

# FIJI LAW REFORM COMMISSION



## Domestic Violence Reference

### Discussion Paper One: Legal Response to Domestic Violence: Context & Approach

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## DISCUSSION PAPER 1

# Legal Response to Domestic Violence:

## Context and Approach

<b><u>Preface</u></b> .....	<b>1</b>
<b><u>i. The Review</u></b> .....	<b>1</b>
<u>Terms of Reference</u> .....	1
<u>Timetable for the review</u> .....	2
<u>Role of the FLRC and Executive Chairperson</u> .....	3
<u>Project Advisory Committee</u> .....	4
<u>Consultants and staff</u> .....	4
<u>Role of Community Focus Points</u> .....	5
<u>Preliminary Workshop 27<sup>th</sup> July 2004</u> .....	5
<u>Consultations and making submissions</u> .....	6
<u>Confidential submissions</u> .....	7
<b><u>ii. Other FLRC reviews relevant to this reference</u></b> .....	<b>7</b>
<u>Current</u> .....	8
<u>Prisons Act Review</u> .....	8
<u>Penal Code and Criminal Procedure Code</u> .....	8
<u>Previous</u> .....	9
<u>The Sexual Offences Report 1999</u> .....	9
<u>Reform of Police Powers 1999</u> .....	9
<u>Report for Children 2000 – Part 1 Offences against Children</u> .....	9
<u>Reform of Criminal Evidence Laws 1998</u> .....	10
<b><u>Legal Response to Domestic Violence: Context and Approach</u></b> .....	<b>11</b>
<b><u>1. Background</u></b> .....	<b>12</b>
<u>1.1. Fiji Law Reform Commission’s Family Law Report 1999</u> .....	12
<u>1.2 The 1997 Constitution</u> .....	13
<u>1.3 Fiji’s National Strategic Development Plan 2003 - 2005</u> .....	14
<u>1.4 The Taskforce on the Elimination of Violence against Women and Children</u> .....	14
<u>1.5 Convention on the Elimination of All Forms of Discrimination against Women</u> .....	15
<u>1.6 Convention on the Rights of the Child</u> .....	18
<u>1.7 Summary</u> .....	19
<b><u>2. Domestic violence in Fiji</u></b> .....	<b>20</b>
<u>2.1 What does ‘domestic violence’ mean?</u> .....	22
<u>2.1.1 Intimate partner violence</u> .....	22
<u>2.1.2 Violence by other relative in the home</u> .....	23
<u>2.1.3 Violence where a child in the home is a direct or indirect victim</u> .....	24
<u>2.1.4 Violence in boyfriend / girlfriend relationships</u> .....	24
<u>2.1.5 Violence in carer and other household relationships</u> .....	25
<u>2.1.6 Summary</u> .....	25
<u>2.2 Nature and prevalence</u> .....	26

<u>2.2.1 Fiji Women’s Crisis Centre National Study</u> .....	27
<u>2.2.2 Lethality</u> .....	31
<u>2.2.3 Domestic violence and gender</u> .....	34
<u>2.2.4 Domestic violence and children</u> .....	36
<u>2.3 Domestic violence compared to other forms of violence</u> .....	37
<u>2.3.1 Private and Public</u> .....	38
<u>2.3.2 Pattern of the violence</u> .....	38
<u>2.3.3 Causes of domestic violence</u> .....	39
<u>2.3.4 Myths about domestic violence</u> .....	43
<u>2.4 Counting the cost</u> .....	44
<b><u>3. Addressing domestic violence</u></b> .....	<b>48</b>
<u>3.1 Framework for responding to domestic violence</u> .....	48
<u>3.1.1 Principles</u> .....	48
<u>3.1.2 National Strategy</u> .....	48
<u>3.1.3 Working definition of domestic violence</u> .....	49
<u>3.2 Working in a common direction</u> .....	51
<u>3.2.1 Families and friends</u> .....	51
<u>3.2.2 Advocacy by men</u> .....	52
<u>3.2.3 Advocacy by women</u> .....	53
<u>3.2.4 Churches and faith groups</u> .....	54
<u>3.2.5 Schools</u> .....	55
<u>3.2.6 Health system</u> .....	57
<u>3.2.7 Department of Social Welfare</u> .....	60
<u>3.2.8 Crisis support and counselling</u> .....	63
<u>3.2.9 Emergency and ongoing accommodation</u> .....	65
<u>3.2.10 Family Assistance Allowance and related payments</u> .....	67
<u>3.3 Particular initiatives</u> .....	68
<u>3.3.1 Multi-ethnic focus</u> .....	68
<u>3.3.2 People in rural and isolated areas</u> .....	70
<u>3.3.3 Young parents</u> .....	71
<u>3.3.4 People with a disability</u> .....	72
<u>3.3.5 Identifying other groups with special needs</u> .....	73
<u>3.3.6 Coordinating and interagency groups</u> .....	75
<u>3.4 Legal system</u> .....	76
<u>3.4.1 Court locations and access to the court</u> .....	76
<u>3.4.2 Legal representation and Legal Aid</u> .....	77
<u>3.4.3 Court support</u> .....	80
<u>3.4.4 Court facilities</u> .....	81
<u>3.4.5 Legal system personnel</u> .....	81
<u>3.5 Overarching issues</u> .....	83
<u>3.5.1 Education and training</u> .....	83
<u>3.5.2 Research and statistics</u> .....	84
<u>3.5.3 Community education and attitudinal change</u> .....	85
<b><u>4. Other issues</u></b> .....	<b>87</b>
<b><u>Attachments</u></b> .....	<b>88</b>
<u>Terms of Reference for Penal Code and Criminal Procedure Code Review</u> .....	88

## Preface

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The Fiji Law Reform Commission has received a reference by the Attorney General and Minister for Justice to review laws relating to domestic violence.

The Terms of Reference, issued on 15 December 2003, are below. These envisage that there must be reform of laws and procedures in this area. It is also important to note that the review is intended to be *holistic* and will include consideration of the steps that may be taken to bring the problem of domestic violence to greater public awareness.

Three **Discussion Papers** have been prepared to help encourage broad public participation in the review. These aim to raise issues and present possible options for reform. The Discussion Papers are:

- DP 1 Legal Response to Domestic Violence: Context and Approach
- DP 2 Legal Response to Domestic Violence: Criminal Justice System
- DP 3 Legal Response to Domestic Violence: Civil Law and Procedures

The Discussion Papers do not represent the final views of the Commission.

The Discussion Papers are being disseminated widely by the Commission with help from Government Departments, Agencies and a broad range of stakeholders. A Summary of the Discussion Papers in English, Hindi and Fijian is also being disseminated.

Many people are likely to hear about this reference in the media or through groups in which they participate. The Commission encourages all interested groups and individuals to help promote discussion and input to the inquiry.

The Commission now **invites public submissions to the inquiry**. In October 2004 the Commission will also be holding consultations in different parts of Fiji. Information about how to make submissions is set out below.

Submissions will be taken into account by the Commission in preparing the **Final Report** to the Attorney-General and Minister for Justice. The Final Report, which will include draft legislation, is to be delivered by 31<sup>st</sup> July 2005.

## i. The Review

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### *Terms of Reference*

On 15 December 2003 the Attorney-General and Minister for Justice Hon. Senator Qoriniasi Bale issued **Terms of Reference** to the Commission, under Section 5(2) of the

Fiji Law Reform Commission Act, for the review of Fiji's Domestic Violence laws. In April 2003 Cabinet approved inclusion of the review of laws relating to domestic violence in the Commission's work program for 2004-2005.

The Terms of Reference are as follows:

Pursuant to subsection (2) (a) of Section 5 of the Fiji Law Reform Commission Act (Cap. 26) (the Act), I hereby refer the laws relating to Domestic Violence in Fiji, for review by the Fiji Law Reform Commission in accordance with subsection (1) of Section 5 of the Act.

The review is to be holistic and must include consideration of the following:-

- The nature and extent of domestic violence as a social and gender problem.
- The legal remedies available for complaints of domestic violence.
- Any changes to the law which may be necessary or desirable to bring greater protection of women and children and other victims of domestic violence.
- The need to give the Police and the Courts adequate powers to effectively protect women, children and others from domestic violence.
- The steps that may be taken to bring the problem of domestic violence to greater public awareness.
- Examination of relevant legislations in other jurisdictions and propose a suitable legislative arrangement on domestic violence for Fiji.

The Commission is to carry out consultations in accordance with its procedures.

The Reference envisages that there must be reforms and changes in the substantive and procedural laws in order to render the law appropriately responsive to community needs, values and aspirations and to protect victims of domestic violence, whilst at the same time attaining acceptable standard of treatment for offenders, victims and others affected by domestic violence.

The Commission is to submit its report with recommendations and draft legislation to the Attorney-General and Minister for Justice before or on the 31<sup>st</sup> day of July 2005.

### ***Timetable for the review***

This Review is funded by the New Zealand Government through NZAID and the Government of Fiji. Additionally, the Fiji Ministry for Women has committed funds to assist with consultations.

The key steps in the review are highlighted below:

Terms of Reference received by FLRC

15 December 2003

FLRC began work on the reference

January 2004

Recruitment of consultants began	March 2004
Consultants appointed	16 <sup>th</sup> July 2004
Backgrounder circulated to key agencies	24 July 2004
Preliminary _ day workshop (Suva)	27 July 2004
Follow up meetings (Suva)	28 July 2004
Discussion Papers released / call for submissions	20 September 2004
Promotion through media and by stakeholders	September – November 2004
FLRC Consultations in locations around Fiji	October & November 2004
Closing date for submissions	30 November 2004
Drafting of final report begins	November 2004
Final Report	by 31 <sup>st</sup> July 2005

### ***Role of the FLRC and Executive Chairperson***

#### *Role of the FLRC*

Fiji is a plural society with a colonial legal history. The laws presently on Fiji's statute books, including some relevant to the current reference, reflect this colonial history, the values, norms and institutions. The traditional institutions or customs were superseded by formal written laws and a substantial amount of common law.

The common law is law developed by Judges in areas of law that are not covered by legislation. The common law that applies in Fiji can be hard to find and hard to apply because much of it is based on old decisions by Judges in England and other common law countries.

The above is true of some of the law that is relevant to the current reference.

Fiji's society has changed enormously and the social changes not only affect moral values and institutions but also the conditions of every day life. Substantive law has failed to keep up with these developments. This has resulted in many of Fiji's laws being inappropriate, unfair, outdated, uncertain and expensive.

The Fiji Law Reform Commission exists to address anomalies in Fiji's laws and to help update the law.

#### *Current review*

FLRC Executive Chairperson Alipate Qetaki is managing the current review and he will open each of the public consultations.

The Final Report will be submitted by the FLRC to the Attorney-General and Minister for Justice.

### ***Project Advisory Committee***

The Project Advisory Committee (PAC) steers and monitors the review to ensure that it achieves its work plan and the objectives stated in the Terms of Reference. The PAC consists of representatives of the following:

- Solicitor General
- Commissioner of Police
- Chief Executive Officer, Ministry of Justice
- Director of Public Prosecutions
- Chief Magistrate
- Chief Executive Officer, Ministry of Fijian Affairs, Culture, Heritage & Regional Development
- Chief Executive Officer, Ministry of Multi-Ethnic Affairs & Reconciliation
- Chief Executive Officer, Ministry of Health
- Chief Executive Officer, Ministry of Women, Social Welfare and Poverty Alleviation
- Director, Department of Social Welfare
- Secretary/ Chief Executive Officer, Fiji Law Society
- Fiji Human Rights Commission
- Manager, New Zealand Agency for International Development (NZ Aid) Suva
- UNICEF
- UNIFEM

### ***Consultants and staff***

On 16<sup>th</sup> July 2004, in accordance with Section 3(6) of the Fiji Law Reform Commission Act, the Attorney General and Minister for Justice appointed Maria Dimopoulos (domestic violence expert), Judy Harrison (legislative expert) and Litia R Valesimede (domestic violence expert) to consider and advise the FLRC in relation to the Terms of Reference.

FLRC staff working on the review are:

Project Manager	Alipate Qetaki, FLRC Executive Chairperson
Acting Principal Legal Officer	Raijeli Tuivaga
Acting Senior Legal Officer	Vukidonu Qionibaravi
Clerical Officer	Kenneth Gortz

### ***Role of Community Focus Points***

The Commission is partnering with various officials and NGO workers at community level to help distribute this Discussion Paper, give information on the public hearings and consultations and assist those who wish to make submissions. This network includes the Roko Tui (Chief Executive Officer) of the 14 Provinces, District Officers, District Advisory Councillors, as well as Women's Interest Officers and community workers from the NGO's affiliated to the National Council of Women, the Fiji Women's Crisis Center Network and Soqosoqo Vakamarama officials in the Provinces.

The Department of Women has a network of 24 Women's Interest Officers (WIO) who work at a regional level across Fiji. For this reference, the WIOs will help distribute the Discussion Paper to community organizations and members of the public in their area. They will help raise awareness about the issues, help coordinate public hearings in their area and help people who want to make a submission.

### ***Preliminary Workshop 27<sup>th</sup> July 2004***

The FLRC invited 33 key agencies to attend a Preliminary Workshop in Suva on 27<sup>th</sup> July 2004 to raise awareness about the review and to receive preliminary input to help inform the development of the Discussion Paper. The FLRC expresses its appreciation to the Minister for Women, Hon. Adi Asenaca Caucau for opening the Workshop and to each of the following who participated:

1. The Fiji Police Force, Inspector Unaisi Vuniwaqa
2. The Chief Executive Officer, Ministry of Justice, Mr. Sakiusa Rabuka
3. The Chief Magistrate, Mr. David Balram
4. The Director for Public Prosecutions, Office of the DPP, Mr. Josaia Naigulevu & Ms. Pauline Madanavosa
5. Office of the Solicitor-General, Ms. Noleen Karan, Legal Officer
6. Ministry for Health, Ms. Railala Ligabalavu, Legal Officer
7. The Chief Executive Officer, Ministry for Women, Social Welfare, Mrs. Kiti Makasiale (Acting Director); Mrs Karalaini Bradburg, DWIO Eastern; Mrs Eseta Tuinabua, DWIO Central & Ms Makelesi Domonakibau, WIA Lomaiviti; Mrs. Alisi Qaiqaica (Acting Principal Research Officer); Mrs. Merewalesi Baleinavutoka (Acting Principal Assistant Secretary)
8. Ministry for Reconciliation & Multi-Ethnic Affairs, Mr. Nemani Bainivalu
9. Social Welfare Department, Mr. Eliko Naikatini, Senior Welfare Officer
10. Legal Aid Commission, Ms. Barbara Malimali, Principal Legal Officer
11. Fiji Human Rights Commission, Ms. Deveena Herman, Legal Officer
12. Manager, NZ AID, Ms Nicki Wrighton
13. United Nations Children's Fund (UNICEF), Ms. Holly Doel-Mackaway, Child Rights Legal Officer
14. United Nations Development Fund for Women (UNIFEM) Pacific, Ms. Amelia Siamomua, Regional Program Manager
15. The President, Fiji National Council for Women, Ms. Titilia Naitini
16. Young Women's Christian Association, Mrs. Ecelini Weleilakeba
17. The Coordinator, Fiji Women's Crisis Centre, Ms. Shamima Ali
18. The General Secretary, YMCA, Mr. John Lee



19. Men as Partners Project (UNDP), Mr. Apete Naitini
20. Salvation Army, Captain Makereta Serukalou, Court Officer, Suva
21. Fiji Council of Churches, Father Ifereimi Cama, Acting General Secretary
22. Dorcas Welfare Society, Rev. Aca Tuisamua, Director, Seventh Day Adventist Youth Division
23. Regional Rights Resource Team, Mr. Apolosi Bose & Mr. George Tavola, Resource Trainers
24. Fiji National Council of Disabled Persons, Ms. Kush Devi Prasad, Executive Officer

Invitations were also extended to the following who were unable to attend:

1. The Chief Executive Officer, Ministry for Education
2. The Chief Executive Officer, Ministry of Information
3. The Director, Institute of Justice and Applied Legal Studies
4. Methodist Church
5. The Director, Fiji Council of Social Services
6. Executive Committee, Soqosoqo Vakamarama
7. The Coordinator, Fiji Women's Rights Movement
8. The President, Stri Sewa Sabha

### ***Consultations and making submissions***

Consultations are crucial due to the complex nature of the reference and the need to ensure that recommendations are practical, effective and workable for the unique environment that is the Republic of the Fiji Islands.

Submissions may be made to the review in person, by telephone or in writing. The closing date for submissions is 30<sup>th</sup> November 2004.

***In person*** - during October 2004 the Commission will be conducting consultations in various locations in Fiji. This will see the Commission visiting the Central, Northern and Western Divisions and holding public hearings and private meetings.

A month before the Commission visits a special effort will be made to ensure that the Discussion Paper is received by contact organisations who will act as local focus points for this information.

Advertisements will be placed beforehand on the radio and newspapers that will enable agencies, organisations and interested individuals to book a 15-30 minute time slot.

Formal hearings will generally be conducted at the Town Council Chambers or District Offices. Translators will be available. Formal hearings will be recorded and later transcribed.

The Commission recognises that special arrangements may be needed for some to express their views. We are particularly conscious of the possible needs of individuals and families where there has been domestic violence or there is a current risk of violence.

The Commission requests that agencies and individuals alert us in advance where there are special needs.

**By telephone** - you can make a verbal submission to the Commission by telephone. You will need to phone first to book a time.

**In writing** - submissions may be sent by post, fax or email to the Commission. Address your submission to:

The Executive Chairperson  
Fiji Law Reform Commission  
Domestic Violence Reference

Post to: P O Box 2194 Government Buildings, Suva, FIJI

Fax to: (679) 3303 646

Email to: DVREF@lawreform.gov.fj

### ***Confidential submissions***

You may request that the Commission treat your submission as confidential.

If you wish to make a confidential submission in person, you should notify the Commission in advance so that we can arrange to hear your submission privately.

Similarly if you wish to make a confidential submission by telephone or by teleconference you should notify us.

If you wish to make a confidential written submission, please mark this clearly on your letter, fax or email.

Where the Commission's Final Report refers to confidential submissions, identifying information will not be included.

## **ii. Other FLRC reviews relevant to this reference**

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In addition to the current review in relation to domestic violence laws, two other current references and several previous FLRC reports are relevant to this reference. That is:

## ***Current***

### **Prisons Act Review**

This is a review of the Prisons Act, Regulations and Prisons Standing Orders and Operational Standards. The objective of this reference is to improve the quality of service delivery within prison institutions in Fiji in conformity with international human rights standards. The review is bearing in mind Fiji's Strategic Direction Plan 2003-2005 goals that include aiming to increase the proportion of ex offenders successfully completing rehabilitation programs.

The review is advanced and is likely to be completed by December 2004.

### **Penal Code and Criminal Procedure Code**

This review will begin in December 2004. The objectives of the review are:

- to review the Penal Code and the Criminal Procedure Code (PC/CPC) to update and recommend changes in relation to offences, penalties/punishment, jurisdiction, defences and criminal procedures, and relating matters, and
- to ensue fair trial and protection of the rights of people accused of an criminal offence and to ensure fair, effective, speedy and efficient procedures for investigation and prosecution of offences.

There is some overlap between the PC/CPC review and the current review in relation to domestic violence. However, the current review provides the opportunity to look at issues that *specifically relate* to domestic violence.

Examples of aspects of terms of reference for the PC/CPC review, that are also relevant to the current reference so far as they relate to domestic violence are:

- the law relating to the competency and compellability of spouses
- penalties and sentences
- penalty options including community work orders and other types of sentences
- conduct of criminal investigations by police
- the use of technology to take evidence at a distance
- alternative dispute resolution, such as reconciliation and family group and victim/offenders conferences

The terms of reference for this review are set out at [Attachment 1](#).

## ***Previous***

Apart from the Family Law Report 1999 referred to below there are several other reports by the FLRC where recommendations are outstanding that are relevant to this reference. These are:

### **The Sexual Offences Report 1999**

In the Reform of the Criminal Procedure Code and Penal Code – The Sexual Offences Report 1999 the FLRC recommended that the focus of provisions relating to rape be shifted away from a gender-specific focus to recognize that rape is a violation of a person's consent (whether male or female) to sexual relations.

Specific recommendations included widening the definition of rape, that 'non-consent' be legally defined, that the maximum penalty be increased, that sexual offences be reclassified and regarded on the basis of gravity, that terminology be modernized and a new offence of stalking be created.

Legislation was passed to increase the penalties for a number of sexual offences as recommended in the report. The bulk of the recommendations are awaiting direction from the Attorney-General but the review of the Penal Code and Criminal Procedure Code that will commence in December 2004, will include consideration of the recommendations made in the report.

### **Reform of Police Powers 1999**

The FLRC report on the Reform of Police Powers in Fiji (March 1999) recommended the establishment of a Police Powers Act to consolidate the various sources of police powers, ensure that they are aligned with the Constitution and to modernise relevant provisions.

The report has been awaiting direction from the Attorney-General but the review of the Penal Code and Criminal Procedure Code includes consideration of the powers available to enforcement authorities.<sup>1</sup> Consequently the previous report will be considered in this context.

### **Report for Children 2000 – Part 1 Offences against Children**

The FLRC Report for Children (2000) reviewed law and key procedures relating to sexual offences against children. Recommendations included the need for:

- tougher penalties for child sexual assault offences
- reclassification of offences and simplification of the way they are referred to in the Penal Code

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<sup>1</sup> Criminal Procedure Code term of reference (m)

- tougher penalties for offenders in a position of trust towards the child victim or who are related to the child victim,
- that the Memorandum of Understanding on reporting child abuse between Police, Ministry of Health and the Department of Social Welfare be legislated,
- special arrangements for child victims to give evidence in court,
- counselling services for the victim and the accused
- treatment centres with trained counsellors
- specialist police investigation and prosecution arrangements
- judicial education

The report is awaiting direction from the Attorney-General.

