



**STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN
RIGHTS**

**REPORT ON PUBLIC ORDER (AMENDMENT) BILL, 2016
(BILL NO. 23 OF 2016)**



**PARLIAMENT OF THE REPUBLIC OF FIJI
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LIST OF ACRONYMS

JLHR	-	Standing Committee on Justice, Law and Human Rights
UNSCR	-	United Nations Security Council Resolutions

CHAIR'S FOREWORD

The Public Order Act is a piece of legislation put in place to ensure that order is maintained in the nation and that safety of its people is not compromised. One such issue, which can disturb order that needs to be addressed is the increase in terrorism threats globally. Even though acts of terrorism are not prevalent in Fiji yet, there is still a great need for Fiji to be prepared to prevent acts of terrorism or mitigate its impact as is required of us by our global partners.

In order to achieve this, Fiji needs to have legislation that provides for such prevention and mitigation measures. This has led to the call for an Act to amend already existing laws which criminalise acts, which disturb public order, such as the Public Order Act. This call has been taken into consideration by the Fijian Government thus the introduction of the Public Order (Amendment) Bill 2016.

There were numerous submissions received by the Standing Committee of Justice, Law and Human Rights where suggestions were made for certain amendments. Amendments were made to various Sections and Subsections of the Act and the amendments which were necessary have been made and marked in red in the copies of the Bill provided with this report.

At this juncture I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the staff and officers of the secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I on behalf of the Committee commend the Public Order (Amendment) Bill 2016 to the Parliament.

Hon. Ashneel Sudhakar
CHAIRPERSON, STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS

1.0 INTRODUCTION

1.1 Background

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the Public Order (Amendment) Bill, 2016, hereinafter referred to as the Bill, for review in 2016. The Bill was referred to the Committee pursuant to Standing Order 85(4)(a) and the Committee was tasked with scrutinising the Bill and to table a report on the Bill in a subsequent Parliament sitting.

1.2 Objectives of the Bill

The Bill amends the Public Order Act 1969. It intends to amend the provisions in the principal act to comply with international requirements under a number of UN Security Council Resolutions (UNSCR 2178 / 1267 / 1989 / 1988 / 1373) in relation to counter terrorism measures.¹

1.3 Procedure and Program

In order for the Committee to carry out its task, it called for submissions from the public and other interested stakeholders by placing advertisements through the Parliament website (www.parliament.gov.fj) and in the local newspapers (Fiji Times and Fiji Sun) on the 7th, 9th, 14th and 15th of July, 2016.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during deliberations and discussions to develop and finalise the Committee's recommendations and report.

1.4 Committee Members

The substantive members of the Standing Committee on Justice, Law and Human Rights at the time of deliberation on the Bill were:

- Hon. Ashneel Sudhakar (MP) (Chairman)
- Hon. Semesa Karavaki (MP) (Deputy Chairman)
- Hon. Lorna Eden (MP) (Member)
- Hon. Iliesa Delana (MP) (Member)
- Hon. Niko Nawaikula (MP) (Member)

During the duration of the term of the Committee in 2016, the following membership replacement and alternate membership arose pursuant to Standing Order 115(2) and (5):

¹ Bill Summary – Parliamentary Research and Library Services, 2016.

Replacement

- Hon. Mataiasi Niumataivalu (MP) replaced Hon. Iliesa Delana (MP)

Alternates

- Hon. Balmindar Singh (MP) (Alternate Member for Hon. Iliesa Delana)
- Hon. Alex O'Connor (MP) (Alternate Member for Hon. Lorna Eden)
- Hon. Mikaele Leawere (MP) (Alternate Member for Hon. Niko Nawaikula)
- Hon. Ratu Sela Nanovo (MP) (Alternate Member for Hon. Semesa Karavaki)
- Hon. Josefa Dulakiverata (MP) (Alternate Member for Hon. Semesa Karavaki)
- Hon. Anare Vadei (MP) (Alternate Member for Hon. Niko Nawaikula)

2.0 PUBLIC ORDER (AMENDMENT) BILL, 2016

2.1 Introduction

The Public Order Act is a piece of legislation put in place to ensure that order is maintained in the nation and that safety of its people is not compromised. One such issue, which can disturb order that needs to be addressed is the increase in terrorism threats globally. Even though acts of terrorism are not prevalent in Fiji yet, there is still a great need for Fiji to be prepared to prevent acts of terrorism or mitigate its impact as is required of us by our global partners.

The threat of terrorism is a serious concern worldwide. Fiji is a Member of the United Nations and must comply with United Nations Security Council Resolutions in relation to counter terrorism and other matters. According to the Bill's explanatory note there are a number of domestic laws which currently do not reflect these international requirements. In particular around the financing of terrorist activity and targeted financial sanctions. The Bill seeks to address this issue.²

2.2 Effects of the Amendments made by the Bill

The Bill amends the Public Order Act 1969 (Cap20) in order to bring Fiji's legal framework up to date to meet its international obligations. The Public Order Act contains a wide range of provisions in relation to the maintenance of Public Order. For example, the permits required for processions or meeting in a public place, it also makes committing malicious acts or inciting violent acts an offence³.

The Bill makes the following main amendments to the Act:

- (a) It **criminalises** a range of offences for example, moving nuclear material without the permission of the Prime Minister, hijacking a ship or detaining people against their will.

² Bill Summary – Parliamentary Research and Library Services, 2016

³ Bill Summary – Parliamentary Research and Library Services, 2016

- (b) It gives **power to authorise certain officers to arrest or detain** any person reasonably suspected of committing terrorist offences on board ships or fixed platforms.
- (c) It deals with the **declaration in the courts of “specified entities”** (person or entity) that participate in or facilitate a terrorist act.⁴

2.3 Written and oral submissions received

The Committee as part of its deliberation received and heard submissions on the Bill.

The Committee heard submissions, from relevant stakeholders, on various dates falling between and including 20th September to 15th November, 2016. Organisations such as *FIRCA*, *FEMLink Pacific*, *Aspire Network*, *NGO Coalition on Human Rights* and *SODELPA* responded to the call by the Committee and gave a submission on the Bill. There were other submittees who gave submissions, but had intentions of raising their own political views and agendas to the Committee. These submittees were cautioned against raising political agendas in their submission as the Committee is only mandated to deliberate on the Bills before the Parliament.

The Committee took into consideration the submissions, made by organisations that would assist the Committee in its deliberation on the Bill. The Committee would like to extend its gratitude to all those who participated and provided an essential contribution to the Committee’s work of deliberating on the Bill.

2.4 Summary of submissions

Copies of the submissions considered by the Committee to be pertinent to its deliberation is attached as ‘APPENDIX A’.

3.0 COMMITTEES’ OBSERVATIONS AND ANALYSIS OF THE BILL

3.1 Specific issues highlighted with regards to the Bill

As stated in above the Committee heard from numerous organisations. Some organisations gave submissions that were both pertinent and assisted the Committee in its deliberation while others had ulterior motives of trying to highlight the organisations’ own political agenda. These pertinent submissions highlighted the following:

⁴ Bill Summary – Parliament Research and Library, February 2016

- (a) That there was a need to have a law that protects and ensures public order, given today's pressing issues. One such issue that the Bill provides for is ever increasing threat of terrorism.
- (b) Terrorism is indeed one such issue that tests our security level, and having proper legislative frameworks could assist the country in addressing this threat.
- (c) Fiji, even though not yet at risk of terrorism, still needs to be prepared, and such a law as this Bill could achieve that.
- (d) A vital concept highlighted by the Bill is with regards to having provisions that have greater clarity and emphasis on financial assistance being provided to terrorists. This would assist and prepare Fiji in combating terrorism.

The Committee shared the main sentiment of these submitters, which is; Fiji needs to have better legislation in order to be prepared to combat terrorism.

3.2 Gender analysis

The Committee took into account the provisions of Standing Order 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

The Committee was unable to conduct a gender-based analysis due to the unavailability of sex dis-aggregated statistics on the subject under consideration. Also, the Committee did not receive any submissions on gender-based analysis of the Bill. It would appear that this Bill is based on gender-neutral policies and everyone is affected by policies, programs and legislation in the same way regardless of gender.

The Committee noted and is satisfied that neither men nor women will be disproportionately impacted by this Bill.

3.3 Suggestions by the Committee put to the Drafters

The Committee analysed the evidence with regards to the Bill by analysing the Bill and the submissions received. The Committee then compiled a set of questions and suggestions that were then sent to the drafters of the Bill; the Office of the Solicitor General. Necessary amendments were done by the drafters of the Bill and these are shown in red in the copy of the Bill provided with this Report.

