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**STANDING COMMITTEE ON SOCIAL AFFAIRS**

**COMMITTEE REPORT ON THE RIGHTS OF PERSONS WITH DISABILITIES BILL**

**(BILL NO. 12 OF 2016)**



**PARLIAMENT OF THE REPUBLIC OF FIJI**  
**Parliamentary Paper No. 31 of 2018**

*Wednesday, 7<sup>th</sup> March, 2018*

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## **Chair's Foreword**

I am pleased to present the Report of the Social Affairs Standing Committee on Social Affairs on the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016).

The Bill seeks to provide for, uphold and enforce the rights of persons with disabilities in Fiji as provided for under the United Nations Convention on the Rights for Persons with Disabilities (CRPD). The 24 year old Fiji National Council for Disabled Persons Act 1994 ('Act') is the only legislation which relates directly to persons with disabilities in Fiji.

This Act is mainly outdated and does not sufficiently address the needs of persons with disabilities and further establishes the Fiji National Council for Disabled Persons and provides for the administrative role of the Council, but is very limited in that it does not convey, uphold or enforce the individual or collective rights of persons with disabilities in Fiji.

In this regard, the Committee had called for submissions from the public on this Bill through advertisements made in the two local newspapers (Fiji Times and Fiji Sun) on Saturday 11<sup>th</sup>, Thursday 18<sup>th</sup> and Saturday 25<sup>th</sup> June, 2016.

The Committee acknowledges the advisory support from the Ministry of Women, Children and Poverty Alleviation and the Solicitor General's Office during the consultation process of the Bill.

At this juncture, the Committee wishes to thank the 19 stakeholders' written submissions and essential contribution during the consultation process. Also, the Members extended its gratitude to the People's Republic of China (Chinese Embassy based in Fiji) for the support towards the Committee's study visit to China for the purpose to observe China's best practices on its services and legislation for persons living with disabilities.

In addition, the Committee commends the support from the United Nation Development Programme, Pacific Centre for the assistance rendered towards the engagement of Professor Ron McCallum, a legal expert in labour law. The Committee was fortunate to involve Professor Ron McCallum who was the Chairman of the first Committee on the Rights of Persons with Disabilities of the United Nations that monitors the compliance of the CRPD. The Professor Ron McCallum provided the much needed technical support, advice and guidance which assisted the Committee to scrutinise the Bill thoroughly and make amendments.

At the outset, the Committee believed that this law will empower and allow persons with disabilities to realise their rights.

The formulation of this bipartisan report was possible through the hardwork and tireless effort by my Committee members and my heartfelt thanks to my Committee colleagues, Hon. Veena Bhatnagar

(Deputy Chairperson), Salote Radrodro (Member), Hon. Anare Vadei (Member) and Hon. Ruveni Nadalo (Alternate Member).

I also thank the late Hon. Ratu Sela Vuinakasa Nanovo, Hon. Alvick Maharaj and Hon. Dr. Brij Lal for their valuable contributions and for availing themselves as alternate members for those Members who were unable to attend the Committee meetings.

Lastly, I thank the Secretariat for the administrative support provided from day one until the finalisation of this Committee report.

On behalf of the Standing Committee on Social Affairs, I commend this Committee report on the Rights of Persons with Disabilities Bill to Parliament.



Hon. Viam Pillay  
Chairperson

## Introduction

Using the legislative powers provided to the Committee, this report examines the Government's proposal to introduce a Bill for an Act to make provisions for the protection of the rights of persons with disabilities in accordance with the United Nations Convention on the Rights of Persons with Disabilities and for related matters (Bill No. 12 of 2016).

The Rights of Persons with Disabilities Bill was referred to the Committee on 25<sup>th</sup> April, 2016 after its second reading in Parliament. The Committee was mandated to examine the Bill and agree to any appropriate amendments.

On Saturday 11<sup>th</sup>, Thursday 18<sup>th</sup> and Saturday 25<sup>th</sup> June, 2016, the Committee had called for public submissions through the two local newspapers (Fiji Sun and Fiji Times). In August 2016, the Committee then took a study tour to China to observe China's legislation and best practices in terms of the services provided and the protection of rights of persons with disabilities. The visit to China was educational, a real life experience and enlightenment for Committee members on China's commitment to the protection of persons with disabilities (Committee Study Tour report attached).

The Committee on its consultation process had received a total of 19 submissions from various organizations such as NGOs, Schools, Government, private sectors and the general public. The Committee held its consultations with the key stakeholders from the 8<sup>th</sup> of June, 2016 to 31<sup>st</sup> May, 2017.

In scrutinizing the Bill further, the Committee also engaged the services of Professor Ron McCallum, an independent legal consultant specialising in the area of persons living with disabilities. This was possible through the support of the United Nations Development Programme, Pacific Centre, Suva. With his expertise on labour law and persons living with disabilities, the Professor provided the much needed technical support, guidance and advice to the Committee in scrutinizing and realigning the Bill to capture and reflect the CRPD.

The Committee extends its gratitude to all stakeholders who were involved, participated and provided essential contribution to the consultation process undertaken on the Bill. Also, the Members acknowledge and commend the support from the People's Republic of China (Chinese Embassy based in Fiji) for the study visit to China.

The presentations made by the Ministry of Women, Children and Poverty Alleviation and the Solicitor General's Office on the Bill had enhanced the Committee's knowledge on the Bill, in terms of provisions on the protection of rights for persons with disabilities.

In addition to the public submissions held in Parliament committee room, the Committee had also visited the Western, Eastern and Northern Divisions to consult and observe various organisations, institutions and social groups providing services to the people living with disabilities.

After thorough examination on the Bill and consultations with stakeholders, the Committee resolved to make appropriate amendments to the Bill.

### **Committee Remit and Membership**

The Committee is a standing Committee of the Fijian Parliament and was established under Section 109 (2) of the Standing Orders (SO) of Parliament of the Republic of Fiji. The Committee comprises of five (5) honourable members, drawn from both the Government and the Opposition parties.

The Committee is mandated to examine matters related to health, education, social services, labour, culture and media. Section 110 (1) (a) of the SO mandates the Committee to examine the Bill as referred by Parliament, and make appropriate amendments to the Bill, to the extent agreed by the Committee.

On Monday 25<sup>th</sup> April 2016, the Attorney General and Minister for Economy, Public Enterprise, Civil Service and Communications introduced a Bill for an Act to make provisions for the protection of the rights of persons with disabilities in accordance with the United Nations Convention on the Rights of Persons with Disabilities and for related matters (Bill No. 12 of 2016).

The House resolved that the Bill be committed to the Standing Committee on Social Affairs to examine and report back to Parliament after 30 days.

### **Committee Members**

The members of the Standing Committee on Social Affairs are as follows:

- |                         |   |                    |
|-------------------------|---|--------------------|
| 1. Hon. Viam Pillay     | - | Chairperson        |
| 2. Hon. Veena Bhatnagar | - | Deputy Chairperson |
| 3. Hon. Salote Radrodro | - | Member             |
| 4. Hon. Anare Vadei     | - | Member             |
| 5. Hon. Ruveni Nadalo   | - | Alternate Member   |

During the Standing Committee's meetings, the following alternate membership arose pursuant to Standing Order 115 (5):

1. The late Hon. Ratu Sela Nanovo;
2. Hon. Alvick Maharaj; and
3. Hon. Dr. Brij Lal.

## Analysis of the Evidence Received

The Committee undertook consultations from the 8<sup>th</sup> of June, 2016 to 31<sup>st</sup> May, 2017 and received 19 submissions emanating out of public consultations and site visits held in the Northern, Western and Central/Eastern Divisions.

During the committee's scrutiny process of the evidence received, a number of key issues were highlighted and subsequently these assisted the Committee in identifying and agreeing to the relevant amendments to the Bill.

Some of the **major amendments** proposed by the Committee to be made in the Bill are as follows:

- **Deemed to be disabled**

The Committee in its consultations with all other stakeholders agreed that the definition of "deemed to be disabled" be deleted from Clause 2, as it captures only two disabled symptoms mentioned in the Bill and restricted other forms of impairments. In clause 27 the term deemed to be disabled is to be substituted with the word impairment which is defined under clause 2 of the Act.

- **Statistics and Data Collection**

The Committee noted that statistics and data collation are pivotal to policy formulation for the effective implementation of this Bill as alluded to by the Ministry of Education and the Fiji National Council for Disabled Persons and this to be included as one of the functions of the Council.

The Committee agrees that the inclusion of Clause 5(q) ***"collate of data and statistics on persons with disabilities in Fiji; and"*** as a function of the National Council for Persons with Disabilities.

One of the lessons learnt from the study tour to China, was the importance and availability of a central database which the stakeholders use for the benefit of service providers.

The availability of data and statistics would help decision makers to make policies which would eventually improve all services offered to persons with disabilities through support services like medical support services, housing, government social welfare allowances and social insurance protection etc.

The Committee noted in its consultations that one of the important instruments to formulate policies is data and statistics for persons living with disabilities. The Ministry of Education and the Fiji National Council for Disabled Persons has raised this issue and suggested that if this could be one of the Council's functions so that it could assist Government in policy making. Further, the Committee also found in its study tour to China that one of their main strengths

was the availability of a central database, which stakeholders used to share data and statistics for persons with disabilities.

- **Enhancing the Monitoring of Early Detection and Intervention Programs through data and statistical analysis**

The Committee recommends (Clause 5) that the Bill be amended to allow the Council to collate data and statistical information on person living with disabilities so that in future it may enable the monitoring and early detection and intervention programs for person with disabilities by the Ministry of Health and Medical Services.

Through the Members observation on its study visit to China, it was noted that it is compulsory for all women to have their prenatal check-ups done during their pregnancy period. Any detection for disabilities is strictly monitored and appropriate actions are taken.

- **Objectives of the Council**

In Clause 4, the Committee recommends that an inclusion of *“to uphold, promote and enforce the rights of persons with disabilities”* as an objective of the National Council for Persons with Disabilities.

The Committee added this subclause in Clause 4 of the Bill to facilitate the implementation, monitoring and compliance aspects of this Bill.

- **Composition of the Council**

The Committee through its consultation found that the Ministry of Youth and Sports does not have a Deputy Secretary position and recommended that **Clause 7(d) should read, “Deputy Secretary or its representative from the Ministry of Youth and Sports”**. The purpose of this amendment as if there is no Deputy Secretary than any Ministry’s representative nominated by the Permanent Secretary could participate in the Council.

Further, also in Clause 7 the Committee agrees to include the *“Director responsible for Occupational Health and Safety from the Ministry of Employment and Productivity”*, for the OHS team is the enforcement agency in any workplace. The Committee believe that it is important that the Director responsible for OHS is involved in the Council’s decision in terms of the implementation aspect of the Bill in all workplace and the compliance aspect.

- **Disaster and humanitarian emergencies**

The Committee agrees that it needs to strengthen Clause 31 by including that the *“State must implement all necessary measures to ensure that the rights of persons with disabilities are protected in accordance with Article 11 of the CRPD”*. The Committee amended this Clause to be incompatible with what has been required in the United Nations under the CRPD.



Apart from the major amendments highlighted by the Committee, there are other **minor amendments** also made in the Bill which are as follows:

- **Content page** - Only minors to the heading of Part 6 and section 27 to properly reflect the content of Part 6 which contains the rights of persons with disabilities and section 27 which contain provision of discrimination on the basis of disability;
- **Content page** - changes ensure that the name of the schedule is set out in capital letters
- **Clause 1** - Minor amendments to year of the Act and style
- **Clause 2** - Minor changes in the definition of “impairment” to align it with WHO definition;
- **Clause 2** - deletion of paragraph (a-e) in the definition of “persons with disabilities”
- **Clause 20** - Inclusion of “**in good faith**” in indemnity provision
- **Clause 27** - Inclusion of a new subclause which says that *“The State must take reasonable measures within its available resources to achieve the progressive realisation of the rights recognised under this Part and within the Constitution with regard to persons with disabilities.”*
- **Clause 36** - Inclusion of a new subclause *“In accordance with subsection (1), a person with disabilities must not be subjected without his or her free consent to medical or scientific experimentation.”*
- **Clause 47** - Inclusion of “*the assistance*” of a representative
- **Clause 48 (1)** - Inclusion of “*all service providers*”
- **Clause 50(1)** – Restructuring of the provision, content remains the same as the original Bill
- **Clause 50(1)** - Only minor amendment made, sentence structure has been rearranged for clarity, no new inclusion.
- **Schedule** - Only minor amendment made for the purposes of clarity. To ensure the subheadings in the Schedule are clearly set out.

The Committee amendments made were based from all the evidence that were received from the stakeholders during its consultation process included the input from the representative of the United Nations Independent Expert on the enjoyment of Human Rights by Persons with Albinism and also contribution from Professor Rob McCallum, an Independent Legal Consultatnt on the rights of persons with disabilities.

The amendments proposed by the Committee will be further reflected in the amended version of the Bill that will be tabled together with this Committee report.

## **Gender Analysis**

Gender is a critical dimension to parliamentary scrutiny. Under Standing Order 110 (2) where a committee conducts an activity listed in clause (1), the Committee shall ensure full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

The Committee considered the issue of equal opportunity for all citizens including women and men during the advertisement of its public notice which calls for public submission during the consultation process of the Bill.

In the consultation process, the Committee encourage and given the opportunity to all groups of people to give submission that both women and men were engaged in the consultation process for the mentioned Bill.

The Committee ensured in its deliberation that all issues considered and recommendations made in the Bill would strengthen the rights of persons with disabilities in Fiji.

The Committee, after thoroughly examining the Bill, noted that it does not only affect Sustainable Development Goal (SDG) 5 on Gender Equality but also affects other SDGs.

## Amendments to the Bill

The following section sets out the amendments which the Committee has agreed and the rationale behind its decision making. A revised copy of the Bill, which incorporates these changes, will be tabled alongside the report.

### Amendment 1

<b>Committee recommendation: To delete the definition of “deemed to be disabled” in Clause 2</b>
The Committee concluded and resolved that an amendment should be made in Clause 2 to delete the definition of “ <i>deemed to be disabled</i> ” in Clause 2.
<b>Part / Section / Clause of bill effected</b>
Clause 2
<b>Proposed amendment – to delete the definition “deemed to be disabled”</b>
“deemed to be disabled” means all persons in the following categories-  a) Blind and visual acuity (vision) of 20/200 (6/60) or less in the better eye with best correction possible; and  b) Persons with the condition known as Down Syndrome.
<b>Justification:</b> The Committee believes that the definition (and its corresponding reference in the Bill) is redundant and incompatible with the CRPD.

### Amendment 2

<b>Committee recommendation: To amend to remove the listed exceptions “a – e” to the definition of persons with disabilities in Clause 2.</b>
The Committee concluded and resolved that an amendment should be made in Clause 2 to delete the listing from part “a- e” from the definition of “persons with disabilities” in Clause 2.
<b>Part / Section / Clause of bill effected</b>
Clause 2

**Proposed amendment – to delete the listing part “a- e” from the definition of persons with disability.**

“**persons with disability**” includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others, but does not include-

- a) Tendency to set fires;
- b) Tendency to steal;
- c) Tendency to physically or sexually abuse other persons; and
- d) Exhibitionism; and
- e) Voyeurism.

**Justification:** The Committee agrees to the removal of the listed exceptions to the definition of persons with disabilities. These exceptions are misplaced and incompatible with the CRPD. They imply disability-based discrimination by associating these unlawful activities with persons with disabilities, in particular those with intellectual or psychosocial disabilities. All discrimination on the basis of disability is prohibited under the Convention (Article 5). The list of activities is a matter for the criminal justice system which should be applied to any apprehended person in accordance with due process and the safeguards under international human rights law.

### Amendment 3

**Committee recommendation: To strengthen **Clauses 4 and 5 by promoting human rights of persons with disabilities and the Council’s role in collating statistics and data.****

The Committee concluded and resolved that an amendment should be made in Clause 4 and Clause 5 “(i) to make it clear that one of the functions of the Council is to promote the human rights of persons with disabilities; and (ii) that the Council has the function to collect statistics and assist the Government in its work”.

**Part / Section / Clause of bill effected**

Clause 4 and Clause 5

**Proposed amendment:**

Clause 4 and Clause 5 should be amended “(i) to make it clear that one of the functions of the Council is to promote the human rights of persons with disabilities; and (ii) that the Council has the function to collect statistics and assist the Government in its work”.

**Justification:** To make it clear that one of the functions of the Council is to promote the human rights of persons with disabilities and that the Council has the function to collect statistics and assist the Government in its work.

#### Amendment 4

**Committee recommendation:** To amend by include in **Clause 7(d) “The Deputy Secretary for Youth and Sports or its Representative”.**

The Committee concluded and resolved that an amendment should be made in Clause 7 (d) to include in the Deputy Secretary for Youth and Sports or its representative.

#### **Part / Section / Clause of bill effected**

Clause 7 (d)

#### **Proposed amendment – to insert the word “or its representative”**

(d) The deputy secretary for youth and sports **or its representative.**

**Justification:** The Committee noted that there is no Deputy Secretary for the Ministry of Youth and Sports and recommended that a Ministry’s representative to be added to sub clause (d).

#### Amendment 5

**Committee recommendation:** To include in Clause 7(k) by increasing the representatives from “three” to “five” and delete “Non-Government and replace it by saying “**Disabled Peoples” Organization (DPO’s) advocating gender balance.**

The Committee concluded and resolved that an amendment should be made in Clause 7(k) to insert in Clause 7(k) by increasing the representatives from “three” to “five” and delete “Non-Government and replace it by saying “**Disabled Peoples” Organization (DPO’s) advocating gender balance.**

<b>Part / Section / Clause of bill effected</b>
Clause 7(k)
<b>Proposed amendment – to amend by insert the word “five representatives from any Disabled Peoples Organization (DPO’s) appointed by the Minister, advocating the rights of persons with disabilities and gender equality”</b>
(k) Five representatives from any Disabled Peoples Organization (DPO’s) appointed by the Minister advocating the rights of persons with disabilities and gender equality.
<b>Justification:</b> To ensure that the voices of persons with disabilities are heard as in their slogan, “Nothing about us, without us”.

#### Amendment 6

<b>Committee recommendation: To include as Clause 7(l) “the director responsible for occupational health and safety” from the Ministry of Employment, Productivity and Industrial Relations.</b>
The Committee concluded and resolved that an additional 7(l) should be made in Clause 7 to include the director occupational health and safety.
<b>Part / Section / Clause of bill effected</b>
Clause 7
<b>Proposed amendment – to insert the word “the director responsible occupational health and safety” in Clause 7(l)</b>
7 (l) the director responsible for occupational health and safety.
<b>Justification:</b> The OHS team is the enforcement agency in any workplace. The Committee believe that it is important that the Director responsible for OHS is involved in the Council’s decision in terms of the implementation aspect of the Bill in all workplace and the compliance aspect of it.

#### Amendment 7

<b>Committee recommendation:</b> To include “ <b>denial of reasonable accommodation</b> ” in Clause 27(1) on the definition of discrimination on the basis of disability.
The Committee concluded and resolved that an amendment should be made in Clause 27(1) to include the “ <b>denial of reasonable accommodation</b> ” on the definition of discrimination on the basis of disability.
<b>Part / Section / Clause of bill effected</b>
Clause 27(1)
<b>Proposed amendment – to insert the word “<b>denial of reasonable accommodation</b>”</b>
27 (1) The Committee concluded and resolved that an amendment should be made in Clause 27(1) to include the “ <b>denial of reasonable accommodation</b> ” on the definition of discrimination on the basis of disability.
<b><u>Justification:</u></b> This inclusion is required so that Clause 27 is compatible with the CRPD.

#### Amendment 8

<b>Committee recommendation:</b> To review Clause 29 and to be in line with “ <b>Article 9 (1) of the Convention on the Rights of Persons with Disabilities (CRPD)</b> ”.
The Committee concluded and resolved that an amendment should be made in Clause 29 to align Clause 29 with Article 9(1) of the CRPD.
<b>Part / Section / Clause of bill effected</b>
Clause 29
<b>Proposed amendment – to align the wordings in Clause 29 with “Article 9(1) of the CRPD” in Clause 29.</b>
<b><u>Justification:</u></b> The review is necessary so that Clause 29 is compatible with Article 1 of the CRPD.

#### Amendment 9

<b>Committee recommendation:</b> To amend by inserting the word “ <b>all necessary measures</b> ” to replace the word “reasonable accommodation” and then add the
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<b>statement “that the Government would comply with international humanitarian law which is part of international law” in Clause 31</b>
The Committee concluded and resolved that an amendment should be made in Clause 31 to include the all necessary measures” to replace the word “reasonable accommodation” and then add the statement “that the Government would comply with international humanitarian law which is part of international law”.
<b>Part / Section / Clause of bill effected</b>
Clause 31
<b>Proposed amendment – to insert the word “all necessary measures” and add the statement “that the Government would comply with international humanitarian law which is part of international law”.</b>
31. All persons living with disabilities have the right to “all necessary measures that the Government would comply with the international humanitarian law which is part of the international law” with regard to the protection and safety of their persons in situation of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.
<b><u>Justification:</u></b> Clause 31 is amended as it is incompatible with what is required by the CRPD.

## Amendment 10

<b>Committee recommendation: To include “clearly express and state that all persons have the right to access justice” in Clause 33</b>
The Committee concluded and resolved that an amendment should be made in Clause 33 as to clearly express and state that all persons have the right to access justice.
<b>Part / Section / Clause of bill effected</b>
Clause 33
<b>Proposed amendment – to insert the word “clearly express and state that all persons have the right to access justice” in Clause 33</b>



33. Clearly express and state that all persons have the right to access justice.
<b><u>Justification:</u></b> To be compatible with the CRPD.

#### Amendment 11

<b>Committee recommendation:</b> To include “ <b>some of the language used in Article 15 of the CRPD</b> ” in Clause 36
The Committee concluded and resolved that an amendment should be made in Clause 36 to include some of the language used in Article 15 of the Convention on the Rights of Persons with Disabilities.
<b>Part / Section / Clause of bill effected</b>
Clause 36
<b>Proposed amendment – to insert the word “”</b>
36. To include some of the language used in Article 15 of the Convention on the Rights of Persons with Disabilities.
<b><u>Justification:</u></b> Clause 36 is incompatible with what is required in Article 15 of the CRPD.

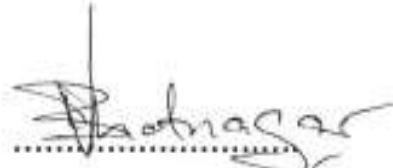
#### Amendment 12

<b>Committee recommendation:</b> To include “ <b>all service providers</b> ” in Clause 48 (1)
The Committee concluded and resolved that an amendment should be made in Clause 48 to include the word “all services providers” after the word “and” in that sentence.
<b>Part / Section / Clause of bill effected</b>
Clause 48 (1)
<b>Proposed amendment – to insert the word “<b>all service providers</b>”</b>
48(1). All persons with disabilities have the right to take part on an equal basis with others in cultural life, and “all service providers” shall take all appropriate measures to ensure that persons with disabilities.
<b>Justification:</b> This inclusion will align Clause 48 with the CRPD.

## **Signatures of Members of the Social Affairs Committee**



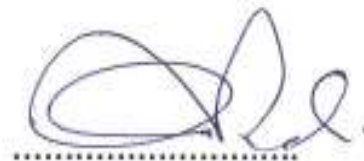
**Hon. Viam Pillay**  
(Chairperson)



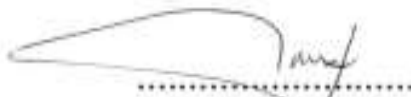
**Hon. Veena Bhatnagar**  
(Deputy Chairperson)



**Hon. Salote Radrodoro**  
(Member)



**Hon. Anare T. Vadei**  
(Member)



**Hon. Ruveni Nadalo**  
(Alternate Member for Hon. Mohammed M. A Dean)

## Annex A – List of Acronyms Used in the Report

CRPD	Convention on the Rights of Persons with Disabilities
DPO	Disabled People's Organisation
FNCDP	Fiji National Council for Disabled Person
LTA	Land Transport Authority
MOE	Ministry of Education
NGO's	Non-Government Organisation
PDF	Pacific Disability Forum
SO	Standing Orders of Parliament
SPC RRRT	Secretariat of the Pacific Community Regional Rights Resource Team
UNCRPD	United Nations Conventions on the Rights of Persons with Disabilities
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific, Pacific Office
UNOHCHR	Office of the United Nations High Commissioner for Human Rights, Regional Office for the Pacific
WHO	World Health Organisation

## **Annexe B – List of Organisations that Provided Oral Evidence**

The Committee took oral evidence from the following stakeholders:

1. Office of the Solicitor General
2. Ministry of Women, Children and Poverty Alleviation
3. Ministry of Health & Medical Services
4. Ministry of Employment, Productivity and Industrial Relations
5. Ministry of Local Government, Housing and Environment
6. Land Transport Authority (LTA)
7. Ministry of Education, National Heritage and Arts
8. Ministry of Foreign Affairs
9. Ministry of Civil Service
10. Fiji Human Rights and Anti-Discrimination Commission
11. Fiji Disabled People's Federation
12. Fiji National Council for Disabled Persons (FNCDP)
13. Hilton Special School
14. Fiji Society for the Blind
15. Pacific Disability Forum (PDF)
16. Fiji Crippled Children's Society and the Frank Hilton Organization
17. Secretariat of the Pacific Community Regional Rights Resource Team (SPC RRRT)
18. Professor Rob McCallum, Independent Legal Consultant specialised in Labour Law and also on the area of persons living with disabilities and also the Chairman of the United Nations Committee on the Rights of Persons with Disabilities in Geneva.
19. United Nation Independent Expert on the enjoyment of Human Rights by Persons with Albinism, Ms. Ikponwosa Ero

## **Annex C – List of Organisations that Provided Written Evidence**

The Committee received a total of 18 written submissions from the following organisations:

1. Ministry of Women, Children and Poverty Alleviation
2. Ministry of Health & Medical Services
3. Ministry of Employment, Productivity and Industrial Relations
4. Ministry of Local Government, Housing and Environment
5. Land Transport Authority (LTA)
6. Ministry of Education, Heritage and Arts
7. Ministry of Foreign Affairs
8. Ministry of Civil Service
9. Fiji Human Rights and Anti-Discrimination Commission
10. Fiji Disabled People's Federation
11. Fiji National Council for Disabled Persons (FNCDP)
12. Hilton Special School
13. Fiji Society for the Blind
14. Pacific Disability Forum (PDF)
15. Fiji Crippled Children's Society and the Frank Hilton Organization
16. Secretariat of the Pacific Community Regional Rights Resource Team (SPC RRRT)
17. Office of the United Nations High Commissioner for Human Rights, Regional Office for the Pacific (UNOHCHR) &
18. United Nations Economic and Social Commission for Asia and the Pacific, Pacific Office (UNESCAP)

## **Annexe D – Verbatim Notes for Submissions Received**

### **VERBATIM REPORT OF INTERVIEW CONDUCTED BY THE STANDING COMMITTEE ON SOCIAL AFFAIRS, HELD ON WEDNESDAY 8<sup>TH</sup> JUNE, 2016 AT 11.00 A.M. IN THE COMMITTEE ROOM (EAST WING), GOVERNMENT BUILDINGS**

**Submittee:** Office of the Solicitor General

**Interviewees:**

- 1) Ms. Timaima Vakadewabuka (Principal Legal Officer)
- 2) Mr. Glenys Andrews (Senior Legal Officer)

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*(Welcome and introduction by Mr. Chairman)*

MR. CHAIRMAN.- Honourable Members, Manager Research had taken us through Bill No. 12 of 2016, that is, the Rights of Persons with Disabilities.

