



FIJI WOMEN'S CRISIS CENTRE SUBMISSION: NATIONAL REFERENDUM BILL 2025.

Fiji Women's Crisis Centre

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Acronyms

FWCC	Fiji Women's Crisis Centre
Bill	National Referendum Bill of 2025
NGOCHR	NGO Coalition on Human Rights in Fiji
CSO	Civil Society Organisations
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations

BRIEF ON FIJI WOMEN'S CRISIS CENTRE

The Fiji Women's Crisis Centre (FWCC) is a non-governmental human rights organization that has existed for more than four decades, and is founded on the principles of human rights, democracy and the rule of law.

The goal of FWCC is to eliminate all forms of violence, in all spheres of life, against women and girls in Fiji and the Pacific. FWCC implements this vision through an integrated and comprehensive program designed to prevent and respond to violence, by reducing individual and institutional tolerance of violence against women, and increasing available and appropriate services for survivors.

FWCC addresses the problem of violence against women using a human rights and development framework. This focus on human rights includes a feminist analysis of the problem and permeates all aspects of FWCC's work, recognising that the root causes of violence against women are unequal gender power relations, imbedded in Patriarchy.

For the past 42 years, FWCC scrutinises laws from a gender perspective and has continuously advocated and raised concerns against laws and policies that violate or contradict human rights. FWCC is also a member and the current Chair of the NGO Coalition on Human Rights in Fiji (NGOCHR). The NGOCHR was formed in 1998 and it promotes and monitors human rights, accountability, good governance, the rule of law and democracy - nationally, regionally, and internationally.

INTRODUCTION

Recently, at the 80th session of the United Nations (UN) General Assembly, Fiji's national statement spoke of Fiji's "*approach to prioritising human rights, and democratic participation while strengthening the institutional foundations necessary for sustainable democracy*" when addressing the proposed Constitution change.

Over the past 3 years, there has been significant discussions and analysis of Fiji's Constitution and the available mechanisms to achieve a Constitutional amendment, a national referendum being one of them.

A referendum is a form of direct democracy that has been practised by many countries. It is employed so that the voices of the people are directly heard regarding public policies, creation of new states, or constitutional issues. While a referendum is usually delegated a date (polling day), the question on how genuine this democratic process is can be viewed through a country's referendum law – how does it prioritise human rights, and is democratic participation of the people really allowed?

This submission will analyse the National Referendum Bill 2025 (Bill) and will highlight FWCC's concerns and recommendations, especially in light of international best practices such as the Venice Commission on the Code of Conduct of Referendum.

1. BACK TO THE DRAWING BOARD

At the outset, FWCC submits that the Bill is poorly drafted – certain grammatical and linguistically inappropriate errors can be noted within the Bill, which creates confusion about the intended meaning of certain provisions. For example, the use of the word “*officers*” in section 24(f) instead of “*offices*”. In addition, the Bill mindlessly mimics the Singapore National Referendum Ordinance of 1961 without any realisation of the lived realities of the Fijian people and how the provisions undermine the very intent of a referendum exercise – democracy.

FWCC recommends that while looking at international laws is encouraged, our legislators must ensure that the international examples we adapt is considered best practice and that laws are contextualised during drafting. Look globally, think locally.

2. AMBIGUOUS ENFORCEMENT AND ALARMING POLICE POWERS

FWCC is particularly concerned with sections 22(2) and 26(3) of the Bill, which permit police officers to arrest, without a warrant, any person “offending in his or her view” against the relevant provisions. The reliance on an individual officer's subjective assessment, without clearly defined thresholds or limitations, creates a significant risk of arbitrary or disproportionate enforcement.

The Bill does not specify the seriousness of conduct required to justify such arrests, nor does it provide guidance on necessity, proportionality, or alternative enforcement options. In a referendum context where public engagement, expression and participation are central, such broadly framed powers poses the risk of having a chilling effect on lawful civic activity and disproportionately impact women, civil society organisations (CSO) and marginalized communities who already experience unequal power dynamics in public spaces.