4.0 CONCLUSION

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation saw that there was great support for the Bill. The Committee also noted that there is a need for some minor amendments to the Bill as highlighted above. The amendments which the Committee felt necessary, were made in consultation with the drafters so as not to upset the objectives of the Bill. Those amendments are reflected in the amended copy of the Bill presented with this report.

The Committee through this report commends the Bill to the Parliament.

APPENDIX A

COPIES OF SUBMISSIONS RECEIVED BY THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS




SUBMISSION


**TO THE PARLIAMENTARY STANDING COMMITTEE ON LAW,
JUSTICE & HUMAN RIGHTS**

ON THE PUBLIC ORDER AMENDMENT BILL NO. 23 OF 2016

15 November 2016

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**SUBMISSION ON THE PUBLIC ORDER AMENDMENT BILL NO. 23 OF 2016
BY THE SOCIAL DEMOCRATIC LIBERAL PARTY OF FIJI**

15 November 2016

Salutations

The Chairman and Members of the Parliamentary Standing Committee on Law, Justice & Human Rights: this submission on Bill No. 23 of 2016, the Public Order Amendment Bill, is made by the Social Democratic Liberal Party of Fiji.

On behalf of the Party Leadership and its members, I thank you for this opportunity to make known the Party's views on the Bill.

Introduction

Since cession, Fiji has been subject to various periods of "emergency" during which rights have been limited under various emergency decrees and regulations. The Party recognises that it is important to have laws to enable governments to deal with disasters, or internal conflict, an extraordinary period recognised the world over, for example during time of war, or natural disaster or civil unrest. The Emergency Powers Act 1998 thus empowers the President to declare a state of emergency.

The Public Order Act first enacted as Colonial Ordinance in 1969 was intended to facilitate the maintenance of public order, in ordinary times. It was not intended to operate in times of emergency.

After the 2006 Coup, the State of Public Emergency Regulations were issued on December 5, 2006 by the military commander and they were replaced by the Public Emergency Regulations (PER) in 2009 under the Public Safety Act limited various rights and freedoms. The PER allowed the censorship of the news media, and imposed limitations on public assembly and expression. The PER was lifted on January 7, 2012. However two days before the PER was lifted, the Public Order Amendment Decree was issued on January 5th, 2012.

However we are concerned, that the continuation in force of PER provisions through the embedding of the POAD 2012 through the Constitution, continues Fiji on an indefinite state of emergency, when it is not necessary, given we have had elections in 2014. The POAD provisions also conflict with the freedom of assembly, expression and opinion recognised in ^{our} the Constitution. These freedoms are essential to democracy, as they enable the free exchange of information and ideas, that inform the citizens of Fiji. The provisions also hobble political parties, in particular the Opposition parties from doing their work, with permits required for ordinary board meetings (held in private)

and even training workshops with party members and workers. It does not appear that these provisions apply to the ruling FijiFirst party's meetings.

What was the situation before?

We are also concerned that the civil servants including the senior police officers are warning the public on the requirements for permits, and we submit this has a chilling effect on freedom of speech and freedom of assembly and association, creating unnecessary fear and apprehension in the community when it comes to the exercise of their civil and political rights guaranteed in the Constitution. Given that we now operate in a democracy, with a parliament and cabinet system in place, civil servants should not be making these announcements, rather the Minister responsible for the Police should be making these announcement.

The insertion of PER provisions in the 2012 POAD inserted emergency provisions into the Public Order Act which was not originally intended to apply during states of emergency, but by their effect, has put Fiji now on a permanent state of emergency with the continued insistence of the Government that permits be applied for ordinary discussions, and having the effect of muting discussion, limiting freedom of opinion, expression and assembly in Fiji.

Recommendation 1

The Social Democratic Liberal Party considers that it is not appropriate to place Fiji citizens and the nation in a permanent state of emergency, the situation since the 2012 Public Order Amendment Decree. It is recommended that the Public Order Act be repealed, and a new Act be drafted, that separate legislation be considered for states of emergency, separate legislation be considered for arms and ammunition provisions, and separate legislation be considered for terrorism offences. A permanent state of emergency does not foster confidence in our nation, it will deter foreign investment and it binds our citizens unfairly, limiting their human rights and freedoms, in particular freedom of speech, freedom of expression, freedom of opinion and freedom of assembly.

2014 United Nations Universal Periodic Review Process

In 2014, Fiji's human rights record was reviewed comprehensively by the United Nations Human Rights Council (HRC) in the Universal Periodic Review Process (UPR) held every four years. Fiji's UPR resulted in various recommendations being made to the Government of Fiji, including for the review of the 2012 Public Order Amendment Decree (POAD). The recommendations focused on the limitations to freedoms of expression, peaceful assembly, and association limited by various decrees including the 2012 POAD, the Media Decree and the Political Parties Decree.

These were contained in at least five recommendations to the Government from the member states of the UN Human Rights Council (see Appendix 1)

Public Order Amendment Bill No. 23 of 2016

Bill No. 23 of 2016 is intended to amend the Public Order Act of 1969. That law has been amended four times already: firstly in 1976, then by Decree in 1998 and as mentioned already, in 2012 and then 2014 by Decree.

In this submission, we will address both the proposed amendments in Bill No. 21 of 2016, and the amendments effected by the 2012 Amendment Decree, given that Bill No. 21 elaborates on the anti-terrorism provisions of the 2012 amendment, and as mentioned, the Party respectfully submits that the terrorism provisions be separated into a comprehensive anti-terrorism law, as recommended in the UN Security Council Resolutions, this is also legally preferable, as it keeps the law tidy and reduces confusion and conflation.

Recommendation 2

The Social Democratic Liberal Party recommends that the anti-terrorism offences be excluded entirely from the Public Order Act and to be included in a new separate and comprehensive anti-terrorism law. We propose the same for the Nuclear Convention treaty provisions and the explosives convention provisions.

Public Order (Amendment) Decree No. 1 of 2012

As we have stated, one cannot review the 2016 Bill without looking at the state of the Public Order Act, as amended over the years, particular the 2012 Decree, which contains many problematic provisions, and which has placed Fiji on a permanent state of emergency ever since.

The 2012 Decree amends the Public Order Act (Cap.20) by adding a new Part 2A on Control of Arms and Ammunition, adding a new Part 3A on Terrorism Offences, adding a new Part 4A on Powers of Arrest, increasing various penalties under the Act, and by adding an 'ouster clause'. The decree also amends section 8 of the Act, and replaces section 9, 10 and 11. The Decree followed the decision not to renew the Public Emergency Regulations (PER), under powers conferred by section 2 of the Public Safety Act (Cap.19). The Decree had the effect of enacting some of the provisions of the PER.

The 2012 Decree continued some provisions contained in the PER, including restrictions on freedoms of speech, assembly, and movement, although in July 2012, the government eased some

restrictions on meetings other than those in large public venues to enable discussions on the Constitution drafting process undertaken by the Ghai Commission.

Below are a few problematic provisions of the 2012 POAD, that the Social Democratic Liberal Party(SODELA) recommends that your honorable Committee review as you also consider the 2016 Bill No. 23 to amend the Public Order Act.

Change of ministerial responsibility from Defence to the Prime Minister

The 2012 Amendment Decree changed the jurisdiction over the Public Order Act from the Minister for Defence to the Prime Minister's Office - where previously the District Officers and Divisional Commissioners had authority to issue permits under the Act, the 2012 Decree transferred this authority to the Fiji Police Force, specifically the Divisional Police Commanders. We now have the situation where the Minister responsible for Police, the Minister for Defence is no longer assigned the Ministerial responsibility over the Public Order Act, but the Fiji Police Force, specifically the Divisional Commanders issue the permits applied for under the Act.

Perhaps this administrative anomaly, is the reason why civil servants like senior police officers are issuing warnings on the requirements for permits and the attendant severe penalties under the 2012 Public Order Amendment Decree - the Minister for Defence cannot make the announcement as he is not the Minister responsible for Police, while the Prime Minister who is now Minister responsible for Public Order, is silent, or more often, is wearing his hat as Minister for Foreign Affairs.