The way we see it, there is a broad coverage in this Bill and today we have the personnel from Solicitors General's office who will take us through this Bill.

Honourable Members as we go along, if you have any clarification or any questions, you may raise those to the drafters and who are here to give us information. Once again welcome and now I will allow you to present to the Committee

MS. T. VAKADEWABUKA.- Thank you Honourable Chair and good morning Honourable Chair and Members of the Committee. Our task this morning is to brief you on the Rights of Persons with Disabilities Bill.

The Rights of Persons with Disabilities Bill 2016, seeks to provide for, uphold and enforce the Rights of Persons with Disabilities as provided for under the United Nations Convention on the Rights of Persons with Disabilities and Section 42 of our Constitution. At the moment, the only law that directly relates to persons with Disabilities is the Disabled Persons Act 1994. However this particular law only has an administrative function and it mainly establishes the Fiji National Councils for Disabled Persons and provides for the administrative role of the council. That particular Act does not

convey or uphold or enforce the Rights of Persons with Disabilities. So this particular Bill seeks to provide for those rights and for the mechanisms to be able to enforce those rights.

The Bill captures bulk of the salient features of the United Nations Conventions of the Rights of Persons with Disabilities and is envisaged to empower persons with disabilities. In total, the Bill has seven Parts and 53 Clauses, including a Schedule.

Mr. Chair, would it be alright that we take you through provision by provision or would you like to go through one part at a time so we can go through parts one, two and three in that particular ...

MR. CHAIRMAN.- Part by part.

MS. T. VAKADEWABUKA.- Thank you Mr. Chair. As I stated the Rights of Persons with Disabilities Bill has seven parts.

The first Part is the Preliminary Provision which is the Short Title and Commencement.

Clauses 1 and 2 states that the actual coming to force on a date appointed by the Minister, by notice published in the gazette. The Bill is passed in Parliament, it is assented to by the President and the Bill will come into force on a date appointed by the Minister and that particular day would be published by a notice in the gazette.

Clause 2 of the Bill is the Interpretation provision. Under clause 2, if you are looking at that particular provision, it has a list of definitions and these terms are terms that are commonly used throughout the Bill. You have the definition of the terms 'communication', 'Minister', being the Minister responsible for Women, Children and Poverty Alleviation, the definition of 'Persons with Disability' and so forth.

HON. A.T. VADEI.- Mr. Chair, as raised yesterday, the definition for 'Committee', because we have the council here, we have different sets of Committees: District Committee as in Clause 13 and the Advisory Committee in Clause 12. The definition of "Committee" has not been stated here.

MR. CHAIRMAN.- That is on which page?

HON. A.T. VADEI.- Interpretation.

MR. CHAIRMAN.- That is on which page, Hon. Vadei?

HON. A.T. VADEI.- Pages 8 and 9 on Interpretation.

MR. CHAIRMAN.- We are going part by part.

HON. A.T. VADEI.- Yes, but the interpretation.

MS.T. VAKADEWABUKA.- The Hon. Vadei, if I may, with regard to the inclusion of the definition of the 'Committee', because the Bill provides for the establishment of several Committees. So, it is not one Advisory Committee ...

HON. A.T. VADEI.- That is correct.

MS.T. VAKADEWABUKA.- .. or one District Committee. The Bill allows you to establish several Committees. Therefore, we do not put a single definition because at one time, there may be several District Committees according to the Districts or several Advisory Committees.

HON. A.T. VADEI.- Thank you.

MR. CHAIRMAN- You may continue.

MS.T. VAKADEWABUKA.- Does that answer your question?

HON. A.T. VADEI.- Yes.

MS.T. VAKADEWABUKA.- Thank you, Sir.

We move on to Part 2 of the Bill. Part 2 of the Bill provides for the National Council for Persons with Disabilities. Under Part 2 of the Bill, we have clause 3, which is the establishment of the National Council for Persons with Disabilities.

Sub-clause (1) of Clause 3 is the Establishing Provision.

Sub-clause (2) states that "the Council must operate as a body corporate with perpetual succession and a common seal.

Clause 4 of the Bill is the Objectives of the Council. The objectives of the Council are listed as (a) to (e), and if I may read through:



- (a) “to act as a co-ordinating body for all organisations dealing with the care and rehabilitation of persons with disabilities;
- (b) to raise awareness throughout society including awareness at the family level, regarding persons with disabilities and to foster respect for the rights and dignity of persons with disabilities...”so the paragraph goes on to paragraph (e).

Basically, the gist of the establishment of the Council and its objectives under Clause 4 is to act as the coordinating body for persons with disability.

We move on to Clause 5, which is the function of the Council.

The functions of the Council are listed at paragraphs (a) to (q). This is a very extensive list of functions which basically, meaning, to state that the functions of the Council is very broad.

- (a) first and foremost is to advise the Minister on all matters relating to persons with disabilities in Fiji;
- (b) formulate a national policy that ensures that services are provided to all persons with disabilities in Fiji;
- (c) draw up a national plan of action for rehabilitation services for approval by Cabinet and implement such a plan...”

So, basically the functions of the Council, once the Act comes into force and the Members of the Council are appointed, the Council will operate under the ambit of clause 5 in terms of its functions.

MR. CHAIRMAN.- Yes, Honourable Member.

HON. A.T. VADEL.- The terminology “rehabilitation”, does it also cover recovery?

MR. CHAIRMAN.- Can you repeat your question?

HON. A.T. VADEL.- My question is rehabilitation services, does it also cover recovery?

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- Clause 6 of the Bill refers to the powers of the Council. Basically, clause 6 includes two paragraphs-

- (a) act as the trustee of money or property invested in the Council; and
- (b) do all things necessary or convenient to be done ...”

So the powers relate to the functions and the objectives of the Council, so under sub-clause (b), which is a broad provision that covers any necessary action that is convenient or necessary to be done to perform its function.

So, sub-clause (6) can be read in conjunction with Clauses 5 and 4 in terms of the functions and objectives of the Council.

We move on to Clause 7. Clause 7 is the composition of the Council.

Paragraphs (a) to (k) have a list of persons which are to be members of the Council.

- (a) the Permanent Secretary responsible for social welfare as chairperson;
- (b) the permanent secretary for justice;
- (c) the deputy secretary responsible for health....” and so forth.

We move on the clause 8, Clause 8 is the Term of Office and it reads –

- (a) “A member of the Council appointed by the Minister under section 7(k) may hold office for a term of three years and is eligible for reappointment.”

The reason why we have referred to clause 7(k) is because members who are appointed under this clause do not hold office.

So with the Permanent Secretary and Deputy Secretary for Health, as long as they are appointed in that particular office, they will be members of the Council but in sub clause (k), these are the representatives from Non-Government Organisations that the Minister responsible for Social Welfare needs to appoint.

In clause 9 - Invited members, clauses 9 (1) and ( 2) relate to persons whom the Council may invite from time to time, to participate in the meetings. Under clause 9(2), they have to be an expert or have special knowledge or experience in a particular field that the Council is deliberating one at the time.

HON. A.T. VADEL.- Mr. Chairman, on these invited members?

MR. CHAIRMAN.- Yes, Honourable Member.

HON. A.T. VADEL.- Will they have to be registered in Fiji?

MS. T. VAKADEWABUKA.- Honourable Member, usually you need to be an expert on a particular field, so perhaps, you are referring to registration in terms of expertise if you are a doctor or sort of, then you need to be registered. The law is very clear when it comes to the Medical and Dental Practitioners Act that in order to render advice, as a Medical Practitioner, you need to be registered. So, basically, anyone being invited in that capacity to the Council has to be registered. Does that answer your question?

MR. CHAIRMAN.- Thank you.

HON. A.T. VADEI.- My concern, Mr. Chairman, is the liability part in Clause 6 because it should be covered in this Bill.

MS. T. VAKADEWABUKA.- Mr. Chairman, usually we do not need to provide liability for invited members, they are just there to provide advice. They do not vote or participate in the meeting. They do not have voting rights in the deliberations of the Council. So, they are usually not held liable for any particular reason and they do not participate in that capacity because they do not have voting rights.

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- We move on to clause 10 - Vacation of office. It and states that, and I quote:

“The office of a member becomes vacant if that member –

- (a) dies;
- (b) is absent without the leave of the Council for three consecutive meetings of the Council; or
- (c) conducts himself or herself in a manner which amounts to misconduct.”

So, these are scenarios where a person’s membership on the Council becomes vacant.

HON. B. SINGH.- Mr. Chairman, this is to assist the question raised by the Honourable colleague in clause 20 - Indemnity, “an invited member is also covered”, so that answers your question.

MR. CHAIRMAN.- From Clause 20?

HON. B. SINGH.- Yes, Mr. Chairman.

MR. CHAIRMAN.- You may carry on, Madam.

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. We move on to Clause 11 - resignation. This is a straight forward clause that states that a member of the Council may resign by giving one month's notice.

Clause 12 - Advisory committees, which we had discussed earlier.

Clause 13 - District committees. So, basically to summarise, the Council may, from time to time, appoint an advisory committee for the purposes of assisting the Council in the performance of its functions. So, the advisory committee has a chairperson, a secretary and other members.

The Advisory committee under sub-clause 3 must advice and assist the Council in the formulation of strategic and national policies concerning persons with disabilities.

We move on to the District committees under clause 13, which states and I quote:

- “(1) The Council may establish a district committee in any district as the Council deems fit.
- (2) Each district committee shall have a chairperson, a secretary and other members all of whom must be appointed by the Council.
- (4) The district committee is to have the functions of making recommendations and proposals to and giving advice on the needs, problems and activities of the person with disabilities in their respective districts in accordance with the objects of the UNCRPD and the World Health Organisation Community Rehabilitation Guidelines.”

So, basically these are committees that can be established by the Council for the purposes of assisting the Council in its functions, whether it be in terms of setting up a national policy, or in terms of just getting data or any specific advice that the Council needs.

We move on to Clause 14, which refers to the Executive Director of the Council. It basically provides for the appointment of an Executive Director of the Council which is the CEO that will run the Council.

Sub-clause (2 ) provides for the term of appointment of the Executive Director which is three years and is eligible for re-appointment.

Sub-clause (3) refers to remunerations of the Executive Director.

Sub-clause (4)(a) states, I quote:

“The Executive Director is to –

- a) be responsible to the Council for its management and the execution of its policies; (these are the policies of the Council)
  - b) assist the Council in the implementation of its strategic plans...; and
  - c) do all things necessary or convenient to be done in connection with, or incidental to, the performance of his or her duties under this Act or any other written law.
- (5) The Executive Director, may in consultation with the Council, appoint such officers, servants or agents as it considers necessary for the efficient exercise, performance and discharge of the duties of the Council.

Mr. Chairman, if it is alright with the Committee, we will move on to Part 3, which are the administration provisions?

MR. CHAIRMAN.- Yes.

MS. T. VAKADEWABUKA.- Clause 15 - Meetings of the Council, basically Provides that:

- (1) The Council must convene monthly meetings and may call special meetings as and when necessary.
- (2) Any issues raised in those meetings must be decided by a majority of the votes of the members present and voting....”

Clause 16 – Conduct of meetings; is the quorum of the meeting which is six members of the Council.

Clause 17 - he Strategic plans, which is must be formulated by the Council and states, I quote:

- (1) The Council must -
  - (a) Formulate a 5 years strategic plan setting out the manner in which the Council proposes to perform its functions....”

(2) A strategic plan, or a revision of a strategic plan, has no effect until approved by the Minister.

Sub clauses 3 and 4 are general provisions that relate to the submission of the strategic plan to the Minister and the performance of the Council's duties under that strategic plan.

Clause 18 - Reports to the Minister, state and I quote:

“The Council must –

- (a) from time to time, inform the Minister on the general conduct of its activities; and
- (b) upon request by the Minister, furnish to the Minister such information in relation to its activities as the Minister requests.

Clause 19 - Remuneration, which is of the Council and invited Members.

Clause 20 - Indemnity, which is the indemnity of the Council or the Committee members, and as rightly stated, by the invited persons. So, in fact, the indemnity of invited persons have been provided for here.

We move on to the other provisions which are Part 4 – Registration. Clauses 21 and 22 are general provisions that require the registration of organisations that provide services to persons with disabilities.

So, basically if you are an organisation that is providing a service to a person with disability, you have to be registered under this particular Bill. This is to ensure that those organisations perform their functions to a certain standard, so the Council will set out certain standards and there are certain standards under the Convention as to how services are to be rendered to persons with disabilities, only to make sure that we do not have these *ad hoc* organisations that are providing these services only to get funding and are not providing the services to the standard that is needed.

HON. S.V. RADRODRO.- Mr. Chairman, can I just seek clarification.

MR. CHAIRMAN.- Yes, Honourable Member.

HON. S.V. RADRODRO.- In terms of organisation providing services, how does this law or Bill will affect those at family level, who do offer these kind of services or care to their relatives and in settlements?

I am raising this in terms of the later provisions of the Bill of the penalties and you had mentioned that if organisations are not registered, bearing in mind that the family unit, particularly in a country like Fiji, we provide that safety net in terms of providing care for members of our family that are affected and also bearing in mind the geographical spread out of Fiji.

What about those that are out in the maritime islands, those that are out in the highlands that do look after their family members but are not registered. I mean, how can you expect a registered organisation that is based in an urban centre like, for example, in Korovou to go right up in the highlands to offer these kind of services in terms of resources, and how will those family members that do offer those kind of care to their immediate family will be affected in this Bill, particularly in the provisions where penalties are going to come in, in terms of, they are not an organisation, they are just family members? Thank you.

MS. T. VAKADEWABUKA.- Thank you, Honourable Member. In terms of registration, you are only registered if you are a fully functional organisation which is under Section 21 clause 5. So if your family member is providing the services to a person with disabilities, that is fine. The Bill does not stop you from providing these services and it does not penalise you for providing these services. This particular provision is only for organisations, so body corporate as such, they need to be registered under this Act.

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- We move on to Part 5 of the Bill. Part 5 of the Bill refers to accounts and finance.

Part 5 of the Bill includes clauses 23, 24, 25 and 26. These are general reporting accounts and audit provisions. Basically, clause 23 is the funds of the Council. These are funds that can be given or can be taken by the Council:

- (a) money appropriated by Government for the purposes of this Act;
- (b) contributions or donations to the Council;
- (c) fees received by the Council under this Act;
- (d) money borrowed by the Council; and
- (e) money received by or on behalf of the Council.

Clause 24 is the accounts of the Council. The Council has a duty to keep proper accounts and other records in respect of its operations in accordance with standard business practices.

Clause 25 is the Annual Report.

“The Council has a duty to prepare and submit to the Minister an annual report including its accounts for the preceding year, before the end of every financial year.”

Sub-clause 2 “the Minister must present an annual report to Cabinet as soon as practicable after receiving it.”

Clause 26 is the general audit provisions and the other provisions that follow that is the gist of the Bill itself which is Part 6, discrimination on the basis of disability.

We move on to Part 6 which includes clauses 27 right through to clause 50. As I said, this is the gist of the Bill that confers the rights to persons with disabilities. Most of these rights have been taken from the United Nations Convention on the Rights of Persons with Disabilities. First and foremost is clause 27, which states:

“For the purposes of this part, ‘discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field’”

Sub-clause 2 relates to affirmative action and states:

“Affirmative action laws, programmes and policies, to promote equality for persons with disabilities shall not discriminate as long as such law provides programmes and policies as ....”

MR. CHAIRMAN.- Yes, Honourable Member.

HON. A.T. VADEL.- In the Bill, it is different., “... shall not be discrimination ...”, “discriminatory” or “shall not discriminate”?

MR. CHAIRMAN.- Yes, there is a typo error there, if that can be noted, please.

MS. T. VAKADEWABUKA - Yes, I take that point, there is a typo and we will rectify that.

MR. CHAIRMAN.- Thank you.

Sub-clause 3 relates to applying the rights for persons with disabilities.



“In applying any right under this part, if the State claims that it does not have the resources to implement the right, it is the duty of the State to show that the resources are not available.”

We move on to Clause 28. Clause 28 is a direct reflection of Article 5 of the Convention and relates to equality and non-discrimination. Basically, clause 28 outlines that all persons with disabilities are entitled to equal protection and equal benefits of the rights and freedoms under Chapter 2 of the Constitution. Chapter 2 of the Constitution, being the Bill of Rights.

Clause 29 relates to Accessibility. Clause 29 is a reflection of Article 9 of the Convention and with regard to accessibility states that:

“All persons living with disabilities shall have the following rights:

- (a) to reasonable access to all indoor and outdoor places, public transport and information;
- (b) to use sign language, Braille or other appropriate means of communication;
- (c) to reasonable access to necessary materials, substances and devices relating to the persons disability;
- (d) to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and effective realisation of their rights;
- (e) in buildings and other facilities to open to the public, information, signage and forms in Braille in easy to read and understand modes; and
- (f) to forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate the accessibility to buildings and other facilities open to the public.

Clause 30, which is the next clause, relates to children with disabilities and is a direct translation of Article 7 of the Convention. Basically, clause 30 provides that in all actions concerning children with disabilities, the best interest of the child shall be a primary consideration.

We move on to Clause 31. Clause 31 relates to disaster and humanitarian emergencies. Basically, clause 31 states and outlines that;

“all persons living with disabilities have the right to reasonable accommodation with regard to the protection and safety of their persons in situations of risk disaster” and humanitarian emergencies.

MR. CHAIRMAN.- Yes, Honourable Member.

HON. A.T. VADEI.- I raised this point yesterday during emergencies, regarding disabilities on high rise. What sort of accessibilities will be there, emergency exits for them? Will they follow the same as proper ones?

MS. T. VAKADEWABUKA.- Honourable Chair, with regard to OHS, if you are referring to in the work environment, OHS policies in every office, they set out that there will be two persons who will be responsible for a person with disabilities. So in cases of an emergency, say a fire, there will be two persons in the office that are appointed to run to the persons with disabilities and evacuate them, and in terms of evacuation, priorities are always given to that person with disabilities.

MR. CHAIRMAN.- Thank you.

We move on to Clause 32 which is equal recognition before the law. Clause 32 is direct translation of Article 12 of the Convention, and Clause 32 basically provides provisions for equal recognition before the law, in terms of all persons with disabilities.

MR. CHAIRMAN.- Yes, Honourable Member.

HON. A.T. VADEI.- Clause 32, Part 1, last line, “we support access to justice for persons with disabilities shall not be discrimination”, is it a typing error or what?

MS. T. VAKADEWABUKA.- This is the same as the one earlier.

MR. CHAIRMAN.- Alright.

MS. T. VAKADEWAKUBA.- Which was in clause 27.

MR. CHAIRMAN.- You can take note and ...

MS. T. VAKADEWABUKA.- If I may, Part 6 is Discrimination on the bases of disabilities. So, this is written in such a way that if you support access to justice for persons with disabilities, that is not regarded as discrimination. So, basically these measures under clause 32, if you provide a means of a way of ensuring easier access to persons with disabilities, that is not discrimination, that is not a typo, it is just the way that we intended it to be written in the law.

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- I think I also spoke too early sooner, it is the same case as the one in clause 27(2), it shall not be discrimination if you provide affirmative action laws.

We move on to Clause 33. Clause 33 relates to access to justice.

In summary, clause 33 outlines rights of access to justice for all persons disabilities and basically states that-

“(1) all persons with disabilities have the right to the provision of procedural and age appropriate accommodations to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

(2) Special measures in court proceedings for vulnerable witnesses shall be available for persons with disabilities.”

We will move on to clause 34, which is liberty and security of persons.

Clause 34 states that basically it caters for liberty and security for all persons with disabilities.

It states that –

“All persons with disabilities have the right –

- (a) not to be deprived of their personal liberty on the basis of the existence of a disability;
- (b) to reasonable accommodation if kept in custody; and
- (c) to the protection of national and international law on conditions of custody for persons with disabilities.

Clause 35 – Freedom from exploitation, violence and abuse.

This is a direct translation of Article 16 of the Convention. In summary, clause 35 provides the rights for freedom from exploitation, violence and abuse, of all persons living with disabilities.

Clause 36 is the protection and integrity of persons. It is also a direct translation of another Article under the Convention, which is Article 17.

Clause 36 stipulates –

“All persons with disabilities have the right to respect for their physical and mental integrity on an equal basis with others.”

We have clause 37, which is the preceding clause.

It is a direct translation of Article 18 of the Convention and relates to the liberty of movement and nationality.

Clause 37 states-

“All persons with disabilities have the right to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including-

- (a) the right to acquire and change a nationality and the right not to be deprived of their nationality arbitrarily on the basis of disability;
- (b) the right not to be deprived, on the basis of disability, of their ability to obtain, possess and utilise documentation of their nationality or other documentation of identification, or to utilise relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- (c) the right to leave Fiji unless prevented from doing so by a lawful act or order;
- (d) the right not to be deprived, arbitrarily or on the basis of disability, of the right to enter Fiji; and
- (e) the right of children with disabilities to be registered immediately after birth and to have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.”

Clause 38 is the next clause in the Bill and it relates to living independently and being included in the community

This is a direct translation of Article 19 of the Convention. In summary, clause 38 provides –

for the rights to all persons with disabilities to live independently and to be included in the community.

The next Clause is Clause 39, which is personal mobility.

Clause 39 is the translation of Article 20 under the United Nations Conventions on the Rights of Persons with Disabilities and in summary, clause 39 outlines that all persons with disabilities have the right to personal mobility and the greatest possible independence.

Clause 40 is the next clause, which is Freedom of expression and opinion, and access to information.

This is a direct translation of Article 21 of the Convention. In summary, clause 40 outline the rights to freedom of expression and opinion, and access to information of all persons with disabilities.

Clause 41 – Respect for privacy.

This is a reflection of Article 22 of the Convention. In summary, clause 41 provides the rights for respect for privacy of all persons with disabilities.

The next clause is clause 42, which is respect for home and the family environment

This is a direct translation of Article 23 of the Convention. Clause 42 outlines that –

”All persons living with disabilities have the right to freedom from discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships ...

So, basically, in summary or as an example in terms of persons with disabilities, they have a right to marriage, to be able to be married and a right to be included in a family or to be part of a family. That right also relates to parenthood, the right to have children and also to be in relationships.

HON. A.T. VADEL.- I just read that, Mr. Chair ...

MR. CHAIRMAN.- Yes.

HON. A.T. VADEL.- ... Clause 42(1)(a) – second line:

“the right of all persons with disabilities who are of marriageable to marry and to found a family on the basis...”

MS. T. VAKADEWABUKA.- Thank you, Honourable Member. Found a family as in usually in terms of the word deriving from the word founder, so to found is to establish a family.

HON. A.T. VADEL.- Thank you.

MS. T. VAKADEWABUKA.- But we take that particular note and if it is your recommendation that we used another word, then I believe the Committee can ....

MR. CHAIRMAN.- If there is anything, then we will put it....

MS. T. VAKADEWABUKA.- Alright.

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- Thank you so much.

HON. S.V. RADRODRO.- The clarification on that particular issue, I mean it is good it is here in the Bill, but what I am thinking, is how do we then be able to implement this particular clause in terms of addressing the needs of those living with disability? For example, I came across a case when we went for an exchange programme in Australia, where this particular issue too (it was not been discussed in the Disability Bill) it was discussed in terms of those organisation offering a service. In Fiji, it is not legalised but in other parts of the country or other parts of the world, it is sort of legalised.

