2016 Cyclone Winston - considered the strongest tropical cyclone in history - with an estimated damage amounting to US\$0.9 billion, including US\$0.6 billion in damage and US\$0.3 billion in losses.²³ The average asset losses due to tropical cyclones and floods combined are estimated at more than approximately USD215 million per year, representing more than five percent of Fiji's GDP. At the same time, these losses also translate into an average of 25,700 people being pushed into poverty every year in Fiji.²⁴

5. Overview of key gender issues in Fiji

The capacity of women to exercise their human rights and build resilience in the face of catastrophic climate events is however negatively impacted by gender inequality. The impacts of climate change are no longer confined to being an environmental or political issue, but also a complex social problem with immense repercussions on human rights and the well-being of women, girls, and other persons from marginalized groups who already face injustices due to gendered power dynamics and a lack of control over the use and access to resources.

Evidence based studies have found that women and girls are 14 times more likely to die or be injured than men due to a natural disaster.²⁵ Women are subject to secondary impacts following natural and weather related-disasters, including gender-based violence, loss of economic opportunities, and increased workloads.

Women in urban and rural areas also differ in their experiences of equality, poverty, domestic violence, and access to justice. Women in urban areas are more likely to have higher levels of education and better access to financial resources, information, and economic opportunities. Fiji has made some progress toward gender equality

21 Department of Environment, Government of Fiji (2020). Fiji's State of Environment Report 2020, Suva, Fiji

22 Department of Environment, Government of Fiji (2020). Fiji's State of Environment Report 2020, Suva,

23 Ibid

24 Ibid 20

25 Soroptimist International of the Americas. (2008). "Reaching Out to Women When Disaster Strikes." White Paper: Disaster Relief. Philadelphia, PA: Soroptimist International of the Americas.

with efforts by the government and civil society groups, however more work must be done to make further dents in gender inequality.

Women are guaranteed the same rights and status as men under family law and in the judicial system, and women have rights of inheritance and property ownership by law, although in practice local authorities often exclude them from decision-making processes on the disposition of indigenous communal land important to note that this is due to the patriarchal nature is imbued in the native land tenure system which sees men being significantly involved and making decisions.²⁶ Overall labor force participation shows considerable disparities between women and men. As noted, women's participation is a little over half that of men, with around 34 percent of women as opposed to 66 percent of men in paid employment.²⁷ Women's labor force participation varies depending on whether they are in low, medium, or high-income brackets. The highest workforce participation is among women from low-income levels.²⁸ Fiji's 2022 election saw a steep decrease in women representatives, with the number of women in the Fiji Parliament dropping from ten out of 51 MPs (19.6%) to six out of 55 (10.9%). With the subsequent resignation of Rosy Akbar from the former ruling party FijiFirst, women's representation has dropped to less than ten per cent. The number of women contesting the election (55) was slightly lower than in 2018, despite a significant rise in the number of men candidates (from 178 to 288). This suggests growing disengagement among aspiring women politicians.²⁹

While progress on economic empowerment has been slow, women's participation in political processes appears promising at the national level, however the recent Fiji national elections in 2022 saw a steep decline in women becoming Members of Parliament. Men also held most of the jobs involving decision-making and leadership. According to the Annual Paid Employment Statistics 2018, women only made up 34 percent of the 9,860 jobs involving decision-making and leadership. This included legislators, senior officials, and managerial positions. Women's representation at the senior management level is very low, with men dominating decision-making in high-paid positions.³⁰

The Ministry of Women, Children and Poverty Alleviation is the agency advising the government on women and gender issues. The Ministry's budget estimate for 2019-2020 was FJD 127.7 million (USD 58 million), a decrease of four percent from

26 Inheritance (Family Provision) Act (Art. 3) and the Succession, Probate and Administration Act (Art. 6)

27 Professor Narsey. W.(2023) "Beyond 33% The Economic Empowerment of Fiji Women and Girls" Fiji Women's Rights Movement, Available at https://www.fwrm.org.fj/images/Breaking_The_33.pdf

28 Asian Development Bank, *Women's Resilience in Fiji How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management 2022* Available at <https://www.adb.org/sites/default/files/publication/817201/women-resilience-fiji-gender-equality-climate-change.pdf>

29 Kant, R. and Baker, K. (2023) "A New Era of Democracy in Fiji – but where are the women?" *The Lowy Institute*, March 3, 2023 [Blog]. Available at <https://www.lowyinstitute.org/the-interpretor/new-era-democracy-fiji-where-are-women>.