Military to perform police functions under POAD

The 2012 Amendment Decree also confers upon the military the power to perform police functions by the consent of the police (Section 8) - this is a continuation of the State of Emergency Regulations of 2006 and the 2009 Public Emergency Regulations (issued under the Public Safety Act). The police force is responsible for law enforcement and the maintenance of internal security. The RFMF is responsible for external security. Under the POAD, soldiers also are authorized to perform the duties and functions of police and prison officers in specific circumstances. The POAD permits military personnel to search persons and premises without a warrant from a court and to take photographs, fingerprints, and measurements of any person. Police and military officers also may enter private premises to break up any meeting considered unlawful.

Offence to undermine the economy

The 2012 amendment at Section 13 provides that any person who makes any statement, orally or in writing, which is likely to undermine or sabotage or attempt to undermine or sabotage the economy or financial integrity of Fiji" faces 10 years imprisonment and/or a \$50,000 fine. The original law, which was targeted largely at hate speech, carried a maximum 1 year imprisonment and a \$500 fine. The offence of undermining the economy is poorly defined and we recommend its review and repeal.

Ouster of jurisdiction of the courts

The 2012 amendment also divested the courts of jurisdiction to hear any claim by any person challenging the validity, legality or propriety of any decision made by the commissioner of police, any divisional police commander, the Prime Minister or any public official. This is undesirable and a limitation of the rights of the citizens of Fiji, a fetter on the independence of the courts in their function to review the executive. The ouster clause also undermines the principle of the separation of powers of government. We recommend the repeal of this provision.

Power of Police to declare a meeting unlawful, including private meetings

The 2012 Amendment also empowered the police to declare unlawful a meeting for which a permit had already been granted, and to also declare unlawful a meeting in a private venue, if deemed to threaten national security.

Detention up to 16 days

Police may detain persons under the POAD for a maximum of 16 days; at that point persons must be charged or released. There is no legal requirement that persons detained under provisions of the POAD be produced in court for judicial review of the grounds for their detention, unless they are charged with an offense. The POAD prohibits any court, tribunal, or other body from reviewing a detention under POAD provisions. The constitution provides that detained persons be charged and produced in court within 48 hours of arrest or as soon as practicable thereafter. Police may detain persons under the POAD for a maximum of 16 days; at that point persons must be charged or released. There is no legal requirement that persons detained under provisions of the POAD be produced in court for judicial review of the grounds for their detention, unless they are charged with an offense. The POAD prohibits any court, tribunal, or other body from reviewing a detention under POAD provisions. ✓ *Human Rights*

Extension of jurisdiction outside of Fiji

The POAD extends the jurisdiction of the public order act outside the country and defines as terrorism any act designed to advance a political, religious, or ideological cause that could "reasonably be regarded" as intended to compel a government to do or refrain from doing any act or to intimidate the public or a section thereof. It also makes religious vilification and attempts to sabotage or undermine the economy offenses punishable by a maximum F\$10,000 (\$5,495) fine or five years' imprisonment.

Restriction of movement, travel

Under the POAD the government may restrict freedom of internal movement, foreign travel, emigration, and repatriation. The POAD authorizes the government to prohibit, restrict, or regulate movement of persons

Authorisation on use of force fostering a culture of impunity in law enforcement

The constitution prohibits torture, however POAD authorizes the government to use whatever force is deemed necessary to enforce public order, and we submit, that the combination of the immunity in the Constitution, and the authorisation for use of force in the POAD contribute to the continued assault of persons in custody, leading to unlawful homicide or death of persons in custody, torture of detained and arrested persons during investigation and the extraction of unlawful confessions, an undesirable state of affairs, and which make a mockery of the rights guaranteed in the Constitution.

Immunity

The 2013 constitution and POAD provide immunity from prosecution for members of the security forces for any deaths or injuries arising from the use of force deemed necessary to enforce public order. The 2013 constitution provides for protection against arbitrary arrest or detention. Procedures for lawful arrest are detailed in the Criminal Procedure Decree. The POAD authorizes security forces to detain a person for up to 16 days before bringing charges; the minister of defense must authorize detention without charge exceeding 48 hours.

Recommendation 3

Fiji should not continue to be under a permanent state of emergency as imposed by the 2012 Public Order Amendment Decree and the Social Democratic Liberal Party recommends that it be reviewed comprehensively by the Committee and that the Committee recommend to Government, that the 2012 POAD be repealed in entirety.

Compliance with international treaties on Terrorism, Explosives, Nuclear Materials

We note that anti-terrorism provisions have been inserted into the Public Order Act by the 2012 Public Order Amendment Decree and this Bill, Bill No. 23 of 2016. This is to comply with anti-terrorism conventions and UN Security Council Resolutions, in particular those passed in the wake of the 9/11 bombings of the World Trade Center in New York City in 2001.

Fiji has also ratified the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the Convention on the Physical Protection of Nuclear Materials, which Fiji has ratified and there are provisions in the Bill to implement our national obligations under this treaty.

SODELPA agrees that Fiji needs comprehensive anti-terrorism legislation, that complies with the Anti-Terrorism conventions, and domestic legislation to implement our treaty obligations on the Nuclear Materials Convention.

We recognise that the impetus for the recent ratification of anti-terrorism treaties are the various United Nations Security Council(UNSC) Resolutions in particular those UNSC Resolutions made after the 9/11 bombing of the World Trade Center in New York City on September 11, 2001 (the 9/11 bombings).

We note however that Fiji has made piecemeal amendment to laws to implement its anti-terrorism treaty obligations. For example, the 2012 POAD introduced a new definition of "Terrorism", while the the Financial Transactions Reporting Act (FTRA) of 2004 also has a definition for "Terrorist Act", "Terrorist Group" and "Terrorist Property". This situation is not ideal to say the least, and a separate anti-terrorist legislation is strongly recommended for the Committee to consider.

The UN Security Council Resolutions call for comprehensive anti-terrorism legislation and in line with that, the Party respectfully submits that Fiji ought to have one comprehensive anti-terrorism legislation; and that the Public Order Act ought to be reviewed comprehensively, so that the various piecemeal amendments to it are not scattered in various decrees and amending legislation.

Recommendation 4

The Social Democratic Liberal Party recommends that Fiji have one comprehensive anti-terrorism law and that these should not be included in the Public Order Act.

Consultation

- ✦ Before concluding we wish to discuss briefly the benefits of effective consultations on reform of legislation, as well as any policy reform.

One of the benefits of effective consultation, is that the people are fully aware of and have contributed to the reforms you are making, so they are supportive of the changes. This aids in the implementation and respect for the reforms and new laws, because you have the buy-in and participation of the affected community, so they can consider that they have 'ownership' of the reform. We therefore urge and we highly recommend that consultations are undertaken in all legislative drafting and government reform programs.

While we appreciate the current consultation process, we are concerned that some provisions of the Bill would have benefitted from more consultation.

In this regard, we note that the consultation process undertaken in the drafting of this Bill have not been outlined. From the party's recollection, we are unaware of any wide ranging consultation undertaken in the process of the drafting of this Bill.

Conclusion

To conclude Honorable Chair and Members of the Committee, on behalf of the the Party Leadership and our members, I expresses again our gratitude for the opportunity to appear before you today.

I hope our observations and recommendations are helpful to the committee, and that we have effectively communicated the concerns we have about this Bill to you.

We are happy to answer any questions you may have regarding this submission.

Vinaka vakalevu.

.....
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APPENDIX 1: UN HUMAN RIGHTS COUNCIL RECOMMENDATIONS FROM THE 2014 UNIVERSAL PERIODIC REVIEW OF FIJI

101.35 Ensure respect for freedoms of expression, peaceful assembly, and association by amending aspects of decrees such as the Public Order Act Amendment Decree, the Political Parties Decree, and the Media Industry Development Decree, that unduly restrict fundamental freedoms (United States of America);

101.36 Favourably consider revising the Public Order Amendment Decree and the Media Industry Development Decree in a way that fully ensures the rights to freedoms of association, assembly, press and expression (Republic of Korea)

101.37 Review and amend or repeal as necessary all decrees limiting freedom of expression and association, particularly the Media, Essential National Industries and Public Order Decrees (United Kingdom of Great Britain and Northern Ireland);

101.38 Bring legislation on freedom of expression, assembly and association in line with international human rights standards, in particular by repealing the "Media Industry Development Decree" 2010 in order to end intimidation and harassment of those that express criticism of the State, to change the climate of fear and self-censorship and to ensure that no one is arbitrarily arrested and detained for exercising their rights (Germany);

101.40 Create and maintain a safe and enabling environment for civil society actors to freely associate, by amending relevant laws and ensuring they are not invoked to curtail the right to freedom of peaceful assembly (Ireland).