I am raising this, and how do we address that because there is an increase in violence like that of a disabled woman who was raped in Bua, in terms of the implementation of the Bill? It is captured here in the Bill but how will that be addressed further? I am just raising that maybe for later but that is the reality of such clause.

MR. CHAIRMAN.- Yes, Honourable Member.

HON. B. SINGH.- Mr. Chairman, just add to what Honourable Salote Radrodro was trying to say was on relationship.

MR. CHAIRMAN.- Relationship?

HON. B. SINGH.- Yes, it says in the clause; “any relationship”.

MR. CHAIRMAN.- Can you provide some clarification?

HON. S.V. RADRODRO.- Maybe. if I can just enhance you again on that. For example, the case in Australia, there was this mother who came to do a presentation in the Committee like this, and she was supporting the Bill for legalising prostitution or something similar, because she said she would rather that her son be provided services from that kind of organisation or entity rather than them coming to their home because the neighbours have started complaining.

In this case, the son will ring up and then they will come and visit him at their home. So the mother said that she would rather support where the son can go, rather than coming to their home, in direct exposure to their neighbours . We have that clause and how do we strike the balance, maybe with other legislation?

MR. CHAIRMAN.- Yes, madam.

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. Basically, this particular clause is with relation to marriage and relationships, so you have the right to enter in a marriage or to be in a relationship, but the laws in Fiji are quite clear. If you are referring to soliciting prostitution that is a crime, and if we were to change that, then that would be a whole different process altogether.

However, basically persons with disabilities under this Bill will be treated like any other person. So, if that particular incident was to happen in Fiji, then that would be deemed as a crime, you are soliciting a prostitute. However, that does not stop a person with disabilities from entering into a relationship with a person and enjoying those cordial relations, et cetera. It is fine for them to do that, it is discrimination though if you deter them or if you stop them.

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- We move on to Clause 43 – Education. This is a direct translation of Article 24 of the Convention. In summary, clause 43 caters for the rights to education of all persons living with disabilities. So, to further elaborate, clause 43(3) states, and I quote:

“In accordance with sub-clause 2 (that is, the right of a person with disabilities to education), such a right shall ensure that -

- (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

and going on to the development of persons.

So these extends from paragraphs (a) to (h) and basically it is in terms of the education being provided to persons with disabilities, what that should include.

We move on to Clause 44 - Health. This is a reflection to Article 25 of the Convention and in summary, clause 44 caters for the health of rights of persons with disabilities.

Clause 45 - Work and employment; is also a reflection of Article 27 of the Convention. In summary, clause 45 stipulates that all persons with disabilities have the right to work on an equal basis with others.

Clause 46 - Adequate standard of living and social protection, is the direct translation of Article 28 of the Convention.

HON. M.M.A. DEAN.- I apologise, just on Clause 45, I think it only formulates the policy framework within the confines of employment. I feel there should be some inclusion of infrastructural conditions also like we are here promoting equal job opportunities for persons with disabilities. However, I think there should be some infrastructural adjustments like all the workplaces should have access to stairs and special areas if a person is disabled or is on a wheelchair.

So, I think in terms of giving equal opportunities in workplaces, the infrastructural adjustments which are preferable to their conditions should also be confined to all workplaces.

MR. CHAIRMAN.- Thank you, Honourable Member. I believe I have seen it somewhere here, and if you can provide some clarification.

MS. T. VAKADEWABUKA.- That particular provision is catered for in clause 29(d) which relates to accessibility and provides for the reasonable adaptation of buildings and infrastructure, vehicles and working arrangements to enable the full participation of persons with disabilities in the environment whether it be a working environment or ....

MR. CHAIRMAN.- Thank you, Madam.

HON. M.M.A. DEAN.- But I think that should be specified there. I think that should be there also - basic work right, in terms of the conditions of the work.

MR. CHAIRMAN.- Yes, that can be discussed in our ....

HON. M.M.A. DEAN.- Later maybe.

MR. CHAIRMAN.- Yes, that can be put in as one of the recommendations, if you feel that that is right.

Thank you, Madam, you can proceed.



MS. T. VAKADEWABUKA.- We move on to clause 46 - Adequate standards of living and social participation. This clause is the translation of Article 28 of the Convention. Clause 46 in summary provides for the provision of adequate standards of living and social protection for persons living with disabilities.

Under Clause 46(2), these include, and I quote:

- (a) access to clean water;
- (b) access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- (c) access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care;
- (d) access by persons with disabilities to public housing programmes; and
- (e) equal access by persons with disabilities to retirement benefits and programmes.

Clause 47 - Participation in political and public life; is a direct translation of Article 29 of the Convention. In summary, clause 47 outlines that all persons with disabilities have the right to participate in political and public life.

Clause 48 - Participation in cultural life, recreation, leisure and sport; is the translation of Article 30 of the Convention. In summary, clause 48 provides that all persons with disabilities have the right to participate in cultural life, recreation, leisure and sport.

Clause 49 – Remedies is an important clause within the Bill itself. In summary, clause 49 provides for the avenues through which an Act of unlawful discrimination against any Fijian with disabilities may be remedied.

We are reading through clauses (1), clause (2), and so on to clause (10) and basically, if you feel that you have been discriminated against, your cause you can make an application to the High Court for redress under the Constitution and the remedies that are available to you are listed under Clause 3. You can have an injunction, a declaration, damages and compensation.

Also, clause 49 is read in conjunction with Clause 50, which is the enforcement of the Discriminatory Act. Clause 50 provides for the bodies that will enforce your rights.

Clause 50 sub-clause 1 states:

The rights guaranteed under this Act may be enforced by -

- (a) the Council;
- (b) any person living with disabilities or a non-government organisation representing persons with disabilities; or
- (c) or the Human rights and Anti-Discrimination Commission.

So in summary, if you feel that you have been discriminated against as a person with disabilities, you can go to these particular bodies to enforce your rights. You can rally through the Council, you can rally through an NGO, and you can also address your complaints to the Human Rights and Anti-Discrimination Commission.

Sub-clause 2 states that the right under this Act may be enforced in addition to the rights under the Constitution, Human Rights Commission Decree and the HIV/AIDS Decree, including the Mental Health Decree.

So that is basically a summary of Part 6 of the Bill.

The final part is Part 7, which is Miscellaneous.

Clause 51 relates to directives by the Minister. In summary, clause 51 states and outlines that:

“The Minister may give directives, not in consistent with the provisions of this Bill as to the performance and functions and duties and the exercise of powers and functions of the Council”

So this is a standard clause usually for all bodies that are established under a particular law and provides an avenue through which the Minister may give directives to the particular body that is established in this case, the Council.

Also clause 52 is a standard provision in our laws and this relates to regulations. Clause 52 allows the Minister to make regulations for matters that are necessary or convenient to be prescribed under this Act.

The final clause is Clause 53, which provides for the repeal of the National Council for Persons with Disabilities Act, 1994 that we discussed earlier. So in the place of the National Council for Persons with Disabilities Act, the Rights of Persons with Disabilities Act will come into force and also enforce the rights of persons with disabilities.

MR. CHAIRMAN.- Thank you, Madam Timaima, the Principal Legal Officer and also Madam Glenys Andrews, the Senior Legal Officer for taking the Committee through clause by clause or part by part with the Bill for Rights of Persons with Disabilities. I think you have also answered most of our clarifications that were raised yesterday when the Manager Resources was taking us through the Bill. We still request Honourable Members if they do have any clarifications, they can get these cleared today. Hon. Salote Radrodoro.

HON. S.V. RADRODRO.- Thank you, Chair, and I thank the officers for that run through with the Bill, enhancing us on the aspects of the Bill. It is a very important piece of legislation and I would just like to ask the ladies if a wide consultation process had been undertaken in the drafting of the Bill with key stakeholders or members of the public?

MS. T. VAKADEWABUKA.- Thank you, Honourable Member, for your question. This Bill has come a long way. It was first around in 2013. The initial draft was done by Madam Nazhat Shameem and they had broad consultations with all relevant stakeholders. I think Mr. Yanuyanutawa would be the best person to elaborate on their consultations, but from my point, even when it was submitted to us as final, they had done all their consultations but we went back and forth also, sitting with the members of the Council to draft the Bill and to insert provisions in the Bill.

MR. CHAIRMAN.- Thank you. Honourable Vadei.

HON. A.T. VADEI.- Chair, may I refer to the Schedule for the registration of organisations affiliated with the National Council for Persons with Disabilities. Section 4 Part (c), “the organisation is brought before the courts for any matter”. This is the removal of an organisation from the register. We need to clarify what sort of cases are these?

MS. T. VAKADEWABUKA.- Thank you, Honourable Member. This is just the removal from the register. In all cases, it is subject to the discretion of the Council, so you might be brought before the Courts for a fickle like a petty matter, in those cases the Council can decide to keep you on the register but if it is a matter of grave concern, say, it is a matter of fraud or misconduct in relation to the care of persons with disabilities under that particular organisation, then the Council, under its discretion, can exclude you from the register of persons with disabilities.

MR. CHAIRMAN.- Honourable Balmindar, you have any clarification?

HON. B. SINGH.- Thank you, Chair, , on 20(2), “... her membership advantage to personally gain...” or causing a loss?

MS. T. VAKADEWABUKA.- Are you referring to the Schedule, Sir, or ....?

HON. B. SINGH.- No, I am looking at the Indemnity – Clause 20(2) – Page 11 of the Bill, in line with the Crimes Decree?

MS. T. VAKADEWABUKA.- Yes, Sir, this is basically, if you are a member of the Council or Committee and your actions cause you to gain because in hindsight, we envisage that the Council will be getting a lot of aid for their functions and in their roles so you cannot act in a way as to personal gain for you like it is the usual FICAC issues are covered here under Clause 22 so that you are not personally gaining from those particular activities.

HON. B. SINGH.- Your intention was to cause a gain but also a loss, once causing a gain, it will also be causing a loss to the institution, so the act was dishonesty.

MR. CHAIRMAN.- So we will take note of that and we will discuss it as a Committee and if we feel that that should be recommended, we will put it in our recommendation.

HON. B. SINGH.- Sir, just on the Schedule also, in line with 3 and 4(g), standards of service delivery, Page 25 of the Bill: “makes no attempt to comply with services delivery standards set; and”, this service delivery is being formulated by the institutions and then forwarded to the Committee or the organisation and then normally, for KPIs, we do realignments in the six months or three months, depends on the scenarios and the changes in the economic, they are not given any leeway or first warning, et cetera.

MR. CHAIRMAN.- Honourable Member, I believe your question is not clear.

MS. T. VAKADEWABUKA.- Yes.

HON. B. SINGH.- I apologise, Mr. Chairman. What I am trying to say is, the reason for the removal of an organisation from registration as outlined in 4(g): “...makes no attempt to comply with services delivery standards set.

MR. CHAIRMAN.- Can you give clarification as far as 4(g) is concerned?

MS. T. VAKADEWABUKA.- Thank you, Sir. Service delivery standards are standards set by the Council that you have to adhere to. In this particular case, if you do not attempt to comply with those standards. As we stated earlier, those organisations that are registered, they have to perform to particular standards set by the Council. So, these are service delivery standards and at particular

intervals, you will be reporting back to the Council as to how far your compliance was and how much you have achieved.

MR. CHAIRMAN.- Thank you, madam. Is that clear, Honourable Member? Do you still have some doubts?

HON. B. SINGH.- Mr Chairman, if you look at the Schedule 3, it says; “The Council may require at any time information from an organisation in relation to the factors...”, and then we look at the Schedule and may also require a proof of standards of service delivery. These are standard delivery that is set out by the ....

MR. CHAIRMAN.- I think that is what she has been advising, she has clarified to the Committee the standards they should meet.

HON. B. SINGH.- The Committee does not set the standards, the organisation will draft or formulate its own?

MR. CHAIRMAN.- Yes, it is true

HON. B. SINGH.- ...and they will forward it to the Committee.

MR. CHAIRMAN.- But they have to meet that standard.

HON. B. SINGH.- What I am trying to say is, line organisations have their own budgets, so that service delivery are in line with the budget.

MR. CHAIRMAN.- Do you wish to provide further clarifications on that?

HON. A.M. RADRODRO.- My question is in regards to the compliance, and I think that is where the question is also coming up from Honourable Singh, because implementation of this piece of legislation is very important. I am linking it to Honourable Singh’s questions in terms of the standards and the budget provisions. So, how will the implementation of this legislation be evaluated and monitored for compliance? Who is the principal enforcement authority?

MR. CHAIRMAN.- Thank you.

MS. T. VAKADEWABUKA.- The principal enforcement authority in the legislation is the Council. The Council reports to the Ministry. So, the Council is governed by the Executive Director

like a Chief Executive Officer (CEO), so it is much like the establishment of a statutory authority that has a CEO, and that CEO running under the line ministry. In this case, the minister responsible will be the Minister for Social Welfare.

In terms of the standards of service delivery, as I had explained earlier, the Council will be setting the minimum standards. The Council and the particular organisation will go back and forth on that particular standard. In paragraph 3 is where the Council will require you to report back on whether you have met the minimum requirement they have set out.

Under paragraph 4, when you do not meet these minimum requirements, you can be deregistered from the register of organisations.

MR. CHAIRMAN.- Thank you. Honourable Vadei.

HON. A.T. VADEL.- Mr. Chairman, just to contribute on to that because it could be the Council's self-assessment. This is its own self-assessment in relation to the compliance of the Bill but they will also engage in assessors, engaging international and regional bodies to assess them on how they comply to those standards.

MR. CHAIRMAN.- Thank you, Honourable Member. Honourable Dean.

HON. M.M.A. DEAN.- Thank you, resource personnel from the SG's Office and thank you, Madam, for your presentation. My perceptions are not based on criticisms for the Bill because when we were in the Ministry of Education, we were really lobbying for a Bill which will specifically enhance the level of special education in Fiji.

The Bill is very good, it basically has almost what we were expecting but only a slight issue. We know the reason why this Bill was enacted, it is to give more equal rights to people with disabilities. Now, for sure, this Bill will increase the standard and level of service delivery in terms of education to the people with special needs.

The main concern is the implementation part. One of the main factors of implementation is equal job opportunities. We can train and teach them to adopt to the normal way of life, which is the basic human rights for anyone. Now the idea here is, how they will carry on from there, which is why I had this concern.

I know the general provisions are there that the infrastructural requirements should be as per convenient to people who are disabled, what I was suggesting is that, if you could make it more

specific to workplaces as well. These general provisions, if you could specify in the Bill that the workplaces should, at any cost, adhere to these and that will, sort of, encourage disabled people to get into the workforce. They will feel a sense of security and say; “we want to apply to that organisation. We want to work there and they have all these infrastructural provisions that will make our work easier and service delivery easier, et cetera.”

So, if the general provisions like the infrastructural requirement can be more specifically mentioned, the issue I was raising are the workplace policies. If those provisions can be specifically included in that, I think that will have a more positive impact on the people who are planning to find work, especially the ones with special qualities. Thank you.

MR. CHAIRMAN.- Thank you, Honourable Member.

MS. T. VAKADEWABUKA.- The Bill outlines the rights of a person with disabilities. Basically, what we are trying to achieve through the Bill is to combat discrimination. If a person walks in to a workplace and you do not hire them just based on the fact that they have a certain disability, they can enforce that particular right against you.

Also the gist of the Bill is to ensure that they are treated on an equal basis with others. When they come into the jobs sector, when you set out criteria for a job, they are required to have the same or exact qualifications as others. They are treated on equal basis, but not so much as to say that we are going to take you for this job because you have this disability, even though you do not meet the standards. So, we do not want to go into that area where you, in some cases, have a quota. So, you just employ this person with disability just to fill your quota which is like this particular workplace; ‘employees - three people every year with disabilities.’

What we are trying to achieve is to ensure the progressive realisation of persons with disabilities in the workplace so that when you are coming into job recruitment, that that recruitment is merit based. You are not just looking at the person because of what they can or cannot do, but whether they have the merits to take up that job. It would be difficult, as you are saying to require each and every organisation to adapt, and to all of a sudden have Braille or have all these things because it would be expensive. What we are pushing for is the progressive realisation of these rights and eventually persons with disabilities not being discriminated against when it comes to job recruitment.

So we cannot state in the law that you must hire all these persons with disabilities because at the end of the day the point of the law is to ensure that they are treated on equal basis.

HON. M.M.A DEAN.- I am sorry, Ma'am. I think you have misunderstood me. I am saying that you have the general provisions there that a workplace should be conducive to anyone with disabilities entering there. I am just saying, in that general provision, if we can specifically include ....

MR. CHAIRMAN.- Honourable Member, I understand that can be also included in our recommendations if we feel that should be included there. I think, Madam, has quite clearly given the clarifications. Yes, Honourable Balmindar Singh.

HON. B. SINGH.- Thank you, Mr. Chairman. I know this Bill when enacted and gazetted. Just a clarification on clause 29, is there any buffer period that will be given for the buildings to comply with?

MR. CHAIRMAN.- In a public place?

HON. B. SINGH.- Yes, in a public place because the Bill does not say that there will be a buffer.

MS. T. VAKADEWABUKA.- Just for clarification, Honourable Member, it does not mean that when the Bill comes into force every building should have a ramp. We will not and the Bill does not confer that sort of restriction or that sort of expectation. We are working towards the progressive realisation so that in time you should be building these ramps or you should be making these considerations. So it is not sort of that this law is in force you do not have a ramp, we will going to take you to Court. What we are trying to push for is that in the near future, you have to have this particular law in consideration and start to build this particular adaptation or incorporate this particular adaptation.

MR. CHAIRMAN.- Thank you, Madam. Yes, Honourable Member.

HON. S.V. RADRODRO.- Thank you for that because like I had mentioned earlier on, the implementation of this Bill is very important otherwise, then it will be just like a toothless tiger kind of Bill, if there is no effective implementation to look after this group of our society and in regards to the implementation.

I draw your attention to clause 23 (d), money borrowed by the Council. This Council is not a revenue earning organisation. So like I said, the effect implementation hinges very much on availability of resources to the Council. So in the event, because here it stated in the Bill that money could be borrowed by the Council. In the event that the Council is unable to pay or to furnish the loan that it had taken, what can you tell us in terms of having that particular item in the Bill? Clause 23 (d).



MS. T. VAKADEWABUKA.- Thank you, Honourable Member, in terms of money borrowed by the Council, as I stated earlier that the Council operates under the watchful eye of the Ministry and the Executive Director. So we do not foresee that they will be borrowing exorbitant amounts of money and in any event if they borrow, they will have security. So that would offset any sort of funding or if they are unable to pay, but usually in these cases for these organisations they are not allowed to borrow a certain sum or above and this is where the finance instructions come in, in terms of borrowing also.

MR. CHAIRMAN.- Thank you, Madam.

HON. A.T. VADEI.- Mr. Chairman, it is quite interesting because the Ministry of Education now has started a new programme in their Ministry the ‘early detection’. This is what I am worried about because they will borrow money for their operation and for the person with disabilities to be diagnosed. This is where I am coming from because they are not earning money or making money but they are assisting people with money. This is where they will come into in this paragraph. What I am asking is, because I do not want to pass on that cost, or where do that cost-sharing comes in, or what formula?

HON. M.M.A.DEAN.- I am sorry, Honourable Vadei, this programme which you are saying “early detection”. It is being carried out by whom on behalf of the Ministry?

HON. A.T. VADEI.- There is a group in the Ministry of Education, they are located in Denison Road.

HON. M.M.A. DEAN.- The Ministry is paying them..

HON. A.T. VADEI.- No, it is paid by the UNESCO or NGO.

HON. M.M.A. DEAN.- Alright.

MR. CHAIRMAN.- Yes, Madam, can you share some clarification on this?

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. I am not aware of the Ministries early detection programme, but in terms of borrowing by the Council as I have stated earlier it is highly unlikely that they will borrow exorbitant amount and in addition to that, it is not that they do not have any money because every year within the Budget, money will be appropriated to the Council that they were run on. This is only, maybe in circumstances, dire need and then they will borrow.

MR. CHAIRMAN.- Thank you, Madam. Thank you, Honourable Members, I would like to thank Madam. Timaima Vakadewabuka, and also Madam Glenys Andrews, the Senior Legal Officer from the Office of the Solicitor-General for taking us through this Bill.

The way I see it, there is a wide coverage in this Bill in regards to the person with disabilities, protection is given and the rights are taken care off. There were some issues as far as the implementation of this, I am sure once this Bill goes through public places where they seek services they will endure to all those things as the Bill goes through.

I also would like to thank Mr. Steven, the Executive Director from Fiji National Council for Disabled Persons who is here today and for me and also to the Honourable Members we have a better understanding of the Bill even after the Manager Research took us along through the Bill Clause by Clause and today through the staff from SG's office.

So once again I would like to thank you all and I request you before you go to join us for lunch. Lunch will be here very soon and we look forward to the same presentation from your office tomorrow, again in regards to the Heritage Bill. Thank you very much.

The Committee Interview concluded at 12.18 p.m.

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AFFAIRS HELD IN THE COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON WEDNESDAY, 31ST MAY, 2017 AT 2.58 P.M**

**Submittee:** Professor Ron McCALLUM

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PROF. R. McCALLUM.- I am truly honoured to be invited ..... I am happy to answer any questions on the Bill that I can help you with, Sir.

MR. CHAIRMAN.- Thank you, Sir. I am the Chairman of the Standing Committee on Social Affairs. My name is Honourable Viam Pillay and with me today are four other Honourable Members, who are Members of the Committee. They are the Deputy Speaker, Honourable Ruveni Nadalo, the Honourable Salote Radrodro, the Honourable Veena Bhatnagar and the Honourable Anare Vadei. Also with us are the secretariat team, Hansard, and we also have the presence of our UNDP team.

I must thank you for your time and I also thank UNDP for making this possible. I believe our secretariat with the assistance of UNDP, has sent all the information to you. Our concern is in regards to this Bill, the Rights of Persons with Disabilities. Most of the Clauses has been brought in straight from the Convention and the Articles are there. But the issue that is with the Committee is that, Articles 4, 6, 8, 10, 26 and 31 have been omitted.

However, the Solicitor-General's Office and the legal drafters had confirmed to us in writing that nothing has been omitted, they had been incorporated in the text of the Bill and in other relevant legal instruments, for example, Article 10 of the Convention on the Right to Life is enshrined in Section 8 of the Constitution of the Republic of Fiji and we need your views on that, Sir. Thank you.

PROF. R. McCALLUM.- First, I have read the response from the Office of the Solicitor-General. Second, I agree that the Right to Life is set out in Article 8 of the Constitution of the Republic of Fiji. While it might be nice to put it in the Bill, you do not really need to. But Article 31 on statistics, the Office of the Solicitor-General says that the Council can collect statistics and he points to Clauses 4 and 5 of the Bill relating to the powers and functions of the Council. There is no expressed power or capacity for the Council to collect statistics and at the very least, the Council should be given the power to collect statistics on persons with disabilities.

In relation to Article 6 of the Convention which relates to women and girls with disabilities, I think it would be helpful to include a provision saying that the Bill protects the rights of women and girls with disabilities expressly, and prohibits discrimination against them.

In all of the countries in which I have participated on the CRPD including Australia women and girls with disabilities are subject to much greater discrimination than a man with disabilities. Women with disabilities are also subject to discrimination both because they are women; and because they are persons with disabilities; and women with disabilities particularly in institutions even in developed countries like Australia and Britain are more likely to have violence against them or sexual violence. So I think the Bill could be improved by expressly stating that the Bill protects the rights of women and girls with disabilities.

Article 4 is an Article aimed at Government. It asks Government to make all laws, to modify their laws in compliance with the CRPD. I am not sure whether you basically need that, but in several places in the Bill, you perhaps, should mention obligations with Government.

Article 8 of the Convention is on awareness raising, and I think that Clauses 4 and 5 on the functions and powers of your Disability Council, give that Council enough power to publicise the rights of persons with disabilities and to explain that persons with disabilities are the same.

I think you need to do something about Article 31 and Article 6. I think the right to life is enshrined in your Constitution, and I do not think you need to do anything about that.

MR. CHAIRMAN.- Thank you.

PROF. R. McCALLUM.- Did I speak too quickly?

HON. COMMITTEE MEMBERS.- No.

MR. CHAIRMAN.- No, it is alright. Thank you very much for the clarifications and we are taking note of all the issues. Honourable Vadei, do you have any question?

PROF. R. McCALLUM.- I have some things to say about the Bill myself but I am happy to answer questions.

HON. A.T. VADEI.- Thank you, Sir. I am Honourable Vadei. In regards to the drafting of our legislation in domesticating the Convention, what do you think about the domestication of our legislation, the drafting of the Bill whether it captures the whole intention and the spirit of the Convention in the Bill or what can you add on to that?

PROF. R. McCALLUM.- That is a very good question, Sir. It is at the centre of what we are discussing, it is a very perceptive question. I think generally the Bill is pretty good. I think it captures a lot of the CRPD. There are just a few areas where I think it could be improved, but generally it is a very good Bill. I wish we had such a good Bill in Australia. Could I tell you the areas that I think could be slightly improved?

HON. COMMITTEE MEMBERS.- Yes, Sir.

PROF. R. McCALLUM.- If you got the Bill before you, I would like to go to Clause 2 on definitions.

HON. A.T. VADEI.- Yes.