### **Reform of Criminal Evidence Laws 1998**

This reference which was completed in 1998 considered the outdated rules of criminal evidence. The Commission produced nine discussion papers including one on competence and compellability. The main recommendations of the Report called for repeal of the Evidence Act (Cap 41) and the introduction of a Civil Evidence Act and Criminal Evidence Act.

Cabinet endorsed the Final Report in 1998 and the Civil Evidence Act was passed in 2000. The recommendations in relation to criminal evidence will be considered by the forthcoming PC/CPC review.

## **Legal Response to Domestic Violence: Context and Approach**

The need for the current inquiry that specifically focuses on the nature and extent of domestic violence and the legal response to it, was highlighted in the FLRC's *Family Law Report 1999: Making a Difference to Families*. There has also been active advocacy by many organisations and individuals over a long period to bring this review about. The Terms of Reference express the need for this reference to take a holistic approach and anticipates changes to law and procedures in relation to domestic violence.

Also, Fiji has been encouraged by United Nations bodies to take further steps to address domestic violence.

The current reference can be seen as one which is in furtherance of Fiji's commitments to:

- social development
- the well being of families
- the well being of children
- women's rights
- equality between men and women, and
- human rights including due process, equality before the law, and the right to security of the person

Other themes that are involved in this review are:

- social responsibility
- education and attitudinal change
- social supports
- healthy relationships
- leadership
- coordination
- due diligence
- access to justice
- quality of justice

# 1. Background

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This section outlines the key findings of the Commission's Family Law Report that highlighted the need for this review and overarching considerations that arise from the Constitution, Fiji's National Strategic Development Plan, and the work of the Taskforce on the Elimination of Violence against Women and Children and human rights obligations.

## ***1.1. Fiji Law Reform Commission's Family Law Report 1999***

The Commission's Family Law Report 1999, found that the problem of violence in the family is a common and insidious one and noted that:

- anecdotal evidence suggests an alarming increase in deaths resulting from violence in the home
- the majority of those subjected to family violence are women in a family setting. Children are also victims of violence both directly and indirectly
- family violence occurs in both intact and separating families and it may lead to family breakdown
- family violence is cyclical and inter-generational if effective intervention is not undertaken
- there is a lack of support services, counselling or conciliation facilities to defuse tension leading up to potentially violent encounters and access to counselling is needed for moral and emotional support
- family members should have ready access to the Courts to get an effective protection order, the current law lacks clear jurisdiction to make specific family protection or non-violence orders and police involvement will be critical to give effect to the order
- a protection order should be able to be made swiftly whether or not family breakdown is imminent
- new legislation to address domestic violence should have clear and effective enforcement procedures particularly given the historical reluctance of police to act.

The Commission indicated that the recommendations contained in its report about the proposed power for the new Family Court division to make civil orders for the protection of a family, particularly where other matrimonial orders are being made, were of a transitional nature *until specific legislation was enacted*. The Commission noted that it intended to make domestic violence a separate civil and criminal reference.<sup>2</sup> As indicated above, the current reference fulfils this intention

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<sup>2</sup> pp 69 - 71

The Family Law Act 2003, which is largely the outcome of the FLRC Family Law Report 1999, will come into effect on January 2005. This includes some new restraining order powers modelled on the Australian Family Law Act 1975 (as amended).

In Australia the legal response to domestic violence is split between the federal jurisdiction on the one hand and state and territory jurisdictions on the other. The restraining order provisions in the federal legislation (the Family Law Act) are rarely used in Australia because these are inferior to those in state and territory legislation.

As a result, as recommended by the FLRC in 1999 and as anticipated by the current Terms of Reference, a substantial aspect of the current review is to focus on what further changes should be made to law and procedures to achieve greater protection for victims in cases of domestic violence.

## ***1.2 The 1997 Constitution***

Under the Constitution the people of the Fiji Islands:

“[REAFFIRM].. our recognition of the human rights and fundamental freedoms of all individuals and groups, safeguarded by adherence to the rule of law, and our respect for human dignity and for the importance of the family..”

The Constitution is the supreme law and any law that is inconsistent with it is invalid<sup>3</sup>. Laws made and administrative and judicial actions are subject to the Bill of Rights in Chapter 4<sup>4</sup>. The following are particularly relevant to the current review:

- the right to freedom from torture of any kind (physical, mental or emotional) and from cruel, inhumane, degrading treatment or punishment<sup>5</sup>
- the right of every person to equality before the law<sup>6</sup>
- the right to be treated fairly without unfair discrimination. This includes direct or indirect discrimination on grounds such as gender, sexual orientation, birth, economic status, age or disability<sup>7</sup>

Because Fiji’s laws must comply with the Constitution, these sections are critical guideposts in considering how current laws and procedures are operating, and what reforms may be needed, in cases of domestic violence.

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<sup>3</sup> Constitution s.2

<sup>4</sup> Constitution s.21(3)

<sup>5</sup> Constitution s.25(1)

<sup>6</sup> Constitution s.38(1)

<sup>7</sup> Constitution s.38(2)



### **1.3 Fiji's National Strategic Development Plan 2003 - 2005**

The objectives of the current review are also in furtherance of the concern articulated in the National Strategic Development Plan (SDP) 2003 – 2005<sup>8</sup> at Chapter 6.3, *Gender and Development*:

Increasing violence against women and children, especially domestic violence and sexual harassment, is of concern. Since 1995 the Police Department has introduced some measures in order to deal with this issue. Initiatives by the Police include the implementation of a zero tolerance or 'no drop' policy, gender sensitisation training for police officers and the establishment of the Sexual Offences Unit. The Family Law Bill will provide additional safeguards for both women and children, particularly in divorce proceedings.<sup>9</sup>

The second and fifth policy objectives of Chapter 6.3<sup>10</sup> are:

Policy objectives	Key performance indicators
To ensure gender equality and non-discrimination before the law.	<ul style="list-style-type: none"><li>• Review of laws in relation to UN CEDAW completed by 2004.</li><li>• Gender issues integrated in the legal system by 2005.</li><li>• Increased collaboration and partnership with NGOs.</li></ul>
To educate the community and law enforcement agencies to prevent and eliminate violence against women.	<ul style="list-style-type: none"><li>• Appropriate sentencing penalties, including counselling, for violent crimes against women and children in place by 2003.</li><li>• Enactment of the Family Law Bill by 2004.</li><li>• Concerted efforts and public awareness programs against domestic violence and sexual harassment conducted by 2005.</li></ul>

### **1.4 The Taskforce on the Elimination of Violence against Women and Children**

The Taskforce on the Elimination of Violence against Women and Children (EVAWC Taskforce) has a key role in implementing SDP Policy objectives 6.3 referred to above. This Taskforce was established under the multisectoral Women's Plan of Action 1998 – 2008 (WPA).

The Taskforce comprises representatives of Government Ministries and key NGOs. That is representatives of the Attorney-General's Office, Department of Social Welfare, Fiji Police Force, Fiji Women's Crisis Centre, Institute of Justice and Applied Legal Studies, FLRC, Ministry of Health, Ministry of Education, Ministry of Information, Fiji Council of Social Service, Fiji National Committee for Disabled Persons, Ministry of National Planning and National Council of Women.

<sup>8</sup> Parliamentary Paper No. 32 of 2002. Available on the web at: <http://www.iti.gov.fj>

<sup>9</sup> *ibid* p. 61

<sup>10</sup> *ibid*, page 62.

Working cooperatively, the Task Force aims to implement the WPA by:

- integrating identified WPA priority actions into Departmental policies and programs,
- assisting to coordinate and monitor implementation,
- assess progress and recommend future actions,
- facilitating the production of Annual Reports on the achievements of the WPA to the Minister

The Taskforce was involved in establishing the current review. The Taskforce is likely to be active during the current review with a concern to ensure that all government and non-government agencies that have a role in responding to domestic violence, as well as members of the community, are encouraged to contribute their views.

### ***1.5 Convention on the Elimination of All Forms of Discrimination against Women***

Fiji is committed to implementing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>11</sup>. Fiji ratified CEDAW in 1995. The ratification expresses a national commitment to end discrimination against women in all its forms, including in relation to marriage and family relations, to implement the principle of equality of men and women before the law, abolish discriminatory laws, and ensure effective protection of women against discrimination.

In 1992 the CEDAW Committee made General Recommendations<sup>12</sup> in relation to violence against women. The Committee noted in part that the gender based violence that impairs a woman's rights and freedoms is discrimination under article 1 of CEDAW. These rights and freedoms include:

- the right to life
- the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment
- the right to liberty and security of person
- the right to equal protection under the law
- the right to equality in the family
- the right to the highest standard attainable of physical and mental health

In December 1993 the General Assembly of the United Nations adopted the Declaration on the Elimination of Violence against Women<sup>13</sup>. The Declaration expressly recognizes that:

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<sup>11</sup> Available at <http://www.un.org/womenwatch/daw/cedaw/frame.htm>

<sup>12</sup> General Recommendation No. 19 (11th session, 1992) Available at: <http://www.un.org/womenwatch/daw/cedaw/recomm.htm>

<sup>13</sup> General Assembly resolution number 48/104 UNGA 48. The Declaration is available on the web at: <http://www.un.org/documents/ga/res/48/a48r104.htm>

“... violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”

The Declaration defines ‘violence against women’ to mean:

“.. any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”<sup>14</sup>.

In addition the Declaration provides that:

- ‘States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women...’<sup>15</sup>
- ‘Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons’<sup>16</sup>
- ‘Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms’<sup>17</sup>
- ‘Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programs, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation’<sup>18</sup>
- ‘Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women’<sup>19</sup>

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14 Article 1

15 Article 4

16 Article 4(c)

17 Article 4(d)

18 Article 4(g)

19 Article 4(f)

- ‘Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women’<sup>20</sup>
- ‘Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence’<sup>21</sup>,

The 1995 UN World Conference for Women in Beijing established a *Platform for Action* which called on governments to develop implementation plans to address the Platform. The Fiji Government’s commitments at the Beijing Conference formed the basis of the National Women’s Plan of Action (WPA) 1999-2008. The five areas of focus of the WPA are:

- mainstreaming women and gender concerns
- women and the law
- women and micro enterprises
- balancing gender in decision-making, and
- violence against women and children.

In March 1999, the Special Rapporteur on Violence against Women stated the following in her report *Violence against Women in the Family* to the UN Commission on Human Rights:

"207. Fiji: According to reports, there is no specific legislation on domestic violence and few cases have been brought before the courts. Although, the Special Rapporteur is heartened by the Police Department's adoption, in September 1995, of the "No Drop" policy, which requires all domestic violence cases to be investigated, she is concerned at reports that a lack of sensitivity and considerable delays in the investigation process leave victim-survivors exposed to more violence. In particular, the Special Rapporteur is concerned about reports that the burden of pursuing action if a non-molestation order is breached is on the woman, who must return to court. Reportedly, police statistics have documented a 149 per cent increase in reported cases of domestic violence over a five-year period (1993-1997). The Special Rapporteur calls on the Government to take all possible measures, in collaboration with the non-governmental sector to develop a coordinated response to domestic violence that includes the systematic collection of statistics, training for all members of the criminal justice system and the provision or financial support of support services for victim-survivors".<sup>22</sup>

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20 Article 4(i)

21 Article 4(i)

22 Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women – Violence against women in the family, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85 to Commission on Human Rights Fifty-fifth session (E/CN.4/1999/68, para. 207, Annex I) Web: <http://www.hri.ca/fortherecord/1999/documentation/commission/e-cn4-1999-68.htm>

Fiji lodged its initial treaty implementation report in relation to CEDAW in 2000 and this was considered by the CEDAW Committee in January 2002. The Committee commented in part:

58. The Committee notes with concern the high incidence of ethnic and gender-based violence against women in periods of civil unrest. It is concerned that, despite the State party's positive initiatives to address gender-based violence, there are high levels of domestic violence and sexual abuse of girls and women. The Committee is also concerned that the social customs on the husband's right of chastisement, and "bulubulu", give social legitimacy to violence. The Committee also notes that the Evidence Bill, which introduces reforms in procedures with respect to sexual offences, has not been adopted.

59. The Committee requests the State party to strengthen its initiatives to combat gender-based violence and adopt the proposed laws on domestic violence and sexual offences very early, prohibiting practices that legalize violence against women. In particular, it calls on the State party to reinforce its "no drop" policy by prohibiting the reconciliation of cases of rape and sexual assault on the basis of the "bulubulu" custom. The Committee recommends the early passage and entry into force of the Evidence Bill<sup>23</sup>.

### ***1.6 Convention on the Rights of the Child***

This review is also in furtherance of the Fiji's obligations under the Convention on the Rights of the Child (CROC) which Fiji ratified in 1993.

Article 19 provides:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

In 1998, when examining Fiji's first periodic treaty implementation report to the UN, the Committee on the Rights of the Child stated:

37. In light of article 19 of the Convention, the Committee further recommends that the State party take all appropriate measures, including revision of legislation, to prevent and combat ill-treatment within the family, including domestic violence and sexual abuse of children. It suggests, inter alia, that the authorities set up social programs to prevent all types of child abuse as well as to rehabilitate the child victims. Law enforcement should be strengthened with respect to such crimes; adequate procedures

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23 Committee on the Elimination of Discrimination against Women: Fiji. 07/05/2002 A/57/38 (Part I).paras.24-70. (Concluding Observations/Comments)Web: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/206085180eaba54fc1256c6a003b956a?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/206085180eaba54fc1256c6a003b956a?Opendocument)

and mechanisms to deal with complaints of child abuse should be developed, such as special rules of evidence and special investigators or community focal points<sup>24</sup>.

### ***1.7 Summary***

From the above it is clear that the parameters for examining current law and procedures that relate to domestic violence arise not only from Fiji's Constitution but also from international treaties that Fiji has ratified.

Fiji's National Strategic Development Plan provides guidance about general directions and the work of the Taskforce also points to how policy directions are currently being implemented.

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<sup>24</sup> paragraph 37, 18th Session of the Committee on the Rights of the Child, Concluding Observations of the Committee: Fiji. 24/06/98, CRC/C/15/Add.89. Web: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4555210b72fc9fa80256624003851e3?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4555210b72fc9fa80256624003851e3?Opendocument)

## 2. Domestic violence in Fiji

List of Articles Daily Post, Fiji Sun, Fiji Times  
January 2004

<u>DATE</u>	<u>MAG. COURT AT</u>	<u>OFFENDER</u>	<u>PARTICULARS</u>	<u>CHARGES</u>	<u>SENTENCE REPORTED</u>
02/01/04 Daily Post Page 3	Nadi	Simione Sigavinaka	Reported with the murder of his wife at his house in Malolo, Nadi	Murder	Remanded in custody till the 13 <sup>th</sup> of this month for mention
06/01/04 Daily Post Page 4	Suva	Anil Kishor	Reported for assaulting his 5 year old son		
06/01/04 Fiji Sun Page 4	Suva	Mikaele Iramasau	Reported with assault occasioning bodily harm.	Assault occasioning bodily harm.	2 year suspended
08/01/04 Fiji Times Page 2	Suva	Constable Josateki Loseni	Admitted throwing hot water on his wife and assaulting her	Assaulted occasioning actual bodily harm	Levy a fine on Loseni for court costs
11/01/04 Daily Post Page 5	Suva	Suruj Band	Reported for assaulting his wife after an argument	Reconciled	Warned not to reoffend in the next 12 monhs
14/01/04 Daily Post Page 4	Suva	Lanieta Kaloni	Struck her husband with a knife on the head	Charge of acting with intent to cause grievous harm	Fined \$ 100 and was told to keep the peace for the next 12 months or face a jail sentence
20/01/04 Daily Post Page 1	Nadi	Roselyn Lata	Tossed a kettle of boiling water on her husband's 17 year old girlfriend	Charges would lay against her as soon as they prove the act was committed deliberately	No charges laid yet

21/01/04 Daily Post Page 4	Suva	Jope Raderua	Reported for allegedly assaulting his 15 year old sister	One count of act to cause grievous bodily harm	The victim was not present in court and the case was adjourned to May 13.
27/01/04 Fiji Times Page 5	Nadi	Mithun Permal	Whipped his pregnant wife with an electric cord	Charged with beating and abusing of his wife	Jailed for 18 months
28/01/04 Fiji Times Page 2	Nadi	Kamla Wati	Assaulted her daughter Rosela Devi causing internal injuries	No charges has been	Investigations continued

### July 2004

13/07/04 Daily Post Page 4	Suva	Parma Rao	Assaulted his 42 year old wife	Assault occasioning actual bodily harm	Stayed the proceedings for 1 year because of reconciliation
19/07/04 Daily Post Page 4	Nadi	Tevita Mapili	Assaulting the Landlady after she demanded payment of an overdue rent	Assault occasioning bodily harm	Jailed
21/07/04 Fiji Times Page 4	Suva	Lusiana Baleikasavu	Allegedly cut off the hand of another women because of a misunderstanding at a drinking party	Charged with act with intent to cause grievous harm	Adjourned the case to August 11
28/07/04 Fiji Times Page 4	Suva	Vijay Narayan	Assaulted his wife causing bodily harm	Assault occasioning actual bodily harm	Fined \$ 150 on each count

The table above is a summary of articles about ‘domestic violence’ cases before Magistrates’ Courts that appeared in the newspapers indicated in January and July 2004.

These reports show how different kinds of relationships are involved in violence that could be called ‘domestic violence’.

UNIFEM has highlighted that:

‘Law, whether general provisions or specific pieces of legislation, usually fail to take into account the context in which violence occurs and so may not be able to provide the help needed’<sup>25</sup>.

<sup>25</sup> p. 44, UNIFEM, Not a Minute More: Ending Violence Against Women, New York, 2003



The ‘context’ in relation to domestic violence in Fiji includes being clear about what is meant by the term ‘domestic violence’ and what is known about the nature and prevalence of domestic violence. Also relevant are:

- what support and help is actually available for victims and for perpetrators
- community attitudes and the roles of families, friends and a wide range of agencies.

This approach can help create laws that are tailored in effective ways. Examples are provisions to address misconceptions and correct unsatisfactory practices. The process can also help avoid or highlight difficulties that might arise in implementation.

The ultimate purpose of laws that deal with domestic violence are to ensure safety and to try to prevent the violence occurring. However, the extent to which the law can achieve these goals is affected by many factors. The state of the law, the way it operates, and who can use it – in turn effects the efforts of many others to address domestic violence.

### ***2.1 What does ‘domestic violence’ mean?***

The first thing that generally comes to mind when thinking about ‘domestic violence’ is physical violence by a man towards his wife or de facto wife, that it occurs in the home although it might also occur elsewhere and that children might be present.

#### **2.1.1 Intimate partner violence**

A great deal of attention has been focused internationally on domestic violence as described above. The World Report on Violence and Health<sup>26</sup> for example deals extensively with ‘violence by intimate partners’ and also outlines the ways that children in the household can be affected by the violence. For this reason children are often referred to as the ‘indirect victims.’

When intimate partner violence is looked at more closely it becomes apparent that there are a range of abusive behaviours that are generally associated with it. These include emotional and psychological abuse. It also becomes apparent that there are identifiable features of this kind of violence that include one partner attempting to dominate the other. This may be based on attempts to control, contain, discipline or punish the ‘victim’ partner.

Work to address violence by an intimate partner often points to the power imbalance between the perpetrator and victim. A leading analysis of domestic violence is that the perpetrator works intentionally to exert power over the victim in order to control the victim. In an intimate partner relationship involving violence, the victim is highly vulnerable. Once a pattern is established the perpetrator may be able to maintain control /

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26 Knig EG et al., eds. World Report on Violence and Health. Geneva, World Health Organisation, 2002 Web: [http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](http://www.who.int/violence_injury_prevention/violence/world_report/en/)

keep the victim in fear by using highly subtle techniques. Sometimes the subtly reaches the point where the victim knows an act is intended to communicate a threat even though an external observer may have difficulty seeing this.

Research shows that *gender* is centrally relevant in heterosexual intimate partner violence. The perpetrators are usually men and the victims are usually women. Heterosexual intimate partner violence is recognised internationally, and named internationally, as a form of violence against women.

It is also the case that intimate partner violence occurs in same-sex relationships.

Domestic violence or violence by an intimate partner, as described above, is generally interpreted in the public mind as meaning cases of ‘assault’. However, violence by an intimate partner can take the form of most criminal acts against the person and many property crimes. This includes rape and homicide and cases where property is damaged or destroyed.

Although intimate partner violence can be an isolated incident, the violence is generally repeated. The victim can often identify a pattern to the violence where the victim knows when a situation is building and the risk is increasing.

International studies point to the breakdown of the relationship as being a time of heightened risk for many victims of intimate partner violence<sup>27</sup>. The risk may continue for months or even years after the separation. Criminal offences may range through the gamut referred to above<sup>28</sup>. This includes cases of homicide where the partner and/or the children are killed and homicide where the perpetrator also commits suicide.

### **2.1.2 Violence by other relative in the home**

In Fiji, in-laws, siblings and other relatives may be part of a household or be regular visitors. These household members and visiting relatives may also be involved in violence in the particular home as victims or as offenders.

This violence has some common features with intimate partner violence. That is, it involves a close personal connection between victim and the offender, it happens in a family or relationship context, and it happens in the home or has a close connection with the home.