Source: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/FJSession20.aspx>

UN HRC Working Group Report:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/28/8&Lang=E>

Addendum to UN HRC Working Group Report:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session20/FJ/A%20HRC%2028%208%20Add.1_E.doc



**Aspire Network Submission - Public Order Amendment Bill to Justice, Law
& Human Rights Commission**

5th October, 2016 – Fiji Parliament, Suva

Presented by Karishma Kaajal Kumar & Luisa Tuilau

1. Organisation Background:

Our Mission:

**“Developing Young People to Develop the Future Generation through Democratic
Innovations”**

Briefly, Aspire Network is a legally registered nongovernmental organization under Fiji's Charitable Trust Act. The NGO's main focus area of work is related to peace, security and development. The NGO is considered as one of the leading peace & conflict politically neutral new generation NGO working in the Pacific Region towards promoting young people's participation in democratic innovation. In Fiji, Aspire Network was the NGO that revived Youth Parliament after 10 years with a new model and conducted the first ever high powered National Security Young Leaders Dialogue. We have hosted several National Dialogues between young Fijians and the Government and the Stakeholders. Aspire Network also partnered in hosting the Pacific Island Development Forum in Fiji and lobbied for 1st National Women Parliament held in August this year. We are members of the United Nations Alliance of Civilization (UNAOC) Network. In 2016, the Founder & Executive Director of Aspire Network was one of the young people out of the 150 that got selected from more than 6000 application worldwide for outstanding contributions to peace and conflict resolution to attend the 7th United Nations Alliance of Civilization (UNAOC) Global Forum in Baku, Azerbaijan. UN Alliance of Civilizations is a United Nations political initiative of the UN Secretary-General. Aspire Network is also a partner of the Commonwealth Youth Peace Ambassadors Network (CYPAN). Our Papua New Guinea Aspire Network Director is also the current CYPAN Pacific Coordinator. Aspire Network PNG is the sister NGO of Aspire Network. Aspire Network is also the 1st regional partner of the World Peace Initiative Foundation.

2. Submission to the Proposed Amendments by the Government in Parliament:

2.1 We support the amendments proposed by the Government in parliament but would like to propose few inclusions on that amendment.

2.2 Inclusion "Special Events Security"

2.2.1 Fiji is aiming to boost its capacity to host high profile international events as such this increases the risk of international conflict spill over in Fiji. This spill over can lead to acts of terrorism and risk public safety of Fiji Citizens. By conflict spill we mean that the main target may not be Fiji citizens but the high profile personalities visiting Fiji. Fiji can become a soft and easy target for terrorist attack since our security forces do not have specialized security equipment such as USA, Australia and New Zealand.

2.2.2 In order for an event to be considered a "special event" four criteria's must be met;

2.2.2.1 Prominent Dignitaries

2.2.2.2 High Level International Meetings

2.2.2.3 Large Crowd Gathering,

2.2.2.4 High National Importance

2.2.3 For this reason we are proposing that "Special Event Security" be include in Fiji's proposed amendment Public Order Bill.

2.2.4 According to Singapore Public Order Act, Minister of Home Affairs may make an order declaring an event as a "special event" which will then allow the Police to exercise the powers to preserve public order and safety of the event. Only major events that are of national and international importance are declared as special events in Singapore.

2.2.5 If an event has been declared as a special event according to Singapore Public Order Act, "Police will be able to exercise enhanced powers to preserve public order and safety. Within the special event area, Police will be allowed to prohibit certain items, stop and search, make arrests, carry out security screening, request reasons for entry and deny entry. Persons

who refuse to comply with Police orders or interfere with the conduct of the event will be committing an offence. The Singapore Police Commissioner has the power to issue directions to event organisers of special events and owners or occupiers of premises within a special event area to take steps to facilitate the security of the area.”¹

2.3 Additional Amendments Proposed

2.3.1 We are proposing additional amendments to the current Public Order Act Review.

2.4 Section 2: Interpretation & Inclusion

2.4.1 Inclusion proposed: "Public Interest"

2.4.1.1 We are also proposing Inclusion of interpretation of "Public Interest". This Act talks about "public interest" but there is no interpretation given in the Act as to what this Act is referring to as "Public Interest"? Since the Act does not explain what is "Public Interest" it opens room for misinterpretation and public confusion, leading to public fear.

2.4.2 Inclusion "Political Meeting"

2.4.2.1 According to the current Act, "Meeting" means an assembly held for the purpose of discussion and matters of public interest or for the purpose of the expression of views on such matters. We feel that the interpretation used for "Meeting" alone in this Act is too broad and opens rooms for misinterpretation by citizens and by authorities that are enforcing this law. For instance, if a family organizes a birthday party, the purpose of assembly is private function but within that birthday party if a group of people gather and discuss matters of public interest or express their views does this mean that Public Order Act has been breached? Such a broad interpretation of "meeting" used in this law generates fear within citizens.

¹ <https://www.mha.gov.sg/Newsroom/speeches/Documents/PublicOrderActBooklet.pdf>

2.4.2.2 We are proposing for inclusion of "Political Meeting". A meeting may be deemed party political in nature and considered breach of the Act if during the meeting, the speakers criticize or support the aims, objectives, actions or make direct reference to the manifesto of the political party for the purpose of gaining political party mileage in winning an election.

2.4.2.3 For example, during 2014 Election Campaign both the leading parties that has won and holds seats in the Parliament visited the area of Nakasi & Naulu to request for votes. During this campaign period the residents requested for bus shelters. Over two years gone by since both the parties won the seats in parliament yet not a single bus shelter has been built in this area. On a daily basis old people and children suffer. The bus does not go into every street. Residents have to wait long on the road to catch the bus. During rainy weather 100's of residents living this area suffer. This is public interest matter, if the residents get together and hold a meeting to discuss a public petition to parliament on this matter they are exercising their constitutional, citizen and democratic rights.

2.4.2.4 This public meeting should not be confused with "political meeting" as the residents are not aiming for political party mileage but seeking a service which they were promised. However if in that same meeting, the organizer of the petition tells the residents do not vote for these parties but vote for another party this can be deemed as political campaigning for another party, hence this is a "political meeting".

2.4.3 Inclusion "Move-On Powers"

2.4.3.1 We are proposing for inclusion of "Move – On Powers" to avoid unnecessary arrest under Public Order Act. Under the Singapore Public Order Act, the Move-On Order is used when an offence under the Public Order Act is about to be committed or when an offence under the Public Order Act has been committed but there is no imminent danger or threat that requires an outright arrest.

2.4.3.2 According to Singapore Public Order Act, "A Move-On Order may remain in force for up to a maximum of 24 hours, and it can include a distance and direction a person must move, or a distance from a place which the person must not enter for a maximum period of 24 hours. An offence occurs when a person, without reasonable excuse, fails to comply with any direction of a Police Officer."

2.4.4 Reduction in Offence Penalty for Section 10:

2.4.4.1 Section 10 creates offences of taking part in a meeting held without a permit or in breach of the conditions of a permit. The maximum penalties are 5 years imprisonment and/or a fine of \$10,000. A person who organises a meeting in breach of the Act is liable to the same penalty.

2.4.4.2 We requesting for reduction in offence penalty for Section 10. This penalty is very high.

Submissions on Public Order Amendment Bill Number 23 of 2016

20 September 2016

Thank you for the opportunity to make a submission on the Public Order Amendment Bill which we note is an opportunity to align to international obligations, in particular the work of the UN Security Council, as well as the opportunity to submit the revision of provisions in order to enable a vibrant civil society to enhance peacebuilding and conflict prevention work.

Our submission draws on femLINKpacific's recommendations to date to the following processes:

- Constitution amendment process
- National Security Defence Review
- The UN Global Study on implementation of UN Security Council Resolution 1325 (UNSCR1325) as well as associated reviews

Overview of femLINKpacific

femLINKpacific was formed and established in 2000 beginning with the Blue Ribbon Peace Vigil, providing a space for the families of the hostages held during the coup of 2000, to have a safe space to talk. A feminist media group emerged, linking the UNSCR1325 to the vision of femLINKpacific and connecting it to women's stories. Today, femLINKpacific is a registered media organisation under the Media Industry Development Authority in Fiji (MIDA) that produces a variety of media and advocacy materials for, by and about women in all their diversities.

femLINKpacific produces a range of media initiatives including community radio broadcasts with our own community radio network, FemTALK 89FM, and publishes a range of resource materials, supporting women's networking, media monitoring and research.