PROF. R. McCALLUM.- I do not understand why there is a definition on persons “deemed to be disabled”. It only covers blind people and people with Down Syndrome, it does not seem to add anything to the Bill. I noted in Clause 27, but I wonder whether you really need that definition.

HON. A.T. VADEI.- Right, thank you.

PROF. R. McCALLUM.- Secondly, you have a very detailed definition of “impairment”. Again, impairment is only mentioned briefly in the Bill. I do not think you need such a detailed definition. You can simply say, as ESCAP in its submissions to you suggests some words which you

can simply say, “impairment includes long-term, physical, sensory and cognitive malfunctions”. But I do not think you need the long definition, I did not quite understand it.

HON. A.T. VADEL.- Thank you.

PROF. R. McCALLUM.- The next definition is, “persons with disability”. In here, you have actually captured in the opening, the exact words of the CRPD in the second sentence of Article 1. You have really done it very well, but it is the next bit which says that persons with disabilities do not include, and it talks about people who light fires and people who steal, what on earth these has got to do with it! There must be a reason why that was put in, but I do not understand. Perhaps, you can help me.

In Clauses 4 and 5 on the Disabilities Council, I think these Clauses would be helped if one of the functions of the Council was to protect the human rights of persons with disabilities. I think the Bill would be strengthened by adding a provision to that effect, you protecting the human rights of persons with disabilities, because a lot of Clauses 4 and 5 are really talking about sickness and medical stuff, and the whole thrust of this Bill. If you look at its title, it is the rights of persons with disabilities, that is what you say. So I think you need to put that in, and as I had said to you earlier, I think you need an express provision if you want to comply with Article 31, of statistics and how to get statistics.

We then come to (I think) Clause 7 which deals with the composition of the Council. If I am going too quickly, please let me know. I would like to take you to paragraph (k)...

HON. A.T. VADEL.- Yes, that is correct.

PROF. R. McCALLUM.- ...which says that there should be three people with disabilities. That seems very few to me. You have about 10 or 11 people from Government Departments. I would have thought that you would have more than three. Again, I am not in the position whether it be four or five, but it just looks small, that you have very low representation on this Council of people with disabilities. So I am not suggesting your Bill is wrong there but I think that you might want to think about the exact representation of people with disabilities.

I now go to Clause 22(7) which is all about registering organisations people with disabilities. As I read it, it says that the penalty, if you conduct a service without being registered, the penalty is FJ\$100,000, that seems to be a huge amount. Why such a big penalty? Is there a reason why the penalty is so large?

HON. A.T. VADEL.- Yes, we will advise our Solicitor-General regarding that.

PROF. R. McCALLUM.- Now, I want to the definition of discrimination in Clause 27.

HON. A.T. VADEI.- I apologise, can I refer to that last one, what is your view on that Clause 22, Sir?

PROF. R. McCALLUM.- It just seems to be so high. I do not know why you penalise bodies for conducting services if they are not registered. There may be good a reason in your local situation that I am not aware of, I am a foreigner, and I have been to your wonderful country a couple of times on a holiday and also to do some work with the Government. But I do not really understand the registration process, why you need it, but there may be a good reason why in your local situation it is needed but I do not know.

MR. CHAIRMAN.- Sir, we respect your views and we will consult Solicitor-General's Office. You may continue, Sir.

PROF. R. McCALLUM.- Let me take you first to Clause 2. You have a definition of reasonable accommodation. It is a very good definition; it is an excellent definition in the Bill.

MR. CHAIRMAN.- Clause 2 of the Bill?

PROF. R. McCALLUM.- Yes, Clause 2 there is a definition for memory of "reasonable accommodation". It is a very good definition, it is an excellent definition in the Bill.

HON. S.V. RADRODRO.- Yes, on page 5.

PROF. R. McCALLUM.- It is a very good definition with Council and the Convention.

MR. CHAIRMAN.- Alright.

PROF. R. McCALLUM.- Do you Committee Members all understand what is meant by reasonable accommodation? It is a difficult concept.

MR. CHAIRMAN.- Can you explain, Sir?

PROF. R. McCALLUM.- Yes, certainly.

Supposing I am an employer in Fiji and a man comes to me looking for a job, and he is in a wheelchair. I say to him; “Look, I cannot employ you because your wheelchair will not fit in the toilet in my office. I am very sorry but I cannot do it.”

“Reasonable accommodation” means that you cannot refuse someone because of the toilet, if that something you can reasonably accommodate like fixing it up. It may not cost much money to make the toilet slightly bigger, and that is what we mean by “reasonable accommodation”. As you know, I have been blind since my birth and I cannot read and I use special computer programmes.

When I took up employment at the University of Sydney, the University gave me reasonable accommodation by spending a thousand dollars on my speech programme. For a big university of 40,000 students, it was not much. And I know it is a hard concept but unless you have reasonable accommodation, it is very hard for disabled people to get jobs. If I can just say, the law requires you to reasonably accommodate me if the accommodation is reasonable and does not cost much money, and your definition in Clause 2 of the Bill on page 5 covers this precisely.

The problem is Clause 27. If we turn to Clause 27...

MR. CHAIRMAN.- Yes, Sir.

PROF. R. McCALLUM.- ... this Clause is a definition of discrimination. But it does not mention at all, “reasonable accommodation”. In other words, it should be that the failure to reasonably accommodate a person with disabilities which amount to discrimination. Let me take my example of the Fijian employer. You simply say to the person, “I am not going to alter my toilet. Find some other job!” The failure to make reasonable accommodation would mean that he had discriminated against that man in a wheelchair. Is it not difficult to alter the size of the toilet? Then that is a reasonable accommodation that the employer is required to make. And if the employer fails to make that reasonable accommodation, then the employer has discriminated against the person with disabilities.

So I think you have “reasonable accommodation” in Clause 2, but I think you will need to make it clear in Clause 27 and in Clause 28, dealing with discrimination directly. That discrimination includes the failure to make reasonable accommodation. I am just looking at my Braille notes.

Clause 28 on equal protection of laws, I think it could be just strengthened by the obligation to provide reasonable accommodation. So, as well as making it clear in your definition of discrimination in Clause 27 that discrimination includes failure to reasonably accommodate, I think you need to make it clear in Clause 28 that people have an obligation to reasonably accommodate people with disabilities.

MR. CHAIRMAN.- Thank you, Sir, you may continue.

PROF. R. McCALLUM.- Clause 29 of the Bill deals with accessibility for disabled people into shops, into buildings, et cetera. Clause 29 of your Bill is based upon, I think, Clause 42 of the Constitution of the Republic of Fiji, and I have read your Constitution very carefully. It is a much better Constitution than Australia's, it is much more modern. But I think it would be better if you re-draft Clause 29 and make in line with Article 9 of the UN Convention on the Rights of People with Disabilities.

If you look at Article 9 of the Disabilities Convention, it covers not just access to transport and buildings, but also to communications, to recreational areas, so I think you could redraft Clause 29 and bring it more into line with Article 9 of the Convention. I am just looking at my notes.

Now, we come to Clause 30 on the Rights of Children with Disabilities. I think this is a good Clause but it would be strengthened by a further subclause, guaranteeing the human rights of all children with disabilities. After Clause 30, I would add in a new clause - "guaranteeing the rights of all women and girls with disabilities", and mould it on Article 6 of the Convention.

As I had explained earlier, women with disabilities are subject to much more discrimination than men with disabilities. We call that anti-sexual discrimination, which is a very big word and it simply means, she can get discriminated against by being disabled and by being a female, and I wish the world were different. I wish we did not need a separate provision for women, but in every country including, Australia, Canada and Africa, women with disabilities are subject to more discrimination and more violence. So I would really strongly urge you to add a clause in. It does not do any harm, and it does not really cause you a problem to do that. Let me read my notes, I have got my notes here.

Clause 31 deals with disasters. It is a good clause, but it says that the Government should reasonably accommodate persons with disabilities, that is where they use "reasonable accommodation". I would change those words and say instead of "reasonable accommodation", I put in the words, "all necessary measures", because it is not a question of reasonably accommodating, it is a question of using all necessary measures. And I take that from Article 11 of the Disabilities Convention. Can I tell you a story about Article 11?

HON. COMMITTEE MEMBERS.- Yes.

PROF. R. McCALLUM.- Well, in the Drafting Committee, no one thought about it. No one thought about emergencies and in December, 2004, the Committee was meeting in America and it was the time of the Boxing Day tsunami. You remember when thousands of people were killed in



Indonesia, close to Australia and in India and in parts of Vietnam. Everyone said the problem is that, when there are disasters, more people with disabilities die than any other group. People who die in disasters tend to be women and very small children, particularly women with very children, very elderly, and disabled people. Often, they cannot get out of their houses, they do not know where to go, and so that is why Article 11 was put in the Convention.

I think it was Ecuador that suggested it, and everyone said, “yes”, and since then we have had emergency after emergency. The emergency in Haiti, the big earthquake. Again, more people with disabilities died than any other group. So I would try and bring Clause 31 into line with Article 11 of the Convention by using the words, “the Government must take all necessary measures, and also must comply with International Humanitarian Law.” Let me say that again, “the Government must take all necessary measures, and must comply with International Humanitarian Law”. That is the part of international law which deals with humanitarian crisis.

I was in Seoul during the big earthquake in China some years ago. The “taking of all necessary measures” meant, having someone on television explain the disaster by using sign language, so that the deaf people would understand, of working out where the blind people live so that they could be evacuated. And given cyclones both, in Australia and in Fiji, I think it is a very important provision, and I wish we had something like Article 31 in Australia. I think it is a very good provision. In fact, this Bill is very good and I want to say very, very clearly, I think the Bill is great, and all I am suggesting are some small matters. I think it is a very good Bill and you ought to be congratulated.

The next Article is Article 32 called, “Equal recognition before the law”. I have written in my notes which is rather scrambled, Subclauses 2 and 3 are pretty good. They deal with the rights to own and inherit property, and they align with Article 12(5) of the Convention. They are well drafted.

But I am a little confused by Subclause 1 because I do not think it says clearly what it should say. I think that Subclause 1 should make the following points:

1. I think it should say, “that all persons with disabilities have legal capacity, the same as anyone else”.
2. It should mirror Paragraph 3 of Article 12 and say that, “Government will assist persons with disabilities to fulfil the legal capacity obligations”.

I think there should be a further point which comes from Article 12(4), “that the Government should allow persons with disabilities to be assisted in making decisions”. We call that “assisted decision-making”, but the Government should lay down appropriate safeguards to protect people with disabilities.

This is a difficult area. Most countries in the world still do not allow persons with mental disabilities to be assisted in making decisions. Often, system safe guardianship have other people making the decisions for persons with disabilities, though they did not have legal capacity.

The world is changing. Australia is changing far too slowly for me, Europe is changing, Canada is changing, so all I am suggesting is that, Clauses 32(2) and (3) remain the same, and Clause 32(1) be re-drafted to make it clear:

1. that all persons with disabilities have legal capacity;
2. that Government should assist persons to exercise their legal capacity; and
3. that, of course, Government will encourage persons with disabilities to be assisted in making decisions, assisted decision-making and that there will be appropriate safeguards.

That is a very important Clause.

Clause 33 is on access to justice for people with disabilities. And I think generally, it is a pretty good clause but again, I think it could be strengthened along the lines of Article 13 of the Convention. I think it needs to expressly state that, “persons with disabilities have the right to access justice”. And, it is a right to access justice so that you can keep evidence if you are a person with a mental disability, that you have the right if you need an interpreter in sign language, so I think it needs to be worded in a stronger manner that you have the right access justice. I think that needs to be added to it, but again, it is a good Clause.

The next clause is a very important clause, and that is Clause 34 which is on liberty. It really talks about people only losing their liberty if they are arrested or take into custody like ,with the police or with Government on deportation. I think it needs to be recognised that often, people are taken against their will to psychiatric care. It is not just criminal custody in jail, it is psychiatric care.

I think you need an express statement here that all persons with disabilities have the right to liberty and cannot be detained, simply because they are persons with disabilities. Let us take an example. It is a very difficult area. Supposing we have a persons with mental disabilities and the Government wants to put him in the psychiatric institution because he is a threat and he will do harm to other people. Well, that is really a matter for the criminal law, not for a Government who should be saying that he should go into psychiatric care, just because he is disabled. If a person is threatening to do harm, that is a matter of the criminal law, not for taking away liberty just because they are persons with disabilities.

The Monitoring Committee of the Disabilities Convention wrote guidelines on liberty in 2015. I actually helped draft them in 2014, simply making very clear that you cannot just detain someone because they are a person with disability. You may have to detain someone because they have a contagious disease and you may have to detain someone if they are threatening to do harm to other people, not to themselves but not simply because they are a person with disabilities. So I would like to see an expressed statement in Clause 34 on liberty.

Clause 35 is pretty good, I have no real comment on this Clause.

Clause 36 is a pretty good Clause which deals with protecting the integrity of the person. I think it could be slightly improved by bringing it into line with Article 15 of the Convention by saying; “there shall be no scientific experiments done on persons with disabilities, no forced sterilisation”, but general speaking it is a pretty good clause.

Living independently in a community is Clause 38. I think it is pretty good, I might have drafted it slightly differently, more in line with Article 19 of the Convention, but it is pretty good.

In Clause 39 on mobility, again, I go back to Clause 29 and Section 42 of your Constitution. I think Clause 39 is alright, but what about an expressly stating, that “persons have a right to access transport”. It is nothing about transportation in Clause 39.

The next two Clauses are alright. In Clause 42 is excellent - Respect for home and the family, I rather like it. It is well written, it is thoughtful and it is really good.

Clause 43 on education, is complex. Education is a difficult area. The Convention requires what is called inclusive education in Article 24. What is meant by inclusive education is that, children with disabilities are in the same classroom as other typical children and perhaps, Clause 33 of the Bill could be strengthened to make it very clear that the aim of the Bill is to have disabled children inclusive education.

This is an area where people argue tremendously. We had great arguments in Australia, there were even arguments amongst members of the Monitoring Committee. Some people say we should have special schools for blind, deaf, et cetera, and others say; “We should have everyone in inclusive education.” I will just give you my thoughts.

My first thought is that, that there could be more disabled children in ordinary classrooms than we have, and I am speaking here about Australia and I think the same might be said about Fiji and other places. There are children in special schools, that I think could cope with they being educated

in ordinary classrooms. The problem is that, if you are going to have disabled children in classrooms, you need some extra teachers to assist, and that might be an issue for developing countries. It is certainly an economic issue in Australia.

I went to an institutional school when I was four and I think I learnt a lot of skills, but it took me away from my family and friends. I did not go to a real school until I was 14, when I went to a real high school. This was a long time ago, 16 years ago, I am a fairly old fellow and things have progressed but my reaction is that, we really need to think more about inclusive education and make it very clear that the aim of the Government of Fiji and of this Bill, is to have as much inclusive education as possible. But otherwise, it is pretty good.

Clause 45 on employment, that is pretty good too, but what I would like to see is that Government has an obligation to employ people with disabilities where appropriate. There is nothing about Government, I think Government needs to be in the lead. I am sitting at the moment in a Committee in New South Wales with the New South Wales Public Service, working out how we can employ more people with disabilities because the Government recognises it has an obligation. It is complex and we are trying to increase the level of employment of people with disabilities in the New South Wales Public Service. It is not easy but we are working very hard and I have spent a bit of time doing that, so I think it would be good to have an obligation upon Government to employ people with disabilities and to encourage the employment of people with disabilities. Maybe, we should simply say here, “the obligation is to employ people with disabilities both, women and men.

Clause 46 deals with adequate standard of living which is like Article 28 of the Disabilities Convention. Here, Honourable Members of the Committee, I am in a little bit of a disadvantage. I am foreign, I am an outsider, although I had visited your wonderful country, but I think that it would be helpful if the Clause made it clear that persons with disabilities had a right to the appropriate social security. I do not know enough about your social security but I think that, that provision could be brought more into line with Article 28 of the Convention. But again, you know your social security situation better than I do.

Clause 47 deals with participation in public life. It is very complex. I read it and I thought, “surely, that could be simplified”. And in ESCAP’s submission to you, they said it could be simplified. I think you just simply need to write, “that all persons with disabilities have the right to vote”, that is all you got. And that, “Government should ensure that there is accessibility to polling booths and that there will be appropriate information in Braille or in other languages where necessary.” Again, I think you could write that more simply, it is just that it was hard for me to understand.

Clause 48 deals with participation in cultural life. Again, I think it needs simplification, I just found this very complicated.

Let me finish by saying that you received a submission from ESCAP and UN Office. I thought it was an excellent submission. It was written, I think, to be fair, in a fairly forceful language but it was a good submission, and I would agree with what they have written.

What I wanted to do today was to try and explain just those provisions that I thought were particularly important. Let me just summarise:

1. First and foremost, in Clause 2, I think you should take away the definition of, “deemed to be disabled”, I do not think it adds to anything.
2. I think you should simplify the decision of “impairment” in Clause 2. I do not even sure that you really need to have it, I know it is mentioned in Clause 27.
3. I think that you need to take away the end of the definition of persons with disability” when it says, “but does not include.” I read this and it talked about people lighting fires and I thought; “Hang on, I do not even understand what they has to do with it.” If people are lighting fire or stealing they are criminals, and they should be dealt with by the criminal law.
4. I think that Clauses 4 and 5 should be amended:
  - i. to make it clear that one of the functions of the Council is to promote the human rights of persons with disabilities; and
  - ii. that the Council has the function to collect statistics and assist the Government in its work.
5. Clause 7(k), I just think you should think about increasing your representation of people with disabilities beyond three.
6. Clause 22 - Registration, I do not fully understand the registration processes, as I had said to you before. I am an outsider, there might be good reasons for this that I do not know, but you have an extraordinary high penalty in Clause 22(7). I do not know why it is necessary and I would again, broaden what is meant by services.
7. Clause 27 deals with a definition of discrimination and Clause 28 deals with what is discrimination itself. I would add in that failure to give reasonable accommodation is discrimination, and you have a wonderful definition of “reasonable accommodation” in your Clause 2. So I just think it needs to be stated clearly.

8. Clause 29 on accessibility, I think it could be more clearly written. I know it is based upon Section 42 of your Constitution but I do not mind it more with Article 9(1) of the CRPD access to information, as well as to transport and to buildings, but it is a pretty good Clause.
9. Clause 30 on the rights of children, I would strengthen it by saying that children with disabilities have the same rights as everyone else I might that expressly. After that Clause, I would add in a new clause I call it Clause 30A, in which for the reasons that I have said to you, I would make it clear that women and girls with disabilities have the same rights as everyone else and cannot be discriminated against. So I just make that clear.
10. Clause 31 on disasters, I would take away “reasonable accommodation” and put in the words, “all necessary measures”, and I would also add, “that the Government would comply with international humanitarian law which is part of international law”.
11. Clause 32 on equal recognition before the law, Subclauses (2) and (3) are fine, but I would make Clause 32(1) in three points:
  - i. That all persons with disabilities have fully legal capacity;
  - ii. That Government will assist persons with disabilities to exercise their legal capacity; and
  - iii. That the Government will help to set up systems of assisted decision-making with persons with disabilities assisted in making decisions but will also have safeguards. Otherwise, I think it is a good Clause.
12. Clause 33 on access to justice is pretty good. I would again just state expressly, I am a great believer in saying things clearly and expressly in legislations, so there could be no doubt about it, that all persons with disabilities have the right to access justice.
13. Clause 34 on liberty, again, it only seems to cover custody by police or in jails, and I think there needs to be an expressed statement, that persons with disabilities cannot be detained. They have the right to liberty, and they cannot be detained simply because they are persons with disabilities or persons with mental disabilities. You may detain them because they have a contagious disease or because they are threatening other people.
14. Protecting the integrity of the person - Clause 36, I would look at some of the language in Article 15 of the Convention, and I will make sure that persons with disabilities cannot be experimented upon or they cannot be forced into sterilisation.
15. Living independently in the community - Clause 38 is pretty good. I might look Article 19 of the Convention but it is pretty good.

16. Mobility - Clause 39, again, I just note here; what about access to transportation? Again, I am grateful even in saying things directly in legislation.
17. Clause 42 is fantastic, I would not make any alteration.
18. Clause 43 on education, it is a scrambled Clause. It tries to do a lot of things and I would just want to say that the aim of the Government is to ensure that all children with disabilities should be in an inclusive education classroom with typical children. I recognise there are issues, but that is what I would working towards.
19. Clause 45 on employment is pretty good but I think Government also has an obligation to employ, and I think Government should be told that it has an obligation to employ.
20. Clause 46 on adequate standard of living, again, I do not know enough about your social security law, but I think persons with disabilities should have a right to receive the same social security as others.
21. Participation in political life - Clause 47, I would want that to be simpler, just simply saying, "All persons with disabilities have the right to vote and that it is an obligation on Government to make polling booths accessible, and to assist persons with disabilities by providing appropriate information on Braille languages and sign languages, et cetera.
22. Participation in cultural life – Clause 48, it just looks very complicated and I try and simplify it.

That is really all. Let me reiterate, first of all, I think that the submission from ESCAP, et cetera, says it more clearly than I do. It says it in 17 pages, as I said it, it is said in a rather forceful language, and I think you should think about it.

Can I say though, I think it is a pretty good Bill. All Bills can be improved. I have spent a lot of time with Australian Governments' working on legislation and even drafting it. I think drafting legislation is very hard, and all I am suggesting is a few small amendments that you think about, but I wish we had such a good piece of legislation in Australia.

That is really all I have to say, but I am happy to answer questions. I will say again, I am truly honoured that I am here, sitting in a little office at the University of Sydney, talking to you way out there in the blue Pacific.

MR. CHAIRMAN.- Thank you very much, Professor, and I think you have very well covered the whole Bill. You have provided us with some very good information, and surely the Committee will go through it. We will be also calling in the Solicitor-General's Office to advise us, similar to the advice you have given to us today. We will see how best all these can be accommodated in the Bill.



Honourable Members, do you have questions? Honourable Salote Radrodro?

HON. S.V. RADRODRO.- Good afternoon, Professor.

PROF. R. McCALLUM.- Good afternoon, Madam.

HON. S.V. RADRODRO.- Thank you for your presentation and your explanation which has really enlightened us on this Bill. My question is just on those Articles that have not been reflected in the Bill, and I believe we have missed out Article 36 and that is on the consideration of reports.

PROF. R. McCALLUM.- I do not think you have to do anything about Article 36. Article 36 is an Article which requires Articles 35 and 36, require countries that have ratified the Convention to send a report to Geneva. Article 36 allows the Committee to consider the Report. I do not actually think you have to do anything. It is really a matter for the Committee.

That part of the Convention, Article 34, deals with the election of the Monitoring Committee and then Articles 35 and 36 deals with the report. All you have to do, I know you have ratified the Convention, is you have to put in your report two years after ratifying or three years when you get it done. I may be wrong but I do not think that, that Article is really relevant to your Bill. Your Bill is dealing with the domestic parts of persons with disabilities in Fiji.

HON. S.V. RADRODRO.- Just further to that Professor, I am just of the view that if it is not reflected in our legislation, then it would sort of appear that it is not mandatory for Fiji, in this instance, to make any report to the UN and in that way, we may be falling back on our implementation.

PROF. R. McCALLUM.- I do not think you need to worry because once you ratify the Convention, you have agreed to be bound by the Convention, and it is the Convention which says, “That States parties must produce the Report”. So you can disobey the Convention. If you want to put in a clause saying that the Government is required to report in conformity with the CRPD reporting requirements, you can do that. That is, if you want to do that.

The Government is obligated to furnish reports in accordance with the requirements of the CRPD and its monitoring tasks. I do not think you need it, but if you really feel more comfortable then you can put it in. Most countries I know, simply put in their reports but if you think the Government needs to be obligated, then you can put in a little clause, sure! I have no problem with that. My wife has brought me a cup of tea because I have been talking a lot. Do you drink tea in Fiji? I love tea.



HON. COMMITTEE MEMBERS.- Yes, yes.

PROF. R. McCALLUM.- I know it is too early in the day to drink kava.

(Laughter)

HON. V.K. BHATNAGAR.- Good afternoon, Professor. This is Honourable Veena Bhatnagar. I just want to commend and compliment you on your deliberation today, on your contribution and I believe your contributions will greatly help us putting in our recommendations on the Bill. Thank you very much.

PROF. R. McCALLUM.- That is very, very kind and I am truly honoured. If there is anything that the Committee wants me to do further, your Committee has my email and I will be very happy to talk by email. But I want to wish you well and commend you on a good Bill. I think it is the best in the Pacific, so go for it.

MR. CHAIRMAN.- Thank you, Professor. On behalf of the Standing Committee on Social Affairs, I must thank you for your time and the information you have provided to us. As alluded by the Honourable Members, the information will help us while reporting back to Parliament.

Once again, I would like to thank you for your time.

PROF. R. McCALLUM.- Thank you very much, good-bye.

MR. CHAIRMAN.- We will wait for you in Fiji. Thank you.

PROF. R. McCALLUM.- Alright, *moce*.

The Committee Interview adjourned at 3.48 p.m.

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AFFAIRS, HELD IN THE COMMITTEE ROOM (WEST WING), ON WEDNESDAY, 15<sup>TH</sup> JUNE 2016 AT 9.15 A.M.**

**Submittee:** Ministry of Employment, Productivity and Industrial Relations

**In Attendance:**

1. Ms. Salaseini Daunabuna, Permanent Secretary
2. Ms. Vani Varea, DLOP
3. Mr. Atish Kumar, ADLS

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MR. CHAIRMAN.- On behalf of the Standing Committee Members I would like to welcome the Permanent Secretary for Ministry of Employment, Productivity and Industrial Relations and her team here today. They are here to present to the Committee in regards to a very important Bill that is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016).

