FWRM SUBMISSION ON THE PROPOSED CYBERCRIME BILL 2020

INTRODUCTION

The Fiji Women's Rights Movement (FWRM), established in 1986, is a multi-ethnic and multicultural nongovernmental organization committed to removing all forms of discrimination against women through institutional reform and attitudinal change, through targeted research and advocacy.[1] Being a feminist organisation, FWRM uses feminist analysis as a basis for this submission to address gender inequality.

Global developments in Information and Communication Technologies (ICTs) has meant the increasing number of online users, sharing of personal information online, and the availability of surveillance systems and mass data collection capabilities for both large companies and government. The right to privacy from increased government surveillance and mass government data collection in Fiji remains an unexplored territory. In 2015, allegations of neighbouring countries "spying" on Fiji surfaced in mainstream media, which sparked a national debate on privacy laws and protection of Pacific island countries from international surveillance.[2] The impacts of such invasion of privacy on women, children and vulnerabilities remains unclear and undocumented.

FWRM takes this opportunity to submit herein our analysis and recommendations in response to the proposed Cybercrime Bill 2020 (Bill No. 11 of 2020) (hereafter 'the Bill').

Issues of Concern

1. Guiding Principles to include Human Rights and Freedoms

FWRM welcomes the effort of the State to align with the International Convention on Cybercrime ('Budapest Convention'). FWRM notes that the Bill seeks to align to the requirements under the Budapest Convention and also introduces new provisions on substantive cybercrime offences, procedural requirements, remedies in relation to cybercrime offences, the collection of electronic evidence and international cooperation for this purpose as set out in the explanatory notes section.

FWRM makes reference to the Preamble of the Budapest Convention and with specific reference to the following provision:

Mindful of the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights as enshrined in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights treaties, which reaffirm the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, and the rights concerning the respect for privacy

FWRM strongly believes that the Bill must have guiding principles for the accurate and appropriate application of the same to ensure that there is no compromise of people's fundamental human rights and freedoms which are also enshrined in Fiji's Constitution.

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[1] http://fwrm.org.fj/

[2] Fiji Sun Online, 2015. http://fijisun.com.fj2015/03/06/spy-alert/

2. Right to privacy of Fijian women and girls

The right to privacy of Fijian women and girls from mass government surveillance and data collection, more so in the context of COVID-19 must be a priority. As articulated in the introductory section of this submission, the right to privacy from government surveillance and mass data collection in Fiji is an unexplored territory, until now. The role of government during a national emergency, disaster or pandemic like COVID-19 is to protect the rights and freedoms of its citizens enshrined under the Constitution. The rationale of increasing government surveillance and mass data collection will be unlawful and intrusive on women and girls' right to privacy unless the government follows strict criteria that is transparent

3. Privacy and Security of Fijian Women Human Rights Defenders

FWRM notes that in Part 5 - Procedural Measures, Section 16 under General Procedural powers, the Bill states that in application of the same, the Bill has powers to collect evidence in electronic form not only for offences under this Bill but also any criminal offence under any other written law.

This is concerning especially for special groups such as women human rights defenders as in the past, women human rights defenders have been subject to surveillance, harassment and intimidation whilst they were carrying out their work in advocating for women's human rights. This particular section could be used as a blanket approval to target women human rights defenders who are vocal in highlighting the violations of women's human rights. In the fifth review of Convention on Elimination of all forms of Discrimination against Women, the CEDAW Committee had made reference to the role of women human rights defenders in promoting the implementation of the Convention.[3]

This Bill could be used to create a climate of fear for women human rights defenders as there are no clear defined threshold for surveillance and investigation.

RECOMMENDATION

1. FWRM strongly recommends that the proposed Cybercrime Bill 2020 include Article 15 of the Budapest Convention as it is integral to the purpose of the Convention, and meet the guiding principle of the proposed Bill; Article 15 of the Conventions provides for Conditions and safeguards: For Fiji to meet its obligations under Art 17 and 19 of the International Convention on the Civil and Political Rights.[4]

2. FWRM calls on the Standing Committee to ensure that the Bill is annexed with a set of comprehensive procedural rules for carrying out investigations by State, or any other investigative body; and that the Bill establish appropriate, readily accessible and un-bureaucratic redress mechanisms for aggrieved persons (including women, girls and women human rights defenders) investigated under this Bill.

3. FWRM strongly reiterates the need for the Government to consult with diverse women's groups and women's human rights defenders. Conducting meaningful engagement and collaborative work with women's rights organisations, local women's groups and grassroots organisations in addressing societal and cultural norms that act as barriers for women and girls is needed during national processes in drafting and implementation of new policies and laws.

4. FWRM strongly recommends that the Fiji government show that the measures taken to rationalise mass surveillance and data collection is necessary, has a time limit, and is implemented with

[3] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFJI%2fCO%2f5&Lang=en

[4] https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

transparency and adequate oversight by all stakeholders, Women's Rights organisations, CSO organisations and the public through meaningful engagement.