

Rights of Sexual Minorities

**Jacqueline Leckie
Rev. Akuila Yabaki**

Background

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Section 38 (2) of the Bill of Rights of Fiji's 1997 Constitution, explicitly includes sexual orientation in its roster of categories protected from discrimination. This has drawn widespread condemnation from various groups in Fiji, especially religious ones, led by the Methodist Church. However sodomy ('unnatural offences') was still subject to prosecution under the Penal Code although there had been no prosecution for this offence since the 1960s. That was until 2005 when two men, one an Australian citizen and the other a Fijian citizen were sentenced to two years imprisonment for homosexual acts and for creating pornography by filming the act. In August the pair won an appeal against their convictions with High Court Judge Gerald Winter ruling that privacy provisions of the Fijian constitution meant that homosexual acts between consenting males in private were not illegal, but homosexual acts in public or without consent were illegal.

A country so founded will put sexual expression in private relationships into its proper perspective and allow citizens to define their own good moral sensibilities, leaving the law to its duties of keeping sexual expression in check by protecting the vulnerable and penalising the

¹ *Vinaka vakalevu* to Piccolo Willoughby and Jone Dakuvula for sending written work by the Citizen's Constitutional Forum on sexual minorities in Fiji.

predator (Winter's Judgment reported, *Reuters* 26 August, 2005).²

However physical and verbal abuse against sexual minorities in Fiji has been a serious problem and sexual minorities there continue to face other forms of discrimination, which the Sexual Minorities Project campaigns against. The project was formed under the Women's Action for Change and is the only LGBT (Lesbian, Gay, Bisexual and Transgender) organization in the South Pacific outside Australia and New Zealand. It advocates for LGBT rights, conducts Pride activities and networks with government, NGOs both locally and internationally, and provides basic skills, including business training to help eradicate poverty in the LGBT community. It promotes a major awareness of issues affecting LGBT people, provides counselling and a support network, and has a drop in centre with library resources. The project also organises self-esteem empowerment training for LGBT members.³

Same sex marriage remains illegal in Fiji. Human rights' groups⁴ have also been campaigning for the criminalisation of 'hate speech', to make it an offence to incite hatred or violence against any person because of their sexual orientation. The Methodist Church and other religious groups continue to advocate for tougher laws against what they consider to be immoral acts. The following letter was sent on 30 July 2004 to Fiji's *Sunday Times* before the legal controversy cited above. It is written by Rev. Akuila Yabaki, a Methodist Minister, Chair of the NGO Coalition on Human Rights and Executive Director, Citizen's Constitutional Forum. He sets the case for equal human rights for sexual minorities but part of this letter locates this within a theological framework and in the Fiji context.

² <http://www.globalgayz.com/fiji-news.html>, 23 November 2005.

³ www.ilga.org/news_results.asp?LanguageID=1&FileCategory=44&ZoneID=1&FileID=121, downloaded 23 November 2005.

⁴ This is focused on the Sexual Minorities Project and the NGO Coalition on Human Rights, which includes the Citizen's Constitutional Forum (<http://www.ccf.org.fj>) Women's Action for Change (WAC), Fiji Women's Crisis Centre (<http://www.fijiwomen.com>), the Fiji Women's Rights Movement and other NGOs.

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Those individuals who keep writing in to condemn homosexuality as a 'sin' and condemn gays and lesbians for 'choosing to behave that way need to take a good hard look at themselves. Many of them profess to be members of a church which espouses compassion, inclusiveness and tolerance of difference.

The NGO Coalition on Human Rights stands in solidarity with our gay and lesbian brothers and sisters, and in support of their rights, which after all are human rights.

We are lucky in Fiji to have a Constitution that expressly prohibits discrimination on the ground of sexual orientation, whether in law or practice, and a Human Rights Commission with a wide jurisdiction to investigate complaints of discrimination or harassment of gays and lesbians. In other words, it is illegal to treat a person differently just because you think they may be gay or lesbian, and if you do it, you may get a call from the Human Rights Commission, or even be sued.

In addition, our Constitution provides for reasonable limits to be placed on the right to freedom of expression, in order to protect the right of others to be free from hate speech. 'Hate speech' is defined to mean an expression in any form that has the effect of encouraging discrimination. We also have provisions in the Public Order Act that make it a crime to incite violence against any person or group of persons, to incite hatred or promote ill will between different communities, or to make intimidating or threatening statements about any community.

And rightly so. The inflammatory comments, scientific mumbo jumbo and religious bigotry of anti-gay extremists are no help to anyone. The NGO Coalition on Human Rights believes that what is needed here is greater understanding. There is no such thing as a 'normal' person. We live in a world of diversity, and we should be glad of it.

Homosexuality is not a disability--- there is nothing a heterosexual person can do that a gay or lesbian person cannot. As for the science on the question of how homosexuality came about, this can be summed up in one word: 'inconclusive'. Scientists do not know whether sexuality is determined by biology, environmental factors or a combination of the two. For every study that suggests an answer there is another that suggests something different. However, no studies show that sexual orientation is simply a matter of individual choice, and no-one who has seriously

thought about their own sexuality can truly believe that it is something you can change if you want to --- like your hairstyle or level of fitness.

Within the Christian tradition, four theological and ethical positions can be teased out regarding homosexuality. There is first, a reject and punitive position. This is the position taken by those who write in this column condemning gays and lesbians. The Biblical references they select are ones which make negative judgements about homosexuality. However, most scholars today question the accuracy of understanding these references as a blanket condemnation of all homosexual relationships. For example, to the extent that the Sodom story (Gen. 19) focuses on homosexual acts, its judgement is upon the homosexual rape of a divine messenger, and against the social injustice and inhospitality to strangers.

The second position that may be taken is a non-punitive rejection, where homosexual acts are condemned as unnatural and violating God's creative intent, but a distinction is drawn between the acts themselves and the sexual orientation of the individual concerned. This position views the homosexual person in the light of God's mercy, to be treated compassionately, as one in need of the church's ministry.

The third position is that of qualified acceptance. It affirms God's heterosexual intent in creation, but accepts that homosexuality is a 'given' ---fixed in early childhood or before, and in adults not susceptible to re-orientation or change.

The fourth and final theological position on homosexuality is full acceptance, with homosexual sex viewed no more nor less favourably than heterosexual sex, and gays and lesbians treated no differently to anyone else.

Of the churches in Fiji that have made their views public on this matter, the majority have taken the second position, of non-rejection. Some have expressed qualified acceptance, and a few are committed to full acceptance. The NGO Coalition on Human Rights, which includes individuals and organizations from a range of different faiths, embraces full acceptance of gays and lesbians, and we encourage religious leaders to do the same.

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