Welcome once again, Madam and your team. Now I give you the opportunity to present to the Committee. Thank you.

MS. S. DAUNABUNA.- Mr. Chairman, and Members of the Committee a very good morning to you all. This morning our presentation on the Rights of Persons with Disabilities Bill, we will touch primarily on the Employment Sector which is the section that primarily deal with or is closely linked to our work at the Ministry.

Mr. Chairman, at the outset, we had provided copies of the documents in support of our presentation this morning. One is the bullet point of the points that we wish to raise and the second document is in relation to the pieces of Employment Law that would work hand in hand with the Bill that is under consideration.

From the presentation slides that we have provided, the Ministry supports the Bill primarily for the reason that the Employment Laws that are already in place (the Employment Relations Promulgation, the Health and Safety at Work Act, Workmen's Compensation Act as well as the National Employment Decree) have provisions in them that already deal with workers generally which includes workers with disabilities. The Rights of Persons with Disabilities Bill will further strengthen the laws that are already in place that deals with persons with disabilities especially in the workplace. We, however, wish to raise a few points that we want to highlight in terms of the Bill and that is also captured in our presentation slides.

Part 1 - primarily we are saying that the interpretation now is wide and progressive because it identifies the physical disabilities as well as medical impairment conditions. Conditions that may not have been particularised previously. In terms of some suggestions that we are putting on the table, if I could refer the Committee to page 2 of our document, just the second slide in terms of Part 2 of the Bill.

Our suggestion if there could be a new subsection 5(4) in terms of data management and use. If there could be an establishment of a data management system, so that there is a system in place that captures the data of persons with disabilities, because even at the Ministry we do not have this information. So, it would certainly be useful if we are talking about for policy purposes as well, and if we had organised training in terms of workers with disabilities, it would be easier for us if there is data that is available for us to tap into if we are to provide that sort of training.

We are also recommending in terms of Powers of the Council a new subsection (c) in terms of decision making. Our operating systems and procedures of the National Council for persons with disabilities, if this can comply with principles of good governance. In terms of the composition of the Council, we recommend that we have a Deputy Secretary for Occupational Health and Safety and if that person can be included as a representative because, under the Health and Safety At Work Act there is the provision on disability friendly workplaces and one of the provisions that the OHS team looks out for is whether you are able to provide those facilities at your workplace, for example, the provision

of ramps. The Deputy Secretary for OHS would be the best person who is well versed with all of these issues.

Also we noticed that there is a provision that there are additions of persons that can be, it is a general provision, however, we recommend that if there is a person representing disabilities organisation, he can also be a member just to provide that practical view point.

Part 3 – Administration. We noticed that the law makes provision for quorum in terms of meeting, however, we would urge that in terms of the Agenda that is discussed on that particular day, for example, if employment is an issue that will be discussed on that particular day, if there is sort of a system where it ensures that the relevant person is present in terms of the makeup of the quorum.

A final point that we wish to highlight is in terms of discrimination on the basis of disability, the Bill provides for remedies that one can seek. If I can refer the Committee, it is Clause 49 of the Bill that deals with remedies that a person may seek if he or she feels that a provision in the Bill has been contravened in relation to the person. For our purposes, we have the Employment Relations Promulgation which covers all workers, any worker that feels that they have been, for example, discriminated against, they have their recourse to the Employment Relations Tribunal.

So, from our end we would just want to ensure that there is no double use of the High Court and also the Employment Relations Tribunal because a person who has agreed has a recourse to the Employment Relations Tribunal for discrimination matters, for example, just on a clear demarcation.

On that note, Mr. Chairman, those are the points that we wish to recommend in terms of the Bill. However, overall we support the Bill because it does strengthen the work that is already been done by the Ministry.

MR. CHAIRMAN.- Thank you Madam for your presentation, some very valid points have been raised. Our secretariat has already taken note of those points, and after receiving all the submissions, the Committee will sit together and will go through all those points raised by various ministries and see how best those could be accommodated in our report that will be reported back to Parliament.

MS. S. DAUNABUNA.- Thank you, Sir.

MR. CHAIRMAN.- Now, I will give the opportunity to our Honourable Members if they have any clarifications or any questions.

HON. S.V. RADRODRO.- Thank you, Mr. Chairman and thank you to the delegation from the Ministry of Labour for your presentation this morning. We all agree that this is a very important piece of legislation particularly to your Ministry. I have four questions to ask and the first one is:

How will this Bill affect the Ministry in terms of OHS Enforcement with other stakeholders? How is the Ministry resourced to meet financial implications?

MR. CHAIRMAN.- Thank you, Madam.

MS. S. DAUNABUNA.- Mr. Chairman, I am not familiar with protocol, do I attempt the question now?

MR. CHAIRMAN.- Yes.

MS. S. DAUNABUNA.- Thank you for that question. In terms of OHS Enforcement as I had mentioned earlier in my presentation, our Occupational Health and Safety Officers already have in their items that they check for is whether the workplace is disability friendly, so we already have our mechanism in place and this Bill will certainly add to whatever we already have existing in the law.

In terms of financial implications, every worker that comes to the Ministry, they are treated on an equal footing so we would have to use our resources within to be able to cater for the workers that would come through as a result of this Bill.

MR. CHAIRMAN.- Thank you Madam, next question.

HON. S.V. RADRODRO.- Thank you for your response. On question two, does the Ministry have any rough idea on when the Bill will come into effect and do you have any transitional plans or arrangements in place for the implementation?

MS. S. DAUNABUNA.- Mr. Chairman, we do not have information on when the Bill will come into effect but as and when the Bill does come into effect, we will of course have to make those provisions. One of the factors, my colleague was just highlighting is the possibility of the employers being even a period in which to be able to meet the requirements in the new law and that would be something that we would have to deal with because it comes directly under our Ministry, but certainly it is a period that we will have to go through to make sure that the employers are able to meet the requirements in the law and the workers are aware of what is in the law themselves. However, we do provide adequate training. We have our personnel who do training widely around Fiji.

MR. CHAIRMAN.- Thank you, Madam. Next question, please.

HON. S.V. RADRODRO.- On question three, how will the Ministry evaluate and monitor compliance?

MS. S. DAUNABUNA.- Mr. Chairman, we have in our Ministry our Labour Compliance Section and this will just add to the responsibilities that come under their jurisdiction.

HON. S.V. RADRODRO.- The question, this is like an odd question but it is referring to page 12 of the Bill on Clause 22 (7) in regards to the penalties. In your view, is the punishment or the penalty proportionate to the offence? It is stating \$100,000.

MS. S. DAUNABUNA.- Mr. Chairman, this penalty deals with the organisation providing services to persons with disabilities and to draw parallel with our Occupational Health and Safety law, we also have the penalty range from a minimum of \$10,000 to a maximum of \$100,000. It more or less would sit within the same vicinity, so to speak. It is not anything out of context, it is already something that we have existing at the moment, a provision similar or to that effect.

MR. CHAIRMAN.- Thank you. Honourable Vadei.

HON. A.T. VADEI.- Sorry, Mr. Chairman for coming late this morning, but I thank the participants for the presentation they have made. There are a few questions that I have. First one, to domesticate this legislation we need all the Government ministries to have a workplan to work against

the ratification of this Convention. With the Ministry of Labour, what is there workplan if this Bill comes into law from 2017?

MS. S. DAUNABUNA.- Thank you for that question. Mr. Chairman, in terms of domesticating this piece of law, I had already stated in the presentation that we have our mechanism in place at the moment that already checks on workplaces that are disability friendly and also we provide training generally to workers. My colleague has just confirmed that we did have workers with disability who also attended that training as well. So we have our workplan that is already in place and we would probably need to just add on to our existing structure to be able to meet the specifics of the law as and when it is enacted.

MR. CHAIRMAN.- Thank you.

HON. A.T.VADEL.- Mr. Chairman, with that workplan does that include terms and condition of employment?

MS. S. DAUNABUNA.- Mr. Chairman, the workplan would include terms and conditions of employment in terms of training and awareness, these are all areas that are captured in the work that the Ministry does when we do our outreach to the general workforce.

HON. M.M.A. DEAN.- Thank you, Honourable Chair and I welcome the resource personnel from the Ministry of Labour. I was just looking at the labour laws, this paper here, I think it is very content heavy and very coherent and conducive to the contents of the Bill which we have in place. So I think there is a lot of support shown and you have very rightfully justified it through this paper and for these reasons I do not think I have any major or any questions to ask. I think the relevance is there.

MR. CHAIRMAN.- Thank you, Honourable Dean.

HON. V.K. BHATNAGAR.- Thank you for the presentation and as you have already mentioned that employment laws are already in place and the Bill will further strengthen the law which is already in place, so thank you for that. Thank you for supporting the Bill and you have raised some very valid recommendations which the Committee will definitely be looking into. *Vinaka*.

MS. S. DAUNABUNA.- *Vinaka*.

MR. CHAIRMAN.- Thank you Honourable Members. Honourable Salote Radrodoro.

HON. S.V. RADRODRO.- Mr. Chairman, just another question because this is in response to the International Convention and there will be periodic State reporting by the Government. Who will be providing the shadow report for this Bill?

Just to guide you, for example, for CEDAW there is a group of civil societies that provide the shadow report. I ask that question because the Fiji National Council of Disabled Persons (FNCDP) which is sort of an independent or statutory organisation outside the Ministry, the Ministry of Women, Children and Poverty Alleviation I believe will be the one providing the State report but because FNCDP is the statutory organisation delegated by the Ministry to be the enforcement agency, so in that way it will not be providing the shadow report, it is like a counter report. So which organisation then would be providing that shadow report to the UN meeting when it does happen?

MS. S. DAUNABUNA.- Mr. Chairman, just a clarification, would this be in relation to employment or generally?

MR. CHAIRMAN.- I feel it is a general question.

MS. S. DAUNABUNA.- Yes, I would not have information on that.

MR. CHAIRMAN.- We will take note of that and we will seek clarification from the drafters.

On behalf of the Committee, Madam PS I would like to thank you very much for the presentation. You have raised some very important points and issues and we have taken note of that. Obviously we will be sitting down and we will consider whatever you have presented to the Committee. Thank you very much for supporting a very important Bill and once again thank you very much.

MS. S. DAUNABUNA.- Thank you, Mr. Chairman.

The Committee adjourned at 9.35 a.m.

The Committee resumed at 9.55 a.m.

**Submittee: Ministry of Health & Medical Services**

**In Attendance:**

1. Dr. Eric Rafai, Deputy Secretary for Public Health
  2. Ms. Raksha Deo Lal, Physiotherapist
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MR. CHAIRMAN.- Thank you Honourable Members, I welcome the team from the Ministry of Health & Medical Services. They are here to present to the Committee in regards to the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). Welcome Sir, and now I give you the opportunity to present to the Committee. Thank you.

DR. E. RAFAI.- Mr. Chairman and good morning to the Honourable Members of Parliament. I am here on behalf of our Permanent Secretary of Health & Medical Services who is unable to make it to this meeting. I will begin with our submission to the Standing Committee on Social Affairs today.

The Ministry of Health & Medical Services respects the Rights of Persons with Disabilities and accommodates this in its prevention programmes and basically the content of the prevention programmes are primary, secondary and tertiary.

The primary focus of prevention, an example, is to encourage pregnant women to book early to the Antenatal Clinic for health advice for the early detection of complications in infants and that is looking at prenatal complications to do with infants.

Secondary prevention looks at screening of school children for early signs of hearing and visual impairment for appropriate referral for correction. That occurs with the school health programme and also conducting diabetic foot sepsis clinics to prevent amputation.

The other component and the major one is our tertiary prevention, much of it is conducted at our rehabilitation hospital at Tamavua Hospital which provides prosthetics limbs to improve mobility of persons living with disability, works with persons with disability to reduce it increasing. The whole attempt is to reduce the increase in disability, provide prosthetics and integrate the affected persons back into the community.

I thought to introduce firstly our submission this way to outline that these areas require substantial resources in terms of programme funding and require expertise in terms of human resources and specialised equipment, and research has shown that expenditure on persons living with disability, in terms of catering for their health needs is well above that compared to what we are currently catering to the general population.

Let me add that the Ministry of Health & Medical Services provide general and specialised health services to this population within the resources it is provided by Government, to ensure there is reduced or prevented mobility, mortality and disability. In terms of disability, we have the National Rehabilitation Centre Inpatient Institutional Care, Physiotherapy and Community Rehabilitation Assistance that care and assist patients in the community and this looks at physical, sensory (which includes hearing, speech and vision), mental impairments in terms of schizophrenia and other mental disorders. We also have other programmes that include Early Childhood identification in our maternal



child health clinics or baby clinics as is known by the population where they are intervened in terms of referral, it also includes multi-sectoral, multi-disciplinary groups in the provision of those special needs.

Now, I will go into our comments on certain aspects of the Bill. I would like to refer to Clause 44 which basically outlines Standards of Health Care for all Persons with Disabilities. The Ministry of Health is satisfied with what is stipulated in the Bill, especially on Clause 44. It has expressed this during its many early engagement and consultation with the current Council that looks after the persons with disabilities. We are actually active members of this Council. The Ministry is happy to be represented in the Council and notes and would like to comment on some of the functions of the Council. An important function of the Council is in Clause 5(c), is to draw up a national plan of action for the rehabilitation services for approval by Cabinet and implements such a plan. Fortunately, the Ministry of Health and Medical Services has actually developed the plan that is called the National Disability Inclusive Health and Rehabilitation Strategic Plan 2015 – 2020. We have had to hold on to this plan awaiting this Bill. However, certain activities has undergone and this plan has undergone the process of assessment, technical consultation, stakeholder consultation and is currently awaiting this Bill to formalise the Council.

This document outlines how our medical services should strengthen access and inclusion of quality health and rehabilitation services for adults and children with disability in the existing health system of Fiji. So, we are happy to see that this is part of the Bill, and actually we are in the right direction in terms of having our own plan on terms of inclusive health services for persons living with disability. However, we would like to comment that the functions of the Council can be further strengthened in possibly in Clause 5 (e) or (n) and (q) of the Functions of the Council which is the section referred to above in Clause 5 to ensure that all entities or organisations that wish to undertake or assist with activities associated with persons with disabilities must be registered with the Council.

This is to ensure that the protection of rights and welfare of persons living with disabilities and that the interest of people living with disabilities is paramount to any organisation either local or international objective. This comes from our experience where certain organisations have come directly to the Ministry without the knowledge of the Council. So, this is where we are coming from, ideally any organisation that has the interest of persons with disabilities should go through the Council.

I reiterate that it has been alluded to in Clause 5 (e), (n) and (q) but it is not probably strong enough to say to ensure that all entities must register with the Council. Also we wish to comment on the issues which, if you may allow me, Mr. Chairman.

MR. CHAIRMAN.- Yes. You may continue.

DR. E. RAFAI.- Just to describe a couple of issues that maybe appropriately under National Policy under the responsibility of the Council, and it raises the issue firstly of the issue of definition of disability as described by the International Classification of Functioning Disability and Health which defines disability as an umbrella term for impairments, active limitations and participation restrictions. Disability is the interaction between individuals with a health condition, personal environmental factors, negative attitudes and limited social supports. I think what I am trying refer to is that in the health context there might be a variant to the current definition that is in the current Bill because we treat patients holistically and look at other issues but there are also other issues arising from the definition.



The health and medical fraternity also utilises several other definitions or classifications disability for the specific interventions and that is referring to the medical treatment of specific conditions. Disability should be viewed as neither purely medical nor as purely societal issue. So what we are saying is that there may be more than just the current definition.

In the medical context, it recognises that disability must be clearly differentiated, this is an additional issue that it must be clearly differentiated from illness so that persons with disability are not mistakenly classified by non-professional as having a disability when they may have a health illness or vice versa. This is to avoid further discrimination against persons living with disabilities, especially young children with disabilities that are left in hospitals by relatives thinking that there are health problems and expected to be accommodated by the health service system when there is actually no acute health illness or condition for them to be in hospital and that it actually puts their lives at risk by remaining in hospital because they are susceptible to infectious diseases or any other diseases that are brought to the hospital.

The second issue is that the Ministry also seeks to include in its mandatory function to collect, collate, analyse and utilise information in any policy on disabled persons with the primary purpose of improving health services or reforming its policies. It is important to have these capacity so that screening programmes that identify early impairment are referred appropriately to the relevant expert or organisation. This includes the establishment, possibly a register of persons with disabilities that remain confidential and need to be seen at regular special clinics or in need of specific attention to disability that is unavailable. This is also an aspect of UNCRPD – ability to collect and share information.

Mr. Chairman, this is a short submission that I have been able to prepare on behalf of the Ministry of Health & Medical Services. I thank you Honourable Members of Parliament for listening.

MR. CHAIRMAN.- Thank you Sir, for the presentation. Committee takes note of the points you have just raised, our Secretariat has taken note of the points that you have requested that could be added to the Bill. We request if you can give us your presentation so that our Secretariat can make a copy of it and also be attached to our report that will be reported back to Parliament. Now I will ask our Honourable Members if they do have any clarifications or questions.

HON. S.V. RADRODRO.- Thank you Dr. Rafai and Madam for your presentation this morning. We believe that the Ministry of Health plays a very important role in the implementation of this Bill as referred to in Article 44. What I would like to draw our attention to is, like in Part 1 of the Bill which specifies all those disabilities and it is very broad. What I would like to ask is, because of the wide inclusion of various kinds of disabilities cited in this Bill and in reference to Article 44 which is on health, what are the financial implications to the Ministry that includes equipment and human resource to be able to effectively enforce this Bill?

DR. E. RAFAI.- Thank you, Honourable Radrodro. Basically we have not been able to work out the expenditures for the disabled but the research out there has indicated that if we are to accommodate the full service for disability services, we require an increase in expenditure. At the moment it is accommodated under other services in terms of hospital services so it cannot be broken down specifically to disabilities. However, we have programme funds that are able to accommodate some of the activities like funding for community rehabilitation assistance and funding for organisations that are multi-sectoral ones such as Project Heaven that conducts screening of school children for eyes and ears.

HON. S.V. RADRODRO.- I have another two questions for you, *Vuniwai*. The next question is, I am not very sure whether you have any rough idea when this Bill will come into effect but in my view it will be pretty soon. Do you have transitional plans in place for the enforcement of this Bill?

DR. E. RAFAI.- Thank you. Mr. Chairman, we have been part of the current Council at the moment, and we have been part of the Chair for the last two years and the activities that the Council are involved in, the Ministry is involved in. Secondly, we have a strategic plan that has been outlined in our submission that which we are using part of that activity. It is actually aligned to what the Council is doing in terms of the Bill.

MR. CHAIRMAN.- Thank you.

HON. S.V. RADRODRO.- The other question is in terms of compliance. How do you monitor and evaluate the compliance because of the breadth of the identified disabilities as in the Bill and the responsibility of the Ministry of Health? For FNCDP to function effectively, will the Ministry engage in some kind of resource sharing to assist FNCDP in the enforcement of the Bill, I am not sure but maybe you could enlighten us on that too in terms of the responsibilities of the Ministry of Health?

DR. E. RAFAI.- Thank you, Madam. As I have alluded before is that we have setup that plan, we have an inclusive disability plan that actually outlines all the Ministry of Health & Medical Services activities and what they would like to do. What we have done is held it back awaiting for this Bill to be passed, as soon as it is passed, it actually becomes part of it.

We are trying to have it aligned to the Council and actually it outlines all the activities and the responsibilities of the Ministry of Health & Medical Services and this has been prepared with technical consultation with WHO and even the current Disability Council. So in addition to that the sharing of resources and activities under the existing framework, there is also district committees.

We also will try and ensure that our various district hospitals and our primary health care teams are also aligned with the activities there and that is where much of the sharing of knowledge and possibly resources are shared. When I am saying sharing resources, for example transport, visiting patients, seeing and identifying disabled persons in the community and helping them with their health needs. Thank you.

MR. CHAIRMAN.- Thank you, Sir.

HON. A.T. VADEI.- Thank you, Mr. Chairman. I wish to thank Dr. Rafai for the presentation this morning in regards to his support of Bill No. 12 of 2016. Some of the questions related to hospitals regarding persons with disabilities. The mortality rate whether there is an increase or decrease in regards to persons with disabilities over the years. Do you have any statistics on that?

DR. E. RAFAI.- Thank you, Sir. I would like to state that I do not have all the statistics at hand. However, I have some positive statistics in terms of, I do not have the exact numbers but the amputation rate that we have always had over years, this is amputation of limbs due to diabetes has actually reduced in the last three or four years through a programme that has introduced diabetic foot sepsis clinic in the various districts.

This includes training of our nurses and our doctors in identifying risk link conditions in diabetes and then treating them early before amputation. What we have found and this is done independently because this programme was supported by DFAT and has now been taken over by the Ministry of Health & Medical Services and independently audited by the DFAT programme which is

our Fiji Health Sector strengthening programme. They have found that there is actually a reduction in amputation rate of diabetes' patients with problem limbs.

MR. CHAIRMAN.- Thank you.

HON. M.M.A. DEAN.- Thank you Dr. Rafai and resource personnel from the Ministry of Health. I just have one question to ask and this is in regards to human resources. Now, you have mentioned that once the Bill comes in place, there might be some issues with human resources. I was just eager to know, does the Ministry have programmes or plans whereby they encourage people to go and get education and trained in special education and disabilities.

DR. E. RAFAI.- Thank you, Sir. It is unfortunate for doctors, much of the speciality training has to be done overseas. However, if you are looking at people living with disabilities, it covers a wide range of disciplines. For example, if you are looking at only physical then you are looking at rehabilitative services, if you are looking at mental, then you are looking at the psychiatric services. Now, with psychiatric services there is training provided by FNU. With rehabilitative services, it requires more training overseas while for prosthetics which is the provision of artificial limbs, we have the capacity in-country and we are actually extending that by providing services to Nauru and other Pacific Island countries. So, there is a range of training required, it is multi discipline, there is also specific technical areas that are required.

HON. M.M.A. DEAN.- The reason why I asked this question Dr. Rafai, because I was in the Ministry of Education in Lautoka Office as a Director and from what I have noticed in Special Schools, we have teachers who are streamlined, trained and recruited on normal teaching curriculum. So, in cases like schools, does the Ministry have any special programmes whereby they encourage teachers who are in Special Schools to go for some training or for some higher education programmes so that their education level can be more adaptive to the school environment in which they are teaching?

DR. E. RAFAI.- Thank you, Sir. We do not have any specific training for the education side of that, but we have training within for screening from within the health services, for screening activities that are conducted in the schools. A major outcome that is coming within a month is a signing of an MOU between the Ministry of Health & Medical Services and the Ministry of Education on a School Health Policy, and that will clearly identify some of the areas of capacity building for both ministries. I think this MOU will be signed at the end of next month.

MR. CHAIRMAN.- Thank you, Sir.

HON. A.T. VADEI.- Thank you, Mr. Chairman. Quite interesting listening to some of the presentation. One of my questions is the rehabilitation programme that you have. There are some success stories and you are spreading that gospel to other Pacific Island countries. If this Bill is going to be a law, how will those success stories be in the years to come, will there be an increase or be a deterrent to that development?

MR. CHAIRMAN.- Thank you Honourable Vadei.

DR. E. RAFAI.- Thank you, Sir for the question. In actual fact, if I may be use the word it "accentuates" the success rate that we are expect. . For many years we have lived in quite a grey area in terms of disability because where it falls, there are some areas that requires multi-disciplinary and multi-sectoral collaboration. So, the Bill is able to define through a focal point through the Council the terms of engagement, because it has all the respective ministries within and it clearly defines what

each is responsible for so that there is no overlapping and there is no duplication. So, we are able to just target what we have been given responsibility over and achieve the outcomes that are expected.

MR. CHAIRMAN.- Thank you. Honourable Veena Bhatnagar, you want to say something?

HON. V.K. BHATNAGAR.- Thank you Dr. Rafai for the presentation and I strongly believe that health has never been discriminatory in our service delivery towards our differently abled people. Obviously we are aware that we do need more human resources, funding, expertise, specialised services, but slowly with the help of our donor partners, and of course the Government, we will get there. So, thank you once again for the presentation and I do not have any questions.

MR. CHAIRMAN.- Thank you Honourable Bhatnagar. Last question from Honourable Salote Radrodro.

HON. S.V. RADRODRO.- Thank you, Mr. Chairman. Dr. Rafai I know that the Ministry is always being challenged in terms of equipment and resources. I worked in the Ministry for quite some time and I have witnessed the challenges that are in the Ministry and then in regards to the Act on the Health, this is just for clarification on Clause 44(3) which reads;

“All persons with disabilities have the right to special health care including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities, including among children and older persons.”

I give you this example, someone who is disabled, an adult and suffers from kidney problems and urgently needs dialysis, and cannot afford it because it does not have the fund. According to Clause 44(3), what kind of assistance can be given to this person? Because it says “has the right to special health care” and this is “intervention as appropriate, and services designed to minimise and prevent further disabilities...”.

MR. CHAIRMAN.- Thank you, Honourable Member.

HON. S.V. RADRODRO.- Can he get it free or what kind of services could be given to someone who is already disabled but urgently needs that kind of special treatment like dialysis and does not have the money?

