

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ATROCITY CRIMES RISK ASSESSMENT SERIES

FIJI

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A U S T R A L I A

INTRODUCTION

The Framework of Analysis for Atrocity Crimes (2014) was developed by the United Nations Special Advisors on the Prevention of Genocide and the Responsibility to Protect, to support the assessment of atrocity crime risk. This report assessing the risk of atrocity crimes in Fiji is guided by the Framework, highlighting the risk factors and indicators that are most applicable to the current situation in Fiji. It should be noted that the presence or absence of risk factors does not guarantee that an atrocity crime will or will not occur.

Fiji is a Pacific archipelago made up of 332 tropical islands, 106 of which are inhabited.¹ The Indigenous peoples of Fiji are known as i-Taukei. From the late 1800's over 60,000 Indians were brought to Fiji as indentured labour on sugar plantations.² Historically known as Indo-Fijians, the introduction of the 2013 Constitution after a military overthrow of the government stipulated that all of Fiji's population be considered "Fijian". There are longstanding tensions between the two groups, and conflict over political control. This struggle for power has resulted in four coups since 1987, three of which were instigated by the Fijian military, while in 2000, a civilian coup was carried out to remove the first democratically elected Indo-Fijian Prime Minister. The Fijian military also became involved in this civilian coup.

This assessment has found that the current risk of atrocity crimes occurring in Fiji is low-to-moderate. Five of the eight common risk factors (RF) are of significance: RF 1 (armed conflict and instability), RF 2 (violations of human rights), RF 3 (weakness of state structures), RF 7 (enabling circumstances), and RF 8 (triggering factors). Two specific risk factors are notable: RF 9 (intergroup tensions or patterns) and RF 11 (signs of widespread attack against any civilian population).

Recent events have contributed to underlying issues that may contribute to the risk of atrocities in Fiji. The Covid-19 pandemic, in particular, has exacerbated existing socio-economic and humanitarian issues. It has also increased the already high rates of gender-based violence. The exploitation of Covid-19 to impose Draconian measures without consultation or warning has also emboldened Fiji's security sector, resulting in heightened tensions between police and the community, and a culture of police brutality and impunity. Fiji's MIDA laws restrict and censor the media, however though its restrictive provision has not been used since its enactment in 2012. Over the past years, the government has often criticised civil society organisations, indicating a lack of tolerance of opposition voices. Land remains a contentious issue and has given rise to increasing tensions among the i-taukei community, particularly with regard to continued politicisation of land and government reforms such as the land bank. Finally, severe weather events, while always an issue in Fiji, appear to be intensifying as a result of climate change and result in extreme social and economic damage.

There have however, been some concerted efforts by the government to address social and economic issues. Fiji continues to strengthen its advocacy on climate change and has committed to developing a National Action Plan to reduce violence against women and children. It has also taken meaningful steps towards combatting human trafficking and child labour.

MAP



Map Source:
1. My Fij

FRAMEWORK OF ANALYSIS

The Framework of Analysis consists of fourteen risk factors for atrocity crimes, each of which is accompanied by six to eighteen specific indicators which help to determine the level of risk. This report will deal only with information relevant to Fiji, and as such does not include risk factors that are not applicable to the situation in Fiji.

The risk factors are separated into two groups: Common Risk Factors, factors which increase the probability of atrocity crimes occurring; and Specific Risk Factors, which relate to the risk of genocide, crimes against humanity, and war crimes. Not all indicators or risk factors need to be present in order to demonstrate a significant risk, and they are not ranked by importance.

FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES		
COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
Genocide		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
Crimes Against Humanity		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
War Crimes		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations
Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be accessed at the UN website at www.un.org .		

COMMON RISK FACTORS

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Risk Factor 1: Situations of Armed Conflict or Other Forms of Instability

Indicator 1.3 – Humanitarian Crisis

Due to Fiji's geographic location, it is often subject to natural disasters such as cyclones, tsunamis, floods, and droughts. Annually, Fiji endures the destruction of homes and vital infrastructure such as hospitals, farms, electricity systems and sewage systems as a result of these natural disasters,³ along with barriers to health care, food and other humanitarian needs.

The effects of climate change on Fiji include an increase in natural disasters, as well as sea level rise which has placed Fiji's 300 low-lying islands in a constant fight for survival.⁴ The World Bank reports that the societal and economic effects of climate change will include: higher rates of diseases, increasingly destructive storms, disruptions to agriculture due to seawater damage, and massive economic impacts,⁵ and it is also anticipated that sea level rise will lead to displacement of communities (such as Vunidogoloa, the first Fijian village forced to relocate to higher ground),⁶ internal migration and potentially inter-communal conflict.

The Covid-19 pandemic has exacerbated Fiji's humanitarian and socio-economic situation. The Bureau of Statistics' (FBS) Household Income and Expenditure Survey estimated that 29.9% of Fiji's population were living below the poverty line in February 2020.⁷ In April 2021, following an outbreak of Covid-19, the Fijian government introduced a suite of measures including lockdowns and containment zones.⁸ These measures, though intended to protect public health, were introduced without consultation or warning, and had a serious impact, in particular, on the availability of food and health care. In June 2021, a number of protests broke out across Fiji over food shortages and a lack of government support for those impacted by the pandemic.⁹ Some people reported being prevented from leaving their house to access bathing and drinking water and other public hygiene and sanitation facilities.¹⁰ Food costs remain high in Fiji today. The RBF's April 2022 Economic Review states that food costs have increased by 7.8% in one month and are the primary driver of Fiji's inflation rate of 4.7%.¹¹