For example, this may involve violence by or towards a sibling, parent, grandparent, child, nephew, niece or cousin. Criminal offences may range through the gamut referred

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27 Neither justice nor protection: women's experiences of post-separation violence, Cathy Humphreys; Ravi K. Thiara, *Journal of Social Welfare and Family Law*, September 2003, vol. 25, no. 3, pp. 195-214(20), Routledge

28 *ibid.* Humphreys and Thaira undertook detailed research involving 180 women in 2000/1 in England. The women surveyed had all been subject to severe physical violence and emotional abuse within the relationship. The women had separated because of the violence. 60% feared that they would be killed and 54% said that they could see that the abuse was affecting their children. However for most the violence did not stop when they separated. More than  $\frac{1}{2}$  of the separated women in the study initially suffered further abuse and harassment from their former partners. Much of the violence ceased after the first 6-12 months often due to the woman moving. However, more than  $\frac{1}{3}$  of the women suffered continued post-separation violence.

to above and include the assault of a wife by an in-law, sexual offences towards children and abuse of elderly relatives. In common with intimate partner violence, there may be a power relationship between the offender and the victim, the victim may be vulnerable because of the family relationship, and the victim may be reluctant to disclose the abuse because of the family relationship.

### **2.1.3 Violence where a child in the home is a direct or indirect victim**

In addition to the fact that children may be present and witness intimate partner violence or other violence that occurs in a household, children may also be the direct victims, or one of the direct victims, of violence in the home.

Violence against children in the home may take several forms including: corporal punishment that amounts to child abuse or a criminal offence; emotional and psychological abuse or withdrawal of care that amounts to neglect and child abuse; and, sexual offences.

Where children at risk of violence in the home come to the notice of Social Welfare there may be grounds for considering removing the child from the home for the child's safety.

The most common perpetrator of child homicide in Fiji is a parent of the child, generally acting alone. This includes cases where a child has died from 'punishment' inflicted where other family members did not or could not stop the attack. Child homicide is dealt with further below.

### **2.1.4 Violence in boyfriend / girlfriend relationships**

There are cases where features of intimate partner violence can be seen in boyfriend / girlfriend relationships whether or not there has been sexual intimacy. This can include physical, emotional and psychological violence while the relationship is still ongoing.

Gender is relevant to violence in boyfriend / girlfriend relationships in a similar way that it is relevant to intimate partner violence. Similarly attempts by the victim to end the relationship may heighten the risk and the risk may continue once the relationship has ended.

There are also cases where violence of the kind described occurs where there has actually been no boyfriend / girlfriend relationship. In these cases the perpetrator may have wanted to establish a relationship but was rejected or the perpetrator imagined that there was a relationship but this was not the case.

### **2.1.5 Violence in carer and other household relationships**

Some of the features of intimate partner violence and violence in family relationships may also be present in the relationship between carer and the person they care for and in household relationships of other kinds. This includes aspects such as:

- vulnerability – for example the vulnerability of a person who is dependant on another for care in the home due to age or disability
- proximity – that is, the difficulty of avoiding contact and remaining separate or safe because the household is shared
- domestic context

Household relationships may include: shared or group houses; boarder or lodger; shared employee or vocational accommodation; and that of person employed to work in the household (e.g. housekeeper, cleaner).

### **2.1.6 Summary**

The section above describes five situations that might be encompassed by the term ‘domestic violence’. That is:

1. Intimate partner violence
2. Violence by other relative in the home
3. Violence where a child in the home is a direct or indirect victim
4. Violence in boyfriend / girlfriend relationships
5. Violence in carer and other household relationships

Identifying what is meant / included by the term ‘domestic violence’ is important for raising public awareness and developing responses.

#### **Questions:**

**Five situations that might be encompassed by the term ‘domestic violence’ are outlined above. That is:**

- 1. Intimate partner violence**
- 2. Violence by other relative in the home**
- 3. Violence where a child in the home is a direct or indirect victim**
- 4. Violence in boyfriend / girlfriend relationships**
- 5. Violence in carer and other household relationships**

**However, there are also differences between these.**

**1 In order to establish a common understanding of the term *domestic violence* should this refer to all five, or only some, of the situations listed above? Are there other situations that should be covered?**

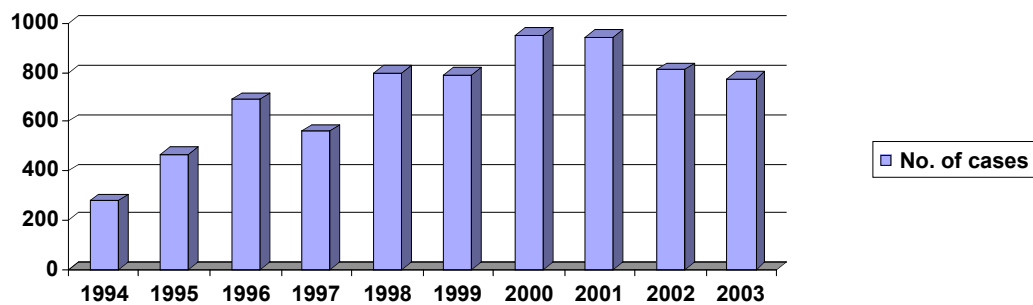
**2. If all five should be included would the term *domestic and relationship violence* be preferable?**

**3. Alternatively, should *domestic violence* only refer to the first three with the last two referred to by a new term *other relationship violence*? Do you have any other suggestions about what terms should be used?**

## 2.2 Nature and prevalence

This section deals with the nature and prevalence of domestic violence in Fiji. It draws on the national study by the Fiji Women’s Crisis Centre and points to some other indicators.

**Ten year Trend for Domestic Violence (1994-2003)**



Source: Fiji Police, August 2004

**Domestic Violence Victims 1999-2003**

Year	Murder	Attempted Murder	Manslaughter	AWITCGH	AOABGH	Common Assault	Other Offences Against Person	Total
1999	3	1	0	59	608	102	14	787
2000	0	1	0	67	687	146	47	948
2001	1	0	0	59	792	79	11	942
2002	2	0	0	74	645	85	3	809
2003	5	2	1	65	590	72	40	775

Source: Fiji Police, August 2004

### **2.2.1 Fiji Women’s Crisis Centre National Study**

In 2001 the Fiji Women’s Crisis Centre published the major research report *The Incidence, Prevalence and Nature of Domestic Violence and Sexual Assault in Fiji*. (FWCC Study 2001). This study looked at the incidence, prevalence and attitudes towards domestic violence and sexual assault in Fiji. The study involved review of a sample of police records to identify cases involving domestic violence and sexual assault and a national survey complemented by 22 focus groups and individual interviews.

The study divided cases of domestic violence into two categories: partner abuse and non-partner abuse. *Partner abuse* refers to abuse that occurs between two people who are or who have been at some stage living in a sexual relationship. *Non-partner abuse* refers to all other scenarios where the abuse was perpetrated by other persons who were related either through blood or marriage and who are living in a domestic situation<sup>29</sup>.

National Police crime statistics for the 5 year period from 1993-1997 showed a total of 2234 reports of domestic violence. The figures were as follows<sup>30</sup>:

Year	Murder	Attempted Murder	Manslaughter	AWITCGBH <sup>31</sup>	AOGBH <sup>32</sup>	Common Assault	Other offence against the person	Total
1993	1	0	2	27	177	22	6	235
1994	4	0	0	40	183	39	12	278
1995	2	0	0	31	354	72	11	470
1996	2	1	1	56	404	211	12	690
1997	0	0	0	32	430	85	14	561
Total	9	1	3	186	1548	429	55	2234

The table shows that by far the largest number of charges laid in domestic violence matters were for assault occasioning actual bodily harm and assault.

The findings of the survey included the following:

#### *Domestic violence* Prevalence

- 80% of women surveyed had at some time seen someone beaten in their home
- the survey results, analysis of cases reported to the Police and analysis of the FWCC own cases all indicated that in 95% of cases the victims were female and perpetrators were male. Perpetrators were mostly male family members

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<sup>29</sup> FWCC 2001, p. 13

<sup>30</sup> *ibid* p. 11

<sup>31</sup> Acting with intent to cause grievous bodily harm

<sup>32</sup> Assault occasioning actual bodily harm

- 66% of survey respondents reported experiencing violence from their partners. By gender, 17% of male respondents and 66% of female respondents reported experiencing violence from their partner.
- 47% of male respondents to the survey admitted to having hit their wives
- for non-partner violence, the in-laws (34.1%) comprised the largest group of perpetrators followed by siblings (25.1%). The relationships of parent, child aunt/ uncle each rated less than 10% but the category 'other relative' was 20.1%,
- the use of weapons in domestic violence attacks was not as widespread as the use of the hand or fist. Where the male was the perpetrator physical violence was used but where the female was the perpetrator (often it appeared acting in retaliation to abuse), generally household objects were used,
- 30% of female victims reported being physically abused repeatedly,
- injuries to the victim were mostly to the head and face,
- in 86% of cases of domestic violence the physical abuse occurred in the home, 7% in a public place and 1% in a restaurant, nightclub or at a party,
- prevalence of domestic violence was not confined to a particular racial group. FWCC Study indicated that ethnic Indian women sought counselling and assistance more than ethnic Fijian women.

### Pregnancy

- 44% of women who had experienced domestic violence reported being hit while pregnant. For most women in these situations the abuse began at the first pregnancy and usually continued throughout the marriage.
- the main reason given by victims for the abuse was their refusal to have sex with their partners while pregnant. Other significant reasons given by victims for the abuse was that the perpetrator was drunk or the perpetrator considered that the victim had been disobedient

### Acceptance of domestic violence

- there is a high level of tolerance of domestic violence in Fiji. Women themselves appear to be culturally and socially conditioned to believe that violence inflicted upon them was justified under the circumstances.

### Intervention

- 80% of respondents indicated that they would intervene in domestic violence conflicts but this appeared to be contradicted by experiences of victims where intervention was rare.

### Justifications given

- disobedience on the part of the woman was the main reason given by men and women (total 49%) as justification for domestic violence upon a woman by her partner. The second major reason was flirting and adultery. Also it was felt that women were justified in hitting their husbands when he committed adultery or was caught flirting.
- 10% of men and 5% of women thought it was all right for a man to hit his wife with an object and around the other way, 7% of men and 6% of women thought that it was all right for a woman to hit her husband with an object
- the justification given for other family members hitting a man or woman in their household was disobedience. 57% thought that disobedience made it all right for other family members to hit a woman with their hands and 45% thought that disobedience made it all right for other family members to hit a woman with objects. These percentages were higher (64% and 56%) respectively in relation to other family members hitting a man.

### Low use of support services / under reporting

- 74% of women victims did not seek medical attention. The main reason given was that they did not consider the injury serious enough to report it. Other reasons given for not seeking medical attention were: shame, restricted access to medical services because of distance/ finance/ transport, fear or that they considered it a private matter.
- only 9% of respondents hit by their partners reported the incident to the police. The main reasons given by respondents for not reporting were that it was not serious (23.5%), fear of partner (13.4%), love partner (9.4%), ashamed 8.9%), private matter (7.9%), couple sorted it out together (6%), partner may go to jail (5.8%). Almost 18% of the respondents did not respond to the question.
- there was a large gap between the number of cases reported to Police and the survey results indicating a major under reporting.
- only 13% of people hit by their partners (3 men and 99 women) reported it to other agencies apart from police and medical authorities. The other main agencies that people reported to were the Social Welfare Department (42.2%), religious organizations (41.2%), counsellors (2%) and the FWCC (5.9%). The main reason given for reporting to one of these organisations was for counselling.
- lack of adequate services and community support for victims of domestic violence and their families contribute to under reporting by victims

### Outcome of reported cases

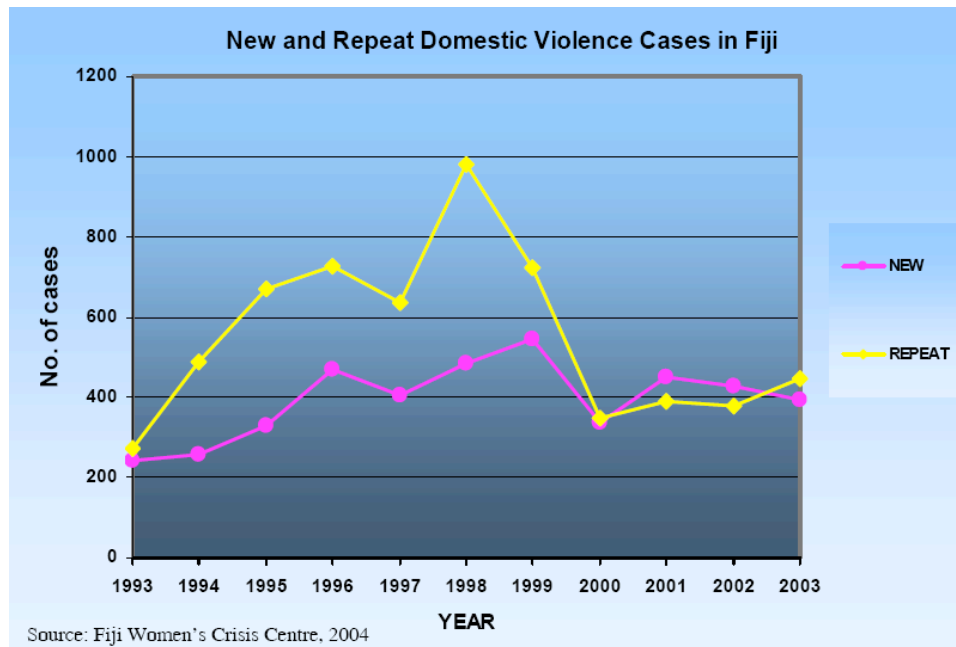
- from sample Police reports for 1993-1997, 38% resulted in reconciliation and 7% resulted in reconciliation and sentencing,
- the slow pace of law and the judicial process are discouraging for women victims who have opted to take court action.



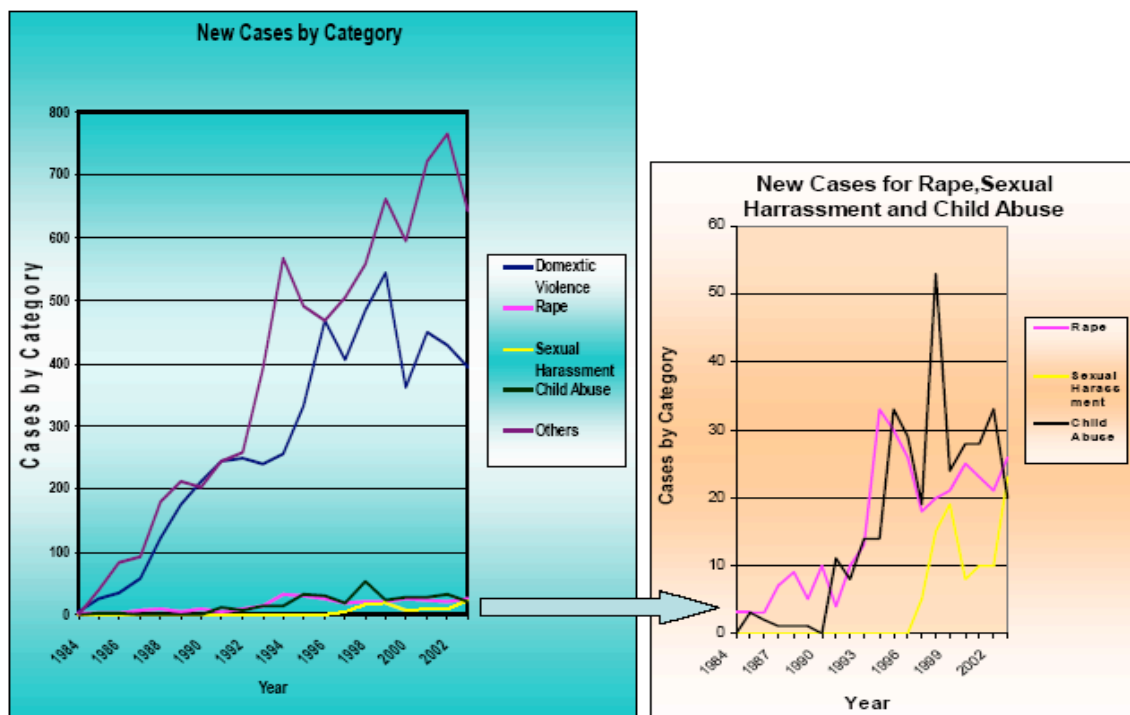
### *Sexual harassment and assault*

- almost 50% of survey respondents said that they knew of someone who was the victim of rape or sexual assault and 13.2% said that they were the victim of rape,
- from Police and FWWC reports all of the perpetrators of the reported cases were male and 96% of the victims were female. The youngest victim was less than 6 years and the oldest over 55 years. The largest group of victims were aged 11-15 years (30%) and perpetrators were mostly in the 20-29 years age group,
- while Police records indicated that 40% of sexual assault cases were committed by male perpetrators who were strangers to the victim, in cases reported to the FWCC 74% were cases where the perpetrators were known to the victim. The difference appears to relate to the fact that cases involving a stranger were more likely to be reported to Police. In FWCC records, relatives made up the largest group of perpetrators being close to 31%
- FWCC statistics show a steady increase in cases of rape and sexual assault indicating that cases of sexual harassment and rape are significantly under reported.
- sexual assault cases especially in a domestic setting were perceived as significantly under reported.

The following tables show new and repeat domestic violence cases seen by the Fiji Women's Crisis Centre<sup>33</sup>



<sup>33</sup> This and the following chart are from a presentation titled Gender Based Violence – A Pacific Perspective, by Urmila Singh, Assistant Representative, United Nations Population Fund Office for the Pacific. The paper was presented at the 2nd Asian Women Parliamentarians and Ministers Conference, A Woman's Perspective: Population, Development and Reproductive Health in the Asia-Pacific Region, 29-30 June 2004, Canberra, Australia. The Paper is available on the web at: <http://www.arfa.org.au/2ndAsianWomensConf.htm>



Source: Fiji Women's Crisis Centre, 2004

### 2.2.2 Lethality

The reach of domestic violence in Fiji includes cases of adult homicide, child homicide and suicide.

#### *Homicide*

National police crime statistics for 1993-1997 quoted above, showed 9 murders and 1 attempted murder relating to domestic violence.

Research into homicides in Fiji released in 1995, indicated that 30.5% of homicides were motivated by domestic disputes.<sup>34</sup> Domestic problems were also found to be a common catalyst for murder-suicides. Women in particular committed murder suicides in response to marriage conflict with husbands and domestic difficulties involving in-laws.

It is also noted that the U.S. State Department's Human Rights Report for 2001 speculated that 30 reported suicides by Indo-Fijian women in Fiji were actually deaths due to bride burning, that is attacks on women by their husbands or their husbands' relatives prompted by dowry disputes<sup>35</sup>. This report has not been corroborated.

#### *Child homicides*

<sup>34</sup> M. Adinkrah, *Crime, Deviance and Delinquency in Fiji*, FCOSS, 1995

<sup>35</sup> Released in March 2002. The report is available at: <http://www.state.gov/g/drl/rls/hrpt/2001/eap/8308.htm>

Sixty one child homicides happened in Fiji between January 1982 and December 1994. These are cases where the children were aged 14 or younger. The cases were examined in a study by Adinkrah<sup>36</sup> who found that there were 51 offenders of whom almost 70% were female and 30% were male. In one case a marital couple was jointly responsible for the murder of their child.

The study found that in Fiji, in common with studies relating to many other countries, it was overwhelmingly the case that most incidents occurred within the context of the family. In the Fiji study, 82% of the child killings were perpetrated by parental assailants of whom 61% were the child's mother. The child's home was the most prevalent location for child homicides.

Adinkrah reported that one of the most striking results of the study was the extent to which intrafamilial violence was a precursor to child homicide<sup>37</sup>.

The cases indicated four major categories of child homicides:

- maternal neonaticides - killing within 24 hours of birth by the mother
- altruistic killings – killings to avoid perceived harm to a child
- fatal child abuse, mistreatment and neglect, and
- assaults by non-familial assailants.

It was found that a number of child homicides occurred against a backdrop of chronic familial conflict, particularly between husbands and wives and between kin related by marriage residing in the same household. Marital disputes often centred on accusations of spousal infidelity<sup>38</sup>. In one case a husband insinuated that his four year old daughter was the product of his wife having an affair with a neighbour. The husband caused the death of his daughter by a protracted pattern of deliberate starvation and mistreatment. In another case a toddler was killed as an innocent witness to a spousal assault.

There were 13 cases where mothers killed their children in response to specific instances of abusive treatment by their husbands or in-laws and then attempted or successfully committed suicide. Case profiles revealed that these mothers feared for the safety and well-being of their children if they had survived.<sup>39</sup>

Nine child homicides occurred in the context of physical discipline administered by parents. These all appeared to be cases of corporal punishment where the force applied was excessive<sup>40</sup>. In one of these cases a father beat his son after the child took a banana from the family dining table. The father kicked him down stairs and beat him into

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36 Child Homicide Victimization in Contemporary Fiji Adinkrah M., International Journal of Comparative Criminology, 1 June 2001, vol. 1, no. 1, pp. 23-39(17) de Sitter Publications

37 p. 36

38 P. 31

39 p. 31-32

40 p. 32

unconsciousness with a belt and a stick. He barred his wife and other members of his household from seeking medical treatment for the child.

There were two cases of child homicide that occurred in the context of spousal revenge. In one of these a husband bludgeoned his wife and their five children to death and in the second the husband set the house alight while the four children were asleep inside. All four died. In the first of these cases the husband was suspicious that the wife was having an affair and in the second the husband was allegedly incensed when he woke his wife to ask her to warm his dinner and she said that he should do it himself<sup>41</sup>.