DR. E. RAFAI.- Thank you, Madam. I think what is important is what I have presented in the submission is that to determine disability in terms of the health context, it is important for the health professionals to do their assessment. Sorry, if I offend in any way because when it is done by non-professionals, an area of disability may not be a health issue but rather an issue of welfare. So it needs to be clarified by not only health professionals but the respective expert because there are certain areas in health that cannot cater for that, for example, audiometry to do with hearing that not necessarily, it is a health issue. That would be my first response.

In terms of our process, we have a process where anyone who is required referral for more expertise and it is not existing in the country, then there is a body that looks after referrals of such cases and trying to contact the relevant experts overseas for treatment or further management.

MR. CHAIRMAN.- Thank you Doctor for your presentation.

HON. A.T. VADEI.- We are going to domesticate this legislation to suit us. Persons with disabilities who do not have any insurance, coming to hospital for operations, how will you work with the people with disabilities on those occasions because they do not have any insurance cover for any operation or medical assistance to be given to them? How will the medical authorities work along those lines?

DR. E. RAFAI.- Thank you, Sir. We have had this experience in recent years with exactly what you have referred to, Honourable Vadei. It has occurred in Tamavua Hospital where we have had patients coming in with inability to pay in many ways and what we have done is made arrangements with Ministry of Women, Children and Poverty Alleviation for them to be getting some kind of allowance in terms of their stay during the long periods at Tamavua Hospital. So I think that model is something we can use in terms of the other hospitals when this Act comes into play in term of persons living with disability.

MR. CHAIRMAN.- Thank you, Sir. On behalf of the Committee I would like to thank you for the presentation and the support you have given towards this very important Bill. As I have said, the points you have raised we have taken note of that and the Committee will sit together and see how that can be included in our recommendations to the Parliament. I also request you to join us for tea and thank you very much for your presentation.

The Committee adjourned at 10.28 a.m.

The Committee resumed at 11.33 a.m.

**Submittee: Fiji Society for the Blind**

**In Attendance:**

Ms. Barbra Farouk, Executive Director

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MR. CHAIRMAN.- Thank you Honourable Members, welcome back. On behalf of the Standing Committee on Social Affairs, I would like to welcome Ms.Barbra Farouk, the Executive Director for Fiji Blind Society.

Madam, welcome to today's Committee sitting and I know you are here to present on behalf of the society on an important Bill that is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). With all respect to you and your members, I now give you the opportunity to present to the Committee on Social Affairs. Thank you.

MS. B. FAROUK.- I am Barbra Farouk representing the Fiji Society for the Blind and I think I have circulated our submission (one-page submission). We agree with the Bill as a whole, but the only thing I have mentioned there is the employment opportunities for persons with disabilities, if the Government could put in place stringent laws to ensure that persons with disabilities are employed both in private and government sectors.

For example, one of our students who did his Diploma majoring in Accounting and Economics, a totally blind student. He has been without job for the last four to five years and is staying home. For him to reach that far and then not being employed, is not fair. We feel if the Government could put in place like the government and private sectors should be employing certain number of visual impaired or persons with disabilities. That is our submission.

MR. CHAIRMAN.- Thank you, Madam for your presentation. Your point has been taken note of and I think this Bill is the way forward of the situation you have just mentioned to the Committee. The Ministry of Employment, Productivity and Industrials Relations were also here this morning and some of the issues were raised to them by the Honourable Members and I think the way forward is this Bill. Once it passes through Parliament, then it would be much easier and people with disabilities have that right and I understand all the ministries should abide by that. Once gain thank you very much for presenting. Does any Member have any clarification or anything to discuss with Ms. Farouk.

HON. S.V. RADRODRO.- Thank you, Ms. Farouk for your presentation. Just for the Blind School in terms of the implementation or the enforcement of this Bill, where would you be getting assistance from in terms of financial and other resources?

MS. B. FAROUK.- We have an educational grant through the Special Education Grant and the Tuition Fee Grant from the Government and then we have grant from the Social Welfare to support the boarders living in the hostel and then we have like corporate agencies, they do project-based funding and also we fundraise which goes for three months to supplement the other expenses of the society.



MR. CHAIRMAN.- Thank you, Madam. Is it possible for the Committee to visit some of your institutes?

MS. B. FAROUK.- Any time. Our school is located at Vatuwaqa.

MR. CHAIRMAN.- Our Secretariat will liaise with you so that during our visitation after next week, we can also visit one of your institutes and see how you are working in there and meet some of the students during our visit.

MS. B. FAROUK.- Sir, you are most welcome and all the Members to come and visit our institution in Vatuwaqa.

HON. S.V. RADRODRO.- Just one other question. Do you have like you have this school in Vatuwaqa, what other kinds of facilities or maybe which other organisations that are in the divisions or maybe towards the rural areas that will help with those people living with eyesight impairment?

MS. B. FAROUK.- Madam, we have our field workers based in all districts around Fiji and they are based with Ministry of Health, they support them and give them space to share. These field workers go out into the fields and identify blind and visually impaired and through them, we bring the referrals to the school and then we provide rehabilitation to the adults who are over 14 years up to 65 and over.

HON. S.V. RADRODRO.- (Inaudible)

MS. B. FAROUK.- Yes we do have. Every year we rehabilitate round about 250 to 300 people and then those who have vision problems like cataract, and with the help of Taveuni Rotary we take them to Taveuni for eye surgeries to regain their sights.

MR. CHAIRMAN.- Thank you Madam.

HON. V.K. BHATNAGAR.- Thank you Madam for the presentation and thank you for supporting the Bill. In fact what percentage of these physically challenged children or people are actually cured or rather, they can see after the surgery, have you got some sort of figures?

MS. B. FAROUK.- Yes. For instance, last year we took about 264 people and out of those 264, only four were not able to get their eyes operated because they had reached the advanced stage, 260 were operated by the doctors from Hawaii (some for one eye and other for both eyes) and they were cured.

HON. V.K. BHATNAGAR.- Lovely. What about like counselling the parents of these different abled people. How do you counsel the parents? Do you do that quite often?

MS. B. FAROUK.- Yes, we do that because our field workers are trained on how to do counselling with the parents. It is really hard to convince parents of a visually impaired or totally blind child because they do not take it. They say that maybe it is a curse from God and all those things. We have to do a lot of counselling and convince the parents to send their child.

HON. V.K. BHATNAGAR.- Thank you for the assistance and caring.

HON. M.M.A. DEAN.- Thank you, Madam and my *salam* to you on the auspicious month of fasting. I just want to ask a scenario. Do you think or feel that in terms of human resources, a noble society like the Fiji Blind Society is adequately provided with, when it comes to human resources or you need more training and awareness in getting more people trained in this area?

MR. CHAIRMAN.- Thank you Honourable.

MS. B. FAROUK.- For the time being, just like I said, we have about six field workers with one co-ordinator, but we always need human resources training and other things and the Australian Government through the FNCDP have been helping us. In fact they are funding this programme and in between they also fund the capacity building workshops and other things to train our staff.

MR. CHAIRMAN.- Thank you, Madam for the presentation. The Committee respects and appreciates the work you have been doing together with your members. Thank you for sharing some very important information which we are not aware of and that is the very reason why our Secretariat will liaise with you so that we can visit your institute and have a fair idea of the programmes that you have as far as the blind members of the association are concerned. Once again thank you very much for presenting to this Committee. The Committee will sit as a whole and will decide on the recommendations that needs to be made to Parliament after receiving all the submissions.

The Committee adjourned at 11.44 a.m.



The Committee resumed at 2.20 p.m.

**Submittee:    Fiji Human Rights and Anti-Discrimination Commission**

**In Attendance:**

Mr. Ashwin Raj, Director

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MR. CHAIRMAN.- Thank you Honourable Members, welcome back. On behalf of the Standing Committee on Social Affairs, I would like to welcome Mr. Ashwin Raj, the Director for Fiji Human Rights and Anti-Discrimination Commission.

We all know that he is here to present to the Committee on the Bill that is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). Welcome Sir and I give you the opportunity to present to the Committee now. Thank you.

MR. A. RAJ.- Good afternoon Mr. Chairman and Honourable Members of the Standing Committee, I warmly congratulate you on this deliberation on the Bill because I think the Bill is going to create the conditions of possibility for a substantive enunciation of rights for people living with disabilities. So I think this is from the perspective of the Fiji Human Rights and Anti-Discrimination Commission, this is a very very critical Bill and many thanks for giving us the opportunity to be able to sort of air our views on the Bill. It is imperative to note that prior to this submission, our Commission also made a submission on the ratification of CRPD as well and I think that will form the pretext of my intervention this afternoon. I have given a brief outline of the paper, so as you know what the rational kernel of the whole debate is.

It is imperative to note that the Fijian Constitution for the first time explicitly defines the term “disability” legally prescribing any preclusion from access and equity on the basis of an individual’s disability as a prohibited ground of discrimination. I think that it is imperative to note that while the 1997 Constitution also explicitly references disability, the fundamental difference with this Constitutional provision known as Bill of Rights is actually the definition of the term “disability” as a prohibited ground of discrimination. Although Fiji has not ratified the Convention on the Rights of Person with Disabilities, again Fiji has signed the CRPD in 2010, the Constitution through Section 42 unequivocally guarantees the rights of persons with disabilities.

It must be further noted that the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016) which is the subject of our discussion this afternoon, before our Parliament aligns with the imperatives of the Constitutional provisions on the rise of the persons with disabilities and encompasses the most salient features of the CRPD will not only create the conditions of possibility for a full ratification of CRPD but will also be instrumental in enforcing the provisions set out in CRPD. So I think that with ratification there is the whole issue of enforcing these provisions and I think the Bill in that fundamental sense will create the conditions of possibility for us to be able to materialise and fully enforce these provisions, so in that sense creating a kind of legal infrastructure on the ground is going to be absolutely necessary to be able to fully enforce these provisions.

The Convention on the Rights of Persons with Disabilities is one of the core international human rights instruments with an established committee of experts to monitor implementation of the treaty provisions by its state parties. The Fiji Human Rights and Anti-Discrimination Commission, therefore, recommends that in its deliberations on the Rights of Persons with Disabilities Bill,

Parliament must also consider the ratification of CRPD without reservation. The ratification of the Convention without reservation as well as the passing of the Rights of Persons with Disabilities Bill in consonance with the non-discrimination principles set out in the Bill of Rights of our Constitution would extend dignity, equality and freedom to persons living with disabilities enabling them to meaningfully participate in all spheres of life.

For your consideration, I have set out the references to various specific areas in the Constitution which makes reference to disability and defines disability. I wanted to have purview of the existing Disabilities Rights Legislation in place before we even talk about the Bill and what gives the Bill its legitimacy in terms of the legislative framework. So if you look at Section 26 of the Constitution is extremely important in terms of the non-discriminatory provisions set out in the Constitution. Section 26 explicitly references the right to equality and freedom from discrimination by making reference to one's disability and I have highlighted it for your purposes under Section 26 (3) which states and I quote,

*“A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her –*

- (a) actual or supposed personal characteristics...” and then extends to disability as an explicit mark of difference.*

Section 42 on the Rights of Persons with Disabilities and this is a welcome inclusion in the 2013 Constitution on the Bill of Rights which says and I quote:

*“(1) a person with any disability has the right –*

- (a) to reasonable access to all places, public transport and information;*
  - (b) to use sign language, Braille or other appropriate means of communication; and*
  - (c) to reasonable access to necessary materials, substances and devices relating to the person's disability.*
- (2) A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicle, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights.*
- (3) To the extent that is necessary, a law or an administrative action taken under law may limit, or may authorise the limitation of, the rights set out in this section.”*

We would like to think that these limitations are justifiable limitations and in consonance where Section 3 and Section 7 of the Constitution as far as it comes to the interpretation of the Bill of Rights because it needs to be consistent with democratic principles of dignity, equality and freedom. So, we think that these justifiable limitations need to be consistent with those principles at all times. When we interpret these constitutional provisions, I think we need to be mindful of once again Section 3 that talks about these broad democratic principles based on human dignity, equality and freedom but more so Section 7, for the purposes of our discussion this afternoon because Section 7 not only affirms the interpretation and the propagation of the values of human dignity, equality and freedom, but further suggest under sub-section 1(b) that we must consider international law wherever applicable to the protection and promotion of rights and freedom set out in the Bill of Rights.

I think in that sense it is extremely important for us to now start thinking about the application of relevant international law and here, the Convention in particular needs to be read in consonance with the provisions of the Bill and further on in the paper I actually talk about the Bill and whether it does align with the Convention itself and to what extent.

If you look at the Bill, the Rights of Persons with Disabilities Bill actually repeals the Fiji National Council for Disabled Persons Act 1994, because the latter Bill as the Bill elucidates is limited in its scope in fully addressing the needs of persons living with disability. So I think that is an important shift in terms of what this Bill would inaugurate compared to the 1994 Act.

So, let us go to the Bill itself. With your indulgence and without being too pedantic, very briefly the Rights of Person with Disability Bill, aims to provide uphold and enforce the rights of persons with disabilities in Fiji. The Bill is consistent with the principles set out in Section 26 and Section 42 of the Bill of Rights and encompasses the most salient features of CRPD. In summary the Bill outlines the rights of person with disabilities act deem as discriminatory and therefore unlawful and also provides for legal remedy as far as the restitution of rights in the event of discrimination and I think that is fundamental, and that is where the strength of the Bill lies, insofar as it outlines and names various acts that it deems as discriminatory and therefore unlawful, further provides for the legal remedy, as far as the restitution of those rights are concerned. I think that is where the role of the enforcers and the agencies that would enforce those rights and non-discriminatory provisions need to take full cognisance of the kind of legal remedies that is available to them.

Furthermore, the Bill provides that all organisations providing services to persons with disabilities are registered. It also provides for the establishment of the National Council for persons with disabilities. The Bill comprises of seven Parts and 53 clauses. Part 1 contains the short title, commencement, interpretation of the provision including an annex that gives you the definitions that are used in the Bill. Part 2 provides for the establishment of the National Council for Persons with Disabilities. Clause 4 actually outlines the objectives and there are quite a few, but I thought Clause 5 is extremely important as far as the extensive functions of the Council is concerned which is to advise the Minister on all matters relating to persons with disabilities, the formulation of a national policy, the drawing up of a national plan of action, maintaining a register of all organisations and the periodic review of national policies and national plan of action to see whether they are still relevant and sustainable both to the local, regional as well as the international context and the encouragement of all forms of media to have positive depiction of persons living with disabilities and also the role of advocacy on behalf of persons with disabilities. As far as the implementation of international conventions are concerned and to fully function as a focal point in Fiji for CRPD, we have some concerns about the National Council, as much as we think that this is a very salutary provision, there are certain things we need to keep in mind and I am going to raise those shortly to ensure that there is access and equity and it is a fully participatory democratic set of model of governance.

Part 3 provides for the administration of the Council. Part 4 establishes a register to be maintained by the Council for all organisations that deal with and provide services to persons with disabilities.

Part 5 provides for the accounts and finance including the provisions of the funds of the Council, annual reports requirement and auditing requirements. These are very important as far as the governance of the Council is concerned, but for us at the Human Rights and Anti-Discrimination Commission, the gist of the Bill really lies in Part 6 as far as it concerns Section 26 and Section 42 of the Constitution that I made reference to earlier.

It describes and defines discrimination on the basis of disability as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing a nullifying the recognition, enjoyment or exercise on an equal basis with others of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field. We feel that this is a very inclusive definition. It is a very progressive definition and it is a definition that I think allows for a multitude of disabilities to be actually encapsulated in this definition. So in that sense it is not creating a kind of legal *cul de sac*, that people come out later on to say that the Bill was limited in its vision and did not think about this particular, sort of kind peculiar situation of disability and there is a definitional limitation, therefore precludes a large constituency. So, we think that the definition is a very expensive one, it is a progressive one, and it is an inclusionary one.

Pursuant to Section 27(6) affirmative action laws, policies and programmes to promote equality for persons with disabilities is not discrimination, as long as they are proportionate to the aim of promoting equality for persons with disability. I think this principle of proportionality is very important, so that one does not see specific affirmative action policies designed to create a sense of parity with those living with disability is not misconstrued as something which is lopsided initiative and it is very specific initiative designed to create semblance of equality and dignity.

Section 27(d) further provides that the State is obligated to implement the right and in the event that the State claims that it does not have the resources to implement that grade, it is incumbent on the State to show that the resources are not available. I think this principle is very consistent if we look at our Constitution, various other areas in the Constitution, for instance, if you look at the provision on social and economic rights, the State talks about or makes reference to what we call a “progressive realisation of rights” and the reason why it is called a progressive realisation is because there will be instances where there will be resource constraints, the State may not be able to fully implement some of these things.

Then, again because the State is constitutionally obligated to protect and promote those rights, it has to show cause as to why and how there is a limitation here in terms of resources. So the burden of proof is really on the State. It cannot willy-nilly argue that we do not have the resources at our disposal, it will have to show cause and fundamentally, I think that this does not mean that it negates the State’s affirmation of those rights, those rights still remain intact.

So, what I wanted to do without taking too much of your time, is talk about the fact that if you look at the provisions of the Bill, they are in consonance with the Convention, and I think that kind of audit is necessary, I have come across members of the public and seemingly enlighten members of the public who are saying their reservations, their limitations, the Bill does not capture all of the stuff in the Convention, so I think an audit is necessary. With your indulgence, if you look at Clause 5 on Equality and Non-Discrimination, it aligns with Article 5 of the Convention. Clause 29 on Accessibility with Article 9 and literally with the same titles and the content too. I read through the content as well just to see if there were limitations in terms of what was being provided.

Clause 30 on Children with disabilities with Article 7.

Clause 31 on Disaster and humanitarian emergencies with Article 11.

Clause 32 on Equal recognition before the law with Article 12.

Clause 33 on Access to justice with Article 13.

Clause 34 on Liberty and security of the person with Article 14.

Clause 35 on Freedom from exploitation, violence and abuse with Article 16.

Clause 36 on Protecting the integrity of the person with Article 17.

Clause 37 on Liberty of movement and nationality with Article 18.

Clause 38 on Living independently and being included in the community with Article 19.  
 Clause 39 on Personal mobility with Article 20.  
 Clause 40 on Freedom of expression and opinion, and access to information with Article 21.  
 Clause 41 on Respect for privacy with Article 22.  
 Clause 42 on Respect for home and the family with Article 23.  
 Clause 43 on Education with Article 24.  
 Clause 44 on Health with Article 25.  
 Clause 45 on Work and employment with Article 27.  
 Clause 46 on Adequate standard of living and social protection with Article 28.  
 Clause 47 on participation in political and public life with Article 29.  
 Clause 48 on Participation in cultural life, recreation, leisure and sport, with Article 30.

So, in a fundamental sense, the Bill is extremely exhaustive, the extent to which it aligns with and it is in consonance with the provisions of the Convention. In a sense, we are on the right direction because it sets the legal infrastructure, like I said earlier in terms of the implementation of should Fiji proceed and I think we should proceed with the ratification of the Convention without reservation. Here is a very robust Bill, a very progressive Bill, a forward-looking Bill that encompasses most of these provisions and will assist in fully materialising and enforcing those provisions.

The Convention rights that are not explicitly included in the Bill because you might have a question, what about the provisions that are not included in the Bill I think are provided for in other legislations like the Constitution, and we must always go back to the Constitution and the Bill of Rights in particular to enforce those things. While the Bill provides for the establishment of a National Council for Persons with Disabilities, it also empowers the Human Rights and Anti-Discrimination Commission with the enforcement of non-discriminatory acts.

It is imperative that as an enforcement body, the Fiji Human Rights and Anti-Discrimination Commission must also ensure that the Commission itself embodies these values. The Commission has undertaken several initiatives in this regard:

- (a) Ensuring that the Commission building is accessible to persons living with disabilities. Under its new location, the ground floor of the Commission will now host the Complaints Department. The Commission is in the process of installing disability rails that is actually done now as of last weekend and disability friendly reception area which is also now complete.
- (b) Development of a disability friendly website by benchmarking it against international best practise for National Human Rights Institutions. The Commission is currently consulting with the New Zealand based AccEase. We in fact now have a full proposal before us and I think in the next two months we should have a Disability Friendly Human Rights Commission website and a complaints mechanism.
- (c) Disability accessible complaints procedure.
- (d) Appointment of a disability desk officer. We have never had a disability desk officer at the Commission before so one of the things that I did as an incoming Director of the Commission because I was only appointed in late February was to include the appointment of a desk officer actually in our budget submission because that is one way of ensuring that this person is actually part of the organisational structure.



- (e) As part of its added anti-discrimination scope, the Commission explicitly references in its Strategic Plan the rights of person living with disability and in particular the rights of children living with disability as a key human rights issue.
- (f) And also we are going to embark on the training of the staff in sign language.

For us it is extremely important because if we are going to be an enforcement agency, then we must embody those values and we must create an environment which is conducive and facilitative because otherwise there is no point for the Human Rights and Anti-Discrimination Commission to occupy an indomitable moral plateau from which it is going to judge the rest of humanity and actually it does not have the infrastructure in place and does not embody those values. So that is the first step the Commission has taken.

What I have also done and I will not go through all of that because I think you might have questions for me is that if we were going to ratify the Convention, how does it affect us as a country? What are the roles of the State? What are the roles of individual actors?

What I want to do is draw your attention to page eight about what the effect of the ratification is going to be and what we will have to do and how does it affect the Bill. I think this is where our work is cut out in terms of enforcing the provisions of the Bill. The first is:

1. The collection of disaggregated data including the number of persons with disabilities in all official statistics that will be instrumental in the formulation and implementation of policies in materialising the provisions of the Convention. Fiji should engage technical expertise in this area and pay particular attention to intersectional nature of violence and discrimination that persons with disabilities may be subjected to on the basis of their gender, sexual orientation, gender identity or expression, children and those that are financially disenfranchised. The collection and dissemination of data must observe and uphold the protocols of confidentiality whereby the wellbeing of persons with disability must remain paramount. I think the ethics and the protocols around the collection of data is going to be extremely important.
2. The other thing is the establishment of focal point such as the Fiji Human Rights and Anti-Discrimination Commission and the National Council for Persons with Disabilities. These focal points must engage not only with Government but equally importantly with Disabled Persons Organisations to assist in the monitoring, promotion and protection of these rights of person with disabilities as well as review the formulation of policies and legislations that give effect to the Convention engendering greater participation of persons living with disability. For these focal points to be inclusive, it is imperative to create what I have called the Access Working Group that engages members from a broad spectrum of society including the media, relevant ministries and civil society.

You will hear some dissenting voices who would say that to just name two bodies such as the Human Rights and Anti-Discrimination Commission or the National Council might be too exclusionary. I mean what about all these other bodies that might be working in the area of disabilities, so on and so forth. I think just to kind of world of any kind of intimation that is an imperial sort of act and to be more inclusionary, it is imperative to

create a working group. I think the effect of the Access Working Group is going to be, if you look at say under the Convention - Article 29, it will be the right to political life under the Bill - Clause 47. Now someone like the Fijian Elections Office will come out and say, “well, we want to be able to enforce provisions of this Bill” and I think that it will be too cumbersome for the Bill to then go out and specifically identify each of those actors. It is prudent for the two enforcing agencies to then say, “okay, we will create an Access Working Group” and the Access Working Group will then look at various facets of , whether it be political participation, whether it be representation in the media, whether it be the health sector, whether it be issues to do with social welfare, whether it be issues of gender, so basically the Access Working Group will be the body that informs the focal point about key issues as it pertains to the enforcement of the Bill. I think that might be a useful way to sort of see through all of the bureaucracy and the power broking, et cetera. I think those kind of struggles begin to stifle the good intention of the Bill. I would respectfully submit that this is one way of working around that difficulty.

3. The third thing of course is the establishment of a framework to implement the Convention. The Government should review the existing National Policy on Persons Living with Disabilities through the appropriate Ministry and I think it will be the Ministry of Social Welfare in this instance, in ensuring that the framework is fully aligned with the Convention and is in consonance with the Bill. Furthermore, the framework must also include the monitoring and compliance provisions crucially recognising the role of Human Rights and Anti-Discrimination Commission as an enforcing body, but it must also engage what we call “DPOs” and we have quite a few in Fiji that also have a regional mandate as well as the National Council for Persons with Disabilities.
4. There are reporting obligations of the State. The collection of credible disaggregated data will be instrumental in the formulation of Fiji’s progress report and the implementation of the Convention. Fiji will be required to report after two years following the ratification and every four years in an inclusive, consultative and transparent manner engaging the views of persons living with disabilities including children. What that fundamentally means is to be able to fully say, “okay, we have met these many set of obligations under the Convention,” here is a Bill with its exhaustive provisions that holds us to account *vis a vis* our obligations internationally. So in that sense, I think the Bill is an important conduit between the State and its international obligations.

With that I open the floor to any questions or recommendations you might have for us. Thank you.

MR. CHAIRMAN.- Thank you for the presentation, Mr. Raj. Our Secretariat has taken note of the issues you have pointed out and the Committee will sit after receiving all the submissions and that will assist us in reporting back to Parliament. Now I will allow Honourable Members for questions or clarifications.

HON. S.V. RADRODRO.- Thank you Mr. Raj for your presentation this afternoon on this very important piece of legislation which I personally believe is long overdue, but what I do not understand is that we have not ratified the Convention as yet as the process would usually go that way if we are really serious about these rights of people living with disabilities and why has Fiji taken so long to ratify the Convention. But having said that, yes it is good that now we are looking at this piece of legislation which like I had said, it is a great piece of legislation considering that it will take care of the rights of people living with disabilities. A lot will hinge on the implementation or the effective enforcement of the legislation. As a saying goes that the proof of the pudding is in the eating and only time will tell. We will note that in Part 1 that there is quite a wide list of disabilities, all those issues that are considered to be classed in that category.