The 2021 Covid-19 outbreak exposed the fragility of Fiji's health care system. By July, Fiji's largest hospital was at capacity as the spread of infection was listed by the WHO as one of the highest in the world.¹² Fijians were advised to self-isolate at home if they felt unwell, despite many living in multi-generational, crowded housing.¹³ Although temporary facilities including gyms and a football arena were converted into testing clinics,¹⁴ this did little to contain the spread of the virus. In August 2021, Radio NZ reported that 50% of Covid-19 deaths occurred at that person's home.¹⁵ The morgue in Fiji's capital, Suva, was also reported to be at capacity in July, prompting the Fiji Ministry of Health to urge people to collect their loved ones.¹⁶

The pressure on hospitals had diminished by November 2021, with 90% of the population over the age of 15 fully vaccinated.¹⁷ However, the inadequate response of Fiji's health care system to the Covid-19 outbreak raises serious concerns about its ability to meet the healthcare needs of Fijian communities, who also have high rates of non-communicable disease such as diabetes and cardiovascular illness. Worsening poverty and food access may lead to an increasing burden on a fragile health system.

Indicator 1.4 – Political Instability Caused by Abrupt or Irregular Regime Change or Transfer of Power

Fiji, although currently politically stable, has a relatively weak democratic system that has been plagued by coups over the past several decades. Fiji is currently in the lead up to an election, to be held in 2022. Fiji has had two elections under the 2013 Constitution and each time was won by the current government under the leadership of Prime Minister Frank Bainimarama. Under the 2013 constitution, Fiji is considered a democracy but the military plays a broad role in governance under the guise of national security.¹⁸ Although the last coup was deemed the 'coup to end all coups' by Bainimarama in 2006, Fiji's history of political instability and a lack of separation between the state and military may influence the likelihood of future election misconduct or even violence. The role of the church in previous coups has been acknowledged, with Reverend James Bhagwan, the General Secretary of Pacific Conference of Churches, stating the Methodist Church would not play a role in any future coup.¹⁹

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

A key piece of legislation governing the registration and conduct of political parties in Fiji is the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013. The 2022 election period has seen a record number of minor parties emerge in Fiji, for example, placing the total number of registered parties at 9.²⁰ The Act requires that a political party have a minimum of 5,000 members that are spread out across Fiji. Another piece of legislation that governs political parties in Fiji is the Electoral Act 2014. Critics argue that recent amendments to this Act stifle the ability of political parties to mount an effective campaign,²¹ in that if a party promises during an election campaign to make a “financial commitment”, then it must “immediately” provide details on costings, where the money will be sourced, and how the expenditure will be allocated in the government’s account books.²² It will be important to monitor how this legislation operates over the coming election period.

Indicator 1.8 – Economic Instability Caused by Severe Crisis in the National Economy

The Covid-19 pandemic imposed a massive toll on Fiji’s economy. In particular, the severe impacts on Fiji’s tourism industry, debt-to-GDP ratio, and fiscal deficit highlight the urgent need for economic reform.

Fiji’s tourism industry – which contributes nearly 40% to Fiji’s GDP and employs roughly 150,000 people²³ – was significantly impacted by the closure of borders in early 2020 and the Covid-19 outbreak in spring 2021. Figures from the Reserve Bank of Fiji (RBF) and the International Monetary Fund (IMF) estimate that tourism receipts – that is, the money flowing in and out of the government’s tourism account – dropped 84.8% in 2020 and 91.7% in 2021.²⁴ Importantly, this reduction in government revenue resulted in Fiji increasingly seeking out foreign loans and grants, and while these were arguably²⁵ necessary to cushion the blow of Covid-19, they have undoubtedly created problems for Fiji’s economy.²⁶ A 2021 report by the IMF highlights that Fiji’s debt-to-GDP ratio ‘jumped 32 percentage points to 81 percent’ in the financial year 2020-2021.²⁷ Whilst the majority of this public debt is held by domestic residents – in particular the Fiji National Provident Fund – a growing amount is now held by non-residents.

Indicator 1.9 – Economic Instability Caused by Acute Poverty, Mass Unemployment or Deep Horizontal Inequalities

One of the many impacts of the Covid-19 pandemic in Fiji has been the increase in unemployment rates. In 2018, Fiji’s unemployment rate was 4.5% and the lowest it had been in 20 years.²⁸ Just two years later in July 2020, 115,000 Fijians – or a third of the labour force – had lost their jobs or suffered reduced hours as a result of the pandemic.²⁹ This has had serious ramifications on Fijian families and communities, more of whom are on the verge of poverty.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Risk Factor 2 – Record of Serious Violations of International Human Rights and Humanitarian Law

Indicator 2.1 – Past or Present Serious Restrictions to or Violations of International Human Rights and Humanitarian Law, particularly if Assuming an Early Pattern of Conduct and if Targeting Protected Groups, Populations or Individuals.

There is a toxic culture of brutality and intimidation within Fiji's police force, with allegations of widespread violations of human rights. In particular, repeated reports of police torture and abuse raise concerns about Fiji's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Fiji's police and military forces have a history of using various forms of torture and abuse against persons accused of crimes or who are being held in custody.³⁰ These forms of abuse include, but are not limited to: rape, other forms of sexual violence, attack by police dogs, and murder.³¹

Fiji has a legal framework to safeguard against these problems. The Constitution, for example, prohibits the use of torture, forced medical procedures, and degrading treatment or punishment.³² Fiji also ratified UNCAT in 2016.³³ The effectiveness of this, however, is arguably hampered by the *Public Order Act Amendment Decree 2012* (POAD). Section 17B(c) states that any police officer may for the purpose of effecting the arrest of a person whom the officer reasonably suspects has committed a crime against public order, "use such force as he or she considers necessary".³⁴ The section further states that no police officer using such force shall be liable in criminal or civil proceedings for any harm or loss caused by the use of force. An offence against 'public order' is essentially any behaviour that infringes sections 63 to 132 of the *Crimes Decree 2009*.³⁵ The presence of legislation that affords police officers discretion to use any level of force in a wide range of circumstances, coupled with a virtual guarantee of impunity, could be encouraging inappropriate and violent behaviour at a systemic level within Fiji's security sector.