Since 2003, catalysed by our role the Pacific coordinator of the Global Media Monitoring Project (GMMP), we have worked to progress gender equality in and with Pacific media as well as being a leading advocate and demonstrating a Pacific feminist media and the community radio model including with inter-governmental organisations.

In November 2015, femLINKpacific signed a Memorandum of Understanding (MOU) with the Pacific Community (SPC) which provides a framework for collaboration to progress gender equality through and with the media, including the use of media monitoring tools.

In March 2016, femLINKpacific signed onto UN Women's Media Compact that aims to be a mutually beneficial agreement through which valued media partners are invited to scale up their focus on women's rights and gender equality issues through high-quality coverage and editorial decisions, complemented by gender-sensitive corporate practices - this includes news media who are influential actors to advance the gender equality agenda. Recognition of femLINKpacific as a media organisation by the UN was further evident with official media accreditation for the World Humanitarian Summit in May 2016.

The purpose of our organisation

The media is increasingly recognized as having a critical role within development agendas and femLINKpacific works to provide women in all their diversities, including young women and the under-served communities, with access to key information - covering issues of relevance to excluded groups and reflecting their perspectives in public dialogue, leading to shifts in public and political opinion.

We work to create spaces for dialogue that encourage the participation and engagement of women, such as those living with disabilities, LGBTIQ and the under-served communities. We will achieve this through the production of radio and multimedia programming and publications which raise awareness of their value and participation at all levels of decision making. In addition to working with women, young women and the under-served communities as our main target beneficiaries and to strengthen ownership and development results, we also work with decision makers at national, provincial, local and advisory levels to mainstream concerns related to our areas of work and to ensure that they are integrated into the systems, processes and decision making at these levels.

We also work collaboratively as members across several NGO coalitions such as the NGO Coalition on Human Rights. femLINKpacific is also a co-convenor of the Fiji Women's Forum and the Fiji Young Women's Forum and is a member of the Global Partnership for the Prevention of Armed Conflict (GPPAC), World Association of Christian Communications (WACC) and World Association of Community Radio Broadcasters (AMARC).

As an accredited media organisation with the Media Industry Development Authority of Fiji, femLINKpacific produces a range of media initiatives. This includes community radio broadcasts with our own community radio network, FemTALK 89FM, and a range of published resource materials that support women's networking, media monitoring and research such as the Community Radio Times, Pasifika Peace Talanoa,

Community Radio Soundbytes and Women's Human Security First reports and policy briefs.

The Role of Civil Society in Conflict Prevention

While security, conflict prevention and peacebuilding issues have primarily been the domain of the state and the military, successive United Nations Security Council (UNSC) resolutions have brought attention for the need to strengthen institutional arrangements – of government and civil society to influence and implement conflict prevention policies.

In 2014, the unanimous adoption of UNSCR2171 (2014) notes in particular, that some of the tools set out in Chapter VI of the United Nations Charter have not been fully utilized – in particular the need to make greater and more effective use of “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional and subregional organizations and arrangements, as well as the good offices of the Secretary-General”.

It also affirmed the preventive value of sanctions, special political missions, peacekeeping operations and human rights mechanisms, pointing out the preventive role of human rights accountability mechanisms, as well. It emphasized the important role that women and civil society organizations played in that regard.

There is also a critical need to give prompt consideration to early warning cases brought to it, and to dispatch, in appropriate circumstances, preventive political missions and to enhance a human security approach to information gathering and analysis on possible conflicts.

While the state has the primary responsibility to maintain peace and stability, the peaceful settlement of local disputes requires enhanced cooperation and capacity-building with such organizations in early warning and facilitation of preventive actions.

A Human Security Approach

As articulated in the National Security Policy (draft 2016), we must consider a broader notion of security – one that is defined in human, rather than in military, terms.

This requires transformation of existing structures as highlighted at the 5th Fiji Women's Forum including a review of the mechanisms which may currently impede women from participating in local government and governance and decision making processes and to reduce levels of conflict caused by marginalization.

It will also require open communication systems including safety and freedom within Fiji's media landscape in order to ensure all people are free to communicate their concerns and also that they feel that they are being listened to.

It requires collaboration to discuss and build on a broader understanding of the concept of human security, as well as the women, peace and security agenda.

Human security for us is about transforming spaces and processes for women's equal participation – in all our diversities. It is about environment security – from the negative impact of extractive industries to intensifying natural disasters and the impact of climate change on food and nutrition security. It is about ensuring that we have a police force that is resourced and responsive to us.

Prevention strategies must also include investing in women's peace and security by ensuring women can inform and influence decisions which affect their lives including through equal participation in local and national governance. The efforts of community based women's movements must also be recognised and supported to bring about long term prevention and social transformation so that all women and girls can claim their right to peace and security.

The development and production of community media content has given rise to both local and national action plans on women, peace and security through quantitative and qualitative evidence which has also informed the development of the Pacific Regional Action Plan on Women, Peace and Security (RAP-WPS) in October 2012.

femLINKpacific's Women's Human Security First campaign since 2014 has highlighted that development processes and priorities must be defined from the community level up, particularly to prevent conflict over resources.

We need to ensure a shift from reaction to prevention.

Gender and the Arms Trade Treaty

femLINKpacific, as a member of the Pacific Small Arms Action Group (PSAAG), also provides gendered analysis of key security instruments such as the Arms Trade Treaty most recently at the Enhancing Fiji's Arms Control System: National Workshop on Small Arms and Light Weapons (SALW) and Arms Trade Treaty (ATT) held in Suva in May 2016.

The ATT also makes reference to the impacts of armed conflict on women and children: "Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence."

- The framing of women as weak and vulnerable is also often used to construct "a feminized and devalued notion of peace as unattainable, unrealistic, passive, and (it might be said) undesirable." The devaluation of certain perspectives, ideas, and interests because they are marked as "feminine," coupled with the equation of masculinity with violence gives war positive value as a show of masculine power.
- This means that even if women do participate in negotiations or discussions on matters related to peace and security, their positions or ideas are often forced to conform to the dominant perspective in order to be taken seriously.
- This is not to say that women bring one perspective to a conversation and men bring another. It rather highlights the gendered understandings of war and peace, disarmament and armament, strength and weakness, which dictate what is considered "acceptable" by the dominant perspective in such conversations.
- UNSCR1325 on Women, Peace and Security and UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) fortify demands that commitments to gender equality and women's human rights in conflict and post-conflict environments require comprehensive participation and integration of women's experiences, expertise and social and economic realities must be taken into account.

CEDAW General Recommendation 30 on women in conflict prevention, conflict and post-conflict recommends State parties:

"Address the gendered impact of international transfers of arms, especially small and illicit arms, including through the ratification and implementation of the Arms Trade Treaty.

Requires stronger regulation of firearms through enforcing the ATT, UN Programme of Actions on Small and Light Weapons and other related UN Security Council resolutions."

- State and civil society groups in partnership with international organisations strengthen the collection and analysis of sex- and age-disaggregated data on the impact of weapons.
- The motivation in documenting and highlighting differential impacts on women should be to ensure that they receive equal and adequate protection, care, rehabilitation, and participation as men in preventing and recovering from armed conflict and armed violence

- Gender diversity in disarmament, nonproliferation, and arms control must promote the participation of women but also of those not conforming to dominant gender or sexuality norms.
- Armed violence also has differential impacts on LGBT people, which should be reflected in discussions about weapons, conflict, and violence: ensure a range of perspectives can be presented in discussions and negotiations, including critiques of dominant structural inequalities and normative framings.
- “Effective” participation of women and others creates space for alternative conceptions of security and focus on preventing armed conflict and armed violence rather than on responding to it with military force.

Nuclear Disarmament

In reference to the section *Possession or use of nuclear material*, we emphasize that preventing the illicit flow arms including the prevention of transport of nuclear arms/weapons is a critical role for member states to uphold UN General Assembly adopted resolution 3477 (1975) on the establishment of a nuclear-weapon-free zone in the South Pacific as well as the Treaty of Rarotonga (1985).

In 2008, Fiji declared its intent to implement UNSCR1540, indicating that it supports the prohibition, destruction, and elimination of all kinds of weapons of mass destruction and more recently the United Nations General Assembly Resolution 70/48 (the Humanitarian Pledge).

What is vital is that the state reaffirms the importance of full compliance with existing, legally-binding arms control, non-proliferation and disarmament agreements and obligations as an essential element of international peace and security.