30 Asian Development Bank, *Women's Resilience in Fiji How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management 2022* Available at <https://www.adb.org/sites/default/files/publication/817201/women-resilience-fiji-gender-equality-climate-change.pdf>

the previous financial year.³¹ The allocation represents roughly three percent of the national budget estimate.³² Funding to implement the Women's Plan of Action was reduced by 23 percent and the domestic violence support programme was reduced by 70 percent to only FJD 30,000 (USD 13,600).³³ Child protection and disability allowances were amongst many social welfare areas where budgets were cut in what was described by the Fiji Women's Rights Movement as "a sharp shift from a welfare-based approach."³⁴ Many social service entities experienced budget cuts, including the education ministry.

The implementation of the CEDAW and the Fiji National Gender Policy requires that women must be treated as equal partners in policy, decision-making and its implementation. Implementation of the policy has in part been guided by the Women's Action Plan 2010-2019. The Women's Action Plan was put together by the Department of Women in partnership with other government agencies, NGO partners, Civil Society and Development Partners. In 2018, the CEDAW Committee expressed concern that coordination within the national machinery and with external partners, in particular NGOs working on women's rights, was under-resourced, and as a result, was weakening the already insufficient gender mainstreaming efforts.³⁵

5.1 Key National laws and policies that may impact on a women's right to a clean and healthy environment

Fiji has made tremendous improvement with the introduction of new laws to address the environment. However, these new laws did not go through proper public consultation process and it fails to mainstream gender consistently throughout the laws and/or policies. It can be argued that Fiji's legislative framework does not fully adhere to international human rights and environmental obligations and commitments this will be addressed in the section.

Fiji has numerous statutes and regulations addressing environmental and natural resource protection. Among the most important are the Environment Management Act (2005), the Environment and Climate Adaptation Levy Act (2015), the Endangered and Protected Species Act (2002), the Offshore Fisheries Management Act (2012), the Forest Act (1992), the Land Use Act (2010), the Land Conservation and Improvement Act (1953), the Litter Act (2008), the Mining Act (1966), the Natural Disaster Management Act (1998) and the Ozone Depleting Substances Act (1998).³⁶

31 Fiji Women's Rights Movement 2019. *Women and gender in the Fiji national budget. National Budget 2019-2020 Analysis* available at: http://www.fwrm.org.fj/images//fwrm2017/publications/analysis/FWRM_National_Budget_Analysis_1.pdf

32 Parliament of the Republic of Fiji. Available at <http://www.parliament.gov.fj/wp-content/uploads/2019/06/2019-2020-budget-estimates.pdf>

33 Ibid

34 Ibid 10

35 UN Committee on the Elimination of All Forms of Violence Against Women, *Concluding Observation on National machinery for the advancement of women*, 2018, para. 17, March 2018, CEDAW/C/FJI/CO/5 available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFJI%2fCO%2f5&Lang=en

36 See the Report on the Special Rapporteur on the issue of human rights obligations

5.1.1 Fiji 2013 Constitution:

The Bill of Rights chapter of the Fijian Constitution under Article 26 (1) guarantees that, “every person is equal before the law and has the right to equal protection, treatment and benefit of the law”, effectively incorporating the State’s obligations under the ICCPR article 26 into its domestic law. As noted above, Article 26 (3) (a) explicitly prohibits discrimination on the “grounds of race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy.”

Article 40 provides that:

(1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

(2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorize the limitation of, the rights set out in this section.