So, to me it is telling us that there is going to be a lot of resources needed for the effective enforcement of this piece of legislation. Can you please explain what evidence is there to show that the Bill will achieve its aims or its objectives?

MR. CHAIRMAN.- Thank you Honourable Member.

MR. A. RAJ.- I always like appearing before these Standing Committees, it makes me think on my feet and I appreciate this very much and I want to sort of begin by saying that, I think a number of issues that you have raised here, I take full cognisance of that. I will begin by saying, first of all that when we think about the logic whether it is ratification first, the Bill would ensue, at this point in our historical political conjunction the fact that in Parliament we have both the desire to have a ratification as well as a Bill in place. It is all the more reason why I would reinforce my initial statement that we read this contrapuntally and we enforce both of them. We ratify without reservation and we hope that the Bill is passed into an Act. We also take full cognisance of your other lucubration that the test really is in its effective implementation and enforcement. I think like all other pieces of legislation, the test really is to move beyond the putative claims of law where the law might seem progressive but material conditions on the ground may be retrogressive and there might be a dissonance or aperture between the putative claims of law, no matter how progressive they might be and its materialisation on the ground.

Therefore, I think I would begin by responding to your question about what evidence we have, whether the Bill will achieve its objective, the moment the Bill is put into an Act, we are going to be obligated by law to enforce its provisions. It is going to be a sad indictment on the State and the Human Rights and Anti- Discrimination Commission and the National Council for persons with disabilities, if we are not able to enforce those provisions because we would be legally obligated to do so.

I think this is one thing that people have to seriously realise, the moment it is put in law it can be tested in a court of law. We are constitutionally obligated to do it, and I think if anything the fact that we had Sections 26 and 42 in the Constitution and there was no further legal infrastructure to say how we are going to materialise these very progressive and salutary provisions, all the more reason we should have the Bill in placed now and if we were to ratify, people will come out and say “well ok these are your international obligation, what kind of legal infrastructure do you have in place?” The fact that the moment the Bill passes into an Act we are going to be legally obligated because it becomes an Act of Parliament and so the reporting, enforcement, accountability is that it will engender is going to be extremely important. We should not discount what is going to happen the moment it becomes an Act. The issue around resources is an important one, and I think when I presented before the Foreign Affairs and Defence Standing Committee, Honourable Isoa Tikoca raised the issue, and we both talked at length about extenuating circumstances, for instance, the calamity that came with *TC Winston* and



the kind of constraint it imposes on States resources, we need to be mindful of those extenuating circumstances.

The other thing of course is that, it is not always extenuating in external circumstances. Disability is a very very complicated business, the thing is that, it is not a very simple set of provision of resources, et cetera. You need to have assessment, you need to have expertise in place, you need to have people who will have the necessary scientific knowledge in terms of the nature of disability, then you need to have policy makers and social policy people who will say “what are the impact and the implications of that for society as a whole, for policy makers, how do we now begin to sort of mainstream some of these provisions, what about the Ministry of Labour, what of kind of reforms do we need to institute in terms of our labour laws, what do we need to start thinking about in terms of the national gender policy, does it have anything on disability, what about the Media Decree, does it talk about these kinds of things, and how are we going to enforce those kinds of things? In a fundamental sense, all Decrees and all those other Acts of laws that make these kind of human rights claims now need to distil to this other level. To say, how are you going to effectively implement these provisions on the ground? So, I think the legal obligation is going to be the most important thing. The moment it puts you into a legally binding situation, we have to build accountability and I think the Parliament as an institution would be the most important locus of enunciation.

MR. CHAIRMAN.- Thank you, Mr. Raj.

HON. A.T. VADEL.- Thank you, Mr. Chairman. On the same line, now we are domesticating this Bill and our domestication of this Bill is a move in a positive direction. What I would like to ask whether there has been any implementation plans in place so that Fiji can fully ratify the Convention from the perspective of human rights.

MR. CHAIRMAN.- Thank you. Honourable Member.

MR. A. RAJ.- I think that is a very important intervention, which is why I took some out to explain what the Commission is doing as a first measure in terms of making sure that the Commission itself is compliant when it comes to non-discriminatory provisions and creating a space which is conducive and inclusive including those living with disabilities. I think the appointment of a disability desk officer is going to be extremely important because that would then create the conditions of possibility for persons living with disability to be able to access the Commission and lodge complaints. I take full cognisance of the fact that the Commission was without leadership for nine years and so on and so forth, but even prior to that, under the 1997 Constitution it did not actually occur to people to have a disability desk officer and so I think that Fiji has made a remarkable stride when it comes to these kinds of things.

I think it is incumbent on us who enforced these laws to make sure that we are compliant and compliance not simply because there is a Paris principle compliance and all those other requirements but also, how on earth are you going to enforce any of those things when you do not have the infrastructure in place, you do not have the people, so it is extremely important for us as a Commission to start by embodying this values and start in a concrete way to show what we are doing to make sure that the Commission has disability inclusive and accessible.

Then the second layer of intervention would obviously come from and we derive our legitimacy from not only the Constitution but now the Bill because the Constitution basically makes reference to disability but the Bill now says, “What are the things that you are going to enforce and what is your work-plan?” The important thing that comes out of our exchange is the importance of a national plan

of action. We need to think about a national plan of action and it needs to be an inclusive one, it needs to be a forward thinking plan, it needs to then begin to say in very very concrete ways, “how we are going to materialise the provisions of this Bill, what is the timeframe, what are the resources that we are thinking about, what are the limitations, and what the risk and mitigation measures? Because you can possibly say that we are going to have this Bill, this is the national plan of action, no one has thought about the risk and mitigation measures. That needs to be done and that will require a kind of auditing in the forensic sense that needs to sort of account not only for resources but also in terms of political risks. What kind of issues of penal liability are we opening ourselves to? In the event that the Bill passes into an Act, things can be trialled and tested in court, so what do we have in place in terms of remedy? What kind of damages are we going to award? What kind of legal precedent does it set? I think we need to prepare ourselves also in terms of what other constitutional jurisdictions are doing in this particular area so that there are some comparative learning and all of that. To answer you very briefly, a national plan of action is going to be extremely important. A well thought out, inclusive national plan of action that should accompany the Bill.

MR. CHAIRMAN.- Thank you Mr. Raj.

HON. V.K. BHATNAGAR.- Thank you Mr. Raj for a very comprehensive presentation and right now I do not have any questions for you because basically you have presented very well and there are quite a lot of things to be looked at.

MR. CHAIRMAN.- Thank you.

HON. M.M.A. DEAN.- Thank you Mr. Raj. I have been seeing you a lot in the media and finally it is an honour to meet you in person. I allude to the comments that you have made in regards to the passion you have when it comes to making submissions in the Committee and I can see the reason why. Your explanations were very informative, it is very thought provoking and it really creates that sense of attention while we are listening to you. I just have one question, we know that the responsibility of this Bill will ultimately come under the Ministry of Women, Children, Social Welfare and Poverty Alleviation. How do you think your Commission can work together with the Ministry in promoting this Bill and ensuring that whatever we want to implement and progressively realise through this Bill, comes into effect more effectively?

MR. A. RAJ.- Thank you Honourable Member. I think that is an important intervention because I think what you alluding to is the microphysics of the arrangement and given the fact that we tend to work in silos and jurisdictional arguments kick in and sometimes people are very imperial and territorial that, “this is my Bill and we enforce it and please stay out of it”, I think that what is going to be extremely important is that the Nation Plan of Action explicitly writes out the roles and responsibilities of various bodies whether they be statutory bodies or Government Ministries. I think that the work plan needs to explicitly reference who is going to do what. For us, the point is that we hope to engage with the Ministry of Women, Children and Poverty Alleviation at two levels, first is to bring to their attention the kinds of complaints that are going to be lodged with the Commission. We already work with disability organisations and they bring things to my attention. I went to the Pacific Regional Disability Forum a couple of weeks ago and I had a very robust one week engagement with them and one of the things that became very apparent was that because there are so many factions and proliferation of bureaucracies and bodies that purport to be working in the area, we need to have a system which is cohesive and integrates and brings people together. I think the national plan of action would bring some of these bodies together into a singular platform with the collective goal of enforcing the Bill. So I think that it is imperative that it be explicitly referenced, so we intervene at two levels.

First bringing to the Ministry's attention our obligations are international obligations as far as the Conventions are concerned because I think we will play a lead role there.

Second is the immediate nature of complaints that will have to do with sort of discrimination in the school, discrimination in the workplace, in public life, in political life and so on and so forth.

One of the things I gathered from the discussions I had with the Pacific Regional Disability Rights Forum was that, they said that these disabled persons were saying that, "we are not simply interested in casting a vote, we want to have disabled members as Members of Parliament". So they are talking about meaningful participation in political life and now they want to talk about manifestos and whether other political parties manifestos reflect those things and what other things they are actually doing, state functionaries and others in sort of facilitating that. Now they are distilling things at that other level where it is all about the interphase between these progressive laws and what is happening on the ground. So I thought that the Commission can also play a very important role in terms of being an interlocutor between these constituencies and the enforcing bodies as well like the Ministry and others to actually make substantive recommendations about what needs to happen, from what we hear from these constituencies, so I think that is another productive role that we can play.

MR. CHAIRMAN.- Thank you, Mr. Raj. Just very quickly looking at the time I will allow one more question to Honourable Salote Radrodro.

HON. S.V. RADRODRO.- Thank you Mr. Chairman. I have three questions for you Mr. Raj.

First one I like that idea you mentioned about the National Plan of Action because I was going to ask you about your own transitional plan but I believe you will have to have the National Plan of Action first before you can do your transitional plan. So which agency should be responsible for that National Plan of Action?

MR. A. RAJ.- Thank you Honourable Radrodro. I think that the Ministry given the fact that the Bill explicitly references the Minister and therefore, I think the Ministry would be the main agency but at the same time I always believe that we need to build accountability and we need to democratise systems and processes and therefore, it is important to explicitly include other enforcing agencies and here I think because the Bill already references the Council and the Human Rights and Anti-Discrimination Commission, they can be two important bodies that would work explicitly with the Ministry. Now how do we then include all those others actors in the National Plan of Action? Well that is where the Access Working Group comes in. The Access Working Group then works very closely with the Ministry and the Human Rights and Anti-Discrimination Commission and the Disability Council to say that these are the things that now need to go into the National Plan of Action. So I think it is about closing the loop too because the Nation Plan of Action then includes various communities, individuals and actors so that no one can say that this Plan of Action did not take us into account. The Access Working Group becomes that intermediary space in which all those other people can come in but when it comes to holding them to account, really it is three institutions. You cannot have all of those other gamut of individuals. It is very hard to hold them to account but the three institutions that are explicitly referenced in the Bill, of course you can and bring the others through the Access Working Group.

MR. CHAIRMAN.- Thank you Mr. Raj. Honourable Members, we now break for 15 minutes for tea and at 3.30 p.m. there is another presenter coming.

Mr. Raj thank you very much for your presentation and I also request you to join us for tea and at 3.30 p.m. we will allow the other presenter to present to the Committee. Thank you.

The Committee adjourned at 3.10 p.m.

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AFFAIRS, HELD IN THE COMMITTEE ROOM (WEST WING), PARLIAMENT, GOVERNMENT BUILDINGS ON THURSDAY, 16TH JUNE, 2016 AT 10.00 A.M.**

**Submittee:     Hilton Special School**

**In Attendance:**

4.    Ms. Sureni Perera    -    Chief Executive Officer
5.    Ms. Nanise Ravisa    -    Head Teacher (Early Intervention Centre)
6.    Ms. Sisilia Yee        -    Head Teacher (Hilton Special School)

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MR. CHAIRMAN.- Thank you Honourable Members. On behalf of the Standing Committee on Social Affairs, I would like to welcome the team from Hilton Special School. Today you are here to present to the Committee on a very important Bill, it is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016) and I now give you the opportunity to present to the Committee.

MS. S. PERERA.- Mr. Chairman of the Standing Committee, Honourable Viam Pillay, Honourable Salote Radrodro, Deputy Chairperson, and Honourable Members of the Standing Committee, my name is Sureni Perera and I am here today in the capacity as the Manager of the Hilton Special School and the Hilton Early Intervention Centre also in my capacity as the Chief Executive Officer of the Hilton Organisation, and as the Secretary of the Fiji Crippled Children Society.

My colleagues here today are the Head Teachers of other schools, Mrs. Nanise Ravisa who has over 23 years in education and is the current Head Teacher of the Hilton Special School and Mrs. Sisilia Yee who has over 17 years' experience in education, as the current Head Teacher of the Hilton Early Intervention Centre. Sir, overall they have been with the Hilton Family for over 15 years. Thank you to the esteemed Committee for providing us with the opportunity to review and provide suggestions and feedback. This consultative process is greatly appreciated, especially because we bring to the table the voice of the most vulnerable part of the community which are children with disabilities.

Sir, today I address you and speak not in an official capacity mainly but as a mother of a person who brought up a child with the disability, as a teacher who provides services to children with a disability and as an administrator.

Sir, a brief background on the Hilton organisation and the Fiji Crippled Children Society. The Fiji Crippled Children Society was registered in 1963 and paved way to Special Education in Fiji. Currently, through six Special Schools we provided education to over 500 children with disabilities. We are the Suva branch and to maintain politically correct terminology, we address ourselves as the Frank youth and organisation to move away from using the word 'crippled'.

Sir, the Frank Hilton Organisation is controlling authority for the Hilton Special School and the Hilton Early Intervention Centre. We have approximately 140 children within our two campuses and we provide an outreach to over 200 children. Sir, under our programme we provide audiology

speech therapy , physiotherapy, early childhood education programmes and also we are piloting a community outreach and family support programme this year.

Sir, our proposed revision to the draft Bill mainly concerns children with disabilities and we feel that the rights of a child, although met through the Convention of the Rights of Children needs to be duly articulated within the Disability Bill as well. Sir, children like I said are the most vulnerable in society. The lack of early intervention, early detection, and early childhood education within the formative years is a heartfelt need amongst the community. The core foundation for successful inclusion as studies have proven can change the developmental trajectory of a child and this has been neglected thus far.

Sir, to focus on successful inclusion and mainstreaming of disability and provide better quality of life, we need to address the needs and the importance of the family as the core unit of society to mitigate hardships, emotionally, physically and socio-economically. We also would like to highlight the need for measurables within the Bill, to ensure accountability at all levels.

Sir, to give you a background on the barriers we face currently, this is provided to persons and children with disability is guided by the National Policy of 2008. Within the policy, key strategic areas outlined through priority and second and third priorities articulate early detection and prevention and intervention of disabilities. However, key services to children with disabilities so far has been provided mainly through the education system of Fiji. The Ministry of Education, commendable effort, policy on inclusive education and promoting inclusion from schools onwards. Amongst these policies, inclusive education rights throughout from early childhood education to primary education to secondary education, however, since early childhood education was only piloted and a policy on ECE was drafted in 2011, the *Na Noda Mataniciva* curriculum was drafted and piloted, traction is yet to be gained for children with disability.

We run the only ECE centre for children with disabilities in Fiji. In the health sector to-date, screening for children with disabilities is provided by Hilton Organisation at the CWM Hospital for hearing impairment. These are when we are provided with the numbers of children within the NICU we go up on a follow-up screening programme and then we provide diagnostic hearing testing for these children. Thus far, global screening of children with disabilities or at risk of disabilities has been lacking.

The families are often burdened and the burden is too heavy to bear, we often find the breakdown in the family system. Many of our children come from broken families where their primary care givers are grandparents and extended family members. This results again, in unsuccessful transition to mainstream and lack in quality of life.

I am not one and I firmly do not believe in the cut and paste approach, however, it is necessary to look at best practices worldwide. Sir, in many countries early childhood intervention are mandatory programmes. Early detection, global screening of children with disabilities are mandatory programmes and it ensures identification from birth onwards. Sir, this directly translates in some countries, if we take the US into about 40 percent employment amongst the disability sector. In countries in Europe, it also translates into approximately 50 to 70 percent employment rates amongst disabilities.

Sir, we should aim to learn and understand then mould and contextualise to suit Fiji's standards. The Individuals with Disability Education Act of the US provides for services from birth. It focuses on family support measures, it focuses on a multi-disciplinary method for development. It focuses on



multi-sector participation, funding provided through Government and private sector. It ensures mandatory comprehensive services for children at the earliest possible time in the life of a child and that child is not left behind.

Sir, this is provided through Part C of the 8<sup>th</sup> Year programme which is the Individual Family Support and Services programmes 0 to 2 and the Individual Education Plan 3 to 21. Currently, Fiji does have an Individual Education Plan at primary level and that is something that is applauded, it is conducted by the Ministry of Education. Sir, the need is to call for sufficient legislative framework in place to ensure that the rights of a child with a disability and the need for detection and intervention and family support programmes is articulated throughout the Bill. To ensure that inclusion at all levels is endorsed through education and all other sectors. To ensure necessary legislation and guidelines that provide compliance through measurable, qualitative and quantitative analysis.

Based on this, Sir, our first recommendation is that the function of the Council in Part 2 of the Draft Bill. First and foremost, since the National Council will be the co-ordinating body for all sectors providing services to persons with disability to ensure that early detection, early intervention, early childhood education and family support programmes are duly articulated and emphasized within the functions of the Council. Sir, we propose that the terms which are referred are articulated as encourage and multi-sector support because early intervention and detection is not solely an education prerogative. It requires support from all sectors. Encourage multi-sector support programmes for children and families of children with disabilities at the earliest possible time in the life of a child.

Mr. Chairman, we also recommend the amendments to Part 6, discrimination on the basis of disabilities that the Bill ensures accessibility to early intervention, early childhood education and appropriate educational and health services.

Mr. Chairman, once again under Part 6, Clause 43 - Education, we require adequate emphasis and articulation of early childhood development programmes. We recommend that as this is not fully State-funded that free where possible is mentioned within the Bill. We also recommend that inclusion be given priority from early childhood stage and free primary education.

Part 6, Clause 44 - Health, we are happy to note that this has been mentioned within the Draft Bill as detection and early intervention. However, we would like to propose that compulsory screening for at risk infants who are identified is duly noted within the Bill. All babies born are screened in first world countries, however we lack the resources and I understand the issues. Therefore, at least the children identified with risk factor should be duly screened for disabilities. Also emphasise on the necessary health care programmes, physiotherapy, speech therapy and audiology, so to-date there are no speech therapist within Fiji. There is one audiologist within Fiji and the Hilton employs him. Emphasis on family support programmes for emotional needs and counselling provided to families to accept the child with the disability because if the nuclear unit of society does not accept that child, and considers him or her a burden, how can we expect the rest of the society to accept that child?

Mr. Chairman, I briefly look to my colleagues now who have so many years of experience under their belts to give you a first-hand view of what they have experienced within their role as educators. Sir, I first call on Mrs Sisilia Yee, the current Head Teacher of the Hilton Early Intervention Centre which is the only early intervention provider in Fiji thus far.

MRS. S. YEE.- Honourable Chairman, Honourable Deputy Chairperson and Honourable Members of the Standing Committee, *ni bula vinaka*. I would like to briefly speak of the years that I have spent in special education in particular within the Hilton organisation over the span of 17 years.

We have met with a lot of challenges. One mainly would be the lack of parental education. As Madam CEO had mentioned that most of our parents are not well educated on the disability of the individual child, more so education on the acceptance of the disability that is with the child. In my capacity I have seen that there is no provision that mandates our parents to allow their children to access special education especially from as early as early intervention. Most of our children that are coming in, have had a good four to five years of living at home without any intervention done at home level. I feel that first before we can allow education to the children, we need to touch base with parents first. We have a lot of parents who are still in the denial stage, so to speak, who still find it hard to accept that my child has this disability. So when they come in upon enrolment, they come with a different picture of what it is that they would like to see of the child. They are blinded to what challenges the child has or the child may have in the future without the intervention. Together with that, we would like to see that parents are educated of their rights as parents of children with disabilities. They have a right to provide that service or to allow their child to access that education which is the intervention or special education.

I would also like to touch on family support, the importance of having family as the most important teachers who are mostly involved in the development of the child. Parent's involvement is very vital because they are the ones who are with the child everyday (from birth until their older years). We feel that most children that we see or have been enrolled into the centre are usually enrolled by the extended family member, a grandparent or an aunt who takes on that responsibility because parents of the child have separated due to the nature of the disability of the child. I feel the parents need to be educated or they need to be mandated that they have a right to educate their child, to take the child to the service providers which is us.

The need for professionals within our sector. We are talking about the involvement of the Ministry of Health, the involvement of nurses, paediatricians, occupational therapists and speech pathologists. These are the people who are able to support the parents or the families better in providing the necessary interventions at home level. We have children who are yet to attend school due to the very tender the age, some are wanting to come in at the age of 1 year old. If I may allow me to speak on this please Ms. Perera, in our capacity at present we are finding it very difficult because we do not have the specialists to work alongside us. We at the Centre are just teachers, and our strength is the instructional teaching or the guiding of the child in developmental areas, mainly focusing on academic pathways. We need the consistent efforts of other specialists that I had named earlier Sir, because these are the very ones who will be able to assist us in providing quality intervention and quality programmes that will allow these children to be able to transit into special schools or mainstream schools. I would really like to see that there are provisions included in the Bill that highlights the three areas of need that I have mentioned, Sir. *Vinaka*.

MS. N. RAVISA.- *Ni sa bula vinaka*. The Honourable Chairman for the Standing Committee, the Deputy Chairperson, and Honourable Members as a special educator for the past years, we are usually encountered with challenges but we take up the challenges to allow us to work with the special children who are entrusted under our care.

One of the challenges that I would like to specifically highlight in this session are the difficulties that teachers and special educators encounter when children with special needs come to school, especially when a child with disability has never been given the opportunity to attend an early childhood centre or had been provided early intervention for that matter. It comes with the fact that there are a lot of gaps that will come up as a result of what the child has missed out during the early life years of education. The gap as I have mentioned is usually huge not only in terms of academic but

children missing out on important developmental milestones. These are some of the areas that we teachers and special educators have to address, and try and work out means and ways of providing solutions or strategies to address the needs of these special children. When this happens, it creates a long retention of children within the special school setting where I had mentioned earlier on, that teachers would try their best to provide suitable measures and teaching strategies to address the development and needs and functional needs of special children.

I would reiterate what Mrs. Perera had highlighted and my colleague as well as the importance of seeing that early childhood education is in place as well as early intervention is provided to address the needs of children with special needs at an early age, giving them the suitable intervention and appropriate assistance to prepare the children well so that they are holistically prepared before entering either a special school or a mainstream school for that matter.

MS. P. PERERA.- Mr. Chairman, the theoretical underpinning for what we propose is provided through the Convention on the Rights of Persons with Disability when it recognises the child, the Convention on the rights of a child. Sir, it also speaks of the importance of family as the first and primary support unit to facilitate inclusion. If we do not help the family first to accept, then again as I said, will society accept? When we are moving towards an inclusive society, then the emphasis on inclusion has been highlighted at all sectors even within the Constitution, if we do not include families, children at the formative years from birth then how can we bridge that gap in education at the primary level.

Sir, if we are to count, we start at 'one', if we were to recite the alphabet we start at 'a' then why not start at birth for a child. So, we strongly recommend that firstly, detection for children at risk be made mandatory. Intervention and family support programmes be provided through the State and through the private sector, where possible. Adequate like health support be provided at an early stage to meet the developmental milestones of a child. Sir, at the age of six, we see children coming in who cannot walk, cannot speak, cannot express themselves and as educators we are asked to provide academic backing for the child and then transit them to mainstream school, it is difficult to try, but we still see retention within the special education sector. We see retention which translates into poor inclusion, which translates into lack of independence and productivity, which translates again into exclusion from society. So, therefore this is our first recommendation, early detection, early intervention, early childhood support programmes and family support programmes to be emphasised and articulated through the Bill.

The second recommendation is for the provision of a method to analyse, to quantify the outcomes to provide us with data to work with. To-date we do not have access to data or statistics on persons with disabilities. The only survey was a base line study done in 2010 - Making Women With Disabilities Visible, but it is still not specific. It says that we have a community of over 11,000 persons with disability in the country and over 3,000 children who are born with disabilities.

Sir, the pat is within the health system, patient information system is not accessible to us, so we do not know how many children are out there whom we need to provide services to. So in an informal study done by Doctor Kate Milner in 2014 at the CWM Hospital, it was recorded that up to 80 children are born each month at risk of a disability. This number is huge. We then move to provide screening for these children. Since August last year we have screened through an automated Auditory Brainstem Response test more than 200 infants before they reach five days of age and we have found from the 130 to 200 children that we have screened, over 30 infants with or at risk of a hearing loss. Once we screen them, we have no means of providing family support to the parents to understand the disability, to provide adequate services to them. So if these children are supported at birth, they can



be mainstreamed even before they reach primary level. They can have a normal life, however, without adequate hearing, their milestones are delayed in speaking and understanding. They will not even reach early childhood stage at education, they will probably end up in special education and then the gap to bridge again is huge.