### *Suicide*

The rate of suicide in Fiji has been identified as a substantial public health issue. In June 2004, announcing cabinet endorsement of a local Yellow Ribbon Team, the Minister for Health, Solomone Naivalu noted that police and health statistics indicated a steady rise in attempted and completed suicides over the last five years. It was also noted that suicide is among the top five causes of death in 15-19 year age group worldwide and comparison with global figures showed that the Pacific youth suicide rates were the highest in the world<sup>42</sup>.

Fiji Police suicide statistics by gender for the period 1997-2001 indicated an average of 44 suicides per year by females and 53 per year by males. In the 5 year period police recorded 221 cases where women successfully committed suicide<sup>43</sup>.

In 2001 the Fiji government established the National Committee on the Prevention of Suicide (NCPS) to help develop strategies for suicide prevention. A national suicide forum was held in March 2004. The NCPS reported that over 100 people committed suicide last year with the largest number being young Indo-Fijian women.

A preliminary study of suicide in Fiji published in 1984, found substantially higher suicide rates among Indo-Fijians than native Fijians. Among Indo-Fijians there were higher rates of suicide for women under 30 and for men over 30. Also, that where Indo-Fijian families gave reasons for the death, marital and family violence accounted for 41 percent of female suicides.<sup>44</sup>

In relation to recent suicides in Fiji, the most common method of suicide has been found to be, in decreasing order, hanging, consuming paraquat poison, immolation and ingestion of other chemicals.

### *Domestic violence fatality reviews*

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41 p. 33

42 Press release: [http://www.fiji.gov.fj/publish/page\\_2653.shtml](http://www.fiji.gov.fj/publish/page_2653.shtml)

43 Fiji Police, Women as Victim of Crimes 1997-2001 presented at the launch of 16 Days of Activism Against Gender Violence / Violence Against Women, November 2003

44 R H Haynes, Suicide in Fiji: a preliminary study, *The British Journal of Psychiatry*, 145, pp. 433-438 (1984). It should be noted that precipitating factors were examined for Vanua Levu during the period 1979-1982 only.

In some overseas jurisdictions arrangements for the review of domestic violence fatalities have been implemented<sup>45</sup>. This consists of a process to:

- identify deaths, both homicide and suicide, caused by domestic violence
- undertake a multidisciplinary review of each case to look at what assistance and interventions occurred
- make recommendations about how to improve the response of various agencies to avert future domestic violence related deaths.

Methods of implementing domestic violence fatality reviews differ. In some jurisdictions there are informal processes established by concerned agencies while in others the arrangements are set out in legislation.

In addition to coordinated processes, other initiatives for review of domestic violence fatalities may include:

- procedures established by individual agencies to undertake an internal review of their performance in relation to individual cases
- increasing the level of emphasis placed by the Coroner on assessing the role of various agencies when inquiring into the causes of death
- establishing statistical collection arrangements that seek to identify and report on domestic violence related fatalities (not limited to homicides)

#### **Questions:**

**4. What further information is available about the nature and extent of the link between domestic violence and fatalities particularly relating to:**

- **murder and attempted murder?**
- **murder-suicide?**
- **child homicide?**
- **suicide?**

**5. What domestic violence fatality review arrangements are in place?**

**6. What if any improvements should be made to these arrangements?**

### **2.2.3 Domestic violence and gender**

Police statistics for 1997-2001 indicate an alarming trend in Fiji in relation to violent crimes committed against women. In this five year period 9370 cases of violence against women were reported to police. Figures for 1997 compared to 2001 indicated an increase

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45 For a review of implementation up to about 1999 in States in the USA see Reviewing Domestic Violence Fatalities : Summarizing National Developments, Neil Websdale, Maureen Sheeran & Byron Johnson Available at <http://www.vaw.umn.edu/documents/fatality/fatality.html>

of about 24%. Each case can involve more than one crime. The following are the totals for types of crime against women in the 5 year period<sup>46</sup>:

Homicide	Serious Assault	Acts against morality of
Murder	Act with intent to cause grievous	women
Attempted murder	bodily harm	Rape and attempted rape
Manslaughter	Common assault	Indecent assault
Total: 30	Assault occasioning actual bodily	Incest
	harm	Unnatural offences
	Total: 13,426	Defilement
		Total: 1,370

Forty seven population based surveys from around the world indicate that 10% - 69% of women reported being physically assaulted by an intimate partner<sup>47</sup>. The higher figure correlates with the national research conducted by the Fiji Women’s Crisis Centre that indicated that:

- 66% of women in Fiji have at some point been beaten by their partner
- 30% of these women have been repeatedly abused, and
- 42% of the women surveyed reported being abused during pregnancy<sup>48</sup>.

The World Report on Violence and Health also focused on violence against women and found:

“One of the most common forms of violence against women is that performed by a husband or an intimate male partner. This is in stark contrast to the situation for men, who in general are much more likely to be attacked by a stranger or acquaintance than by someone within their close circle of relationships. The fact that women are often emotionally involved with and economically dependent on those who victimize them has major implications for both the dynamics of abuse and the approaches to dealing with it”<sup>49</sup>.

Intimate partner violence occurs in all countries, irrespective of social, economic, religious or cultural group. Although women can be violent in relationships with men, and violence is also found in same-sex partnerships, the overwhelming burden of partner violence is borne by women at the hands of men”<sup>50</sup>.

Additional figures from the FWCC national survey (set out above under Nature and prevalence) indicate that most victims of intimate partner violence in Fiji are women.

<sup>46</sup> Fiji Police, Women as Victim of Crimes 1997-2001, presented at the launch of 16 Days of Activism Against Gender Violence / Violence Against Women, November 2003

<sup>47</sup> op cit p. 89, World Report on Violence and Health

<sup>48</sup> See above, under Nature and prevalence

<sup>49</sup> op cit p. 89 World Report on Violence and Health

<sup>50</sup> ibid

### **2.2.4 Domestic violence and children**

The FWCC survey asked respondents who had witnessed violence in their home to describe the perpetrator's relationship to the victim. The result was as follows:

Description of victims of violence witnessed in respondent's home

Victim/s	Number	Percentage
Daughter	563	32.8
Son	417	24.3
Mother/ wife	673	39.2
Father / husband	53	3.1
No response	12	0.7
Total	1718	100

The report noted:

'The fact that daughters (32.8%) appear to be beaten in more households than sons (24.3%) confirms assumptions based on counselling and community education experiences. Children (sons and daughters) accounted for 57.1 per cent of the victims, exceeding the wives/ mothers who accounted for 39.2 per cent'.<sup>51</sup>

The survey also asked who was most frequently beaten<sup>52</sup>:

Victim/s	Number	Percentage
Mother /wife	572	36.3
Children	307	19.5
Daughter	140	8.9
Son	230	15.9
Mother and children	15	1.0
Father / husband	6	0.4
No response	305	19.4
Total	1575	100

49% of survey respondents (all adults) said that their mother had been beaten by their father and 13% said that their father had been hit by their mother<sup>53</sup>.

In cases where no one intervened to stop the beating of the mother by the father the main reasons given were: too scared; too young; and not anyone else's business<sup>54</sup>.

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<sup>51</sup> FWCC 2001, p. 15

<sup>52</sup> *ibid* p. 15

<sup>53</sup> *ibid* p. 19

<sup>54</sup> *ibid* p. 31

The above figures highlight that the direct victims of domestic violence include children and additionally that children are often aware of domestic violence between their parents or other family members.

Additionally, as noted above, violence against children in the home may take several forms including: corporal punishment that amounts to child abuse or a criminal offence<sup>55</sup>; emotional and psychological abuse or withdrawal of care that amounts to neglect and child abuse; and, sexual offences.

Apart from the consequences of direct physical attacks on children, research conducted in many countries points to serve consequences for children who witness domestic violence in the home. That is:

Witnessing and experiencing violence as a child can also result in internalizing violence as a form of conflict resolution. Girls who witness their mother being abused may be more likely to accept violence as the norm in a marriage than those who come from non-violent homes. While many children from violent homes do not grow up to be violent, those who have witnessed violence in childhood are more likely to become adults who engage in violent behaviour both inside and outside the home<sup>56</sup>.

Children are often present during domestic altercations and those who witness marital violence are at a higher risk for a whole range of emotional and behavioural problems, including anxiety depression, poor school performance, low self-esteem, disobedience, nightmares and physical health complaints.<sup>57</sup>

### ***2.3 Domestic violence compared to other forms of violence***

There are a number of factors that distinguish domestic violence from other forms of violence. These include:

- the nature of the relationship between victim and perpetrator
- the location of the violence within the private rather than the public realm
- the pattern of the violence
- the causes

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<sup>55</sup> op. cit, Adinkrah, M., Child Homicide Victimization in Contemporary Fiji

<sup>56</sup> p. 12, Domestic Violence Against Women and Girls, Innocenti Digest No. 6, 2000, UNICEF Innocenti Research Centre. Available at: <http://www.unicef-icdc.org/publications/pdf/digest6e.pdf>

<sup>57</sup> op. cit p. 103, World Health Report on Violence and Health



### **2.3.1 Private and Public**

The Pacific Regional Workshop held in Suva in February 2003 emphasised that an outstanding problem was that violence against women is still seen mainly as a personal and domestic problem.<sup>58</sup>

Under the public / private dichotomy there is a strong tendency for public matters to be regulated and private matters left alone. Reluctance to ‘cross the boundary’ into the private sphere is one of the reasons that violence in the home goes unchecked.<sup>59</sup> Also, this distinction means that other members of the community become concerned about ‘interfering’ with ‘other peoples business’ and are reluctant to intervene or are uncertain about how to intervene.

The public / private dichotomy is at the heart of the difficulty the community and the legal system have in addressing domestic violence. Increasingly, advocacy groups are promoting the view that domestic violence, while largely occurring in the private sphere, must be seen as a public problem, with public intervention and sanctions.

Despite significant efforts to make domestic violence an issue in the public arena, as the research undertaken by the FWCC indicates, many victims are reluctant to report abuse, and many law enforcement and court personnel are reluctant to use their discretion and resources to pursue these matters. That is, the public / private dichotomy results in difficulties for victims and uncertainty and discomfort for public institutions.

### **2.3.2 Pattern of the violence**

Unlike other forms of violence, domestic violence is generally not ‘one off’ and there is a pattern to the violence.<sup>60</sup>

The ‘pattern’ of domestic violence has been described in various ways. The World Report on Violence and Health refers to a continuing pattern of abusive behaviour, where most women who are targets of physical aggression generally experience multiple acts of aggression over time<sup>61</sup>.

Violent events may occur in a variety of patterns. The victim may experience ongoing abuse or the abuse may stop and start. A pattern of abuse that often applies to domestic violence begins with a tension or building phase, followed by the actual abusive act, then a calm and a making-up phase sometimes called the honeymoon phase, followed by process starting again. This has been referred to as the ‘cycle’ of domestic violence<sup>62</sup>.

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58 UNIFEM, Strengthening Pacific Partnerships for Eliminating Violence Against Women – A Pacific Regional Workshop Report, Suva Fiji (2003)

59 op cit, World Report on Violence and Health p89

60 Walker, Lenore, The Battered Woman. New York: Harper and Row, 1979

61 op cit World Report on Violence and Health p. 89

62 op. cit. Walker

The honeymoon phase may include both excuses for abusive episodes and expressions of love for the victim. The abuser may deny the violence or blame his actions on his drunkenness, stress and/or the behavior of the partner /victim. The abuser may promise that the abuse will never happen again<sup>63</sup>.

While many victims of domestic violence can identify a ‘cycle’ to the violence the ‘phases’ listed above are a generalisation. Many women never experienced a gradual build-up of tension, but rather unpredictable episodes of battering. This theory also did not explain why men directed their explosions of rage only against their intimate partners<sup>64</sup>.

The pattern of the violence partly explains why many victims of domestic violence face obstacles in seeking support. That is, for some victims the pattern produces diminished self-esteem, helplessness, depression, feelings of imprisonment, even the belief that they deserve abuse<sup>65</sup>.

The World Report on Violence and Health identified a number of factors that can result in women continuing to be vulnerable and at risk. These include:

- fear of retribution
- lack of alternative means of economic support
- concern for children
- emotional dependence
- a lack of support from family and friends, and
- hope that the man will change<sup>66</sup>.

The research also suggests that leaving an abusive relationship is a *process*, not a *one-off* event. Most women leave and return several times. At times the process is characterised by periods of denial, self-blame and suffering before the victim might come to recognise the reality of the abuse<sup>67</sup>.

### **2.3.3 Causes of domestic violence**

The causes of domestic violence have been looked at from many perspectives. These includes consideration of issues such as whether this form of violence is learned or inherited, sex related, biological, related to intelligence, substance abuse (alcohol or drugs), socio-economic status, the role of the media, as well as how these factors may interplay.

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63 op. cit Walker

64 R. Emerson Dobash & Russel P. Dobash, (1992) Women, Violence and Social Change 222-23, 225, 229-32

65 Campbell, J., Rose, L., Kub, J. and Nedd, D. 1998, Voices of strength and resistance: A contextual and longitudinal analysis of women’s responses to battering, Journal of Interpersonal Violence, 13,6, 743-762

66 op. cit, World Report on Violence and Health, p. 96?

67 ibid

The World Report on Violence and Health notes that while there is an emerging consensus that an interplay of personal, situational, social and cultural factors combine to cause abuse, there is still only limited information on which factors are the most important.<sup>68</sup>

Differences in ways of viewing the causes of domestic violence explain some of the variations in social, political, legal and service delivery responses. Below is a brief overview of some of the approaches that have been taken.

### *Individual psychological and behavioural approaches*

Some psychological perspectives see the cause of a perpetrator's abusive behaviour in his personal developmental experience. This approach often identifies characteristics of the perpetrator such as:

- low self esteem accompanied by high levels of dependency on spouse or partner with accompanying jealousy and suspiciousness
- fear of intimacy
- high power/control needs
- high levels of hostility
- depression<sup>69</sup>

Some international studies have shown that men who assault their partners are more likely to be emotionally dependent, insecure, have low self esteem, and are more likely to find it difficult to control their impulses.<sup>70</sup>

Practices and interventions based on these perspectives focus on the individual and might include counselling or therapy.

### *Social learning approach*

Social learning approaches propose that violence is a learned social behaviour. That is, that perpetrators are violent because they have learned to be that way for example through their families as children. This perspective can go on to theorise that women who saw their mother being abused go on to seek out similarly abusive relationships.

However, other research suggests that although some men who physically abuse their wives have violence in their background, not all boys who witness or suffer abuse grow up to become abusive.<sup>71</sup>

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68 op cit , p.97 World Report on Violence and Health

69 Carden AD (1994) 'Wife abuse and the wife abuser: Review and recommendations' in The Counselling Psychologist, Vol 22, No 4, October, 539-582.

70 Kantor GK, Jasinski JL. Dynamics and risk factors in partner violence. In: Jasinski, JL, Williams LM, eds Partner violence: a comprehensive review of 20 years of research. Thousand Oaks, CA, Sage, 1998

71 Caesar ,P.L. (1988). Exposure to violence in the families-of-origin among wife abusers and maritally non-violent men. Violence and Victims,3, 49-63.

Social learning approaches also point to the effectiveness of correcting violence by re-learning based on individuals taking responsibility for their own actions. For example money problems were often cited by respondents in the FWCC study as the reason why domestic violence happened. A social learning approach would tackle this by encouraging responsibility to manage pressure in ways that do not involve violence.

### *Family based approaches*

Family based approaches see violence as a symptom of a dysfunctional relationship. Family based approaches suggest that 'the origins of the problem of violence lie in the nature of family and that family violence is caused by a variety of social structures and pressures such as concepts of roles and entitlements within the family, difficult working conditions, unemployment, financial insecurity, health problems, and that both husbands and wives are affected.'<sup>72</sup>

The FWCC study found that many men and women considered that disobedience by a woman justified her being beaten by her husband or by another family member<sup>73</sup>.

### *Mental impairment*

Mental impairment approaches focus on mental function including the effects of alcohol and drugs. As an example, research about the connections between alcohol and domestic violence is now outlined.

In the FWCC survey about 7.4% of men hit by their partners said that it was because they (the men) were drunk and 10% of women hit by their partners said that it was because their partners were drunk<sup>74</sup>.

There is great deal of research about the possible relationships between alcohol and domestic violence. Key findings include:

- levels of alcohol consumption relate to the likelihood and severity of domestic violence. Alcohol may be particularly important in escalating existing conflict<sup>75</sup>
- perpetrators are more likely to have been drinking at the time of an incident compared to victims<sup>76</sup>
- women whose partners abuse alcohol are more likely than other women to be assaulted by their partners<sup>77</sup>

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72 Kurz D (1993) 'Physical assaults by husbands: A major social problem' in RJ Gelles and DR Loseke (eds) Current controversies on family violence. Sage: California.

73 FWCC 2001, p. 37

74 FWCC 2001, p. 39

75 Quigley, B.M. and Leonard, K.E. (2000). Alcohol and the Continuation of Early Marital Aggression, *Alcoholism: Clinical and Experimental Research*, Vol. 24(7): 1003-1010 Research Society on Alcoholism.

76 Kaufman Kantor, G. and Straus, M. (1987). The 'Drunken Bum' theory of wife-beating. *Social Problems*, 34(3): 213-230

77 Demetrios N. Kyriacou, Deirdre Anglin, Ellen Taliaferro, Susan Stone, Toni Tubb, Judith A. Linden, Robert Muelleman, Erik Barton, and Jess F. Kraus, Risk factors for injury to women from domestic violence. *The New England Journal of Medicine* 341:1892-98. December 16, 1999.

- lack of inhibition to commit violent acts may be a selective response occurring only at certain times<sup>78</sup>. There may be a belief system that partner abuse is excusable when the perpetrator is drunk<sup>79</sup>
- some women develop alcohol problems following victimisation<sup>80</sup>

A national survey undertaken in the United States found that people hold a range of beliefs about alcohol. The researchers spoke with both men and women who had assaulted their partners. Male perpetrators were significantly more likely than female perpetrators to subscribe to the belief that alcohol use leads to losing one's temper and behaving impulsively. Women are less likely to make such a connection, possibly because of socialization<sup>81</sup>.

The research highlights that the relationship between alcohol and domestic violence are complex<sup>82</sup>

Where alcohol abuse and domestic violence appear to be associated in a particular case, both problems may need to be addressed. This is because resolving the alcohol issue will not necessarily stop the violence and resolving the violence will not necessarily stop the alcohol abuse<sup>83</sup>.

### *Power and Control*

This analysis describes domestic violence as an abuse of power perpetrated mainly (but not only) by men against women in a relationship or after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other.

The World Health Organisation<sup>84</sup> emphasises that power and control is often related to notions of the 'proper' roles of men and women. In many settings, women are expected to look after their homes and children, and show their husbands obedience and respect. If a man feels that his wife has failed in her role or overstepped her limits then violence may be his response.

All violence by one person towards another can be seen as an attempt by the aggressor to exert power and control over the victim. However where the aggression occurs in a family or domestic context the victim may be more likely to believe that the violence is their fault and be isolated and lack support.

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78 Parker & Auerhahn Alcohol, Drugs and Violence, Annual Review of Sociology Vol. 24: 291-311

79 Gelles, R. The Violent Home (Updated Edition). Newbury Park: Sage Publications, 1987

80 Roberts, G.L., Lawrence, J.M., O'Toole, B.I. and Raphael, B. (1997). Domestic violence in the emergency department: I – two case-controlled studies of victims. General Hospital Psychiatry, 19(1): 5-11.

81 Kaufman Kantor, G. and N. Asdigian. When women are under the influence: Does drinking or drug abuse by women provoke beatings by men? In: Galanter, M., ed. Recent Developments in Alcoholism, Volume 13: Alcoholism and Violence. New York: Plenum Press, 1997a. Pp. 315-336

82 Zubretsky, Theresa M. and Karla M. Digirolamo, The False Connection between Adult Domestic Violence and Alcohol, in Albert R. Roberts, (Ed.), Helping Battered Women. New York: Oxford University Press, 1996.

83 Domestic Violence/Substance Abuse Interdisciplinary Task Force 2000, Safety and Sobriety: Best practices in domestic violence and substance abuse, Illinois Department of Human Services, Springfield.

84 op cit p95, World Report on Violence and Health

The core elements of responses to domestic violence that are based on a power and gender analysis, include:

- emphasis on confronting social control by men in relationships
- safety of women and children who are victims is the highest priority
- perpetrators are held responsible for their violent behaviour
- education programs for men focus on attitudinal and behavioural change about gender and misuse of gender based power and control<sup>85</sup>

### **2.3.4 Myths about domestic violence**

The Fiji Women’s Crisis Centre has prepared a summary of myths about domestic violence that addresses misconceptions that are common in Fiji. These myths have also been common in other countries.

Addressing myths about domestic violence is pivotal in any effort to move responses away from excusing domestic violence and blaming the victim to responses that actually aim to stop the violence.

Stopping the violence involves a wide range of interventions – from the role that family and friends can play through to the role of the legal system. The concerted effect of research and knowledge about how to address domestic violence is that the approach at all levels must be consistent. The response must aim to ensure the safety and well being of the victim and hold the perpetrator responsible.