The 2013 Fiji Constitution under the Bill of Rights provides the right to a clean and healthy environment. That includes the right to have the natural world protected for the benefit of present and future generations (Section 40), which is relevant to general environmental management as well as to specific climate change laws.

In recognizing a clean and healthy environment as a human right the Fijian Government has to enact legislation identifying procedural and substantive elements enabling for the effective implementation of this right. This also implies upholding procedural rights such as the rights to receive information, to participate in decision-making about environmental matters, and to obtain access to the justice system. The substantive component has allowed national courts to impose duties on States to effectively implement the right to a healthy environment.³⁷

5.2 Environmental Laws:

Fiji’s Constitution and environmental laws also guarantee the rights of those concerned by any development that may have a significant impact on the environment to participate in the decision-making process.³⁸

relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/43/53/Add.1) para. 19, available at <http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20report%202020.pdf>

37 IUCN, (2021), *The Right to a Healthy Environment*, IUCN available at <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>

38 Sloan. J, (2018) *Fiji’s natural resources: governance and decision-making, the importance of participating* available at <https://www.sas.com.fj/ocean-law-bulletins/fijis-natural-resources-governance-and-decision-making-the-importance-of-participating>

5.2.1 Environment Management Act 2005

Fiji's Environment Management Act, 2005 (EMA) assists with good decision making by requiring environmental impact assessments (EIAs) for any major development. Section 2 of the Act defines development activity or undertaking as "any activity or undertaking likely to alter the physical nature of the land in any way, and includes the construction of buildings or works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, seagrass or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing."³⁹ The EIA process and reports should thoroughly assess the impacts of a development to enable the decision-maker, within the Department of Environment or the EIA Administrator, to determine whether the development should be permitted or not and if it is permitted on what conditions.⁴⁰

The Environment Management Act is the most important environmental law of Fiji. It provides for "the protection of the natural resources and for the control and management of developments, waste management and pollution control and for the establishment of a national environment council and for related matters." It plays another important role in that it establishes and regulates the process for environmental impact assessments.⁴¹

The Environment Management Act and the EIA Process Regulations does not expressly address gender issues or make any distinctions between men and women in environmental management issues. The EIA Process Regulations do require extensive consultation with "stakeholders" and in this respect, they represent good practice law. However, there is no requirement to undertake gender-inclusive consultations on new development proposals among the stakeholders. If the stakeholders are living in a village where community decisions are made according to customary law and practice, according to CEDAW, these should also be subject to scrutiny to ensure there is no discrimination against women. Pursuant to section 54 (1) "any person may institute an action in a court to compel any Ministry, department or statutory authority to perform any duty imposed on it by this Act.

5.2.2 Climate Change Act 2021⁴²

The objective of the Climate Change Act is to establish a comprehensive response to climate change, to provide for the regulation and governance of the national response to climate change, to introduce a system for the measurement, reporting and verification of greenhouse gas emissions and for related matters.

39 Pacific Islands Legal Information Institute, *Fiji Sessional Legislation* available at http://www.paclii.org/fj/legis/num_act/ema2005242/

40 Ibid

41 Fiji Environmental Law Association and EDO NSW, *Towards an Effective Legal Framework for Marine Protected Areas in Fiji: Policy and Law Discussion Paper* (Suva, Fiji Environmental Law Association, 2017), pp. 29 and 30

42 Pacific Islands Legal Information Institute, *Fiji Sessional Legislation* available at http://www.paclii.org/cgi-bin/sinodisp/fj/legis/num_act/cca2021109/cca2021109.html?stem=&synonyms=&query=Climate%20Change%20Act

The Principles of the Act are set out under Section 5 and take a holistic and inclusive approach to gender and human rights, with a view to ensuring that persons who are marginalized and disadvantaged are included in and during consultations for the drafting and implementation of the National Adaptation Plan [this is a requirement under the Paris agreement]. The National Adaptation Plan is a policy document that reflects the Climate Change Act and international principles.