3. INSUFFICIENT NOTICE PERIOD FOR AN INFORMED REFERENDUM PROCESS

FWCC also raises concern regarding section 11 of the Bill, which requires the Supervisor of Elections to publish notice of polling stations, referendum questions and symbols **not later than five days** prior to polling day. While this may satisfy minimum procedural requirements, FWCC submits that it does not adequately support informed democratic participation, especially when referendum related canvassing, public advocacy and civic education are prohibited. Referendums, which often involve complex constitutional or significant questions on public policy, require sufficient time to be given to the public to freely and carefully consider the referendum questions before making an informed choice.

Time is a critical element in ensuring that voters are able to access information, seek clarification, engage in discussion and undertake due diligence before making decisions of long-term national consequence. In a patriarchal society like ours, a shortened notification period risks disadvantaging women, rural communities and vulnerable groups who may face barriers to timely access to information and public discourse.

FWCC therefore recommends that a substantially longer period be given for the publishing of the notice in the Gazette, preferably longer than four weeks as is recommended by the Venice Commission.

4. CONSTITUTIONAL AND HUMAN RIGHTS CONCERNS

Sections 22, 23, 24, 25 and 27 of the Bill raises serious constitutional and human rights concerns, particularly in relation to freedoms that are

stipulated in the Bill of Rights under Fiji's Constitution, particularly freedom of speech, expression and publication, access to information and political rights.^[1] Additionally, Fiji has also ratified the International Covenant on Civil and Political Rights (ICCPR) which guarantees under Article 25 the right to participate meaningfully in public affairs.^[2] While the objective of these sections within the Bill appears to be the protection of the integrity and orderliness of the referendum process, the breadth and rigidity of the restrictions imposed go beyond what is necessary or proportionate in a democratic society.

Section 22 imposes a blanket prohibition on the making, publication, distribution, display, or use of virtually any form of expression "*in connection with any referendum*" at any time before, during, or after the referendum. This restriction captures legitimate political expression tools such as advertisements, posters, badges, symbols, and public messaging. By criminalising citizen's right to expression, the provision effectively suppresses public debate and civic awareness on the referendum rather than regulating it. Such an approach is inconsistent with the constitutional guarantee of freedom of speech, expression, and publication, which exists to allow political discussion on matters of national importance.

Section 23 compounds this concern by prohibiting canvassing, including visiting a voter at their home or place of work for any purpose connected with a referendum. A referendum, unlike a routine administrative vote, requires citizens to consider complex legal, constitutional, or policy questions. Preventing individuals, civil society organisations, community leaders, and advocates from engaging others in discussion undermines the ability of voters to hear different perspectives, test arguments, and arrive at informed decisions. In effect, the provision privileges silence and passivity over engagement and deliberation.

Section 24 also raised some concerns, particularly subsections (d), (e) and (f), which prohibit "waiting" and "loitering" within 200 metres of a polling station and restrict the maintaining of officers pertaining to referendum related activity on polling day. Subsections (d) and (e) grant wide discretion to enforcement authorities and risk criminalising ordinary conduct. These sub-sections also run the risk of disproportionately affecting the elderly and

people living with disabilities who are usually need accompaniment by their aide. It can also negatively women, who, in Fiji's patriarchal context, bear primary caregiving responsibilities and may need to attend to polling stations with their children and dependents. In addition, women who undergo coercive control in their relationships will further be disproportionately affected. These sub-sections may limit the referendum participation of women living in domestic violence relationships because of her perpetrator. Given the lived realities of women, this maybe by way of coercing her to stay home or wait for him outside the polling station, thereby disregarding the law.

Moreover, the restriction on civil society presence further limits access to trusted information, increasing the risk that women are excluded from participation or unable to make informed decisions.

Subsection (f) is unfair as it gives privilege only to political parties who are represented in parliament. Given that the referendum is a process that hears directly from the citizens, there should be no differentiation between those in parliament and those who are not. In fact, on the polling day, FWCC submits that the Bill should provide for CSOs and other actors to observe the referendum and its processes.

Section 25 introduces further constitutional concern by deeming an assembly of five or more persons unlawful where their common object on polling day is to act in a manner calculated to cause "intimidation, alarm or annoyance" to any voter. While protecting voters from "intimidation and alarm" is a legitimate aim, the inclusion of vague and subjective terms such as "annoyance" creates an unacceptably low threshold for criminal liability. This provision risks capturing peaceful gatherings, community presence or ordinary social interactions, that we the people of Fiji are known for, and grants excessive discretion to enforcement authorities. Such uncertainty undermines freedom of assembly and association protected under section 17 of the Constitution and article 21^[2] of the ICCPR. Existing criminal and electoral laws already address intimidation and disorderly conduct; section 25 is therefore neither necessary nor proportionate.