In our region, Environmental Security is connected to the reality in our region due to protracted nature of nuclear testing. Due to our connections via the sea, all Pacific states have been connected and are thus affected by the testing.

It is vital that there is support for a strong Pacific Island government and non-government organisations movement against nuclear weapons testing and the illegal transportation through our oceans, particularly as we are already aware in this region of the reality of the ocean pollution and impact on the food chain and subsequent genetic damage to human populations – the result of nuclear fallout has already been experienced by Pacific islanders.

femLINKpacific, as a member of GPPAC and International Campaign to Abolish Nuclear Weapons (ICAN), reaffirms that emphasis on the catastrophic humanitarian consequences of nuclear weapons is a reality for the Pacific Island region which continues to bear the impact of the use and testing of nuclear weapons.

This is more than just about the prevention of transportation but an urgent need to call for complete disarmament in the spirit of Fiji's endorsement of the Humanitarian Pledge and its commitment to work for a new legally binding instrument for the prohibition and elimination of nuclear weapons.

A crucial step is for the state at the United Nations General Assembly (UNGA) to vote on a resolution which prohibits nuclear weapons for all countries is needed.

The Non-Proliferation Treaty (NPT) is the main treaty on nuclear weapons. No significant advances have been made on nuclear disarmament in the NPT's history.

The NPT has mainly been enforced by nuclear armed states to prevent proliferation, but they have not followed their treaty obligations under Article VI, to act in good faith on their own nuclear disarmament. This has not happened. The NPT Plan of Action of 2010 has also not been implemented.

Many non-nuclear states have arrived at the conclusion, that the continued threat of any use of nuclear weapons needs to be prohibited. These are the only weapons of mass destruction not yet prohibited and banned by a legally binding treaty.

The scientific, medical and humanitarian evidence on the impact of nuclear weapons and the catastrophic consequences of their use, for world health, food security, agriculture, climate change and, indeed, human survival, has been emphatically confirmed by the three humanitarian initiative conferences. At the end of the third conference, the host country took the unusual step of making a country commitment with the Austria Pledge, to advance the negotiation process to fill the legal gap in prohibiting nuclear weapons.

Women, Peace and Security

It has been recognised that gender equality and women's leadership are central ingredients, and must be strongly grounded in human rights for peace and stability.

In fact, as we have experienced in Fiji – women have led the peace movement and mobilised for peace when our country has faced some of our darkest hours and there is a substantial link between women's meaningful involvement in efforts to prevent, resolve and rebuild from conflict and those efforts' effectiveness and long-term sustainability, as well as the need for greater resourcing, accountability, political will and attitudinal change.

We, therefore, draw attention to successive UN Security Council Resolutions including UNSCR1325 (2000) and UNSCR2242 (2015) which has adopted language to improve the role of women's civil society to progress a gender inclusive Peace and Security Agenda to improve implementation of its landmark women, peace and security agenda, covering its work on countering violent extremism and terrorism.

The adoption of UNSCR1325 (2000) had underscored the pivotal link between gender equality and international peace and security. One common theme had emerged from three major reviews – of peace operations, the peacebuilding architecture and women, peace and security.

The findings of the Global Study on UNSCR1325 has also identified that resolutions on counter-terrorism should further recognize the role of women in prevention and response frameworks.

While terrorism was not mentioned in UNSCR1325 (2000), UNSCR2122 (2013) refers to the Security Council's intention to increase its attention to WPS issues in all thematic areas of work on its agenda, including in relation to peace and security threats caused by terrorist acts.

The UNSCR2178 (2015), which focuses on the emerging threat posed by foreign terrorist fighters, calls for the need to empower women as a prevention response to the spread of violent extremism.

In addition, during the annual debate on Women, Peace and Security on 28 October, 2014, a Presidential Statement was issued which reiterated the role of women's participation and empowerment as a buffer to the spread of extremism while also noting the specific consequences of violent extremism on the rights of women and girls.

Effective Countering Violent Extremism (CVE) strategies must be coordinated, multi-sectoral approaches that include high-level diplomacy and leverage military action

with governance, development and human rights programming that include the promotion of gender equality. As extremist groups continue to grow in power and influence, so too does the focus on military solutions to stop their progress.

As such, a military and security response, while limiting their capabilities, ultimately cannot stop the spread of their ideas.

Inter-cultural and cross-cultural dialogue and exchange can also play a critical role in dissuading violent extremists. Intolerance is, in part, bred out of ignorance. Dialogue is necessary between and within cultures through social interaction and education.

Women can and must have a safe space to engage in these types of dialogues, as they are often the first to reach across divides and build bridges.

Peace is in the interest of women who are impacted differentially by conflict and also tasked with the business of living – of keeping families intact and ensuring livelihoods.

It is important to not essentialize women and assume that their natural disposition will be towards peace simply because they are mothers.

The traditional roles ascribed to women in many societies as wives and mothers often uniquely position them to act as powerful agents of prevention. Yet, while mothers are their children's first teachers, what is taught is not always peaceful and tolerant. When considering how to engage and empower women for countering violent extremism, it is important to understand the varied roles of women in this area including the motives that move women towards violent extremism.

Culturally relevant solutions are an important step towards increasing the efficiency of countering violent extremism and this requires local knowledge, without which a women's rights agenda is not sustainable. It is also important to remember that women are not a monolithic social group.

Their potential and their power will be shaped by their self-perception and how their communities perceive them. They must be protected and able to use their voice. Their perspectives on and approaches to countering violent extremism will be distinct based on their lived experiences.

Legal reforms that are then followed up with implementation can provide an important avenue towards improving the lives of women and reinforcing their ability to lead as change makers in countering violent extremism.

In addition to UNSCR2122 (2013) which puts stronger measures in place for women to participate in all phases of conflict prevention, resolution and recovery, placing the onus of providing them with seats at the decision making table, the adoption of

resolution 2242 (2015), member states are further reminded of the need to integrate women, peace and security concerns including dedicating consultations to the topic of women, peace and security implementation.

These resolutions recognise and reaffirm the role of women's civil society to ensure the participation and leadership of women's organizations in devising strategies to counter terrorism and violent extremism and progressing a human security agenda with a strong emphasis on participation for prevention.

Increasing recognition of the need to situate counter terrorism and violent extremism responses more firmly within a women, peace and security framework has brought into the focus the potential ways to engage women as leaders and partners in prevention and response frameworks. UNSCR1325 (2000) and the six resolutions on women, peace and security that have followed it emphasize the role that women play in international peace and security efforts, including conflict prevention and peacebuilding. Women are often uniquely positioned within their families and communities to provide essential information to those working to counter extremism.

In many cases, CVE practitioners engage with only certain community gatekeepers and neglect the input of women and women's civil society groups who may also have access or intelligence.

Anecdotal evidence also shows that family ties are a strong predictor of extremism and that women are central to understanding how to leverage the role of the family in promoting positive change.

Recalling the real spirit of UNSCR1325, which was reminding the Security Council that women's leadership is an untapped resource for peace and that injustices and inequalities embedded in gender relations are a long term threat to development and stability, it is important to recognize that gender equality represents a buffer to the spread of radicalization and violent extremism.

As such, strategies to counter violent extremism that promote women's participation, leadership and empowerment are critical.

We must also be careful when securitizing women's roles in strategies to counter violent extremism. By doing this, we run the risk of further marginalizing women and women's organizations, potentially making them targets for extremist groups. In many situations, efforts to counter terrorism and violent extremism have resulted in an adverse impact on women's rights and women's rights organizations.

For example, funds used to combat terrorism have been diverted from budgets addressing broader socio-economic conditions, under-resourcing the issues that are often of priority to women.

At the same time, international restrictions on financing related to terrorism need to be reviewed to ensure they do not discriminate against civil society women's organizations that have the potential to counter violent extremism.

The Role of Media including Community Media

Media and communication can be a powerful force for positive social change. Radio, TV, printed and social media, as well as mobiles and interpersonal communication, can engage large numbers of people relatively cheaply - facilitating the exchange of information and ideas, dialogue, discussion and debate.

This stimulates face-to-face communication among communities and policy-making structures that can benefit large numbers of people.

Media can give voice to all members of society in national debates that will shape the nation's future and foster an engaged public calling for transparency and accountability from its government. It can also play a role in informing the public about topics such as education, climate change, health, access to justice, gender inclusiveness in decision making that could improve the life of the citizens.