The following is from the FWCC publication ‘Myths about domestic violence’<sup>86</sup>

<b>False idea</b>	<b>Fact</b>
Domestic violence does not happen often.	One in three wives is likely to suffer domestic violence at some time in her marriage.
Domestic violence only happens among the poor.	Our experience in Fiji supports worldwide studies which show that wife battering happens to women of all levels of society, of many cultures, and of all ages.
Marriage is private and what happens in that relationship is no-one else's business.	Assault is a crime, and society as a whole is responsible for criminal behaviour. Violence is not a normal part of marriage. The abuser loses the right to privacy. Even though marriage is a private contract, freedom from assault is a basic human right.

<sup>85</sup> Yllo KA (1993) ‘Through a feminist lens: Gender, power and violence’ in RJ Gelles and DR Loseke (eds) Current controversies on family violence. Sage: California.

<sup>86</sup> Also available on the FWCC web site under FAQ at <http://www.fijiwomen.com/>

<p>If a woman doesn't like being hit, she can always leave.</p>	<p>It is usually extremely hard for a battered woman to leave. She often doesn't leave because she:</p> <ul style="list-style-type: none"> <li>• is afraid the man will do something to her or someone she cares for</li> <li>• depends on him for money</li> <li>• doesn't have anywhere to go</li> <li>• is worried about the children's future</li> <li>• lacks self-esteem</li> <li>• doesn't have support</li> <li>• is afraid the man will do something to her and her children</li> <li>• doesn't want to break up the family may still love him and doesn't want to end the relationship - she just wants the beatings to stop.</li> </ul>
<p>Offenders cannot control their violence.</p>	<p>Less than half the men who batter their wives also assault people outside the home. Most of them can control their violence with others. They choose to be violent with their wives.</p>
<p>Women provoke domestic violence by nagging or displaying other annoying behaviour.</p>	<p>There is no excuse for violence - and no-one deserves to be bashed. We do not blame the victim in other crimes. For example, we do not blame the murder victim for being murdered. And, in any case, a man sometimes starts beating the woman without warning - she starts getting hit from behind or when she's sleeping.</p>
<p>Alcohol causes domestic violence.</p>	<p>In about 50 per cent of cases, the offender is sober at the time of assault. Often alcohol can trigger an assault, but it is totally wrong to think alcohol is the cause of the violence. The causes of domestic violence are complex. The causes of domestic violence have to do with the fact that the man believes he has power over the woman and can treat her badly if he wants to. Some men have less control over themselves when they are drunk, and that is why they lash out. But they know that about themselves when they start drinking. They can choose not to drink because they know they become violent when they do. Drunkenness is no excuse for brutal behaviour.</p>

## 2.4 Counting the cost

There have been numerous studies in countries around the world about the 'cost' of domestic violence both to individuals and to the particular country.

The following chart summarises many of the socio-economic costs of violence:<sup>87</sup>

<p>Direct costs: value of goods and services used in treating or</p>	<ul style="list-style-type: none"> <li>• Medical</li> <li>• Police</li> </ul>
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<sup>87</sup> Buvinic M., Morrison A.R. and Shifter M. (1999) Violence in the Americas: A Framework for Action in 'Too Close to Home: Domestic Violence in the Americas', Morrison A.R. Biehl M.L. (eds.). Washington DC: Inter-American Development Bank. Also Walters H, Hyder A, Rajkotia Y, Basu S, RehwinkelJA, Butchart A. The economic dimensions of interpersonal violence. Department of Injuries and Violence Prevention, World Health Organisation, Geneva, 2004

preventing violence	<ul style="list-style-type: none"> <li>• Criminal justice system</li> <li>• Housing</li> <li>• Social services</li> </ul>
Non-monetary costs: pain and suffering	<ul style="list-style-type: none"> <li>• Increased morbidity</li> <li>• Increased mortality via homicide and suicide</li> <li>• Abuse of alcohol and drugs</li> <li>• Depressive disorders</li> </ul>
Economic multiplier effects: macro-economic, labour market, inter-generational productivity impacts	<ul style="list-style-type: none"> <li>• Decreased labour market participation</li> <li>• Reduced productivity on the job</li> <li>• Lower earnings</li> <li>• Increased absenteeism</li> <li>• Intergenerational productivity impacts via grade repetition and lower education attainment of children</li> <li>• Decreased investment and saving</li> <li>• Capital flight</li> </ul>
Social multiplier effects: impact on interpersonal relations and quality of life	<ul style="list-style-type: none"> <li>• Intergenerational transmission of violence</li> <li>• Reduced quality of life</li> <li>• Erosion of social capital</li> <li>• Reduced participation in democratic process</li> </ul>

Many other costs can be identified for Fiji in relation to domestic violence including the cost of non-government services, the ‘cost’ to the well being of families and the ‘cost’ of the indirect impact of domestic violence on children.

In 2002 the Reserve Bank of Fiji undertook a study to calculate the economic costs of violence against women in Fiji<sup>88</sup>. The study found that there are substantial economic consequences for Fiji. The study presented the following details:

Women in Fiji contribute to the economy in the following ways:

- as 39% of the formal workforce
- as self-employed
- women help sustain the family in subsistence living
- women are home workers, freeing the productive members of the family for formal employment – the 1996 Census states that 42% of women are in this category, and the contribution to GDP can be substantial
- violence against women decreases the contribution to the economy of women in the workforce and violence and threats of violence discourage some women from working.
- the direct and indirect costs to the Fijian economy of violence against women include:

Direct	Indirect
<ul style="list-style-type: none"> <li>• output is reduced if women cannot attend work</li> <li>• productivity is lower</li> </ul>	<ul style="list-style-type: none"> <li>• if women are unable to manage the house, then children may not attend school, etc</li> </ul>

<sup>88</sup> Economic Costs of Violence Against Women, paper by Mr Savenaca Narube, Governor, Reserve Bank of Fiji, 2002 presented when launching the Eliminating Violence Against Women and Children Taskforce 2002 16 Days of Activism campaign



<ul style="list-style-type: none"> <li>• the cost of medical treatment where there is injury</li> <li>• the cost to the police if they are called</li> <li>• the cost of welfare</li> <li>• if the offender goes to court, lawyers, prosecutors and Magistrates costs etc</li> </ul>	<ul style="list-style-type: none"> <li>• community responsibilities may not be met</li> <li>• if violence leads to marital separation, there are additional costs to the couple, their children and society</li> </ul>
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There are also opportunity costs which are alternative uses for the money spent on the various direct and indirect costs outlined above.

The study noted that there are many difficulties in quantifying the costs of domestic violence. For example, many cases are not reported and hospitals, the police and courts do not record these costs separately. Also opportunity costs are even more difficult to identify and there is no universal template to measure the costs

Looking at a study New Zealand undertaken in 1994 to measure the cost of family violence which worked on three ratios: 1:4, 1:7 and 1:10 which translate to 25, 14 and 10 percent respectively, calculations for Fiji were made as follows:

- use the definition of violence as any incident involving the occurrence, attempt or threat of either physical or sexual assault
- use the middle ratio of 1:7, which supposes that 14% of women in Fiji have suffered from violence
- if that ratio is applied to the female population aged 15 years and over, this hypothesizes that 36,000 women of the Fiji population, based on the 1996 census have experienced violence
- then the average cost of the violence for each victim is estimated by adopting one quarter of the New Zealand estimate of \$11,000, which is \$2,700 direct costs to the victim
- multiply the average cost to each victim of \$2,700 x 36,000 estimated cases gives a total of FJD\$97 million of direct costs borne by the victim and their families
- the New Zealand study estimated the direct cost to government was \$22,000 per victim, a quarter of that is \$5,500 x 36,000 gives a total of about \$200 million for law enforcement, welfare services and health care and so forth
- together, the direct costs of \$97 million to the estimated 36,000 victims and the cost to Government of \$200 million gives a total cost to Fiji of about \$300 million, which is about 7% of GDP.

However it was pointed out that this example is an oversimplification of an extremely complex exercise. The estimate is very sensitive to the prevalence ratio used. For instance, if one uses the prevalence ratio of 1:4, or that one quarter (25%) of the female population suffer from violence, then the total costs increases to about \$500 million. If the prevalence ratio of 1:10 is used, the total cost is \$100 million. The cost of violence

against women in Fiji can vary from \$200 million to \$500 million based on the prevalence ratio used.

It was noted that the \$300 million calculated above is equivalent to:

- the government's budget deficit;
- the government total borrowing;
- the total government capital expenditure;
- the total income taxes expected to be collected;
- the total VAT estimated to be collected; and it is
- greater than the total budget allocated to all the law and order agencies of government in 2003.

## 3. Addressing domestic violence

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### 3.1 Framework for responding to domestic violence

#### 3.1.1 Principles

The principles on which the legal response to domestic violence is based should be made clear so that they are understood by the community and by those who will apply the law. Ideally these principles would also form the basis for the overall effort to address domestic violence.

The following is a draft of possible principles:

- individuals have the right to be free from violence
- all forms of domestic violence are unacceptable
- acts of domestic violence that constitute a criminal offence must be dealt with as such
- the safety and wellbeing of victims of domestic violence must be the highest priority in all responses
- those who commit domestic violence must be held accountable for their behaviour and are expected to address their behaviour
- individuals, families, communities, agencies and government all have responsibility for working towards prevention of domestic violence

#### Questions:

**7. Is there a need for a statement of principles to provide the foundation for legal responses and other responses to domestic violence?**

**8. If so, what should the principles be? What are your views about the draft principles above?**

#### 3.1.2 National Strategy

It is generally accepted that responses to domestic violence must be holistic.

Many other countries and jurisdictions that have decided to work hard to address domestic violence have established a national strategy. This usually expresses a sense of the seriousness and urgency of the problem, the importance of a holistic approach and maps out improvements and progress intended in a wide range of sectors. Where a strategy is established the legal response to domestic violence is part of the strategy.

Fiji does not yet have a national strategy to address domestic violence.

**Questions:**

**9. Should Fiji develop a National Strategy to Address Domestic Violence?**

**10. If so, what factors would be most relevant to ensuring it was effective?**

**3.1.3 Working definition of domestic violence**

Various forms that violence in a domestic context can take are outlined above (see What does domestic violence encompass?). Domestic violence could be defined in a way that referred only or mainly to intimate partner violence or it could be defined in a broader way that takes into account additional family or domestic relationships.

There are two key parts of a definition of domestic violence:

- the part that describes the conduct that is violence, and
- the part that deals with the relationship between the perpetrator and the victim

Two definitions are needed. One expressed in simple terms and one in legal terms. The simple definition can be used for community education and the legal definition where precision is important.

Taking a *broad approach* about how domestic violence might be defined a simple definition and a legal definition are set out below.

**Working definition of domestic violence (simple version)**

Domestic violence means physical violence, property damage, threats or intimidation by a person who is, or was, in a family or domestic relationship with the victim.

**Working definition of *domestic violence* (expressed in legal terms)**

The following conduct constitutes domestic violence when committed, directed or undertaken by a person ('the perpetrator ') towards another person ('the victim') where the perpetrator has, or has had, a family or domestic relationship with the victim:

- a) causing or threatening to cause physical injury to the victim, or
  - b) damaging or threatening to cause damage to property of a victim, or
  - c) threatening, intimidating or harassing the victim, or
  - d) persistently behaving in an abusive, provocative or offensive manner towards the victim,
- or

- e) causing the victim apprehension or fear by:
  - (i) following the victim, or
  - (ii) loitering outside a place frequented by the victim, or
  - (iii) entering or interfering with a home or place occupied by the victim, or
  - (iv) interfering with property of the victim, or
  - (v) keeping the victim under surveillance
- f) causing another person to do any of the above acts towards the victim

### *Definitions*

“*family or domestic relationship*” means the relationship of:

- a) spouse
- b) other family member
- c) person who normally or regularly resides in the household or residential facility
- d) boyfriend or girlfriend,
- e) person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care.

“*other family member*” means any of the following:

- a) parent, grandparent, step-parent, father-in-law, mother-in-law
- b) child, grandchild, step-child, son-in-law, daughter-in-law
- c) sibling, half-brother, half-sister, brother-in-law, sister-in-law
- d) uncle, aunt, uncle-in-law, aunt-in-law
- e) nephew, niece, cousin
- f) clan, kin or other person who in the particular circumstances should be regarded as a family member

In determining the above relationships where the victim was or is the de facto spouse of another person the relationship of *other family member* is determined as if the de facto spouse relationship was or is a marriage relationship.

‘*spouse*’ includes a person who is or has been cohabiting as the husband or wife or de facto partner

“*property of a victim*” in paragraph (b) of the definition of domestic violence means property of victim that the victim owns or property that the victim does not own but:

- a) used or enjoyed
- b) was available for the person's use or enjoyment
- c) was in the person's care or custody; or
- d) was at the person's home or place or residence

### **Questions:**

**11. This section gives a working definition of domestic violence. In relation to the**

**working definition, what are your views about:**

- **The description of the violence, particularly whether there are any forms of violence that should be covered in a definition that have been left out?**
  
- **The description of the relationship between the perpetrator and the victim, particularly:**
  - **the aim of including all household relationships, and**
  - **the aim of including everyone who might be considered a relative or family member**

**12. What if any changes would you recommend to the working definition?**

### ***3.2 Working in a common direction***

This section focuses on many factors about the context in which laws that specifically relate to domestic violence would operate. It asks for input about how others are responding and whether responses can be improved.

This is to ensure that it deals with:

- families and friends
- advocacy by men
- advocacy by women
- churches and faith groups
- schools
- health system
- Department of Social Welfare
- crisis support and counselling
- emergency and ongoing accommodation
- Family Assistance Allowance and related payments

#### **3.2.1 Families and friends**

Families and friends are the primary source of social support and attitudes of both to domestic violence are crucial. Domestic violence is less likely to occur in family settings where there are *strong values* that domestic violence is unacceptable. This includes modelling and consistently applying non-violent approaches to resolving conflict.

Victims of domestic violence, including children, also need to know that they can turn to other family members and to friends for help and support.

Values against domestic violence and early intervention by family and friends are *the strongest strategy* that can be applied to address domestic violence.

In the FWCC study 80% of survey respondents indicated that they would help if they saw a man hitting a woman but the figure was considered to reflect the fact that most people like to think that they would help but in reality help is rarely given.

The reasons given by respondent for not helping if they saw a man hitting a woman were: scared (42%); none of my business (39%), the woman might deserve it (1%); don't know the circumstances (5.4%); too young/ weak (1%) and 15% did not specify a reason<sup>89</sup>.

It is acknowledged that there can be real dilemmas for family members and friends in working out how to extend help in cases of domestic violence.

Additionally, Adinkrah and others<sup>90</sup> have raised issues about the prevalence of harsh corporal punishment of children in a family setting. This is a very high risk factor in physical and psychological terms for children. Corporal punishment risks ingraining approaches about the use of physical force and punishment that may be played out in later life.

**Questions:**

**13. What information and support is currently provided to families and friends about domestic violence and the roles that families and friends can play to try to stop it happening?**

**14. What more can be done to educate families and friends about domestic violence to support their attempts to intervene?**

**15. Do families need more information about the risks associated with corporal punishment of children?**

**3.2.2 Advocacy by men**

Advocacy by men is essential in efforts in Fiji to address domestic violence. This includes advocacy by men who are leaders, by men in their families, by men with their friends and by men in other aspects of their ordinary life.

The Task Force on the Elimination of Violence Against Women and Children is working to encourage this with a three year program on Men's Advocacy.

In 2002, the FWCC and the Ministry for Women conducted the first training program for Men Against Violence Against Women in Fiji. The most recent training program was in July 2004 when twenty men from the church, military, police and government departments, completed the program in Labasa<sup>91</sup>. The participants issued the 'Labasa Commitment' which starts with a statement of position about violence against women. That is:

That violence against women is a violation of women's human rights.

That the unequal status of men and women in our society is the root cause of violence against

<sup>89</sup> FWCC 2001, p. 30

<sup>90</sup> op. cit, Adinkrah, M., Child Homicide Victimization in Contemporary Fiji; FWCC 2001, report

<sup>91</sup> Fiji Women's Crisis Centre, Male Advocacy on Women's Human Rights, 9 July 2004, <http://www.fijiwomen.com>

women.

That violence against women is prevalent in Fiji and is a source of growing concern to government and civil society.

That there is no excuse for any form of domestic violence.

That there is no excuse for rape and sexual assault.

That there is no excuse for sexual abuse of children.

That violence against women is not part of our culture, tradition and religion.

That these crimes of rape, domestic violence and child abuse are crimes against humanity.

That there is a need to address legislation and policies relating to violence against women.

That there is a need for victim/survivors to have access to appropriate and quality services.

That there is a need for appropriate programs for the re-education of perpetrators of violence against women.

**Questions:**

**16. How are men in Fiji currently involved in advocating to address domestic violence?**

**17. What information and support is available to help men to advocate to address domestic violence?**

**18. What are the best ways to encourage advocacy about domestic violence by men as leaders, family members, friends and in other aspects of their ordinary lives?**

**3.2.3 Advocacy by women**

Women, and women's organisations have played a critical role in providing services and support to victims of violence and working to make domestic violence a public issue. Advocacy by the Fiji Women's Crisis Centre, Fiji Women's Rights Movement, National Council of Women Fiji, the Pacific Women's Network Against Violence Against Women and numerous other organisations have helped ensure that violence against women is recognised as a concern by governments in the Pacific.

Women's NGO's working from a basis of women's empowerment and rights have taken up what were taboo issues to promote discussion and bring about changes in attitudes, services, law, policy and practices.

This has included a strong focus on trying to change community attitudes to violence against women. In Fiji this work of government and women's NGO's brought about the Women's Plan of Action.

Many women's advocacy organisations are also working with men to partner in advocating for change. The FWCC, for example, is working to train men as advocates working with younger men through community education.<sup>92</sup>



<sup>92</sup> UNIFEM Pacific Regional Office Ending Violence Against Women and Girls Pacific Regional Scan June 2002



**Questions:**

**19. What, if any, additional steps could be taken to increase the effectiveness of the respective contributions of government and women's organisations in working to address domestic violence?**

**3.2.4 Churches and faith groups**

According to the 1996 census the religious affiliation in Fiji as a percentage of population was: Christians 52%; Hindus 38.1%; Muslims 7.8%; Others 0.5%

The FWCC Study found that where a woman who was a victim of domestic violence consulted a religious leader in her church she was often discouraged from doing anything that would break up the family and she was usually encouraged to reconcile with the husband. There were 42 respondents who reported the abuse to their religious representative including Hindus, Methodists, Muslims, Catholics and 4 from other churches.

The FWCC Study recommended that<sup>93</sup>:

- churches and religious organizations must play a more pro-active role in eliminating violence against women in eradicating its acceptance within the community
- the curriculum at religious training institutions should include liberation theology and awareness raising on gender and violence against women
- religious leaders should be specifically trained to deal with cases of violence against women in a gender-sensitive manner
- women's leadership within religious organizations and hierarchies should be encouraged

2000-2010 is the World Council of Churches (WCC) decade to overcome violence. This global theme has been endorsed by the Pacific Conference of Churches.

Some of the themes in the FWCC recommendations were discussed at a forum held in Fiji in March 2003. This forum was convened by the Weavers advocacy group. This is a group for women and women's concerns in theological education coordinated through the program of the South Pacific Association of Theological Schools (SPATS). The forum was titled "Violence against Women and Children: A Theological Perspective" and it was attended by representatives of church, government, the legal profession, women's organisations and the medical profession.

The forum aimed to highlight current strategies and challenges facing the various sectors committed to eliminating all forms of violence. An additional purpose was to look at ways to incorporate the issue into theological education and debate in the church including theological colleges, parishes and homes.

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93 FWCC 2001, Recommendations 35-38, p. vii

In August 2004, the Second Pacific Ministerial Meeting on Women held in Nadi, acknowledged the important role of tradition and religion and recommended that faith based organisations promote equality of men and women<sup>94</sup>. A recommendation to similar effect was made by the Pacific Regional Workshop on Strengthening Partnerships for Eliminating Violence Against Women in February 2003. Outcome 11 was that the Workshop ‘strongly recommended that some cultural and religious practices need to be re-examined to support rather than victimize women<sup>95</sup>.

**Questions:**

**20. What roles are being played by churches and faith groups to:**

- **assist perpetrator’s of domestic violence correct their behaviour?**
- **promote the safety of victims of domestic violence, including children?**

**21. What additional measures should be undertaken by churches and faith groups?**

**3.2.5 Schools**

Teachers and others working in primary and secondary schools may become aware of violence or abuse in the home. As explained above, it is established that domestic violence and abuse, whether directed at a child or occurring in the child’s home, has a range of negative effects on children. This often includes behavioural and psychological problems and poor school performance.

Issues arise about the roles of teachers and schools:

- when they know or suspect that a child is a direct or indirect victim of domestic violence
- in teaching children and young people about healthy relationships and problem solving in relationships and in the family
- in modelling non-violent responses
- in teaching children about safety planning (things children can do if they are at risk), and
- in educating parents and communities about domestic violence

Issues have also been raised about the use of corporal punishment in schools, including the risks that this poses to children and the messages that it can give to children, have also been raised<sup>96</sup>.

The FWCC Study recommended that:

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94 Second Pacific Ministerial Meeting on Women, Ministerial Communique, Nadi, 20th August 2004

95 Pacific Regional Workshop on Strengthening Partnerships for Eliminating Violence Against Women , Outcome Statement, 17-19 February 2003, Suva

96 op. cit, Adinkrah, M., Child Homicide Victimization in Contemporary Fiji; FWCC 2001, report recommendation 31

- corporal punishment in schools should be abolished,
- all students should have access to trained school counsellors,
- sexual harassment policies should be implemented, and
- school curriculum should include issues of gender and violence against women.<sup>97</sup>

### *Protocol*

In May 1998 the Fiji Police and Ministry for Education and Technology entered a Memorandum of Understanding in relation to the need for cooperation to protect and assist children and young people in relation to any form of abuse. Abuse was defined to include any act or omission which endangers a child or young person's physical or emotional health or development. Physical, sexual and emotional abuse and neglect were highlighted.