Section 27 further provides unnecessary and unjustifiable restrictions by prohibiting persons under the age of 18, and persons who cease to be registered voters, from taking part in any activity connected with a referendum. While it is appropriate to restrict voting to eligible voters, this provision extends far beyond that purpose by excluding children and young people from meaningful participation via civic education, discussion, observation and engagement.

Fiji is now at the archway of getting acquainted with referendums. Therefore, it is imperative now more than ever to create an environment that involve our young people in meaningful political participation to foster patriotism, cultivate civic pride and identity from a young age. Referendum outcomes, particularly those involving constitutional reform have long-term implications for young people, yet section 27 denies them any participatory role whatsoever. This approach undermines democratic learning and is inconsistent with article 19 of the ICCPR and the principle of inclusive participation in public affairs.

Taken together, sections 22, 23, 24(d)–(f), 25 and 27 construct a referendum framework that significantly narrows civic space, marginalises civil society organisations, and restricts the flow of information essential to informed decision-making. Civil society organisations are not recognised anywhere in the Bill as a legitimate partner in voter education, advocacy or community engagement. This omission is striking, particularly given the Government’s stated commitment to participatory governance. A referendum process that silences debate, polices information, discourages assembly, and excludes young people risks producing outcomes that are procedurally valid but democratically insincere.

By using these repressive and draconian provisions without any justification, it risks fostering an environment where the State can attempt to shape the perception of people, suppress independent thoughts, drive propaganda censorship and narrative manipulation. This will in turn promote a government’s agenda at the cost of silencing dissent.

As a society that lauds itself on its journey to sustainable democracy and prioritising human rights approaches, we must do all that we can to enable critical thinking by allowing open discussions on important public and constitutional issues, and the pursuit of a multifaceted viewpoint, and encourage meaningful political participation, especially of young people.

FWCC recommends that the legislators refer to the Venice Commission's Code of Good Practice of Referendum which suggests that a democratic referendum must respect fundamental rights, especially freedom of expression, freedom of assembly, freedom of association for political purposes and the freedom of movement inside a country. It also encourages for voters to be allowed access to balanced and quality information in order to make an informed choice.

5. OTHER PROVISIONS

FWCC submits that Fiji's referendum law needs to have:

I. Legislative provisions for appeals

It is also concerning that the Bill is silent on an appeals mechanism, especially if the public would have issues with the referendum questions. International best practice recommends that the appeals body be provided within the referendum law. The absence of any appeal or review mechanism undermines transparency and accountability and risks concentrating decision-making power in the executive without adequate public oversight. FWCC submits that a clear legislative process should be included to allow the public to raise concerns or seek review of referendum questions prior to polling.

II. Legislative provision to clearly stipulate the legal effects of the referendum results

The Bill is also silent on the legal consequence or effect of the referendum result. This uncertainty has significant implications for public trust and democratic legitimacy. If the results are binding, the law should clearly state the obligations placed on the Government to implement the outcome. If the results are advisory, the Bill should transparently

acknowledge this and outline how the results will inform government decision-making. Without this clarity, there is a risk that citizens may participate under the assumption that their vote will have a direct legal effect, only to find that the outcome carries no enforceable consequence. FWCC submits that the Bill must explicitly define the legal status of referendum results to ensure informed participation and avoid misleading the voters or citizens.

CONCLUSION:

While FWCC welcomes the concept of having a referendum, we submit that the Bill in its current form will undermine democracy, and it an attempt by the State to control the narrative and obfuscate the real issue.

FWCC recommends that the Bill be returned to the drawing board and needs to be re-drafted to ensure human rights and democracy are protected. It is also recommended that the sections 22, 23, 24 (d) (e) (f), 25 and 27 be removed as they are not necessary and are unjustifiably restrictive. If Fiji is truly intent on building institutional foundation to a sustainable democracy, then FWCC urges our legislators to ensure the democratic process for a referendum be protected at all cost.