The United Nations Children’s Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the Pacific in a joint statement, welcomed Fiji’s enactment of the Climate Change Act 2021⁴³ including the Act’s explicit recognition of economic, social and cultural rights and links between gender equality, social inclusion and the Sustainable Development Goals. The Act highlights women’s rights, rights of people living with disabilities and of older persons, as well as children’s right to a healthy environment. ⁴⁴It contains a focus on youth and groups and communities living in vulnerable and marginalized situations. The Act provides guidance on how Fiji can develop and action long-term climate change measures to protect its people, ecosystems, and biodiversity in the face of climate emergencies.⁴⁵

Part 12 of the Act addresses climate displacement and relocation and this includes the establishment of a Fijian Taskforce on the Relocation and Displacement of Communities Vulnerable to the Impacts of Climate Change (s75) that assists the Minister to prepare successive Fijian Planned Relocation Guidelines. The Minister is then supported by the Taskforce in the responsibility of relocating and supporting at risk communities in accordance with the provisions of section 77 of the Act. This part of the Act provides minimum standards that must be met to assist at-risk communities and there are also a consultation requirement and public hearings prior to any relocation decision.⁴⁶

The framework that the Act sets out requires implementation. Fiji faces numerous challenges including but not limited to sustainable sources of finance to make the changes that the Act envisages.⁴⁷

5.2.3 National Climate Change Policy 2018–2030 (NCCP)

The National Climate Change Policy was adopted including COP23 Gender Action Plan, which aims to increase the participation and representation of women and girls in climate action. The Fiji government has purported to have developed the Planned Relocation Guidelines in what it describes as a holistic and participatory manner through a collaboration between government and civil society, including

43 United Nations, *UNICEF and UN Human Rights welcome Fiji’s Climate Change Act*, 2021 available at <https://reliefweb.int/report/fiji/unicef-and-un-human-rights-welcome-fiji-s-climate-change-act>

44 Section 65, Climate Change Act 2021 Available at http://www.paclii.org/fj/legis/num_act/cca2021109/

45 Ibid 40

46 Sloan. J (2021) *Fiji’s Climate Change Act, 2021 - Fiji’s whole of government approach to reduce emissions and remove carbon* available at <https://www.sas.com.fj/ocean-law-bulletins/fijis-climate-change-act-2021-fijis-whole-of-government-approach-to-reduce-emissions-and-remove-carbon>

47 Ibid

representatives from gender groups and various communities.⁴⁸

One of the purposes of the NCCP is to avoid exacerbating vulnerabilities or deepening gender inequality. The policy also includes gender responsiveness as one of its three key policy pillars, which is justified and expanded under seven points that can be summarized as follows:⁴⁹

- (i) Women are agents of change and there is a need to improve and enhance the incorporation of all women’s knowledge, skills, participation, and leadership into planning processes at the local and national levels.
- (ii) Social adaptation is required, including addressing structural inequalities directly.
- (iii) Benefits should be progressive and not reinforce the elements of traditionally and socially constructed roles for women and girls which contribute to gaps and inequalities.
- (iv) There is a need to ensure that gender gaps are understood across government ministries and among stakeholders.
- (v) It is necessary to plan for solutions that reduce inequality, through inclusive consultations and efforts that engage and incorporate all women’s agency.
- (vi) Use gender-sensitive indicators.
- (vii) Recognize that natural resource management is not gender neutral.

The policy reiterates that it is “gender-responsive and human rights-based” and it includes a specific policy pillar on gender responsiveness as noted. However, in the later parts of the policy—including the more concrete aspects of implementation—there is less guidance on how to ensure the gender policy pillar is mainstreamed.⁵⁰

The guidelines are underpinned by a clear commitment to “ensure an inclusive and gender-responsive consultative and participatory process” set out in Part I. However, in the body of the document, this general proposition is shortened to simply “inclusive.” The guidelines listed five means, including human rights-based approach in meaningful participation of affected people, ensuring that men, women, the elderly and persons with disabilities in the decision-making, planning, and implementation related to the planned relocation. This means that the detailed guidance on processes set out in Part II “Stages of Planned Relocation and Stakeholders Involved” do not specifically draw attention to gender inclusiveness. The detailed guidance on implementation does not highlight the gender component of “inclusiveness”.⁵¹ There is a need to strengthen the definition or the scope of “inclusiveness” to sufficiently address the detail on gender inclusiveness.