The Memorandum noted that the primary roles of Police were: to conduct investigations of abuse; notify the Department of Social Welfare of allegations of abuse; liaise with the Ministry of Education where appropriate; and, where appropriate to be involved in the development of a case plan relevant to the needs of the child.

The primary responsibilities of the Ministry of Education and Technology were listed as being to:

- recognise the signs which indicate a child/young person may be the victim of physical, sexual, emotional or psychological abuse and/or neglect within the school or family environment
- notify the Department of Social Welfare of allegations and concerns of suspected child abuse for immediate investigation
- liaise with the Department of Social Welfare and other agencies concerning care and protection of any child or young person subjected to abuse
- assisting, where appropriate, in the development and execution of a case plan.

### **Questions:**

**22. What policies and procedures are schools currently applying in relation to domestic violence?**

**23. What is the status of the Memorandum of Understanding between Fiji Police and the Department of Education in relation to the protection of children from abuse?**

**24. How effective are the reporting and liaison arrangements between schools, the Police and Department of Social Welfare?**

**25. Are further steps required to improve how schools respond where they suspect that a child is at risk due to domestic violence?**

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97 FWCC 2001, Recommendations 31-34

### **3.2.6 Health system**

The 2002 World Report on Violence and Health drew on a wide body of research literature to summarise the effect of intimate partner violence on women's health as follows<sup>98</sup>:

#### **Physical**

Abdominal/thoracic injuries  
Bruises and welts  
Chronic pain syndromes  
Disability  
Fibromyalgia  
Fractures  
Gastrointestinal disorders  
Irritable bowel syndrome  
Lacerations and abrasions  
Ocular damage  
Reduced physical functioning

#### **Psychological and behavioural**

Alcohol and drug abuse  
Depression and anxiety  
Eating and sleep disorders  
Feelings of shame and guilt  
Phobias and panic disorder  
Physical inactivity  
Poor self-esteem  
Post-traumatic stress disorder  
Psychosomatic disorders  
Smoking  
Suicidal behaviour and self-harm  
Unsafe sexual behaviour

#### **Sexual and reproductive**

Gynaecological disorders  
Infertility  
Pelvic inflammatory disease  
Pregnancy complications/miscarriage  
Sexual dysfunction  
Sexually transmitted diseases, including HIV/AIDS  
Unsafe abortion  
Unwanted pregnancy

#### **Fatal health consequences**

AIDS-related mortality  
Maternal mortality  
Homicide  
Suicide

In the inaugural address to launch the 2003 16 Days of Activism Against Violence Against Women and Children Campaign of the EAW Taskforce on 25 November 2003, the Minister for Health, Hon. Solomon Naivalu recounted findings from the Fiji Women's Crisis Centre study and particularly highlighted issues relating to domestic violence and reproductive health. The Minister noted the worldwide phenomenon that many women are targets of their husbands or partner's violence during pregnancy:

“Most women report that if they were already in abusive relationships, the violence was often directed to the head or other parts of the body, however during pregnancy the blows were mostly directed towards the stomach. Post-partum violence is also common. The consequences can be miscarriage, or other complications, and the violence can also be reproductive risk for future pregnancies. Along with the physical repercussions is the accompanied stress that can have severe consequences for the woman's mental health.

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<sup>98</sup> p. 100 – op. cit. World Report on Violence and Health

Women in violent relationships are also often prevented from seeking help, medical and otherwise”<sup>99</sup>

The Minister also noted that battered women run the risk of contracting STIs and HIV/AIDS. These women are often raped and sexually assaulted by their partners:

“If their husbands are having sexual relationships outside the marriage, they run a greater risk. The chauvinistic control of the male leaves the woman with little or no negotiating power over safe sex and contraception. This may lead to unwanted and repeated pregnancies. Preference for a boy child also subjects women to repeated pregnancies which has adverse effects on her health, reproductive and otherwise”<sup>100</sup>.

As noted above, the emotional and behavioural problems for children that result from witnessing domestic violence are severe (See # Domestic violence and children, above).

### *Fiji Women’s Crisis Centre Report*

The FWCC Study found that about one fifth of respondents hit by their partner sought medical attention. This included 4.4% of men and 22.7% of women who were hit. In half of the cases in which medical attention was not sought the respondent gave the reason that the injury was not serious enough. Other reasons given for not seeking medical attention were: shame, restricted access to medical services because of distance/ finance/ transport, fear, or that they considered it a private matter. 4.4% of women indicated that they did not seek medical attention because they were stopped by their husband / partner<sup>101</sup>.

Other significant findings of the study were that:

- even if a woman seeks medical treatment they rarely admit the cause of the injuries
- that medical personnel generally do not ask about the cause of injuries that they suspect arise from domestic violence because they do not have the resources, the time or training to address the problem
- access to medical help is particularly difficult for women in remote rural areas because of the distance to the nearest Health Centre, limited access to transport and often no money, being reliant on their husband for financial support<sup>102</sup>

The review recommended that:<sup>103</sup>

- women in remote areas must have better access to health centres

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99 Minister’s Address p. 5

100 *ibid*. Also see Chaitanya Laksham, Emerging Issue: HIV/AIDS and Women in the Pacific Island Countries and Territories, Research Paper prepared for the Secretariat of the Pacific Community, presented during the 9th Triennial Conference of Pacific Women, Nadi, Fiji 16-19 August 2004

101 FWCC 2001 p. 42-43

102 FWCC 2001 p. 43

103 FWCC 2001, Recommendations 24-30, p. vi

- routine checkup e.g. prenatal checkups should include screening and monitoring for domestic violence
- privacy and confidentiality of patient cases needs to be taken more seriously
- doctors and nurses need to receive training in procedures of handling domestic violence and sexual assault cases
- specialised treatment should be made available for children who have been sexually assaulted
- ensure that appropriate facilities and equipment are available for victim/ survivors of sexual assault
- work towards the provision of a special examination room for victims/ survivors of domestic violence and sexual abuse

### *Protocols*

In May 1998 the Fiji Police and Ministry of Health entered a Protocol based on the need for cooperation in the investigation of alleged criminal activity and other related statutory requirements. Under this Protocol it was noted that the primary responsibilities of Police included conducting investigations into alleged assaults and unnatural deaths and that the highest priority was the victim's safety and well being.

The primary roles of the Ministry of Health were listed as conducting medical examinations and attendance at court to testify.

In relation to general medical practice, the Protocol did not deal with reporting by medical personnel in cases of violence or abuse to Police or to the Department of Social Welfare. Fiji does not have mandatory child abuse reporting legislation.

### *Future directions*

In November 2003, the Minister for Health outlined issues relating to violence against women that he would like to see addressed by the Ministry. That is:

- appropriate policies are in place within the health system to ensure that victims of gender violence are dealt with effectively
- capacity building for health professionals to appropriately manage cases of violence against women
- health information system to document the various levels of violence as reported in the health facilities
- strengthen reproductive health programs including HIV and AIDS at all levels, in particular in rural areas and empowering women to actively participate on RH issues such as the status accorded to women in our society, gender, violence and other related matters
- collaborate with other stakeholders such as the Fiji Women's Crisis Centre in mobile counselling

- reproductive health programs for men need to have a gender dimension to encourage a change in behaviour<sup>104</sup>

### **Questions:**

**26. What policies and procedures are currently applied by hospitals and other health facilities in relation to domestic violence?**

**27. What protocols are in place between relevant health agencies, the Police and the Department of Social Welfare in relation to domestic violence?**

**28. What roles does the health system currently play in community education about domestic violence?**

**29. What training have medical personnel and health workers received in relation to domestic violence?**

**30. What if any further initiatives are required?**

### **3.2.7 Department of Social Welfare**

The Department of Social Welfare has statutory functions under the Juveniles Act Cap 56, Probation of Offenders Act Cap 22, Adoption of Infants Act Cap 58, Matrimonial Causes Act Cap 51, Maintenance and Affiliation Act Cap 52, Community Work Act 1994 and the Fiji National Council of Disabled Persons Act 1994.

The Department's key responsibilities are:

- child protection and welfare of children at risk,
- mediation on disputes including rights of children and divorce proceedings
- preparation of court reports,
- supervision of offenders,
- Family Assistance Scheme,
- Poverty Alleviation Program,
- grants to Non-Government Organisations,
- marriage guidance counselling,
- family mediation and counselling services.

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104 op. cit. Minister's Address p. 11-12

Issues about domestic violence can arise in all of these areas of responsibility. The Family Assistance Scheme and Poverty Alleviation Program are referred to below under *Family Assistance Allowance and related payments*.

In relation to the Department's other areas of responsibility the following are examples of how domestic violence is relevant:

<i>Key responsibility</i>	<i>Examples of how domestic violence is relevant</i>
<ul style="list-style-type: none"> <li>child protection and welfare of children at risk,</li> </ul>	<ul style="list-style-type: none"> <li>domestic violence in the home may result in the need for Departmental intervention</li> <li>Departmental intervention may include the need to remove the child from the home.</li> <li>young people who are homeless and at risk may be unable to live at home because of violence towards them at home or continuing violence in the home</li> </ul>
<ul style="list-style-type: none"> <li>mediation on disputes including rights of children and divorce proceedings</li> </ul>	<ul style="list-style-type: none"> <li>parental separation may have resulted from domestic violence and there may or may not be a continuing risk</li> <li>where there has been domestic violence there may be a substantial power imbalance between the parties and the victim may still be vulnerable to the perpetrator. The case may not be suitable for mediation as a result and if mediation is conducted special arrangements will be required</li> <li>the rights of children include the right not to be subjected to violence. The mediator's knowledge about the effects of domestic violence and understanding of the actual level of risk are both relevant</li> </ul>
<ul style="list-style-type: none"> <li>preparation of court reports,</li> </ul>	<ul style="list-style-type: none"> <li>domestic violence can arise in all of the types of matters where the Department provides reports to the court including reports relating to sentencing and reports in juvenile matters</li> <li>officers who prepare these reports need to be aware of issues relating to domestic violence and ideally be sufficiently expert to be able to include material in reports, where appropriate, to assist the court to understand the full context.</li> </ul>
<ul style="list-style-type: none"> <li>supervision of offenders</li> </ul>	<ul style="list-style-type: none"> <li>offenders may have been subjected to domestic violence particularly in childhood. Offender attitudes may indicate that they are at risk in the future of perpetrating domestic violence.</li> <li>the offence for which the offender was convicted may</li> </ul>



	result from domestic violence or relate to domestic violence.
<ul style="list-style-type: none"> <li>Grants to Non-Government Organisations</li> </ul>	<ul style="list-style-type: none"> <li>depending on the purpose of the grant, the services to be provided or other intended outcomes of the grant – knowledge and approach to addressing domestic violence may be relevant</li> <li>it may be relevant to the selection of grantees, to quality requirements and service guidelines that are applied as a condition of the grant.</li> <li>the Department’s expertise in monitoring performance against quality requirements in relation to services that deal with victims of domestic violence is relevant.</li> </ul>
<ul style="list-style-type: none"> <li>marriage guidance counselling,</li> <li>family mediation and counselling services.</li> </ul>	<ul style="list-style-type: none"> <li>in relation to both of these the importance of officers having knowledge and skills to properly deal with cases involving domestic violence are dealt with below under ‘Counselling’</li> </ul>

The Fiji Women’s Crisis Centre report was critical of the fact that the Department’s counselling services for victims of domestic violence were very limited and that it mainly acted as a referral agency. Also that there was little presence in rural areas, Social Welfare Officers were based in towns and rarely visited villages. Additionally respondents who reported domestic violence to the Department complained about lack of follow up.<sup>105</sup>

The FWCC Study made the following recommendations<sup>106</sup>:

- The Government should make a serious commitment towards combating domestic violence by increasing its budget allocation to the Department.
- Staff members must undergo appropriate gender training, training on the issues of violence against women and children and training in counselling skills.
- Departmental procedures and staff attitudes should be more 'client-friendly' and 'women-friendly'.
- The Department must have the resources and personnel to enable ongoing monitoring of cases that require it.
- The Department should ensure that it has the resources and the authority to carry out field visits, as these are an essential part of the monitoring process.

**Questions:**

**31. What, if any, changes should be made to how the Department of Social Welfare is responding in cases involving domestic violence?**

**32. If you see the need for changes, what are the highest priorities?**

<sup>105</sup> FWCC 2001 p. 50

<sup>106</sup> FWCC 2001, Recommendations 14-18

### **3.2.8 Crisis support and counselling**

#### *Fiji Women's Crisis Centre*

Funded by aid donors, the Fiji Women's Crisis Centre is the main non-government organisation with a primary focus on violence against women. The FWCC based in Suva with branches in Labassa, Nadi and Ba. That is:

- Suva – Coordinator, 16 staff and volunteers
- Labassa - services the provinces of Cakaudrove, Bua and Macuata – 4 full time staff and volunteers
- Nadi – services Nadi, Lautoka, Sigatoka and surrounding villages and rural settlements
- Ba – service extends to Tavau, Vatukoula and Rakiraki including the surrounding villages and rural settlements - 4 full time staff and volunteers.

From each of the four locations FWCC provides

#### Counselling and support services

- free crisis counselling for victims/ survivors of domestic violence, sexual assault, child abuse and sexual harassment
- legal advice
- accompanying clients to court, police, hospitals and other agencies
- 24 hour telephone counselling on phone number 3313 300 (operated from Suva)
- emotional support and options for clients to make choices for themselves

#### Community education and public advocacy

- giving talks, running workshops and seminars on issues of violence against women and children
- lobbying for law reforms
- lobbying locally with Police, Social Welfare, Judiciary and welfare organizations for better support for victims of violence and women's rights
- organizing and participating in campaigns

#### Information services

- library is open to members of the public looking for information on violence against women and children and related issues
- documenting the experiences of women and children who are survivors of violence

The FWCC also plays the leading role in building expertise to address violence against women in the Pacific. It includes the pivotal role in establishing and maintaining the Pacific Women's Network Against Violence Against Women and providing regional training.

*Counselling and crisis support generally*

The FLRC reported on the availability of counselling services in the Family Law Report 1999. It was found that arrangements were ad hoc and that training and standards were required. A recommendation was made for the standardised policy, practice and service delivery guidelines as well as training to ensure neutrality and the safety and security of the parties<sup>107</sup>.

Examples of family related counselling services are:

- Most Church groups (Catholic, Methodist and Anglican) have marital and pre-marital counselling
- the Anglican Church through Saint Christopher's Home
- the Methodist Church through Dilkusha Home
- Salvation Army
- Life Line Counselling Services
- Pacific Community for Pastoral Care Counselling
- Family Support and Education Group Lautoka
- Family Life Counselling Service - interdenominational pre marriage and marital counselling
- Department of Social Welfare - employs some counsellors and the job description for Social Welfare Officers includes counselling. This mainly consists of marriage guidance counselling although counselling assistance is also provided to victims of sexual abuse. This function is separate from the role that the Department Officers also play in preparing reports for the court.

The Department of Social Welfare provides some anger management counselling.

In addition to the above, planning is currently happening to establish the counselling and mediation capacity that will be needed once the Family Law Act 2003 comes into effect. This arises because of the extensive use of these services that is foreshadowed by the Act.

Counselling in domestic violence cases requires knowledge of domestic violence including the causes of the violence, the effect on the victim, the ways that victims and perpetrators may present and the special needs that are likely to be present for the victim, children and separately the perpetrator.

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<sup>107</sup> Family Law Report 1999, op. cit. p.47

Counselling from a perspective that places emphasis on reconciliation can be extremely dangerous in domestic violence cases. That is, until the perpetrator has genuinely moved forward from using violence in the relationship – emphasis on reconciliation risks exposing the victim to further violence.

Values about the importance of keeping families together and the importance of preserving marriages can be put into practice by the primary focus being on working to correct the offender's behaviour.

If instead, the primary focus is on attempting to persuade the victim to resume the relationship 'for the sake of the family', 'for the sake of the children' or 'for the sake of the marriage' the unintended, yet very powerful effect, may be to side with the offender against the victim.

There are due diligence and legal liability issues associated with improper practices in relation to counselling of domestic violence victims and offenders.

**Questions:**

**33. Are there sufficient crisis support and counselling services in urban and rural areas for:**

- **adult victims of domestic violence,**
- **children who are direct or indirect victims of domestic violence**
- **domestic violence offenders**

**34. If more services are needed how can this realistically be achieved?**

**35. What approach is being taken by counselling services in cases of domestic violence. For example, is highest priority placed on the safety of the victim?**

**36. What training and support is available for counsellors who deal with cases of domestic violence?**

**37. What standards and guidelines are applied by counselling services in cases of domestic violence?**

**38. In addition to counselling services what *programs* are available for domestic violence offenders in order to correct their behaviour?**

**3.2.9 Emergency and ongoing accommodation**

Until such time that there is support from various systems, including the legal system, for victims of domestic violence to be able to remain in their homes while the perpetrator is expected to leave, access to emergency and ongoing accommodation will be a crucial issue for victims of domestic violence.

Lack of alternative accommodation options may result in a victim of domestic violence trying to stay in a violent relationship. Additionally, lack of ongoing accommodation options may force a victim of domestic violence to return to a violent relationship.

### *Emergency Accommodation*

The availability of alternative emergency accommodation for victims and perpetrators of domestic violence is a critical issue. Although victims of intimate spouse abuse are overwhelmingly women, other victims of domestic violence include male and female children and young people, the elderly and those with a disability. The result is that emergency accommodation options may be required by victims whose circumstances vary substantially.

The Salvation Army and St Christopher's Home provide refuge for women and children escaping domestic violence. Both are in Suva. The Mahaffy Girls Home in Suva provides shelter for girls who have been victims of sexual abuse. All of these facilities are experience high demand to the point that it is not possible to accommodate all victims of domestic violence who need assistance.

In rural areas the victim's safety may often depend on how informal networks operate and what support is provided. That is, whether there is any safe alternative accommodation available. If the victim needs to leave the area, considerations may include the cost of travel and trying to work out how to leave safely.

### *Mid and long term accommodation*

If a victim of domestic violence does use emergency accommodation such as that provided by the Salvation Army, this will be available for a limited time. If the perpetrator refuses to leave the home and the victim is unable to take action, for example through the court, the victim may have little option other than returning to live with the offender.

Stable accommodation is essential for victims of domestic violence and their children to recover from the violence. Stable accommodation is generally also crucial to be able to consistently send children to school and to obtain employment<sup>108</sup>.

#### **Questions:**

**39. Is there enough emergency accommodation for victims of domestic violence in urban and rural areas?**

**40. What emergency accommodation options are available for perpetrators of domestic violence in urban and rural areas? Are there sufficient services to meet the need?**

**41. If there is not enough emergency accommodation what can realistically be done to improve the situation, in urban and rural areas for:**

- **victims of domestic violence, and separately**

108 Chung D, Kennedy R, O'Brien B, Wendt S, Cody S, Home Safe Home: The link between domestic and family violence and women's homelessness, Partnerships Against Domestic Violence, University of South Australia, Social Policy Research Group, Women's Emergency Services Network, Department of Family and Community Services.

- for perpetrators of domestic violence
- 42. What additional assistance (e.g. counselling, court accompaniment, help finding long term accommodation) is provided by emergency accommodation services to victims of domestic violence?**
- 43. What mid term (post emergency) accommodation options are available for:**
- victims of domestic violence, and separately
  - for perpetrators of domestic violence
- 44. Are these options sufficient to meet the need and if not what realistic steps could be taken?**

### **3.2.10 Family Assistance Allowance and related payments**

For victims of domestic violence who need to live separately from the offender to be safe, their ability to support themselves and any children are often a crucial factor. Where a separation does occur, the ability to manage separately may also be a strong factor in the victim's thinking about reconciliation. This may result in a victim staying in a violent relationship because it seems that there is no other option or returning to the violent relationship for the same reason.

The victims may be able to turn to their family. Some families may refuse to help or help only for a limited time as a way of forcing the victim to resume the relationship. Some families are unable to provide support.

The material support that is available from other sources consequently becomes a pivotal issue for many victims of domestic violence.

The Department of Social Welfare administers the Family Assistance Scheme and the Poverty Alleviation Program.

Those who may receive Family Assistance Allowance (FAA) are the elderly, physically disabled, chronically ill, widows, deserted spouse/ single parents and prisoners' dependants. Eligibility is subject to a means test. FAA is targeted to the poorest of the poor.

Women who have left their partners due to violence can qualify as single parents. The Department has advised that FAA payments range from \$40-\$100 per week.

Those who are receiving FAA may apply under the Poverty Alleviation Program (PAP) for additional financial assistance. The Poverty Alleviation Scheme is aimed at improving the housing, health, education interest, food growing or income earning capabilities of its recipients. Financial assistance may be granted for low cost housing or income generating projects. The maximum PAP grant is \$5000.