In response to the allegations of abuse and torture from police and military forces, Prime Minister Frank Bainimarama argued that these were isolated incidents, and that torture is not sanctioned by the state.³⁶ However, a recent publication by the Office of the Director of Public Prosecutions found that between 2015 and 2020, 400 police and military officers were charged with criminal offences. Of those, 110 were charged with assault, assault causing actual bodily harm, assault occasioning actual bodily harm, and assault with intention to cause grievous bodily harm.³⁷ These numbers do not take into account unreported or unprosecuted incidents which could amount to significantly more.

Articles 12 and 13 of UNCAT require the Fijian government to promptly investigate any allegation of torture. Despite having ratified the Convention, the Fijian government has breached its obligations on a number of occasions in recent times. In 2017 there were multiple cases of abuse by officers, who received no disciplinary action.³⁸ In November 2020, a man died in police custody after jumping out of a building. Not only did a post-mortem examination contradict police claims that the man died from the fall, but a witness at the scene alleged that the man initially survived, but was subsequently assaulted by police.³⁹ An internal investigation by the Fiji Human Rights and Anti-Discrimination Commission found that the man was subjected to "cruel, inhumane, degrading or disproportionately severe treatment at the hands of police officers, which resulted in his death", and recommended that those responsible be punished. It is unclear whether any charges have been levelled.⁴⁰

Civil society organisations maintain that there is a culture of police brutality. In May 2021, the Fiji Disabled Peoples Federation issued a press release addressing 'police brutality on persons with psycho-social disability on the streets'.⁴¹ They cited a number of events, including during the Suva lockdown in late April 2021, when police prevented people from leaving their homes to access bathing and drinking water and other public hygiene and sanitation facilities.⁴² The NGO Coalition on Human Rights (NGOCHR) also pointed to police brutality as a sign of failing democracy, in May 2021, citing various social media posts and videos of people being detained well over 48 hours from the time of arrest, as well as police tampering with people's personal properties, and erasing evidence of wrongdoing in public spaces.⁴³

In response to the violent arrest of a bus driver who failed to give his name to police in May 2022, president of the Fiji Law Society, Mr Wylie Clarke, emphasised that police brutality is not only continuing to undermine public trust in police, but eroding the rule of law. The rule of law "requires the respect for people's human rights and people's

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

right to question authority, and to raise legitimate questions about why they are being detained”.⁴⁴ Fiji’s culture of police intimidation and brutality, enabled by domestic legislation and denied by the government, is considered a risk factor for the commission of atrocity crimes.

The Fijian government has increasingly relied on the police to achieve its political ends, exploiting the Covid-19 pandemic to restrict the rights and freedoms of Fijians beyond appropriate public health measures, as previous noted. In May 2020, a senior military officer told the Fiji Sun that the Covid-19 emergency gave Fiji’s leaders “good reasons to stifle criticism of their policies by curtailing freedom of speech and freedom of the press.”⁴⁵

The Fijian government’s crackdown on media and opposition parties was highlighted when Suva police raided the headquarters of the opposition National Federation Party (NFP) on June 9, 2020, allegedly rifling through files and documents in the search for information relating to the party’s social media posts.⁴⁶

Later that week, Fijian police served a search warrant to *The Fiji Times* authorising officers to obtain “video footage and photograph articles of staff and student protesters at the University of the South Pacific, dated 9 June 2020”.⁴⁷ The protests were in response to the dismissal of USP vice-chancellor Professor Pal Aluwhalia, who blew the whistle on alleged corruption and financial mismanagement within USP. Fijian police subsequently confiscated at least three photographs of student protestors restricting their fundamental rights to freedom of association and assembly.⁴⁸ This is particularly troubling considering USP is a regional institution owned by 12 Pacific nations.

The claim that Fiji’s government attempted to use the police force for political ends is supported by the introduction of a draft police bill in March 2021. Although eventually withdrawn following widespread protest, it was set to give broad, sweeping powers to the police, including greater surveillance powers, the right to enter any premises secretly or forcefully, to place tracking devices without a warrant,⁴⁹ and the ability to “access, seize, extract and store any information from any electronic or storage device”.⁵⁰ According to the Minister for Police, the law needed to be updated to respond to “new and emerging challenges such as the global Covid-19 pandemic, terrorism [and] transnational organised crime”.⁵¹ However the Fiji Law Society argued that the Bill would potentially affect human rights set out in the Constitution and international conventions, conflict with other legislation and common law rights to property and privacy, and be inconsistent with values of respect for human rights, freedom and the rule of law.⁵²

In August 2021, nine Fijian opposition MPs were arrested for voicing their dissent on a proposed amendment to the *iTaukei Land Trust Act 1940*. The arrests, which were made under the *Public Order Amendment Decree (POAD)*, have also led to allegations that the Fijian government is using the police as a “political weapon” to quash dissent.⁵³ This range of examples indicate a general tendency towards authoritarian control and a lack of respect for human rights, which can be precursors to atrocity crimes.