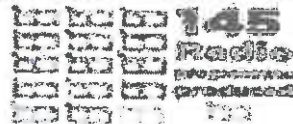
Identified in Section J of the Beijing Platform for Action, and as femLINKpacific has demonstrated, a feminist media approach can contribute to strengthening national and regional networks of civil society groups and engaged media professionals to bring about a qualitative and quantitative increase in women's participation in the news media as well as enhance an approach to media professional ethics that integrates gender equality concerns.

Building on the work of enabling women's access to appropriate and accessible media technology is resulting in enhancing media literacy and production as proponents for a more gender-responsive media. A community media approach has been enabling a broad spectrum of opinions to be shared, as well as ensuring that politicians and government authorities respond to the needs and priorities of its citizens.

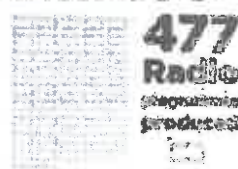
Our current community media database has a core group of 380 rural women leaders who represent more than 10,000 women and further 15,000 community members - these women meet via our district level convenings which are held every month.



2016 In numbers



2015 in numbers



We also bring together 8 women to each of the 3 divisional consultations and in 2016 we have begun national convenings which include a learning exchange and interactive dialogue with government officials. Also included in the national consultation is the production of the new Radio with Pictures series in partnership with Fiji Television. Each level of convenings enables the women leaders to build solidarity and understanding of the common and distinct realities for their divisions and develop national level recommendations on priority issues.

Additionally, our network of women leaders are provided a national space to reaffirm their right to participate in decision making and claim their communication rights. The first national consultation was convened in March weeks after TC Winston bringing together 40 women including those able to travel from the most affected communities: <http://www.femlinkpacific.org.fj/index.php/en/actions/archive/431-femlinkpacific-s-inaugural-national-consultation-march-2016>. 58 women leaders from 47 networks/organizations representing 20,030 members participated in the 2nd consultation in June: <http://www.femlinkpacific.org.fj/index.php/en/actions/archive/441-femlinkpacific-s-2nd-national-women-s-human-security-first-consultation-june-2016>. 32 participants including young women, LGBT and disability right activists were included in the 8 episodes of Radio with Pictures

Recommendations

Translating these UNSC resolutions into national legislation means

- Ensuring a supportive legal framework for civil society and access to justice; public and political environment for civil society; access to information; public participation of civil society actors, and human rights education;
- Ensuring the need to protect and promote the right to freedom of association, in particular civil society's right to access resources for its vital work, and to be free of arbitrary registration and reporting requirements that seek to hinder the work and safety of civil society;
- Recognising that threats to civil society including illegitimate restrictions to their rights to freedom of expression, association and peaceful assembly, as well as reprisals against those seeking to cooperate or cooperating with the United Nations and other international bodies;
- Ensuring the understanding of "minority groups" in line with international human rights law

It is crucial that there are political spaces for the many voices of women to be heard – by the state, the media and civil society networks as well as within our local communities.

It is in this space that we must ensure that we do not securitize women's roles in strategies to prevent the resurgence of violent and armed conflict and in countering violent extremism because in doing this, we run the risk of further marginalizing women and women's organizations.

What is needed is a human security approach and a focus on the development indicators that may lead to a range of conflicts including violent extremism.

By addressing these everyday needs, we can help create an environment that allows for women, their families, and communities to fully participate in prevention.

SUBMISSION ON THE PUBLIC ORDER BILL BY FIJI REVENUE & CUSTOMS AUTHORITY

ON 4TH OCTOBER 2016

INTRODUCTION

FRCA acknowledges the threat of terrorism is a serious concern globally and as a member of the UN recognizes the importance of complying with the UN Security Council Resolutions in respect of counter terrorism and other related matters.

FRCA further notes from the explanatory notes that there are a number of domestic laws which currently do not reflect these international requirements and understands that this Bill is to address this issue.

How can FRCA assist in ensuring that Fiji's Border is protected from the movement of nuclear weapons into the country?

The Customs Division of FRCA is mandated to protect the security of the nation at the border apart from its role in collecting 80-90% of Government Revenue and facilitating trade and travel. The role of customs in protecting Fiji's border is very crucial as the decision on when goods are given clearance to enter or imported the country rests entirely with Customs.

Before clearance of goods are made, custom officers at the border must be satisfied that these goods are not restricted or prohibited imports/exports. In addition to performing its duties at the Border, Customs also acts on behalf of 23 other Government Departments and Statutory Bodies.

The 23 Government Departments and Statutory Bodies include:

1. Fiji Police Force
2. Biosecurity
3. Department of Immigration
4. Exchange Control Unit - Reserve Bank of Fiji
5. Financial & Intelligence Unit
6. MSAF
7. Ministry of Forestry
8. Ministry of Fisheries
9. Department of Environment
10. I-Taukei Affairs
11. Department of Minerals
12. LTA

1) what about the transfer of money to terrorist organ

2) Need for specific laws

3) Red, Yellow & Green flags

4)

13. Ministry of Trade
14. Department of Energy
15. Ministry of Justice
16. Ministry of Economy
17. Civil Aviation Authority
18. Ministry of Tourism
19. Telecommunication Authority
20. Department of Trades & Standards
21. Pharmaceutical Council
22. Tobacco Control Unit
23. Ministry of Health

Customs on behalf of these government agencies protects the border from ensuring that no approval/clearance is given for the importation, exportation, transshipment of goods that are prohibited or restricted from entering/leaving the country.

The law that regulates this is the Customs Prohibited Imports and Exports Regulations (CPIER). The CPIER sets out different categories of restricted goods whether imported or exported. These are :

Category of goods	Example
Absolutely prohibited	<ul style="list-style-type: none"> ❖ Goods containing words which are seditious; ❖ Counterfeit coins/notes ❖ Dangerous/illicit drugs ❖ Chemical warfare gas/devices and apparatus
Imported/exported subject to conditions	<ul style="list-style-type: none"> ❖ Fireworks ❖ Methylated spirit ❖ Whales tooth ❖ Certain animal species ❖ Mahogany
Imported/exported subject to license by minister	<ul style="list-style-type: none"> ❖ Gold ❖ Minerals ❖ Motor vehicles
Prohibited under other laws	<ul style="list-style-type: none"> ❖ Arms and ammunition

POWERS OF CUSTOM OFFICERS

As the Border Agency acting on behalf of the other Government Agencies, Custom Officers have the powers to detain/destroy absolutely prohibited goods. They also have powers to detain any goods imported/exported which are prohibited/restricted under the CPIER. These powers are legislated under section 129 of the Customs Act.

↓
Customs

LEGISLATION	POWERS
Customs Act	Section 129 Detention Section 104 - 109 Require ship for boarding and search Section 111 – Search Section 112 Entry, detention without warrant Section 114B Examine records Section 122 Prevent flight of aircraft before customs clearance
Fisheries Act	Section 7 – power to examine and detain fishing vessels
Illicit Drugs Control Act	Section 12 – investigate, board, search and seize Section 29- appoint suitably trained person to perform the functions of a customs officer
Marine Spaces Act	Section 16 Licensing Offence liable on conviction to a fine not exceeding \$100k. Section 17 Fisheries Officers Includes custom officers appointed under the provisions of the Customs Act, as a fisheries Officer board foreign fishing vessel, inspection, search, if reasonable grounds to believe an offence has been committed, detain the vessel

Comments on the Public Order Bill

Section 12H

FRCA notes Section 12H of the Public Order Bill which prescribes offences relating to importation and exportation of nuclear materials to and from Fiji if a person imports/exports without permit given by the Minister.

Given the role of Customs Division in the clearance of goods that arrives at the Border, it is recommended that Customs Officers be given the powers to detain such goods stated in Section 12H if no import permit is given by the Minister. To give this to effect, FRCA requests that a provision be made to the Bill allowing detention of goods by Customs at the Border. In addition, once this Bill is enacted by Parliament, FRCA will make submissions for amendment to its Customs Prohibited (Imports & Exports) Regulations to include the Public Order Act as a legislation administered by Customs at the Border.

Section 12M (5)

FRCA notes the use of the term 'authorized law enforcement agencies' however this is not defined in the Bill and recommend for a definition of this term in the Bill.

Section 12P

This section relates to the process leading up to the declaration of a Specified Entities. Specified Entities is defined in section 3 as an entity for which a declaration has been made under section 12P or United Nations listed entity as described in section 12Q.