**Questions:**

**45. To what extent is the financial difficulty of living separately from the perpetrator contributing to victims of domestic violence staying in or returning to violent relationships?**

**46. What forms of emergency financial relief are most frequently needed by victims of domestic violence. Is this usually available?**

**47. What forms of mid and longer term financial relief are most frequently needed by victims of domestic violence? Is this usually available?**

**48. Are there further issues about the effectiveness of the Family Assistance Allowance and Poverty Alleviation Program for victims of domestic violence?**

**3.3 Particular initiatives**

**3.3.1 Multi-ethnic focus**

According to the 1996 census Fiji's population was 772,655 made up of: Fijians 51.8%; Indians 43.6%, and others 5.3%

Research by the FWCC found that domestic violence is a problem in both of the main ethnic groups in Fiji. This is also borne out by the following statistics:

**Domestic Violence Victims by Race 1999-2003**

Year/Race		Murder	Attempted Murder	Manslaughter	AWITCGH	AOABGH	Common Assault	Other Offences Against Person	Total	% Rep Total
1999	Fijian	1	0	0	34	289	30	6	360	46%
	Indian	2	1	0	23	295	68	7	396	50%
	Others	0	0	0	2	24	4	1	31	4%
	<b>Total</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>59</b>	<b>608</b>	<b>102</b>	<b>14</b>	<b>787</b>	
2000	Fijian	0	0	0	17	254	42	11	324	34%
	Indian	0	1	0	41	323	78	31	474	50%
	Others	0	0	0	9	110	26	5	150	16%
	<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>67</b>	<b>687</b>	<b>146</b>	<b>47</b>	<b>948</b>	
2001	Fijian	0	0	0	33	415	30	5	483	51%
	Indian	0	0	0	24	370	48	4	446	47%
	Others	1	0	0	2	7	1	2	13	1%
	<b>Total</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>59</b>	<b>792</b>	<b>79</b>	<b>11</b>	<b>942</b>	
2002	Fijian	1	0	0	45	341	28	0	415	51%
	Indian	1	0	0	29	300	57	3	390	48%
	Others	0	0	0	0	4	0	0	4	1%
	<b>Total</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>74</b>	<b>645</b>	<b>85</b>	<b>3</b>	<b>809</b>	

2003	Fijian	2	0	1	39	327	30	20	419	54%
	Indian	3	2	0	25	256	42	17	345	45%
	Others	0	0	0	1	7	0	3	11	1%
	<b>Total</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>65</b>	<b>590</b>	<b>72</b>	<b>40</b>	<b>775</b>	

Source: Fiji Police, August 2004.

This table shows the total number of domestic violence cases registered by police as a crime report from 1999 to 2003. It gives a racial breakdown and types of offences committed in domestic violence cases.

Strategies to address domestic violence need to focus on issues that may relate to particular sections of the community. This includes attitudes, practices and social norms that may be associated with culture and tradition. These questions are also relevant to *who should be involved* in addressing the problems.

Examples are attitudes towards:

- the roles of husbands and of wives and other family members, in the family
- the rights of women
- preserving the family
- the use of physical violence between husband and wife and towards children
- ways of resolving disputes
- a family member seeking help from someone outside the family

These factors may be associated with heightened risk of domestic violence, isolation of victims and family and community attitudes that excuse the offender. As noted above the Pacific Regional Workshop on Strengthening Partnerships for Eliminating Violence Against Women in February 2003 recommended that some cultural and religious practices need to be re-examined to support rather than victimise women<sup>109</sup>.

#### **Questions:**

**49. Are there particular matters to be taken into account in addressing domestic violence where it occurs in indigenous Fijian families?**

**50. Are there particular matters to be taken into account in addressing domestic violence where it occurs in Indo-Fijian families?**

**51. Are there particular matters relating to other families?**

<sup>109</sup> Pacific Regional Workshop on Strengthening Partnerships for Eliminating Violence Against Women, Outcome Statement, 17-19 February 2003, Suva



### **3.3.2 People in rural and isolated areas**

Fiji has 332 islands about 1/3 of which are inhabited. According to the 1996 census 46.4% of the population is urban and 64.6 % is rural.

The population of the eight main centres in 1996 were:

Suva	167,421	Nausori	21,645
Lautoka	42,917	Ba	14,596
Nadi	30,791	Sigatoka	7,940
Labasa	24,187	Levuka	3,745

Radio is the only communication medium that is available everywhere.

The Fiji Poverty Study 1996, based on the household income and expenditure survey, found that 25.5% of households live below the poverty line and average gross household incomes were 28% higher in urban areas than in rural settlements and 54% higher in urban areas than in rural villages.<sup>110</sup> Access to services in rural areas is more limited. Family attitudes and community responses become particularly important in trying to ensure that victims of domestic violence are safe. The response of the Church, Medical Centres and Police Posts are all crucial in rural areas as well as the contributions of local community groups.

Limitations also apply in relation to access to the Courts. The circuit arrangements for the Magistrates' Court are set out under 'Court locations and access to the court' below.

#### **Questions**

**52. Is domestic violence is more prevalent in rural and isolated areas in Fiji?**

**53. What particular problems are faced by victims of domestic violence in rural and isolated areas?**

**54. What help is available for those who perpetrate domestic violence in rural and isolated areas?**

**55. Which organisations or groups can do most to help prevent domestic violence in rural and isolated areas? And what, if anything, should these organisations do?**

**56. What realistic and practical steps could be taken to increase assistance for victims of domestic violence and perpetrators of domestic violence in rural and isolated areas?**

<sup>110</sup> Available on the web at: [http://www.undp.org/fj/poverty/poverty\\_study.htm](http://www.undp.org/fj/poverty/poverty_study.htm)

### **3.3.3 Young parents**

In 2000 young people aged 10-24 years made up 32% of the population with 60% of young people living in rural areas. Youth concerns include teenage pregnancy. In 1996 teenage pregnancy accounted for 80% of the single mother pregnancies in Fiji<sup>111</sup>. Some young women hide or attempt to hide their pregnancies due to social attitudes and attitudes within their families. These factors point to heightened risk of violence and abuse directed towards young mothers by family members.

Young single mothers lacking family support face increased risk of long term poverty and their children may be at greater risk.<sup>112</sup> Difficulties may extend to trying to resolve arrangements about the child with the child's father and/or avoiding the child's father because of his reaction to the pregnancy. These and other factors point to heightened risk of domestic violence.

Reviewing its own case records for the period 1993-1997 the FWCC study reported that while domestic violence cases were not confined to one age group the largest group of victims were aged 18-30 years (52% of victims).<sup>113</sup> Only 1.1% of the FWCC's case records were for people under 18 years.<sup>114</sup> When considered with information from respondents about who they saw being beaten in the home<sup>115</sup> and risk factors associated with young pregnancy, the FWCC statistics appear to indicate that young women and young mothers were under represented. Statistics from the Department of Social Welfare, social services for young people and experience in the health and juvenile justice sectors are likely to throw more light on the extent of the problem.

Perceptions about gender roles, particularly on the part of young men, are likely to be an additional risk factor. Partners in Community Development Fiji is currently undertaking a three year project called 'Masculinity, Mental Health and Violence'. This is a joint project with a number of other organisations that has goals that include reducing the growing trend of young Pacific men using violence to deal with depression and to assert their masculine power.

#### **Questions:**

- 57. Are young mothers one group at increased risk of domestic violence? If so, what are the factors that result in increased risk?**
- 58. To what extent are young mothers and fathers coming into contact with social services and police in relation to domestic violence? What statistical and other information is available?**
- 59. What strategies and services are currently operating to address domestic violence directed at young mothers and domestic violence in young couple relationships?**

111 report to the conference: A Life Worth Living: Teenagers, The Family, and Health Lautoka, Fiji - 19 April 1997

112 A. Pickering, Single Mothers in Fijian Society: Surviving Against the Odds, 1999

113 FWCC Study 2001, p. 13 -14

114 FWCC Study 2001, p. 14

115 Participants in the FWCC survey were asked about who they had witnessed being beaten in their home. Children (sons and daughters) accounted for 57.1% of the victims. Of these 32.8% were daughters and 24.3% were sons. These figures exceeded the number of wives/mothers (39.2%) who respondents had seen being beaten (p. 13)

## 60. What, if any, additional initiatives are needed?

### 3.3.4 People with a disability

This section is about the vulnerability to domestic violence of people with a disability.

In the 1996 census nearly 12,000 people were recorded as being disabled in some way. The Fiji Poverty Survey, found that many people with a disability were living in poverty and experience major barriers in relation to access to schooling and a range of other services. There is a higher proportion of households that are poor and have a disabled head of the household in rural areas.<sup>116</sup>

There are no statistics providing a gender breakdown of people with disabilities in Fiji, however the Biwako Framework document<sup>117</sup> stated that women with disabilities are one of the most marginalized groups in Fijian society.

People with a disability are often more vulnerable. This includes an increased risk of domestic violence that may relate to their spouse, family members and also to carers.<sup>118</sup> Very alarming figures have been reported in one study overseas about levels of domestic violence suffered by women with a disability.<sup>119</sup>

The concept of ‘domestic’ may be different. There are many domestic situations such as community based group homes, residential institutions, boarding houses, transition houses. For example, a disabled person living in a group home or residential facility can experience personal violence, intimidation and harassment from other residents, carers and/or service providers<sup>120</sup>.

In addition to other forms of domestic violence, where there is dependancy on others to meet basic health or social needs, actions that may not be considered abuse for non-disabled people may be extremely harmful for those with a disability. For example abuse may include taking away a wheelchair, or bathing a disabled person in water that is too cold or too hot. It could involve rearranging the physical environment, which then increases risk of personal harm.

Studies have documented the vulnerability of people with disabilities, particularly women and girls, to sexual abuse.<sup>121</sup>

116 Chapter 5 The Poorest Households in Fiji , Fiji Poverty Study,

117 Biwako Millennium Framework for Action Towards an Inclusive, barrier-free and right-based Society for Persons with Disabilities in Asia and the Pacific

118 Nosek, M. (1996) *Sexual Abuse of Women with Physical Disabilities*. Krotoski, D., Nosek, M., & Turk, M. *Women with Physical Disabilities - Achieving and Maintaining Health and Well Being*; Paul Brookes Publishing Co, Baltimore USA.

119 Feustein estimates that upward of 85% of women with disabilities are victims of domestic violence in comparison with 25% to 50 % of the general population Cited in Waxman, B.F., (1991) *Hatred: The Unacknowledged Dimension in Violence Against Disabled People*’. *Sexuality and Disability*, Vol. 9, No. 3, pp. 185-199.

120 For a detailed and extensively referenced discussion see: *Women With Disabilities Australia*, Submission to the South Australian Government's Discussion Paper: "Valuing South Australia's Women: Towards A Women's Safety Strategy For South Australia", 2004 Available online at: <http://www.wvda.org.au/saviolsub.htm>

121 McCarthy, M , (1996) 'Sexual Experiences and Sexual Abuse of Women with Learning Disabilities' in Hester, M., Kelly, L., and Radford, J., *Women, Violence and Male Power*. Buckingham: Open University Press pp 119-129

## Questions

- 61. What research or other information is available about the vulnerability of people with a disability in Fiji to domestic violence?**
- 62. What are the most common forms of domestic violence against a person with a disability?**
- 63. In these situations, what is the relationship between the victim and the perpetrator and in what contexts (e.g. home or elsewhere)?**
- 64. Are special strategies needed to address domestic violence against people who have a disability?**

### **3.3.5 Identifying other groups with special needs**

There may be other victims of domestic violence who form an identifiable group where particular support, intervention and education measures are required.

The following are examples:

#### *Military families*

While international literature suggests that the dynamics and impact of domestic violence are no different in the military context, certain characteristics of military life and culture can make some military families especially vulnerable. Characteristics of military life include economic dependence, weapons training and exposure to combat, family stresses related to deployment and reunification, and isolation of many victims from familiar support systems<sup>122</sup>.

Moreover, military life, with its powerful control over the lives of service members, presents unique challenges for victims in need of help. Unlike the civilian world, where clear institutional boundaries exist between employer, doctor, judge, social worker and advocate, the military system is, for the most part, seamless.

Many victims fear that by reporting, the batterer will lose his job or otherwise face career consequences, leaving the victim and her children impoverished and without housing or health care.

In Feb 2002, the Fiji Women's Crisis Centre established a formal partnership arrangement with the Fiji Military Forces, which included the delivery of training particularly focused on those who have a mentoring role with service personnel. The training focuses on gender and violence including domestic violence, sexual assault, child abuse and sexual harassment. The training includes the recognition that factors such as the extended periods of time that members of the military might spend away from home and that the

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<sup>122</sup> In the United States studies have found that a substantial percentage of military families and partners are at risk of domestic violence. One study found that the military rate of domestic violence was three times higher than the civilian rate. See: Christine Hansen, A Considerable Service: An Advocates Introduction to Domestic Violence and the Military, Domestic Violence Report Volume 6 No 4 April / May 2001 [http://www.civicsresearchinstitute.com/dvr\\_military.pdf](http://www.civicsresearchinstitute.com/dvr_military.pdf)

violence they may encounter during overseas missions have a profound impact on family life.

### *Police families*

In the United States, the National Centre for Women and Policing have highlighted higher rates of domestic violence in police families.<sup>123</sup> Overseas, victims of domestic violence at the hands of serving police officers sometimes complain that other police and the legal system are biased against them.

Many police departments do not have a policy about addressing police perpetrated domestic violence. This runs the risk that officers may respond to the victim as colleagues of the perpetrator rather than in a policing role.

In July 2003 the International Association of Chiefs of Police published a Model Policy on Domestic Violence by Police Officers.<sup>124</sup> This includes: screening prior to recruitment; special reporting arrangements for police families; early intervention by supervisors; procedures to safeguard investigation; support for police families; and, remedial and disciplinary action including discharge from the police force.

### *Mining families*

Around the world there are examples of work to highlight issues of domestic violence in mining communities. For example, one outcome of a survey of the 160 attendees at the August 2003 Papua New Guinea Women in Mining Conference, was:

Mining causes significant social harm - over 60% of conference participants reported significant harm relating to domestic violence, alcoholism, and family disruption<sup>125</sup>

The July 2004 Mining Ombudsman *Case Report: Vatukoula Gold Mine*<sup>126</sup> notes reports by the Fiji Women's Rights Movement and miners about high levels of domestic violence.

### **Questions**

**This section has looked primarily at material from overseas to give examples of additional groups where there may be particular issues relating to domestic violence. The examples given are military, police and mining families.**

**65. Are there particular issues regarding domestic violence for military, police or mining families in Fiji?**

**66. Are there particular issues regarding domestic violence for other identifiable groups in Fiji that have not been referred to in this Discussion Paper?**

**67. In responding to the above questions can you comment on:**

<sup>123</sup> Police Family Violence Fact Sheet online at <http://www.womenandpolicing.org/violenceFS.asp>

<sup>124</sup> Available on the IACP web site at <http://www.theiacp.org/>

<sup>125</sup> Reported in a presentation by John Strongman and Adriana Eftimie Women in Energy and Mining Voices for Change A Vision for a Better World Bank Energy Week, March 2004. Available online at <http://www.worldbank.org/energy/energyweek/>

<sup>126</sup> Oxfam Community Aid Abroad. Available online at <http://www.oxfam.org.au/campaigns/mining/>

- **what the issues are?**
- **what steps have been taken to address the issues?**
- **what more should realistically be done?**

### **3.3.6 Coordinating and interagency groups**

There are many examples of interagency or multi-sector groups in Fiji working on particular issues. The Taskforce on the Elimination of Violence Against Women and Children is an example at a national level.

At a local level, there are some outstanding examples of concerned individuals taking the initiative to work to address domestic violence. People who are concerned to see their communities do better can often make a major difference. For example, by holding regular meetings, encouraging agencies to coordinate and raising public awareness.

One way to establish these groups at a local level is to look at who does what when domestic violence occurs (e.g. family and friends and agencies, services and groups in the community). If problems with the response are discussed, joint plans about how to do better can be developed.

There are also roles for external agencies to help establish these processes at a village, town and regional level– both in terms of impetus and sharing knowledge and expertise.

The purposes of interagency coordination vary and the level of formality varies. At a village or small town level the purposes might include trying to:

- provide support and early intervention when domestic violence is happening
- ensure that the offender can be separated from the victim so that the victim is safe
- help people and agencies respond more effectively to stop the violence
- build a community attitude that says that domestic violence is wrong
- educate children about domestic violence

At a regional level the purposes might include complimenting local initiatives with broader strategies. Regional inter-agencies might come together at different times to promote coordination between regions and work together on common issues.

#### **Questions:**

**68. Taking into account current grass roots action, coordinating and interagency activity to address domestic violence, what more is needed and how can this be achieved?**

**69. What further roles might be played in local or regional interagency groups to address domestic violence by: Police, Crime Stoppers, Village, District and Provincial Councils, the Multi-Ethnic Affairs administration, Regional Advisory**

## Councils and District Advisory Councils?

### 3.4 Legal system

This section deals with some of the barriers that victims of domestic violence may experience in trying to use the legal system.

#### 3.4.1 Court locations and access to the court

The Magistrates' Court has registries in Suva, Nausori, Sigatoka, Nadi, Lautoka, Ba, Tavua and Labasa. The Court undertakes a circuit whereby magistrates travel to 6 outer islands for one week every 6 months. The following shows the circuit sittings for 2004.

##### **Eastern Division**

Lakeba - Lau Group of islands  
Magistrate Mr. Aminiasi Katonivualiku  
4-11 Feb 2004  
1-8 Sept 2004  
Vanuabalavu - Lau group of islands  
Magistrate Eroni Sauvakacolo  
22-29 February 2004  
19 - 26 Sept 2004  
Gau - Lomaiviti group of islands  
Magistrate Ms. Naomi Lomaiviti  
3-10 March 2004  
6-13 October 2004

##### **Eastern continued**

Moala - in the Lau Group  
Magistrate Katonivualiku  
18 - 25 March 2004  
21 - 28 October 2004  
  
Koro - in the Lomaiviti Group  
Magistrate Mr. Eparama Rokoika  
3 - 10 April 2004  
6 - 14 November 2004  
**Southern Division**  
Kadavu - Fiji's southernmost island  
Magistrate Ms. Vani Ravono  
18 - 25 April 2004  
21 - 28 November 2004

Court locations and the frequency of sittings are relevant to who can use the courts and how quickly matters can progress. Also, relevant are the arrangements for urgent applications between court sittings and levels of access to technology at, and between, court locations.

Discussion Paper 3 focuses on the possibility of new domestic violence restraining order legislation for Fiji. Issues are raised about who should be able to apply, including whether police should normally have the role of applying on behalf of victims of domestic violence.

Logistical issues are likely to arise about how applications can be heard on an urgent basis if the victim lives a long way from the court and / or is not able to travel to the court.

Due to considerations of urgency and distance, legislation of this kind in most Australian States and the Northern Territory permits police to make applications to a Magistrate by telephone. In Australia, this process normally involves access to a telephone and a facsimile machine at both ends (police and Magistrate).

**Questions:**

**70. What difficulties do victims of domestic violence experience in being able to use the court? Are there particular issues in your area?**

**71. If there are difficulties what realistic and practical steps could be taken to try to address these?**

**72. If new domestic violence restraining order legislation is introduced what, if any, new arrangements would be needed in your area for urgent orders to be made for the protection of victims of domestic violence?**

### **3.4.2 Legal representation and Legal Aid**

UNIFEM has emphasised that laws aimed at protecting women from violence can have a powerful impact if they are implemented and that implementation requires service infrastructure<sup>127</sup>. Part of that infrastructure is access to legal assistance. The issues here are not limited to access to legal advice and representation in relation to reforms that might be made to the law but include access to legal help generally for victims and perpetrators of domestic violence.

The Fiji Poverty Study 1996, based on the household income and expenditure survey, revealed that 25.5% of households live below the poverty line. Additional findings were that:

- single-headed households make up 20% of the poor and that one in seven of the poor are female-headed households
- that while women constitute just under 50% of the population, they comprise only 33% of the economically active population, and less than 25% of those in formal paid employment
- average gross household incomes were 28% higher in urban areas than in rural settlements and 54% higher in urban areas than in rural villages.<sup>128</sup>

The figures indicate that:

- a very high proportion of the population is unlikely to be able to afford a lawyer,
- women are less likely to be able to afford a lawyer than men, and
- those in rural settlements and rural villages are less likely to be able to afford a lawyer than those in urban areas.

<sup>127</sup> Not a Minute More: Ending Violence Against Women, UNIFEM, New York, 2003

<sup>128</sup> Available on the web at: [http://www.undp.org/fj/poverty/poverty\\_study.htm](http://www.undp.org/fj/poverty/poverty_study.htm)



### *Legal Aid*

The Legal Aid Commission was established by the Legal Aid Act 1996. The Commission employs staff lawyers in Suva, Labasa and Lautoka. Some matters are briefed to private lawyers and some private lawyers take some cases without charge. The statistics for 2000 were as follows<sup>129</sup>:

Legal Aid Commission (matters/cases, 2000)

	Criminal	Civil	Domestic	Traffic	Misc.
Suva	273	50	0	2	16
Labasa	38	2	75	2	0
Lautoka	51	8	171	0	0

Public Legal Advisor (2000)

<i>Applications</i>	<i>Total received &amp; processed</i>
Divorce	449
Maintenance	122
Affiliation	29
Variation	28
Custody	13
Writ of Habeas Corpus	3
Total Applications Approved	644
Total Applications Rejected	98
Total Applications Received	742

There are strong demands on the Legal Aid Commission's limited resources.

Under powers conferred by the Legal Aid Act the Commission has established Guidelines to allocate assistance to those in greatest need. The Guidelines are subject to an overriding discretion that can be exercised in 'special circumstances'. A means test applies and the Guidelines specify the types of matters in which legal assistance will be provided. The Commission determines the types of matters and the Act gives a general discretion in this regard<sup>130</sup>.

The Commission's Guidelines provide that legal assistance may be given in three types of matters.