Moreover, the Government has on many occasions fast tracked legislation change through the Parliamentary Standing Order (order 51), bypassing community consultation and public participation in the law-making process.⁵⁴ Lawyer Graham Leung and former Secretary General to Parliament argue that, “Standing Order 51 deals with ‘motions’ for Bills to proceed without delay. It is being abused. Most, if not all Bills are now being rushed through parliament.”⁵⁵ In September 2021, Parliament rushed through an amendment to the Electoral laws under Standing Orders 51 to require that people use their name as recorded on their birth certificate in the electoral records.⁵⁶ This would impact many women who use their spouse’s surname on their official documents. The law was passed despite widespread objections from the public. A few women have filed a constitutional case of discrimination as a result.⁵⁷

Indicator 2.3 – Policy or Practice of Impunity for or Tolerance of Serious Violations of International Human Rights and Humanitarian Law, of Atrocity Crimes, or of their Incitement

Since 2011, there have been 200 cases of child labour identified in Fiji.⁵⁸ As a response and act of recognition, the Fijian government ratified the International Labour Organization Employment Policy Convention in 2010.⁵⁹ This convention committed Fiji to develop a national employment policy, which was adopted in 2018.⁶⁰

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Moreover, Section 41 of the Fijian Constitution 2013 – titled ‘rights of children’ – states that every child has the right ‘to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and *hazardous or exploitative labour*’.⁶¹ Fiji also has laws in place which make attending school compulsory for children until the age of 15, and allow children aged of 13-15 years the opportunity to work on a daily wage basis in non-industrial ‘light’ work conditions while returning to guardians at night.⁶² However, many children are victim of domestic servitude and/or forced sexual activities by relatives in exchange for basic needs such as food, clothing, shelter, and school fees.⁶³

The Fijian government approved its first National Action Plan and National Strategy for Combating Human Trafficking in 2020, which includes provisions relating to child labour.⁶⁴ Although this is only considered a ‘moderate advancement in efforts to eliminate the worst forms of child labor’, according to the ILO, the Fijian Government has also made a commitment to (a) formulate a National Child Labour Policy, (b) review the current National Employment Policy, (c) finalise the National Occupational Health and Safety Services strategic plan, and (d) formulate a paperless Labour Inspection Program.⁶⁵ The Fijian Government is working with the ILO and its stakeholders to ensure these pledges are put into action.⁶⁶

In 2020, the Inter-Agency National Human Trafficking Committee met for the first time in nine years in another sign that the Fijian Government is actively addressing the problem of child labour. The Committee, which was set up to address issues relating to the exploitation of children, includes the Fiji Police Force, the Department of Social Welfare, the Ministry of Local Government, the Suva City Council, the Fiji National Council for Disabled Persons, the Ministry of Health, the Ministry of I’Taukei Affairs, and local NGOs.⁶⁷ Despite these improvements, the ILO and UNICEF emphasised in 2021 that the Covid-19 pandemic threatens to erode global progress on combatting child labour.⁶⁸

Risk Factor 3: Weakness of State Structures

Indicator 3.3 – Lack of Independent and Impartial Judiciary

Under the Constitution, the Fijian judicial system is independent from the government.⁶⁹ However, there has been a history of government interference. The laws around Fiji's judiciary raise questions about its independence and impartiality. Prior to the 2006 coup, the High Court Act 1875 listed a range of countries from which nationals could be appointed to the judiciary. This changed after the coup when a large number of expatriate judges – predominantly Australian and New Zealanders – resigned in protest, complicating efforts by the Fiji government to appoint new members. The law was altered to allow nationals from 'any country which at the time of the appointment is a member of the Commonwealth of nations'.⁷⁰

Today, Fiji's judiciary largely comprises foreign officers, particularly from Sri Lanka.⁷¹ Judges enjoy different terms of office depending on whether they are citizens of Fiji or not.⁷² Fijian citizens may retire either at the age of seventy or seventy-five, depending on their role.⁷³ If they are not citizens, they may not serve for a period exceeding 3 years but are eligible for reappointment.⁷⁴ While these laws are not problematic per se, the makeup of Fiji's judiciary means that a judge's security of tenure may be undermined. Security of tenure is important for an independent judiciary. According to a former Fijian High Court justice, "the appointment and removal of judges to and from their respective office is [a] highly delicate and sensitive process. Both these processes...should be done with great... fairness and openness as they manifestly affect the independence of the judiciary".⁷⁵

Allegations of interference have often been denied by the Fijian government and the judiciary. Fiji has not allowed the Special Rapporteur on the Independence of Judges and Lawyers to visit despite numerous requests.⁷⁶

Indicator 3.6 Absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims.

There are concerns about the independence of the Fiji Human Rights and Anti-Discrimination Commission ('the Commission'), which is established under s 45(1) of the Constitution in order to promote human rights, make recommendations to the government concerning human rights, and monitor the government's compliance with international human rights law. Section 45(7) necessarily mandates the independence of the Commission in the performance of these functions.

Since 2021, the Commission has been considered a 'B-status institution' by the Global Alliance of National Human Rights Institutions (GANHRI). This signifies that it partially complies with the Paris Principles Relating to the Status of National Human Rights Institutions.⁷⁷ In 2007 the Commission was suspended from GANHRI due to concerns it lacked independence in the wake of the 2006 coup. Before this time, it had a rating of 'A', signalling full compliance with the Paris Principles.⁷⁸

According to the GANHRI Sub-Committee on Accreditation Report for June 2021,⁷⁹ the selection and appointment process enshrined in the Constitution is not sufficiently broad and transparent.⁸⁰ In particular, it does not require the advertisement of vacancies for members or specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.⁸¹ In addition, there are no limitations on the tenure of members, and they may be re-elected for an indefinite period of time.⁸² There is also a notable lack of rules and regulations concerning conflicting interests of members which, as the Report notes, blurs the line between the government and the commission, which can impede the latter's ability to serve as a watchdog on the state.⁸³

In 2020, a whistleblower from inside the Commission alleged that complaints against police and prison officers were blocked by order of Fijian authorities.⁸⁴ Former human rights commissioner, Shamima Ali, has also accused the incumbent director of the Commission of failing to speak out against actions of the police, attacking CSOs and human rights activists and failing to make "genuine steps towards complying with the Paris Principles".⁸⁵

This perceived lack of independence is concerning as it allows for the potential for human rights abuses and atrocity crimes to be committed without a check on government power and without the capacity to ensure accountability.