48 Republic of Fiji, Ministry of Economy, *Planned Relocation Guidelines: A framework to undertake climate change related relocation*, 2018 available at <https://cop23.com.fj/wp-content/uploads/2018/12/CC-PRG-BOOKLET-22-1.pdf>

49 Asian Development Bank, *Women’s Resilience in Fiji How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management 2022* Available at <https://www.adb.org/sites/default/files/publication/817201/women-resilience-fiji-gender-equality-climate-change.pdf>

50 Ibid

51 Ibid

5.2.4 Planned Relocation Guidelines: A Framework to Undertake Climate Change- Related Relocation 2018

These Guidelines provide guidance for the government and all other stakeholders present in Fiji, to consider planned relocation solutions for the affected communities as part of their adaptation strategies in relation to disasters and climate change-related slow-onset events occurring on the territory of Fiji. The guidelines mention gender equality and gender responsiveness as well as human rights. There is a commitment to “ensure an inclusive and gender-responsive consultative and participatory process.”⁵²

5.2.5 Nationally Determined Contribution (NDC), updated in 2020

Nationally Determined Contributions (NDCs) are at the heart of the Paris Agreement and the achievement of its long-term goals. NDCs embody efforts by each country to reduce national emissions and adapt to the impacts of climate change.⁵³ Article 4, paragraph 2 of the Paris Agreement requires each Party to prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve.⁵⁴ In general the NDC, has explicit inclusions of equality and non-discrimination language in the climate change law and policy landscape in Fiji, which forms an important benchmark for implementation and strengthening women’s resilience to climate change risks.

Although gender equality, non-discrimination, and women’s empowerment are included as a principle of the act and mainstreamed into the policymaking as among a group of principles that must be considered, there is no mechanism to require gender assessments or gender analysis, and most implementers will likely require further guidance in this regard.

6 Conclusion and Recommendations:

Fiji has shown some progress in advancing women’s human rights, which has only been possible because of the strong and engaged women’s NGOs. These include the Fiji Women’s Crisis Center and the Fiji Women’s Rights Movement, working to hold the government accountable in its obligation to respect and protect rights. Human rights defenders that focus on women’s human rights with their allies have fought long and hard to have gender perspectives reflected in the local legislation which complies with international human rights law and standards.

It is critical that gender considerations are substantially included in environmental laws in order to advance inclusiveness and to effectively implement a women’s rights to a healthy environment. Fiji has made a positive start with the introduction of the Climate Change Act and policies that incorporate gender and a human rights based approach. Fiji has a relatively good set of environmental laws and

52 Ibid

53 United Nations Climate Change, *The Paris Agreement and NDCs 2022* Available at <https://unfccc.int/ndc-information/nationally-determined-contributions-ndcs>

54 United Nation, Framework Convention on Climate Change, The Paris Agreement Available at https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf

policies but a more important challenge for Fiji is to close the gap between laws and policies on paper and practices on the ground by increasing implementation and enforcement.⁵⁵

Newly revised laws and policies on disaster risk management in Fiji fail to recognize the link between gender inequality and disaster risks, and as such Fiji has failed to mainstream gender in these laws and policies.

The Climate Change Act 2021, as well as the NCCP, are examples of gender-responsive legislation. The approach of gender inclusion as a principle or goal is a feature of newer specific laws and policies on climate change and disaster in Fiji. However, it is important to note that the underlying principles of general inclusions have been substantially incorporated into the implementation sections of many of the policies. Guidance is therefore needed to support gender-responsive implementation and programming under these laws and policies, including guidelines and toolkits for government officials. The practical guidelines are needed so that the laws, policies and practices are not empty rhetoric or mere words on a page. They must be actioned and this requires a whole of government and a whole of society approach and technical and financial resources must be reflected accordingly.