FRCA notes that the processes under section 12P appears to be limited only during peace time, where the declaration of a special entity is made by the Minister subject to an order made by the court upon the application through the Attorney General. We understand that applications made to court requires compilation of affidavit (annexing documentary evidence) to support the test that the Minister has reasonable grounds to believe that an entity has committed, or attempting to commit a terrorist act which takes considerable time to prepare and this may be reasonable during peace time. However the question that arises is what happens during state of emergency where time is of the essence?

On this basis FRCA recommends for a new sub section to section 12P which gives powers to the Minister to make a declaration of a Specified Entity for an interim period of 72 hours during state of emergency.

General Observations

Finally FRCA noted that the Draft Bill is focusing on persons and offences that they are liable for particularly in respect of importation or movement of goods that contain nuclear or chemical radiation materials. The Bill does not address the powers of detention of goods, storage facility of these goods and how these are disposed of.

Further there is no provision in relation to OHS related issues and this is a concern to FRCA particularly when inspection and clearance of goods at the border is done by custom. These custom officers may be exposed to chemical/nuclear radiation goods and we respectfully recommend that legislative provisions are in place for the protection of custom officers when it comes to inspection and clearance of such goods.

 **Submission Ends -**

NGO Coalition on Human Rights

Towards a Fiji that respects and protects human rights

NGOCHR Public Order (Amendment) Bill 2016 Submission

5 October 2016

The NGO Coalition on Human Rights (hereafter 'the Coalition') is a coalition of civil society organisations that works towards a Fiji that respects and protects human rights and fundamental freedoms within the framework of the rule of law.

The Coalition acknowledges the State's proposed Public Order (Amendment) Bill 2016 (hereafter 'the Bill'), and welcomes the opportunity provided by the Justice, Law & Human Rights Standing Committee to present a submission. While the Coalition recognises the need for legislation such as the Public Order Act, including the Bill before the Standing Committee, we submit herein suggestions for the improvement of the principle act, as well as a brief analysis of the proposed Bill, highlighting issues and an overview of recommendations for both the proposed Bill and the Principle Act.

Firstly, in calling for a review of the Public Order Act [Cap 20], our hope is that the Standing Committee will also take into account considerations raised within this submission. Particularly in the effort of ensuring that legislation pertaining to public order is balanced and pragmatic in its approach to safeguarding public order and citizen's fundamental rights to *Freedom of Speech, Expression & Publication, Freedom of Assembly and Freedom of Association*, enshrined in sections 17, 18 and 19 respectively within Fiji's 2013 Constitution. Secondly, by highlighting the issues from a human rights perspective of the proposed Bill we submit herein strong recommendations to improving its compliance to maintaining a balance between public order and the safeguard of Fiji's human rights obligations.

The NGOCHR Secretariat, the Fiji Women's Rights Movement makes this submission on behalf of the Coalition. This submission is made up of three parts: (1) brief highlight of concerns of the Public Order Amendment Decree 2012 in comparison to the 2013 Constitution and the International Covenant on Civil and Political Rights, (2) brief analysis of the proposed Bill and (3) recommendations to improving the compliance of the principle act as well as the proposed Bill.

i. Brief highlight of concerns of the Public Order Amendment Decree 2012 in comparison to the 2013 Constitution and the International Covenant on Civil and Political Rights

In making this submission, it would be remiss of the Coalition not to highlight the recent political arrests where several prominent political figures were detained over the weekend for political opinions shared at a NGO-organised panel, the week prior.

Your honourable Chair and fellow committee members, we submit herein that the restriction on political speech or on debates of questions of public interest, where there is no reasonable proof of incitement to violence, undermines true democracy. These recent arrests have highlighted this concern and brought public scrutiny on the Public Order Act and its Amendment made by decree in 2012 (Amendment decree in 2014 repealed sections 8,9, 11 and 11A of the Principle Act). Moreover it has highlighted that while the Principle Act and its amendments personify limitations to fundamental freedoms outlined in the 2013 Constitution- these restrictions need to be reasonable and proportionate in its application, to avoid contravening the spirit of the Bill of Rights, within the 2013 Constitution.

The Prime Minister, Frank Bainimarama, has made public remarks of Fiji's return to a true democracy.¹ The Public Order Amendment Decree (POAD) 2012, including that in 2014 provided substantive additions and changes to the Principle Act. As the arrests recently have indicated, some of the changes have been perceived as arbitrary in nature and in direct contravention to fostering a democratic culture in Fiji.

A democratic society calls for an environment that fosters a democratic culture. This calls for the respect of civil and political rights, encompassed in the International Convention on Civil and Political Rights (ICCPR), particularly Articles 19, 21 and 22, which are similar to sections 17, 18 and 19 (previously mentioned) in the Bill of Rights.

The International Convention on Civil and Political Rights:

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 21

¹ The Fijian Government (2016) **HON PM BAINIMARAMA SPEECH AT THE WELCOME BANQUET FOR NZ PRIME MINISTER JOHN KEY (6/9/2016)** <http://www.fiji.gov.fj/Media-Center/Speeches/HON-PM-BAINIMARAMA-SPEECH-AT-THE-WELCOME-BANQUET-F.aspx> (Accessed 18/9/16)

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

These rights adhere to mutual respect and are bound by special duties and responsibilities. We respect the need for statutory powers on public order but reiterate an emphasis on rule of law subjected on the principle of necessity on the citizens that it governs.

II. Brief Analysis of the proposed Bill from a human rights perspective

- a) Essentially States have a responsibility to protect people from becoming victims of a crime, including so-called acts of 'terrorism'.
- b) While we acknowledge that States should investigate criminal offences including acts of 'terrorism' through a fair trial process, we note too that this is a highly politicised and emotional term. And rather it should suffice that it is covered under the criminal justice system.
 - Section 12P(2) which provides that the court must deal with the Minister's application ex-parte (including other private administrative sittings) threatens the right to a fair trial safeguarded under sections 14-16² of the 2013 Constitution Bill of Rights.
 - Section 12P(3) lowers the burden of proof for serious crimes, which can foreseeably result in an arbitrary curtailment of freedom of expression, movement and association, to satisfied 'on reasonable grounds' rather than the usual criminal threshold of 'beyond reasonable doubt'.³

² Section 14 Rights of Accused Persons, Section 15 Access to Courts or Tribunals and Section 16 Executive and Administrative Justice.

³ The recent arrests of political commentators is an indicator of this.

- There is no specific section within the Bill that provide for clarity and process where an affected individual or organisation under section 12 can seek review of orders. This ambiguity can severely restrict rights of accused individuals or organisations.

The main challenge with 'terrorism' related offences is often they are considered thought (or spoken) crimes- relying on threats, or expressed intentions, regardless of capacity to carry out criminal acts. This can lead to the imposing of heavy, unnecessary and disproportionate penalties based on fear associated with such crimes. In essence, they should be treated as ordinary criminal acts, where the state has a duty to protect people within its territory from violence.

There is also a concern that the proposed Bill is too vague and overly broad for example- section 12K on hijacking a ship. This could apply to environmental activist groups that board ships in order to stop whaling, as much as it could to a 'terrorist organisation'.

III. Recommendations

The Coalition, strongly calls for following recommendations to be taken into consideration:

In relation to the Principle Act:

1. Reconsider imposing the proposed Bill as there is limited technical support or clarity on governance structure to its enforcement.
2. Include clear provisions as to the definition of what constitutes a 'public meeting'. This provision should not be so overt as to contravene the Bill of Rights, of the 2013 Constitution.
3. Include provisions that guides and gives clear police operational procedures to be based on the principle of proportionality. Taking into consideration the following:

- Is the purpose sufficiently important to justify the restriction (i.e., are there relevant and sufficient reasons to justify the restrictions)?
- Will the measures proposed achieve that purpose?
- Are the measures to be taken the least restrictive to achieve the intended purpose?
- Are the restrictions to their constitutional rights necessary to meet the legitimate aims set out in the Bill of Rights concerned?

4. Include provisions that provide clear guidelines of necessity for enforcement.

In relation to the Proposed Bill:

1. Reconsider provision section 12P(2) as it threatens the right to fair trial safeguarded under sections 14- 16⁴ of the 2013 Constitution Bill of Rights or amend this provision to reflect its fair compliance to sections aforementioned in Fiji Constitution 2013's Bill of Rights.
2. Reconsider the change of burden of proof for serious crimes under section 12P (3).
3. Provide a specific section within the proposed Bill that provide for clarity and process where an affected individual or organisation under section 12 can seek review of orders.

ENDS

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⁴ Section 14 *Rights of Accused Persons*, Section 15 *Access to Courts or Tribunals* and Section 16 *Executive and Administrative Justice*.