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Risk Factor 7 – Enabling Circumstances or Preparatory Action

Indicator 7.1 – Imposition of emergency laws or extraordinary security measures that erode fundamental rights.

In April 2021, following an outbreak of Covid-19, the Fijian government introduced a suite of measures including lockdowns and containment zones.⁸⁶ These were often called without consultation and without sufficient time for the population to prepare.⁸⁷ As a report from the Asia-Pacific Responsibility to Protect Centre notes, “while the intent of lockdowns is in the interest of public health, the lack of government transparency and a history of mistrust in the [Fijian] government due to underlying instability has led to frustration among the population”.⁸⁸

By July, the Fijian government had shifted its Covid-19 strategy from containment to mitigation.⁸⁹ This involved the imposition of increasingly restrictive policies, along with penalties for non-compliance,⁹⁰ but without accompanying strategies to assist people with employment, welfare, health care and basic supplies. Blanket vaccine mandates and mask requirements were imposed with disproportionate penalties such as huge fines and 5 years’ imprisonment that did not take into account personal circumstances and challenges. Another law barred people from receiving social welfare benefits if they had not received at least one dose by August 14.⁹¹

One of the major failures of this roll out was the absence of related communication and education materials, or community consultation.⁹² In a survey conducted by the Fiji Women’s Rights Movement in 2021, 42.4% of women felt ambivalent about getting vaccinated, for reasons ranging from a lack of confidence in the safety of the vaccines, long queues, misinformation on social media, and a distrust in government.⁹³

Whilst these laws have since been repealed, Fiji’s poorly communicated and sometimes authoritarian response⁹⁴ to the Covid-19 pandemic provides an insight into the government’s lack of respect for community consultation and raises concerns that its “compliance and punishment approach, along with the silencing of opposition voices could be used as a pathway towards more authoritarian rule”.⁹⁵

Indicator 7.7 – Expulsion or refusal to allow the presence of NGOs, international organizations, media or other relevant actors, or imposition of severe restrictions on their services and movements

Negative government sentiment regarding CSOs and NGOs

The Fijian government has a difficult relationship with civil society and non-governmental organisations, many of whom feel undervalued, ignored and even attacked by the government.

Despite Fiji’s extensive non-governmental network, which largely operates without any state intervention, in 2020, Fiji’s civil society space was considered ‘obstructed’ by the CIVICUS Monitor,⁹⁶ a global tool tracking civil space. In reaching this conclusion, CIVICUS cites the government’s harassment of human rights defenders, journalists and other members of civil society as well as the arbitrary restriction of the right to peaceful assembly, particularly in the context of trade unions.⁹⁷ Fiji’s civil space remains ‘obstructed’ as of February 2022.

On June 2, 2021, several members of the Parliament made harmful allegations about CSOs in Fiji, particularly that some were operating as proxies of the Opposition parties.⁹⁸ On June 4, 2021, the Social Empowerment Educational Program (SEEP) expressed disapproval of the Fijian government’s ‘blatant disregard’ for CSO’s humanitarian work,⁹⁹ concerns echoed by CSO COVID Alliance, the Fiji Women’s Rights Movement (FWRM), and femLINKpacific.¹⁰⁰ One media release stated, “...it is sad to see the Fiji government resorting to labelling NGOs and CSOs, who represent a large constituency of people’s concerns, as ‘fools’...The Fiji government seemingly fails to realise that a properly functioning democratic state involves all sectors of society in its politics through the fundamental rights of, amongst others, free speech and free assembly... This applies especially to NGOs and CSOs, whose explicit purpose is to improve society not only through direct action but through advocating for policies that are beneficial for all – i.e., politics.”¹⁰¹

One of the strongest mitigating factors for atrocity crimes is the presence of a strong civil society that operates independently of the state, holds it accountable, and drives political change. The continuous harassment and dismissal of these actors by the Fijian government may be an underlying risk factor for further measures to restrict the work of civil society, and in turn, the likelihood of atrocity crimes.

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Media restrictions

Considering that an independent, responsible and accountable media is the cornerstone of any democracy and plays a crucial role in the prevention of atrocity crimes, the restriction of media in Fiji points to a lack of transparency that may contribute to the likelihood of atrocities.

The Fijian Constitution grants Fijian citizens the right to freedom of speech, expression and publication under s 17,¹⁰² and the freedoms of assembly and association under ss 18 and 19 respectively.¹⁰³ Despite this, Reporters Without Borders (RSF) placed Fiji 102 out of 180 countries on their World Press Freedom Index in 2022.¹⁰⁴ This represented a drop of 47 points from Fiji's position in 2021, where it placed 55 out of 180 countries. Similarly, Freedom House considered Fiji 'partly free' in 2022, lowering their rating to 58/100 compared to 60/100 in 2021 and 2020.¹⁰⁵

Fiji's media landscape consists of a mixture of public and private outlets comprising television, radio and newspapers. The two main privately-owned newspapers, the *Fiji Sun* and the *Fiji Times* are considered to be, respectively, pro-government and independent.¹⁰⁶ It was alleged in August 2021 by a former government advisor that the Attorney-General regularly tells *The Fiji Sun* **which stories to cover**.¹⁰⁷ The principal public broadcaster in Fiji, the Fiji Broadcasting Corporation (FBC), has been labelled by the Fiji opposition as pro-government and there are links between FBC's senior staff and government ministers.¹⁰⁸