ICJ's Recommendations

[ICJ makes these recommendations for the consideration of](#)

[The members of the legislature or Parliament of Fiji](#)

1. Review and reform laws, policies and practices with a view to mainstreaming gender dimensions, including incorporating gender lens and gender driven solutions in the context of climate change and environmental protection strategies.
2. Ensure that the review articulated in Recommendation 1 extends to section 61 of the Environment Management Act 2005, with a view to ensuring women have equal roles in decision-making. Amend the Environment Management Act accordingly, to include inter alia, the incorporation of the right to a clean and healthy environment as the overarching purpose of the law.
3. In the short term, revised the EIA Process Regulations 2007 to create a mechanism within the EIA process to ensure that women in stakeholder communities are actively engaged in decision-making, including the opportunity to consult separately with women on any development proposal that falls under the ambit of the Environment Management Act.⁵⁶

55 See the Report on the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/43/53/Add.1) para. 106 available at <http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20report%202020.pdf>

56 Asian Development Bank, Women's Resilience in Fiji How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management 2022 Available at <https://www.adb.org/sites/default/files/publication/817201/women-resilience-fiji-gender-equality-climate-change.pdf>

4. A.) Ensure that the new or revised Disaster Risk Management Bill is gender-responsive, in particular by including a section on overall DRM objectives and/or principles and ensuring its subsequent implementation.⁵⁷

B.) Ensure that the new law and policies recognizes the links between disaster risks and an increase in incidences of GBV in order to prepare the relevant institutions address GBV incidences during and after natural disaster in a manner which places human beings at the centre of any strategy, intervention, action or policy practice.

The relevant Minister under the Environment Management Act-

1. Establish an Information Platform that includes research, data collection, reporting and communication with gender and ethnicity disaggregated data.
2. Include a section that recognizes the differences in disaster resilience or impacts between men and women, and that women may bring different and important experiences to effective Disaster Risk Management.
3. Require that implementers collect, analyze, monitor, and publish sex-disaggregated data, and allocate budgets, monitor, and evaluate expenditures to address gender issues in DRM.⁵⁸
4. Enhance the public's ability to participate meaningfully in environmental decision-making by creating an online registry that would make environmental information easy to access, including on air and water quality, laws, regulations, policies, permit applications and decisions, pollution data and enforcement actions taken. Develop guidelines on increasing women's participation in environmental decision-making.⁵⁹
5. Allocate more financial and human resources to all departments and agencies with environmental responsibilities, including the Department of Environment, the Land Transport Authority, the Water Authority of Fiji (to upgrade drinking water and wastewater infrastructure) and the Maritime Safety Authority of Fiji (to create a marine environmental enforcement unit), as well as municipal governments.⁶⁰

57 Ibid

58 Asian Development Bank, Women's Resilience in Fiji How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management 2022 Available at <https://www.adb.org/sites/default/files/publication/817201/women-resilience-fiji-gender-equality-climate-change.pdf>

59

60 See the Report on the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/43/53/Add.1) para. 108(e) available at <http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20report%202020.pdf>

Develop a practical guidance on gender mainstreaming should be developed. The Climate Change Act 2021 to relevant enforcement authorities:

1. Implement a holistic system that sufficiently provides responses and redress for survivors of GBV.
2. Implement continuous capacity building of DM offices and other humanitarian stakeholders on gender and disaster preparedness plans, including by setting up women-only shelters where women can report cases of GBV and obtain access to redress and rehabilitation.”⁶¹

61 Asian Development Bank, Women’s Resilience in Fiji How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management 2022 Available at <https://www.adb.org/sites/default/files/publication/817201/women-resilience-fiji-gender-equality-climate-change.pdf>

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