- (1) Criminal matters, where a person(s) has been charged with a criminal offence(s) and where there is a real likelihood of the person(s) on conviction being given immediate custodial sentence and/or offences raising issues of public interest
- (2) Matrimonial matters, including divorce, judicial separation, maintenance, custody of children, affiliation, guardianship, adoption and similar claims

<sup>129</sup> Fiji Legal Aid Commission, Annual Report, 1999-2000

<sup>130</sup> s. 8 Legal Aid Act 1996

- and also including disputes of a similar nature between couples not formally married by having lived together
- (3) Civil matters generally, including claims to real or personal property or in tort or for breach of contract, BUT only circumstances where the Commission is satisfied:
- (a) that its financial resources for the time being are sufficient to fund such assistance without impeding its ability to provide assistance under sub paragraphs (1) and (2) above
  - (b) that no alternative sources of funding are available to the applicant in respect of his/her legal costs in the matter.

The Act also enables the Commission to require that a person seeking legal assistance has reasonable prospects of success. The Guidelines provide that ‘in less serious offences’ an applicant for legal aid must have reasonable prospects of success<sup>131</sup>

The Guidelines do not refer to domestic violence. It is noted that while Guideline 1, about criminal matters, refers the risk of a custodial sentence (i.e. seriousness results in priority) that Guidelines 2 and 3 do not refer to seriousness, such as the level of risk to the physical safety of the person or a child in their care.

The family law Guidelines applied by each Australian State and Territory Legal Aid Commission provide a contrast. The Australian legal aid Guidelines for family law divide family law matters into two categories – urgent and non-urgent. The Guidelines for urgent family law matters are as follows:

**Urgent matters**

Protecting the safety of a child or a spouse who is at risk is to be accorded the highest priority in making grants of aid in family law.

As a matter of urgency, aid would be granted for an interim order or injunction where

- a child's safety or welfare is at risk
- the applicant's safety is at risk
- there is an immediate risk of removal of a child from Australia or to a remoter geographic region within Australia
- there is a need to preserve assets, or
- other exceptional circumstances exist<sup>132</sup>.

**Questions:**

**73. To what extent are legal aid arrangements meeting the needs of victims and perpetrators of domestic violence?**

**74. If there is insufficient legal aid for victims and / or perpetrators, what realistic and practical steps should be taken?**

131 *ibid.* s. 9 and Legal Aid Guidelines, guideline C (iii)

132 Australian Commonwealth Legal Aid Commission Guidelines for Family Law Matters. A copy is available on the NSW Legal Aid Commission web site: <http://www.legalaid.nsw.gov.au/>

**75. Should Legal Aid Commission matrimonial and civil guidelines be adjusted to give priority to cases where safety is at risk?**

**76. If it is unlikely that the needs of victims of domestic violence for legal representation can be accommodated within the legal aid program, are there any other ways of providing legal help to victims that should be explored?**

### **3.4.3 Court support**

For most victims of domestic violence, going to court is daunting and it may be so daunting that they can not proceed without support. Examples of situations where victims may need to go to court are:

- to obtain an order for protection for themselves and their children,
- to seek orders about children
- to give evidence as a witness for the prosecution on a criminal charge against the offender

Court support (personal support at court) for victims of domestic violence, particularly in association with legal representation, can have a substantial effect. For example, typically more applications of all kinds are made by victims of domestic violence, the number of applications withdrawn is reduced, and more criminal charges proceed to conviction<sup>133</sup>.

The purpose of court support is not to encourage a victim to take steps that they do not want to take. Rather the purpose is to support them in the choices they wish to make.

The absence of court support for victims of domestic violence generally works to the advantage of the perpetrator. This includes situations where the perpetrator is charged with a criminal offence. Without support for the victim, the offender has a greater chance that the victim will not have the strength to proceed.

The absence of court support also constrains courts in the decisions that they can make in domestic violence cases. If a victim decides not to proceed there is normally nothing that the court can do other than order that the matter be dismissed.

Personal support may be provided by a family member or friend or by a staff member or volunteer with a particular organisation or service. For example the Fiji Women's Crisis Center will provide court support in Suva and at locations attended by its branch offices.

Overseas, there are examples of court support rosters organised on an individual community basis by concerned volunteers.

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133 L. Blazejowska The Women's Domestic Violence Court Assistance Scheme (WDVCAS) Redfern Legal Centre 1993; S Harris Evaluation pilot project; Waverley Domestic Violence Court Assistance Scheme Eastern Suburbs Domestic Violence Committee April 1994.

In some overseas jurisdictions there are ‘Court Support Networks’ or ‘Court Support Schemes’. These are generally non-government organisations that receive a grant from the Attorney-General’s Department to ensure that personal support is available at as many court locations as possible. An example is the state wide Court Network in the State of Victoria.

In addition to personal support for victims of domestic violence at court, in some jurisdictions (for example the Australian Capital Territory) active attempts are made by specialist agencies to liaise with offenders before they attend court and also at court to make sure that they are aware of the counselling services and other assistance that is available for them.

**Questions:**

**77. Taking into account the range of locations where the Magistrates Court sits in Fiji, to what extent:**

- **is court support available for victims of domestic violence?**
- **is information and referral information available at court for offenders?**

**78. What practical and realistic steps could be taken to extend the availability of court support for victims of domestic violence?**

### **3.4.4 Court facilities**

Additionally, facilities at court are important in domestic violence cases. This includes:

- proper security arrangements in the public areas
- separate waiting areas to avoid intimidation of the victim by the offender
- facilities and procedures within court rooms so that the victim does not have to sit or stand next to the offender

**Questions**

**Taking into account the range of locations where the Magistrates Court sits in Fiji, to what extent:**

**79. Do court locations have proper security arrangements, separate waiting areas and court room arrangements so a victim of domestic violence does not have to sit or stand next to the offender?**

**80. If not what practical and realistic adjustments can be made to procedures or physical set up to improve court facilities for victims of domestic violence?**

### **3.4.5 Legal system personnel**

Victims of domestic violence face numerous barriers when seeking legal redress. Besides the fear of retaliatory violence by partners, attitudes of legal system personnel may

demonstrate lack of knowledge about domestic violence and reluctance to take such incidents seriously.<sup>134</sup>

All court personnel involved with domestic violence cases need to have an understanding of the dynamics of domestic violence and its impact. This includes judges, prosecutors, public defenders, probation officers, corrections and parole officers.

The need for judicial education that incorporate gender awareness and domestic violence training, was highlighted in the FWCC Study.

A rationale for judicial training was cited by Hon. Catherine A Fraser, Chief Justice of Alberta at the Eureka Conference<sup>135</sup>. These include:

- to ensure that the justice system operates fairly and equally,
- to ensure that Judges do not rely on myths and stereotypes,
- the recognition that because Judges make law, they must be aware of other values, cultures and perspectives,
- the recognition that in making law, Judges often weigh or choose competing values,
- the need to ensure that Judges understand the context in which law operates because equality is a constitutional norm,
- the fact that this context is also important because equality principles are infusing the common law, and
- the fact that judicial awareness training is new for most Judges.

International research has identified the potential for gender awareness programs to improve court and tribunal performance, enhance equality before the law and improve access to justice as quite significant.

Recognising the importance of gender awareness training, the Commonwealth Magistrates and Judges Association, held a 2 day workshop on Gender and Human Rights in Nadi in May 2004. Attended by over 30 paralegals, lawyers, magistrates and judges from Pacific countries including Fiji, the aim was to develop training material for judicial and legal practitioner training.

The Workshop made recommendations including:

- Courts need to acknowledge the vulnerability of women in cases of domestic violence in order to protect victims and their families,
- training should be offered to judicial and legal officers and law enforcement personnel in combating domestic and gender-based violence,
- the social impact of gender-based violence on children should be acknowledged and measures should be taken to address the problem

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<sup>134</sup> Imrana P. Jalal, *Law for Pacific Women: Legal Rights Handbook*, Fiji Women's Rights Movement, 1988; *Not a Minute More: Ending Violence Against Women*, UNIFEM 2003

<sup>135</sup> Fraser, Hon. Catherine A., Chief Justice of Alberta, *Judicial Awareness Training*, Paper presented to Eureka 1995 Equality and Justice Conference, Ballarat, Australia 18-20 October 1995

- the need for more women police officers, prosecutors and judges<sup>136</sup>

**Questions:**

**81. What realistic and practical measures can be taken to provide training opportunities for judges, magistrates and legal system personnel about gender and violence and particularly domestic violence?**

**82. Are additional measures needed to address gender bias in the legal system? If so, what process would you recommend for these issues to be addressed?**

### *3.5 Overarching issues*

#### **3.5.1 Education and training**

The Fiji Women's Crisis Centre report strongly identified a need for training for a range of agencies. This included<sup>137</sup>:

- the need for the FWCC to expand its community education and awareness raising programs in rural areas. Also, to be more proactive in training other organizations and people in skills and strategies needed for work in relation to domestic violence and sexual assault
- more community education programs and campaigns to directly target men about the promotion of non-violence and conflict resolution
- increased visits and consultations by the FWCC with Police Stations and court houses to assist to promoting communication channels
- gender sensitivity training for Police and Police to attend the Regional Training Program offered by FWCC. Police officers to also under go anger-management and conflict resolution training
- gender training and training on issues of violence against women and children and counselling skills for staff of the Department of Social Welfare
- gender sensitivity training and awareness on the dynamics of violence against women for the Judiciary
- training for doctors and nurses in procedures of handling domestic violence and sexual assault cases
- school curriculum should include gender and violence against women
- curriculum at religious training institutions should include liberation theology and awareness raising on gender and violence against women

<sup>136</sup> These recommendations are available on the Commonwealth Magistrates and Judges Association web site at <http://www.cmja.org/news.htm>

<sup>137</sup> Fiji Women's Crisis Centre, Report 2001, recommendations p. v-vii

- religious leaders should be specifically trained to deal with cases of violence against women in a gender –sensitive manner

### Questions

- 83. Do you agree that there is a widespread need for training and education about domestic violence?**
- 84. If so, are there key areas in which training and education are required in addition to those listed above?**
- 85. If there is a widespread need, what practical and realistic strategies should be used? For example, should these needs be addressed by individual groups and organisations or would a combined approach be more practical?**

### 3.5.2 Research and statistics

The need for further research about domestic violence has highlighted several times. The Workshop Strengthening Pacific Partnerships for Eliminating Violence Against Women<sup>138</sup> strongly recommended that:

- Regional, national and community based research on incidences, responses and impacts of violence against women should be undertaken and shared widely.
- Relevant participatory research methods, gender indicators on violence against women and sex disaggregated data systems should be used by governments and NGOs for policy and program development and action strategies

In his paper about the costs of violence against women in Fiji, Governor of the Reserve Bank, Mr Savenaca Narube said that:

The biggest challenge on the studies of violence against women is the lack of a central database where agencies are connected and share statistics, a problem that is pronounced in developing countries like Fiji. Each department has its own separate statistics and collation and correlation is difficult<sup>139</sup>.

The Fiji Women’s Crisis Centre Report, recommended further in-depth research about domestic violence in Fiji on issues such as the development costs of domestic violence and the effects of domestic violence.<sup>140</sup>

### Questions

138 Pacific Regional Workshop on Strengthening Partnerships for Eliminating Violence Against Women, Outcome Statement, 17-19 February 2003, Suva, Available at: <http://www.forumsec.org.fj/news/2003/Final%20Outcome.pdf>

139 Economic Costs of Violence Against Women, paper by Mr Savenaca Narube, Governor, Reserve Bank of Fiji, 2002 presented when launching the Eliminating Violence Against Women and Children Taskforce 2002 16 Days of Activism campaign

140 FWCC 2001, Recommendation 40, p. vii

**86. In preparing these Discussion Papers the FLRC has aimed to draw on research that is available about domestic violence in Fiji. Can you suggest additional material that should be taken into account?**

**87. What are the key areas that require further research in relation to domestic violence in Fiji?**

**88. What practical strategies could be implemented to address statistical collection issues and research priorities about domestic violence?**

### **3.5.3 Community education and attitudinal change**

According to the FWCC Report, community demand for information about violence against women and human rights has increased.

However, there continues to be a high level of acceptance that violence against women and girls is justified under certain circumstances.

Promoting attitudinal change is long term work where continuing and expanded efforts of various organisations and groups are needed.

A particular model of intervention is one that is directly informed by community development principles and practice. This approach aims to involve entire communities in recognising, addressing and working to prevent domestic violence. Optimum effect comes from a broad approach that involves families; businesses; advocacy groups/civil society; public services such as police, and health practitioners; social services such as welfare, unemployment, public housing and health; education; the media and officials from government.

Public education conducted by organisations such as the FWCC offer good practice models to increase community awareness of domestic violence.

Community education strategies to address domestic violence rely on a number of factors for their success, including:

- involving the community using locally relevant and locally determined approaches;
- partnerships that include groups with different perspectives
- the need for action to be taken quickly <sup>141</sup>.

Campaigns can be directed to the general public as well as to specific target groups. This includes material being available in the main languages.

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141 Mugford, J. and Nelson, D. (1996). 'Community Justice Groups – remote Aboriginal and Islander communities, Queensland.' in Mugford, J. and Nelson, D. Compilers, Violence Prevention in Practice: Australian Award-Winning Programs. Griffith: Australian Institute of Criminology.



An example of a particular initiative is the FWCC Male Advocacy for Women's Human Rights and Against Violence Against Women which is being undertaken with the Violence Against Women Taskforce.

A crucial element of this program is training men from key agencies, such as police, military, community workers, chiefs and religious groups. The approach includes:

- the use of a human rights framework to increase men's awareness of gender equality as a fundamental human right, which involves challenging traditional and cultural beliefs and practices on violence against women and gender relations,
- emphasis on the importance of men addressing their own violence before they can be effective advocates, or provide counselling to other men, and the provision of training and support to facilitate this process, and
- emphasis on accountability of men's groups to the women's movement, and to the human rights of both women and men.

The Strengthening Pacific Partnerships Workshop highlighted how various structures that are influential in the community could assist in addressing negative attitudes in Pacific societies, that continue to hold women back or justify violence against women as 'natural' or 'cultural'. The use of positive features of Pacific cultures to build up awareness and support for the elimination of violence was suggested as a major challenge in community campaigns.<sup>142</sup>

### **Questions**

**89. Which agencies or groups should be involved in contributing to community education and attitudinal change about domestic violence?**

**90. Are there particular strategies or initiatives that should be promoted or facilitated at a local, regional and / or national level?**

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<sup>142</sup> op cit, 39, Strengthening Pacific Partnerships for Eliminating Violence Against Women.

## 4. Other issues

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This Discussion Paper has canvassed issues relating to the context in which domestic violence occurs and approaches to addressing domestic violence. There are two other Discussion Papers in relation to this reference:

- DP 2 Legal Response to Domestic Violence: Criminal Justice System
- DP 3 Legal Response to Domestic Violence: Civil Law and Procedures

### Questions:

**91. Are there additional issues relating to the context in which domestic violence occurs or the approach to addressing domestic violence that you wish to raise?**

## **Attachments**

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### ***Terms of Reference for Penal Code and Criminal Procedure Code Review***

## **FIJI LAW REFORM COMMISSION ACT (CAP. 26)**

### **TERMS OF REFERENCE FOR THE REVIEW OF THE PENAL CODE (CAP. 17) AND CRIMINAL PROCEDURE CODE (CAP. 21)**

Pursuant to Section 5(2) of the Fiji Law Reform Commission Act (the Act) I hereby refer the **Penal Code, and Criminal Procedure Code** for review by the Fiji Law Reform Commission (the Commission) in accordance with Section 5(1) of the Act.

The objective is to review in a holistic manner the **Penal Code** and the **Criminal Procedure Code** to update and recommend changes in relation to Offences, Penalties/Punishment, Jurisdiction, Defences and Criminal Procedures, and matters incidental thereto that are reflective of, and responsive to existing local and/or global conditions, circumstances, trends and practices.

Further, the review is to propose law reform measures and recommendations that would lead to providing Fiji with a legislation governing and relating to criminal offences or crimes, that is suitable to Fiji's current and future needs and circumstances, and a legislation governing and relating to criminal procedures that ensures fair trial of persons accused of offences, protect the rights and freedoms of all persons suspected or accused of offences, and provide fair, effective, speedy and efficient procedures for the investigation and prosecution of offences and the hearing of criminal cases.

### **PENAL CODE**

The Commission is to inquire into and review the Offences, Penalties/ Punishments, Jurisdiction, Defences contained in the **Penal Code** and matters incidental thereto, and thereafter propose reform measures and recommendations that meet and account of Fiji's existing and future needs and circumstances, and in particular, without affecting the generality of the foregoing, to consider:-

- (a) The need for the creation of new offences and penalties relating to fraud and any fraudulent activities, including commercial fraud, trans-border and high-tech crime such as computer and electronic crime;
- (b) The need to consolidate and create uniform and generally applicable offences, including the offence of larceny;
- (c) The need to consolidate offences under the Public Order Act, Minor Offences Act and other laws within the Penal Code;
- (d) The need to abolish offences that are inapplicable to Fiji;
- (e) Whether the existing 'Year and a Day' rule in relation to homicide should be abolished and whether any related changes in the law are necessary;
- (f) Whether there is a need to change the current law on abortion;

- (g) The present laws governing homosexual conduct in Fiji, and the need to change or retain the same;
- (h) The scope and applicability of criminal defences in Fiji, including intoxication, self defence, insanity, provocation, diminished responsibility, duress and mistake of facts;
- (i) The need to review the penalties and sentences in the Penal Code and other related laws (Minor Offences Act and Dangerous Drugs Act);
- (j) The need to review the scope of available penalties/punishments, especially the practice for Magistrates to “sentence” offenders to compulsory work regime in lieu of imprisonment, the appropriateness of community work orders and other types of sentences;
- (k) The need to review/change the jurisdiction of Fiji’s Courts in relation to offences committed by Fiji citizens outside of Fiji where they are not prosecuted in the country of commission including the power to prosecute acts done outside of Fiji where the victim is located within Fiji; and
- (l) The need to move away from the use of the term “Code” in Fiji’s law books so that the term “Act” is used to be consistent with other statutes and to explore the possibility of renaming the Penal Code as Criminal Offences Act or Crimes Act.

### **CRIMINAL PROCEDURE CODE**

The Commission is to inquire into and review the procedures contained in the **Criminal Procedure Code** and matters incidental thereto, and thereafter propose reform measures and recommendations that ensures the fair trial of persons accused of offences, protect the rights and freedoms of persons suspected or accused of offences, and provide fair, effective, speedy and efficient procedures for the investigation and prosecution of offences and the hearing of criminal cases, and without affecting the generality of the foregoing, to consider:-

- (a) The laws relating to admissibility in criminal proceedings of evidence of the accused past sexual experience and reputation, in sexual offences;
- (b) The types and nature of charges wherein the consent of the Director of Public Prosecutions should be obtained before the charges are laid;
- (c) The need to allow the taking of evidence inside and outside of the Courts, through modern equipments (and technologies) as a mean to overcome the geographical and similar difficulties in securing the attendance of a witness in court;
- (d) The need to allow the use of technical equipment (e.g. tape recordings and video tapes) for the purpose of disproving a statement made on oath during a trial by a witness who had made an earlier contradictory statement recorded on such technical equipment;
- (e) The participation of unrepresented accused during trial, including sexual assault trials;
- (f) The conduct of the Police in criminal investigations and their duties and obligations to ensure that their conduct is proper and untainted by irregularities;
- (g) The need to permit and facilitate surveillance and the interception of communication on targeted syndicates as a means to combating organized crimes;
- (h) The award of cost in criminal cases for adjournment of trials and hearings;

- (i) The Appellate procedures under the Criminal Procedure Code and the Court of Appeal Act, and the elimination of any idiosyncrasies contained therein;
- (j) The scope of the powers of the Director of Public Prosecutions with respect to appointment of prosecutors and in prosecutions undertaken by Police and other agencies;
- (k) The power of the Director of Public Prosecutions to grant immunity and whether it should be extended in its scope;
- (l) The use of new technologies for taking of evidence at a distance;
- (m) Powers available to enforcement authorities and the admissibility of evidence obtained with regard to telephone intercepts, listening devices, “sneak and peek” search warrants etc;
- (n) Reviewing the provision on pre-trial applications and whether to change such allowing pre-trial applications relating to admissibility of evidence;
- (o) The reception of evidence (other than **viva voce**) and the admissibility, for example, of “Evidential Video Tapes” of special witnesses such as child complainants in sex cases;
- (p) Compulsory provision of forensic samples from convicted offenders;
- (q) Alternative dispute resolution, such as reconciliation and Family group and victim/offenders conferences;
- (r) Clarification of the scope of the law on corroboration where such is required as a matter of law and those cases where mere “Judicial Warning” is required;
- (s) The applicability and clarification of the practice endorsed by the Fiji Court of Appeal whereby one expert can give evidence on the basis of a report prepared by another;
- (t) The reception of foreign evidence under a formal system without the need to rely on “Letters Rogatory” procedure;
- (u) The law relating to the competency and compellability of spouses;
- (v) The Fiji Law Reform Commission’s Criminal Evidence Report (January, 1999) and its recommendations for the reform of laws of evidence in criminal proceedings and to consider whether in relation to criminal proceedings laws relating to criminal evidence contained in the existing Evidence Act are to be transferred to a new legislation dealing with criminal procedures or be contained in a stand alone legislation relating to evidence in criminal proceedings, and
- (w) The need to move away from the use of the term “Code” in Fiji’s law books so that the term “Act” is used to be consistent with other statutes and to explore the possibility of renaming the Criminal Procedure Code as Criminal Procedure Act.