There are a range of statutes that regulate media and communications in Fiji.¹⁰⁹ Two of these, the *Public Order (Amendment) Act 2017* and the *Media Industry Development Decree 2010* are of particular importance. The *Public Order (Amendment) Act 2017* allows the government to restrict constitutional rights for a variety of reasons. These include public safety, public morality, protecting the reputation of individuals and preserving the peace. The wording of this Act may be misused by Fijian police to prevent peaceful protests. There are also concerns that it limits the actions of Fiji's union movements.¹¹⁰

The *Media Industry Development Act 2010* establishes the Media Industry Development Authority (MIDA), a public body whose purpose is to enforce and investigate possible violations of the Decree by media outlets.¹¹¹ The Act states under s 22 that the content of any media service 'must not include material which (a) is against the public interest or order; (b) is against national interest; or (c) creates communal discord. Any breach of these particular rules is an offence and could attract a fine of up to \$100,000 or two years imprisonment. Moreover, ss 25, 26 and 27 of the Act grants the MIDA power to investigate, require documents or information, and enter premises to search – subject to a warrant – where they have a reasonable suspicion that the Act has been breached. Both Freedom House and the Fiji Media Association (FMA) have expressed concern that the offences under s 22 are vaguely defined.¹¹²

In 2009 and 2012, the *Fiji Times* was charged with contempt of court for publishing the comments of individuals criticising the behaviour of Fiji's judiciary.¹¹³ The *Fiji Times* was subsequently fined \$163,000 USD and the editor-in-chief was sentenced to six months' imprisonment, suspended for two years on a good behaviour bond.¹¹⁴ This occurred prior to the 2015 amendment to the Decree, which reduced the penalties.

Although Fiji's Attorney-General asserts that no journalist has been imprisoned in Fiji,¹¹⁵ the existence of these laws creates an atmosphere of intimidation and fear. According to the RSF, the Decree "fuels a climate of fear and self-censorship thanks to [its'] penalties".¹¹⁶ The General Secretary of the Fiji Media Association has also commented that there are "...some aspects of the decree we have no problems with, like the code of ethics which is similar to ours, but it's the penalties and, in particular, the independence of the make-up of the tribunal authority. Those are two provisions we feel are a concern."¹¹⁷

Indicator 7.9 – Increased Serious Acts of Violence Against Women and Children, or Creation of Conditions that Facilitate Acts of Sexual Violence Against those Groups, Including as a Tool of Terror

The frequency of serious acts of violence against women, children and the LGBTQ+ community in Fiji are among the highest in the world.¹¹⁸

RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

A 2022 Article states that 64% of Fijian women who have been in an intimate relationship sometime during their life have experienced physical and or sexual violence by an intimate partner.¹¹⁹ The Fiji Women's Crisis Centre (FWCC) found that of 818 recorded rape cases from 2016 to 2021, 836 of the 870 perpetrators were known to the victim.¹²⁰

Fiji Women's Right Movement (FWRM) has found that the majority of women face hurdles in reporting abuse to police, with some being told to resolve the issue within their family or village.¹²¹ Only about 1 in 10 women and girls felt they could report the cause of their injury to a healthcare worker, and many do not seek care at all.¹²² This indicates an underlying societal acceptance of gendered violence in Fiji, a risk factor that correlates strongly with the risk of atrocities. Research has found that societies with high levels of gender inequality are more prone to atrocity crime.

In 2020 the FWCC published a report titled *The Warwick Principles: Best Practices for Engaging Men and Boys in Preventing Violence against Women and Girls in the Pacific*, which outlines seven principles around education on violence against women and girls.¹²³

The Covid-19 pandemic

Violence against women in Fiji was further exacerbated by the Covid-19 pandemic. According to Shamima Ali, the coordinator of the FWCC, the pandemic "...has definitely increased [violence against women] compared with 2019 and last year – the frequency and intensity has increased".¹²⁴ For example, calls to the FWCC's toll-free national domestic violence helpline skyrocketed following the imposition of curfews and lockdowns. In February, prior to these measures, the centre recorded 87 calls on average per day.¹²⁵ In March, that figure was 187. In April it was 527 – a 600% increase from February.¹²⁶ Financial and unemployment stress, along with other socio-economic issues, may have contributed to this increase.¹²⁷

In February 2022, the Fijian government announced a commitment to develop a National Action Plan to Prevent Violence Against All Women and Girls, an important step towards gender equality and a reduction in gender-based violence.¹²⁸

Indicator 7.11 – Destruction or Plundering of Essential Goods or Installations for Protected Groups, Populations or Individuals, or of Property Related to Cultural and Religious Identity

Fiji is officially a secular state but conflicts between ethnic and religious groups have occurred, including attacks on cultural and religious property. In December 2017, for instance, there were four attacks on Hindu temples that involved graffiti, destruction of idols, and theft of monetary donations.¹²⁹

RISK FACTOR 8: TRIGGERING FACTORS

Risk Factor 8: Triggering Factors

Indicator 8.4 – Abrupt or Irregular Regime Changes, Transfers of Power, or Changes in Political Power of Groups

In the past few decades, Fiji has endured three military coups and one civilian-led coup. The instability of Fiji's government stems in part from ethnic tensions between Indigenous Fijians and Indo-Fijians. Today this divide is being managed through cooperation and collaboration of government structures, services, and polices, but tensions remain under the surface.

Since 2006, there have been two general elections (2014, 2018) in which Frank Bainimarama's *Fiji First* party has retained power. It should be noted that after the last election in 2018, the incumbent government suffered a loss of 5 seats; though *Fiji First* still has a majority with 27 of the 51 seats in Parliament.

An unsettled question is whether the *Fiji First* party will retain a majority of seats in the upcoming 2022 election. The general election due to be held in 2022¹³⁰ is contested by a historical high of nine parties and is touted to be determined by the youth of Fiji.¹³¹ Although Fiji's legal system is more robust than it was in 2006, the potential for a change in power could nonetheless be a 'triggering factor' for violence or even atrocity crimes.

Indicator 8.9 – Sudden Changes that Affect the Economy or the Workforce, Including a Financial Crisis, Natural Disaster, or Epidemic

Nations of the South Pacific are some of the most disaster prone in the world. Fiji has a long history of natural disasters and particularly in the last decade, has experienced tropical cyclones of increasing frequency and intensity. Historically, the impacts of natural disasters on Fiji's economy and workforce have been severe. The IMF estimates that natural disasters on average cost Fiji 5-6 percent of its GDP each year, with more major disasters causing damage of up to 20 percent (IMF, 30).¹³²

In April 2022, Fiji's Minister for Disaster Management stated that tropical cyclones have cost Fiji over \$3 billion and 67 deaths in the last ten years.¹³³ There is an additional problem of agricultural land becoming salinated with rising sea levels, which could have dire consequences for the agriculture industry.¹³⁴

It is highly likely that climate change will continue to increase the severity of Fiji's natural disasters, potentially leading to protracted humanitarian crises, which coupled with socio-economic issues and inadequate health care, could result in unrest and conflict. In addition, Fiji has already seen the displacement of low-lying communities due to sea level rise, a problem the Fiji Government is attempting to address for soon-to-be inundated villages.¹³⁵

While climate change is not a direct cause of atrocity crimes, it could exacerbate the risk of atrocities where there are underlying risk factors, as is the case in Fiji.

Indicator 8.10 – Discovery of Natural Resources or Launching of Exploitation Projects that have Serious Impact on the Livelihoods and Sustainability of Groups of Civilian Populations

There are concerns that mining and extraction projects, as well as large-scale development of Fijian islands, often owned by international operators, are having adverse effects on the livelihoods of local communities.¹³⁶ One example relates to Chinese resort company, Freesoul Real Estate Development are pertinent. Freesoul was granted a contract by the Fijian government to develop a multi-million dollar resort on Malolo Island but was convicted by a Fijian magistrate on two counts of undertaking unauthorised developments for removing mangrove trees and for destroying extensive parts of a reef to create a canal.¹³⁷ According to a local landowner, the area remains damaged, and polluted water prevents members of the community to fish and catch crabs. The interference of extraction and development with the ability of local Fijians to meet their basic needs may cause resentment and conflict. Should protests erupt in such circumstances, it could also result in severe responses by Fiji's security sector, and violence is possible.

SPECIFIC RISK FACTORS GENOCIDE

RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

Specific Risk Factors are six risks that indicate the likelihood of the occurrence of genocide, crimes against humanity and war crimes.

Risk Factor 9: Intergroup Tensions or Patterns of Discrimination Against Protected Groups

Indicator 9.1 – Past or Present Serious Discriminatory, Segregational, Restrictive or Exclusionary Practices, Policies or Legislation Against Protected Groups

Tensions between different ethnic and religious groups do remain in Fiji, particularly between Indo-Fijians and Indigenous Fijians. Historical legislative and political acts have led to a sense of mistrust, that continues in light of the broader lack of government transparency, consultation and accountability.

Although Fiji's 2013 constitution provides protection against discrimination on the basis of sex and gender, societal attitudes hostile to LGBTQ+ rights continue. The Prime Minister has spoken out forcefully against same-sex marriage,¹³⁸ for example, and LGBTQ+ people were scapegoated for the spread of Covid-19.¹³⁹

Violence against transgender people is also rampant. In 2020, research conducted by the Haus of Khameleon found that "70% of transgender women in Fiji have experienced some form of violence, whether physical, sexual, or psychological, upon the disclosure of their status as transgender".¹⁴⁰

A tense relationship exists between the LGBTQ+ community and the police in Fiji in the form of "...a lack of trust with the Fiji Police Force due to fear of discrimination, harassment and violence which really discourages LGBT people from working in cooperation with law enforcement, particularly with cases of hate crime."¹⁴¹

Civil society and human rights organisations are working on these issues and advocating for the rights of LGBTQ+ people. Consultation with those groups on policy decisions that may affect LGBTQ+ individuals should be a priority.

RISK FACTOR 11: CRIMES AGAINST HUMANITY

SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

Risk Factor 11: Signs of Widespread or Systematic Attack Against any Civilian Population

Violence against religious groups

Every person in Fiji has the right to freedom of religion, conscience and belief under s 21 of the *Constitution*.¹⁴² It also protects freedom of speech, expression and publication under s 17.¹⁴³ This freedom does not extend to any behaviour that incites violence or insurrection against the *Constitution*.¹⁴⁴ There are patterns of conflict between religious groups in Fiji, such as between Hindus, Muslims and Christians, which has at times erupted into violence.

CONCLUSION

This risk assessment finds that the current overall risk of atrocity crimes in Fiji to **Low-to-Moderate**.

Five common risk factors were noted in this assessment: Risk Factor (RF) 1 (armed conflict and instability), RF 2 (violations of human rights), RF 3 (weakness of state structures), RF7 (enabling circumstances), and RF8 (triggering factors). Of the specific risk factors, RF 11 (signs of widespread attack against any civilian population) and RF 9 (intergroup tensions or patterns) were noted as possible risk factors.

There are a number of concerning findings in this assessment. Fiji faces a humanitarian crisis (Indicator 1.3) as a consequence of the Covid-19 pandemic and natural disasters. These events, as well as others in the past, have severely shocked Fiji's economy (Indicator 1.8 and 8.9) and left the country with a swelling debt and increased unemployment. Police brutality (Indicator 2.1), along with restrictions on the media and opposition voices, and a lack of respect for, and consultation with, civil society, are all risk factors for atrocities. The Covid-related upsurge in sexual and gender-based violence (Indicators 7.9 and 11.1) in a country with already high rates, is major concern, as is the ongoing societal prejudice against LGBTQ+ communities. Fiji's history of coups and political instability remains deeply embedded in the collective memory, and government transparency and respect for democratic rights and institutions will be crucial in the coming lead up to the 2022 election.

Nevertheless, there is no indication of any active plans or policies to commit atrocity crimes against the population, and risk mitigation actions also exist. In particular:

- 1) Fiji has taken an important step in addressing the widespread crisis of sexual and gender-based violence, being the first Pacific Island country to develop a National Action Plan to Prevent Violence Against Women and Girls.
- 2) Since November 2019, Fiji has also begun to actively address the problem of child labour. This is evidenced by the development of a National Action Plan and National Strategy for Combating Human Trafficking in 2020, which includes provisions relating to child labour. Fiji's Inter-Agency National Human Trafficking Committee also re-convened for the first time since 2011.
- 3) Fiji has become a world leader in the fight against climate change, acknowledging that climate change is the most pressing issue for the survival of Fiji today.¹⁴⁵ The Fiji Government is effectively advocating on the world stage for climate action and for the needs of the Fijian and broader Pacific nations.

RECOMMENDATIONS

RECOMMENDATIONS FOR THE GOVERNMENT OF FIJI	
1	<p>Indicator 1.4:</p> <ul style="list-style-type: none"> Ensure free and fair elections in 2022 via equitable and non-discriminatory electoral laws.
2	<p>Indicator 1.8:</p> <ul style="list-style-type: none"> Develop policies and programs to soften the financial shocks to the population associated with Covid-19 and natural disasters, and ensure future responses to such events involve appropriate consultation with local communities.
3	<p>Indicator 2.1:</p> <ul style="list-style-type: none"> Continue to provide training to police officers on appropriate conduct and the lawful treatment of civilians and work to improve relations between police and vulnerable groups such as the LGBTQ+ community. Hold accountable security forces found to violate the rights of citizens or commit torture or cruel and degrading treatment. Ensure that the <i>Public Order Amendment Decree</i> and any other legislation that regulates the police force does not unreasonably expand police powers or provide impunity for breaches. Allow for more public participation and scrutiny in the law-making process and only use Parliamentary Standing Order 51 sparingly and where genuinely required.

RECOMMENDATIONS

4	<p>Indicator 2.3:</p> <ul style="list-style-type: none"> Continue to work with the ILO and its stakeholders to ensure that the government's pledges to reduce child labour are put into action.
5	<p>Indicator 3.6:</p> <ul style="list-style-type: none"> Consider the recommendations published by GANHRI concerning the independence of the Human Rights and Anti-Discrimination Commission, to address issues relating to selection and appointment, terms of office, full-time members and conflicts of interest.
6	<p>Indicator 7.7:</p> <ul style="list-style-type: none"> Amend the <i>Media Development Industry Act 2010</i> to define the words 'public interest or order'; 'national interest'; and 'communal discord' that appear under s 22. This will provide much needed consistency and transparency in the law.
7	<p>Indicators 7.9 and 11.1:</p> <ul style="list-style-type: none"> Finalise the National Action Plan to Prevent Violence Against all Women and Girls and ensure timely implementation. Continue to develop laws and frameworks that prevent sexual and gender-based violence by working closely with women's rights and LGBTQ+ organisations.
	<p>The Government of Fiji should, more generally:</p> <ol style="list-style-type: none"> 1. Appoint an official to act as a national R2P Focal Point.¹⁴⁶ 2. Ensure that the development of national policies, legislation and other regulatory frameworks are human rights compliant and strengthen the regulatory frameworks for the prevention of atrocity crimes or their incitement.¹⁴⁷ 3. Support the strengthening of regional early warning systems for atrocity prevention by implementing policies and collaborating with civil society and community organisations.¹⁴⁸ 4. Develop comprehensive policies and programs in consultation with civil society and local communities for reducing hate speech and intercommunal tensions and ensure that government policies do not further inflame historical tensions or conflicts. 5. Ensure that national and local regulations support the principle of non-discrimination. 6. Continue to demonstrate international leadership on climate change, in particular, recognise ensure human rights and atrocity prevention are considered in the development of climate change policies and frameworks.¹⁴⁹ 7. Continue to mainstream the Responsibility to Protect within its legal frameworks and policies. 8. Build and strengthen regional and international partnerships on R2P and work towards strengthening the capacity and knowledge of state officials especially security personnel in monitoring atrocity crimes and its triggers and work towards full compliance with the Fijian government's R2P.
FOR CIVIL SOCIETY ACTORS	
1	Consider the recommendations of the Nadi Civil Society Statement on Atrocity Prevention and support the development of early warning systems for atrocity crimes where that strengthens existing monitoring systems.
2	Support the establishment of a network of civil society and community advocates for R2P to empower the community to participate in atrocity prevention. ¹⁵⁰
3	Continue to advocate for legal accountability in relation to police brutality, domestic violence and issues disproportionately affecting women, children, and the LGBTIQ+ community.
4	Continue to support the protection of human rights in Fiji.

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