Therefore, Sir, no centralised data collection system for persons with disabilities. We have no access to centralised data centre, so we strongly recommend that in Part 2 - Functions of the National Council articulate the need to gather, analyse, assess and disseminate data and statistics on persons with disability. This will then enable us to map out what we need to do and also analyse the outcomes and better ourselves every step we take. Sir, again the rationale for this is adequately provided through the CRPD in Article 31. I do not need to emphasise on this. Sir, to undertake, collect data and statistics, and formulate and implement policies is a necessity. If the National Council is going to be the Advisory Council then they need to know who they are addressing and how many they are addressing. Information used to assess implementation is important. Absolute importance and essential is the requirement for us to evaluate and measure where we are and what we are doing. This is our second revision that we are proposing.

Honourable Sir and Madam, we may not be professors or *pundits* on this issue, in fact my colleagues and I are merely educators, parents and administrators. With our hands on a daily basis, we touch lives, we see smiles on children's faces and we know that we are changing lives, so we think with our hearts. We hope and pray that our humble views will be taken into consideration in good faith by the esteemed Committee so that we will be able to contribute, we will see our vision realised, our achievements realised and we will be encouraged that children's lives are changed, most of all, Sir, which we articulate within our vision, we will be able to uphold the rights of all children with disabilities. Thank you, Sir, for giving us this opportunity.

MR. CHAIRMAN.- Thank you, Madam Sureni Parera, Madam Sisilia Yee and Madam Nanise Ravisa. On behalf of this Standing Committee, we do acknowledge the work that your organisation has been doing and we also appreciate and acknowledge the presentation you have given to our Committee today and the strong recommendations. Be rest assured, our Secretariat has been taking note of all the important issues that you have raised to the Committee and after receiving all the submissions, the Committee will sit back together and see how we can accommodate those recommendations into our report. We acknowledge the work you have been doing and be rest assured that whatever you have informed us has been taken note of. Very quickly, I will allow our Honourable Members if they have any clarifications or questions with 5 minutes time, if that can be answered or further clarifications can be given to our Secretariat if you are not able to provide the clarifications here. He will also be in contact with you because the Committee wishes to visit some of your institutions. We will be coming out after next week and the Secretariat will liaise with you. We will be also coming to visit some of the schools and you can liaise with our Secretariat to make relevant arrangements, he will be organising those things.

HON. A.T.VADEI.- Thank you Chair and the ladies for the presentation this morning. A few things that I have noted from your presentation this morning and has been captured in our Draft Bill. Some of the actuals that you had been raising, that can be raised in the National Plan of Action if there is going to be one coming up, that is what you have mentioned so far. If there will be a National Plan of Action, will you continue with the submission as you have stated this morning?

MS. S. PERERA.- Yes, we will.

HON. A.T.VADEI.- That will be for pathways to capture those values and cultures into that National Plan of Action. Will that be done by your institution?

MS. S. PERERA.- We will be happy to provide advice in our position as educators but if I may, the policy on Persons with Disability 2008 specifically identifies early detection and intervention as a priority objective. However, we still have only one early intervention centre and very less detection at birth. Therefore, this is why we would like it to be mandatory at some point and stated within the Bill as important. We understand that a plan of action will be drafted and submitted, however, if there can be some legislative underpinning to this, it will carry more weight.

MR. CHAIRMAN.- Thank you Madam.

HON. A.T.VADEI.- I have seen Clause 42 - Respect for home and the family, Clause 43 is education and Clause 44 is health in the Bill. In those clauses, say for Clause 42 (3), (4), (5) and (6), it strictly states that children must not be separated from his or her parents. There is a good point that you raised that parental education or societal awareness should be raised in that context also. That can be included in the National Plan of Action so that people do take ownership of this Bill and make it happen. Is that true or Or do you wish to further clarify on those?

MS. S. PERERA.- Sir, if I may? I have just had one day to go through the Draft Bill, but I noticed that adequate mention for comprehensive support towards family is not within the Draft Bill. Yes, it articulates the role of a family but family of a person with a disability, it does not provide enough adequate emphasis for the role of a parent or the family in the support of a child with a disability. It does not provide enough adequate emphasise for the role of a parent or the family in the support of a child with disability. This is my view, Sir.

MR. CHAIRMAN.- Thank you Madam.

HON. A.T. VADEI.- My second last question is, did you see in this Bill taking into consideration other Bills, like the Family Law Act, Human Rights Law did you see that in that context, what you have proposed today? As long as we do not run around in circles without any implementation on the ground, that is what I am trying to get through.

MS. S. PERERA.- Sir, as I said before, we are not *pundits* on the issue, we are speaking as educators. Yes, I am aware of all the other legislations but right now in this Act it preserves the rights of persons with disability and I would like to emphasise that the child with the disability is of utmost importance. Therefore necessary emphasis on articulation on the child with the disability and the family as the primary support provider needs to be felt or emphasised within the Bill, Sir.

MR. CHAIRMAN.- Thank you, Madam.

HON. A.T. VADEI.- My last question, as you have already said that you need professionals, what sort of proposals are you going to give these to Government for children with disabilities if they agree to those proposals?

MS. S. PERERA.- Sir, the Hilton organisation five years ago was simply known as the Hilton Special School. However, now realising the holistic developmental need of the child, we have set up a multi-disciplinary approach to child development, early intervention and education. We have departments within our organisation to provide physiotherapy, we have the only functioning audiology and speech therapy department in Fiji, and the Early Childhood Education Centre. It is noted that all

these professionals (speech therapist, audiologist, physiotherapist, occupational therapist, paediatricians, health service providers and community workers are required to provide that holistic support.

Sir, in the five years that I have been in the organisation, I have met with numerous ministries specifically Ministry of Education, Ministry Health and Ministry of Women, Children and Poverty Alleviation and in 2014 we actually provided a concept paper for a national framework on early intervention and early childhood education to the then Minister of Health. We provided this to the Minister of Education and we are moving towards a Memorandum of Understanding to provide these services. I must say that the Ministry of Education has been extremely forthcoming in realising the need, however, there are jurisdictions which they need to work through, we understand and respect that, and therefore any additional support the management has provided in the school system. So, we are more than willing to provide a study of the model that we would like to see replicated within the country and we also have the framework to provide this through the branches of the Fiji Crippled Children's Society which is island wide, Sir.

HON. M.M.A. DEAN.- Thank you beautiful ladies with a very beautiful heart. The presentation which you have presented before the Committee was very informative, an eye opener and very emotional too. I, as an educationist, I have seen the problem in terms of special education, especially the need to get more qualified people to deal with the issues pertaining to children with special qualities. I just have one question, in terms of improving human resources in your organisation, if you could just highlight us with one important plan that you might be continuing or undertaking to improve the resource personnel to deliver more efficiently and better the services to the special children in your institution?

MS. S. PERERA.- As I said we have drafted our strategy for a five-year plan and capacity building is within that strategy. Therefore, we have adequately setup departments and we are looking to train, we have already recruited and are in the process of training personnel, we have employed a physiotherapist who was formally from the Ministry of Health to act as Specialised Paediatric Physiotherapist within our unit. We are currently employing a Community Rehabilitation Assistant to understudy her and we will look to recruit more physiotherapists and provide training to other schools as well on physiotherapy required with four special needs children within a classroom.

As for audiology and speech therapy, this is a new area in Fiji I think, currently we have no speech therapist. Two years ago we worked with the Fiji National University and proposed that a post graduate programme in speech pathology be introduced at tertiary level to ensure that there are resources within the country. However, we did not see this happen, so, we went on to form partnerships with an organisation in Australia who will continue with training. We are looking to introduce a training programme to qualify audiometrists and under the partnership with the organisation in Australia, we are training speech pathologists, however, to offer them credibility we have no tertiary education support within the country.

So, we will train experienced personnel, however, it is sad to note that validation of their experience or professionalism cannot be done in Fiji and I am very worried to offer them opportunities to seek validation or credentials overseas because they may never come back.

HON. M.M.A. DEAN.- Actually, that is what I had inferred to, no matter how much training we give them on tertiary level, there is a limitation because there are very few programmes offered to them in Fiji at the moment. Thank you.

MR. CHAIRMAN.- Thank you, Madam.

HON. V.K. BHATNAGAR.- Thank you Mr. Chairman, and thank you Madam CEO and the representatives. The presentation was very enlightening and thank you for sharing your sentiments. What you have highlighted today, I can only say that you are very committed and passionate in what you are doing and I salute you too for that, because you are looking after children who are differently abled. I know there are very few people who actually have a lot of passion towards assisting and serving these particular sector of children.

The Bill is all about persons with disabilities, looking at the functions of the Council, a lot of recommendations which you made has been captured here in the Bill, but I think looking at No. 2 on page 7 it says;

*“The Council may perform any of its functions in co-operation and consultation with any person, association or organisation in the local, regional or international facet.”*

So, I think it is time now, like you said giving it a multi-sectoral approach, working in collaboration with all the stakeholders and the onus will be on you as well to be coordinating and especially the Ministry of Health because I being the Assistant Minister for Health. I think there needs to be a wider collaboration with the Ministry of Health so that we can work together to provide better services, giving it a holistic approach to improve our services towards our differently abled children.

I do not have any questions but some of the very strong recommendations which you made are definitely we will be sitting as a Committee to go through it and of course, I also believe in a data system needs to be in place, and to be shared and disseminated throughout the stakeholders. That is also one of the very strong points you raised. The Bill is not only you as an organisation, but I think the whole of Fiji needs to have a positive attitude towards our children who are needy. Of course, once this Bill is passed and once we start working in collaboration with all the stakeholders, I think we will be able to achieve what we want to. So that is what I would like to say and once again a big *vinaka vakalevu* for all your services.

MR. CHAIRMAN.- Thank you Madam for your comments. One last question from Honourable Vadei.

HON. A.T.VADEI.- Thank you Madam for the presentation. You have identified a lot of gaps in the system that we have and I agree with that, especially our education system, some are very fast learners and some are very slow but they are classified as failures and as Toppers on the other end. That was a good proposal that you made that we need those resource centres to be developed to capture those slow learners and fast learners can continue. How about the programme where some schools continue with a certain programme, can that capture some of the gaps that you have stated, like the *Matua* Programme? People have failed and come back when they are 30 year old or 40 year old to complete their education, that is, complete their Form 6 and Form 7 and go onto university.

MS. S. PERERA.- I am not well versed on the programme you mentioned, Sir. However, our focus is on minimizing retention and minimizing dropout levels before they occur. Of course, we have, as I said our community support programme and outreach programme caters to understanding the family, the issues and to bringing back the children into our schools and to regularising attendance within our schools. However, I am sorry, Sir, I am not able to comment further.

MR. CHAIRMAN.- Thank you Madam, would you like to say anything in the end before we close?

MS. S. PERERA.- Thank you Sir for the opportunity. I apologise that there may be some semantic errors within my written submission. We did receive the invitation to submit our views only on Tuesday and I had the opportunity to read through and put together the proposal only yesterday. So I do apologise for any errors within the document. However, I would appreciate if there are any questions or clarifications, you can contact us so that we can adequately provide the information.

MR. CHAIRMAN.- Thank you Madam for your presentation. Once again thank you very much and we the Committee appreciate the work you have been doing, as also shared by Honourable Veena Bhatnagar. Be rest assured we have taken note of the points you have raised. The Committee will discuss on that prior reporting back to Parliament. Honourable Members, we will meet at 11.15 a.m., after having tea, and I would like to ask the three ladies to join us for tea.

HON. V.K. BHATNAGAR.- Mr. Chairman, can I just add something, as you have mentioned, I also believe that early detection, intervention and preventative measures put in place along with family support, we can make huge improvements in this sector. It is not actually the Bill, but like I said a multi-sectoral approach. A lot of awareness needs to be made here about the family support and of course like I said, working with Ministry of Health and Medical Services, early detection and then if it is done, basically you know we are doing some work in these area such as the Safe Motherhood Programmes and Mother and Child Safe for Hospitals and all those, so we are actually working in this area. But I think these areas needs to be strengthened and only if we work together can we strengthen these areas, but there needs to be a lot of awareness.

Being in the media industry before I joined politics, I visited a lot of homes, disabled schools and I have seen that sometimes the family members are very negligent. The reason being I think they are not aware of the situation or either they do not have the facilities or they have financial problems. You people are doing a great job by educating the family members but I think there needs to be more awareness and media could one very powerful tool which you could use to disseminate this kind of information.

MR. CHAIRMAN.- Thank you, Madam.

The Committee adjourned at 10.56 a.m.

The Committee resumed at 11.20 a.m.

**Submittee:    Fiji Disabled People's Federation**

**In Attendance:**

- |     |                        |   |                    |
|-----|------------------------|---|--------------------|
| 3.  | Ms. Lanieta Tuimabu    | - | Office Manager     |
| 4.  | Ms. Savaira Tinai      | - | Project Officer    |
| 5.  | Mr. Peniasi Rawaidranu | - | A/Project Officer  |
| 6.  | Ms. Leona Tamainai     | - | A/Project Officer  |
| 7.  | Ms. Gael Seru          | - | A/Project Officer  |
| 8.  | Ms. Inise Tawaketini   | - | A/Project Officer  |
| 9.  | Mr. Joshko Wakaniyasi  | - | A/Project Officer  |
| 10. | Ms. Anaseini Vakaidia  | - | Project Officer    |
| 11. | Mr. Jese Mamanavesi    | - | Project Officer    |
| 12. | Mr. Sailosi Ledua      | - | Personal Assistant |
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MR. CHAIRMAN.- Thank you Honourable Members, welcome back. With all respect and whole-heartedly welcome the team from the Fiji Disabled People's Federation to present to the Standing Committee on Social Affairs in regards to this very important Bill, that is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). We are very happy to have you here and we request the Manager to start the presentation which they are here to do to the Committee today. Thank you.

MR. J. WAKANIYASI.- Thank you Honourable Members for having us here this morning. First of all the Bill on Disability is one that we have been waiting for quite some time for this. It is one that has caused a lot of excitement, one that we are grateful for that whilst the wait has been quite some time, it will provide a platform into better the services and recognition on the rights of persons with disability in this country. As you may have realised that according to the World Health Organisation, there is over 15 percent of persons with disabilities living, especially in Pacific Island countries and also the adverse effects of NCDs that is happening.

As you can see appear before you today, Honourable Members, is actually five organisations, with the umbrella organisation being the Fiji Disabled People's Federation, you also have the United Blind Persons of Fiji, the Psychiatric Survivors Association of Fiji, the Fiji Deaf Association and the Spinal Injury Association of Fiji. These are organisations for persons with disability, governance structure by persons with disability, advocating, providing awareness and services to persons with disability.

Our offices are manned by persons with disability alongside volunteers and we try and provide the best that we can. This, for us we believe provides a platform, a pathway whereby some of our work can be integrated into the Government ministries. We do understand that since the establishment of the Fiji National Council for Persons with Disabilities way back in 1994, that was an establishment Act, we believe now that this will strengthen our work, this will also strengthen the partnership and will provide the sustainable scope and recognition, so that persons with disability will get to realise their rights.

Also at the same time, why we are here in our great number, our presentation this morning is also to get and to kill the cobwebs in our minds or any fears that we might have on the grey areas, so



that we can at least, the best that we are hopeful for is that, there be an inclusive process that we will be undertaking the implementation. We understand that this will provide the legal framework to Fiji, and the review of all the current legislations that will be undertaken if the Bill does get ratified, then we do hope that we be part of that process.

So, again thank you for having us here this morning and as we mentioned the theme before we left the office, for the Standing Committee that is here, this maybe the current role and responsibility. This is our lives, this is the rest of our lives that we are taking about, it is the lives of the future generations of persons with disability is yet to come. Thank you and I now ask the Fiji Disabled People's Federation representative to then go through the process and as you can see that, the presentation we have is colour coded on the different submissions, this is by the different organisations on their thoughts on each of the particular clauses and sub-clauses that is in the current Bill. Thank you.

MR. CHAIRMAN.- Thank you, Sir.

MS. S. TINAI.- Thank you. As to the Disability Bill Part 2 - National Council for Persons with Disabilities. This section establishes the National Council for Persons with Disabilities under objectives of the Council – Clause 4.

*“The objectives of the Council are as follows –*

*(a) to act as a co-ordinating body for all organisations dealing with the care and rehabilitation of persons with disabilities;”*

Therefore we have a recommendation whereby Clause 4(a), the Council to work with disabled people organisations in creating advocacy and awareness at all levels of society beginning from the grassroots level to Government on issues relating to persons with disabilities.

Clause 4 (c) to work toward eliminating the causes of disabilities or impairment. Clause 4 (c), no one can eliminate impairment but the Bill can state that the Council to work with disabled people's organisations in raising awareness on the prevention or minimising the effect of impairment, thus eliminating the adverse effects of disabilities.

My colleague from the Fiji Association for the Deaf will continue with Clause 4(d).

MS. I. TAWAKETINI.- Clause 4(d) - this clause is a bit confined to economic productivity, could suggest amended to social, cultural, religious, political and economic life of the community, including the workplace and labour market.

MR. J. WAKANIYASI.- For Clause 5(p) it currently reads:

*“advocate on behalf of persons with disabilities for the implementation of all international conventions and human rights matters in Fiji;”*

The recommendation that we have is that, if that could be reworded into “advocate on behalf of persons with disabilities, in partnership with Disabled Person's Organisation for the implementation of all international conventions and human rights matters in Fiji.”

Some of what you will see in what we are saying is that, some are footnotes, some are our additional notes in actually highlighting how important this is to us. Some are actual requests from our part on ensuring that corrective language is used, also the inclusion of the organisation.

This is from experience, what we have here is from vast experience on the different and the current components and legislations that sometimes we are left out in the cold. The different models has changed, we are supposed to be now on the rights based model but yet realistically, if you look at 3 Brown Street, Suva and I am pretty sure anyone who drives past 3 Brown Street, Suva, the first thing that comes to mind is the charity model.

Now, let us get real, when you see a person with disability that is the first mindset. We are hoping that shifts over, as we are going through the documents, we will get to realise that some of it are specific, some of it are complimentary notes because we know that even prior to the Bill being put together there had been extensive consultations, but during this long period of wait over the last three years, and going through the different components whereby externally again being reviewed by the Attorney-General's Office, certain changes and certain aspects of it, we are grateful for today is that we can come back and reiterate some of these areas, please we need these changes.

So as we continue, the makeup of the Council, there are currently 11 members according to the current Bill. What we are hoping and we know that the powers that are given right throughout the nomination of the makeup of the Council is appointed by the Minister. It has on the last of that subsection that three representatives from any Non-Governmental Organisation appointed by the Minister. For us that is okay as far as partnership is concerned and we do understand this that and what we are hopeful that the Committee understands, because it is very important for us is that, also that there be three members to the Council nominated by the Disabled Person's Organisations in Fiji.

Currently there is only one representative from the Disabled Person's Organisation. I am the only member on behalf of the Disabled People's Organisation that is there and we do understand is that sometimes the ill issues from our members is because these are the people that we are trying to serve and highlighting the importance even right down to the very little things of how long should the meeting be because often we have representatives that come to Council, the feedback we often get is that when I look around the table I get to see new faces all the time, then when I introduce myself, they say, "I sitting in for so and so" and I have always been asking the question to myself and everyone in the table is that, how important is disability issues?

At times we send junior representatives to sit in for the people that have been designated or nominated by the Minister. So for us it is very important that our voice and opinions because to be honest, we are the ones that will actually spend most of the time working on the process, that is our specific task, to improve and better the lives of persons with disability.

While the representatives that are there may be nominated, it is broad, they have got also other duties to look into. So that is why we are hopeful that there also be three members nominated by the Disabled Person's Organisation within the country. The explanatory note on that, I will give that to FAD.

MS. I. TAWAKETINI.- The explanatory notes is as follows:

1. The Council has 10 Government Ministers and three NGO representatives appointed by the Minister responsible for Women, Children and Poverty Alleviation. How will the NGO representatives be selected by the Minister? There is no requirement in the Bill that these



representatives be persons with disabilities. This is a serious shortcoming given Article 4 (3) of the CRPD and that nothing without us is about us principle. We would recommend that the Bill be amended to require that the Minister appoint a person with disability from a registered Disabled People's Organisation in Fiji.

2. The NGO representatives are appointed for three years. Can the Committee consider that these appointment renewals be staggered, for example, not all replaced at once, so there is some continuity of corporate knowledge. The clause could require that the Council provide all reasonable accommodation to a member of the Council with a disability to enable them to perform their functions effectively. This would mean, for example, if a deaf person was appointed, the Council would have to provide funds for interpreters and not the deaf person to pay. Note these representatives are paid, as according to Clause 19, as determined by the Minister.

Advisory Committees – Clause 12(1),

*“The Council may, from time to time, appoint advisory committees for the purpose of assisting the Council in the performance of its functions.”*

Does this advisory committees include persons with disabilities who are representing Disabled Peoples Organisation?

MR. S. LEDUA.- The advisory committee on Clause 12(2), we also suggest if a representative from Disables People's Organisation (DPO) could also be part of this Committee as a slogan that most often used by persons with disabilities says, “nothing about us without us.”

MS. I. TAWAKETINI.- Clause 12(2) - persons with disability from Disabled People's Organisation should be part of this advisory committees which is not stated specifically in this Bill.

The explanatory notes, this is a very important role since this Committee serves as an advisor to the Council on their roles and responsibilities towards the promotion and protection of persons with disabilities. Therefore, it is only right to include persons with disabilities since they will be the best people to advise the Council and Government on their roles, laws and legislation in improving the lives of persons with disabilities in Fiji. There is no requirement that these committees have persons with disabilities on them, only people with relevant knowledge, this is a shortcoming. Two representatives to each advisory committees from Disabled People's Organisation nominated by the Disabled People's Organisation.

MR. S. LEDUA.- On district committees, sub-clause 13(1), “The Council may establish a district committee in any district as the Council deems fit.”

The recommendation is, we suggest if a representative from the Disabled Peoples Organisations, as I have already mentioned from the above sub-clause, if a representative from Disabled People's Organisation could be part of this Committee.

MS. S. TINAI.- Clause 13 needs an additional sub-clause that reads, “The district committee are to have at least two persons with disability from the relevant district.”

MRS. G. SERU.- Clause 14(6) – The appointment of people to assist the Council, this clause could also require at the end of the clause, and any persons with disabilities shall be afforded reasonable

accommodation. This means that the person with disability could apply for these jobs and make sure they would be supported.

MS. S. TINAI.- Clause 15(1), “The Council must convene quarterly meetings and may call special meetings as and when necessary”.

MR. J. WAKANIYASI.- If we can say that the quarterly meeting, there is a suggesting in the Bill to have monthly Council meetings, we have to get real, how much can we do in one month. At the moment is that, the expenses that are concerned to bring these people together for their meetings and as I mentioned earlier, sometimes we are meeting, we have people giving apologies and sending junior people. We do not want people just to be there and bums on seats, so to speak, so that we can make up the number, so that we can have a meeting that will not go very far.

Quarterly meeting one then we can then mandate that these individuals, an annual calendar could easily be set up, so you have the people that matter actually to be there and then with an M&E framework, we can actually track actual productivity of work being carried out.

Quarterly meeting, it will be just for the sake of meeting. This is the Council, you do not need to meet once every month, and you could meet every quarter because you have got the affiliates of the Council. It is actually carrying out activities on the ground. So, allow them time so that the Council can provide appropriate monitoring and evaluation of the work being carried out.

The makeup of the Council currently and the change as far as the meeting for Clause 16 it is six members of the Council constitute a quorum at a meeting. Our recommendation is that eight members of the Council constitute a quorum for a meeting. This is just because of the request on the earlier section, which we are requesting for three representatives from persons with disability. So, the shift in that number would provide a shift also in this area.

Clause 17 - “(a) – *formulate a 5 year strategic plan setting out the manner in which the Council proposes to perform its functions*”.

Our recommendation is that Clause 17 (a) to read; “Formulate a strategic plan together with monitoring and evaluating framework and budget setting out the manner in which the Council proposes to perform its functions”.

This way you have a holistic because anyone who has worked with disability long enough and if you look at the current FNCDP National Disability Policy and with the 12 thematic areas, there is no measuring tool embedded into the policy, how do you measure that this is being achieved? Who is appropriately responsible for this? To just have a straight plan is not strong enough. It does not validate that, there is a commitment to it, but if it has a monitoring evaluation and framework with it, together with a budgetary allocation, at least we know where we are heading, at least we can then measure, and there are measuring tools that will be in place.

We can also shadow report in DPO saying “yes, that is now happening and tracking” so, we can then be working alongside because the DPOs often look at ourselves as probably the extended arm of any Government in helping, supporting and actually achieving the mandate.

For Clause 17(b) a monitory review every quarter, at the moment it says; “review and revise the strategic plan on an annual basis”. An annual basis is too long. The thing is that sometimes, if you are waiting for 12 months then you get to realise, we have done nothing at all, or we have been heading

in the wrong direction all this time. We believe that there should be a precise time as far as when monitoring is done, so a monitoring review every quarter of activities against budget and outputs and outcomes on a compulsory annual evaluation on targets key performance indicators against the strategic plan.

Sometimes people often can provide and prepare strategic plan, yet the activities and the direction is taken has got nothing to do with the plan, because if it is not budgeted for, or if there is a leeway or is made available, people often are side-tracked. So, that is why the importance of this particular section for Clause 17 is to have very clear and precise KPI indicators on what you are working towards, what you are trying to achieve and the budget that is aligned to it, together with an appropriate monitoring and evaluating framework.

As we go further down, it states on Clause 17(3) – “The first strategic plan shall be submitted to the Minister within 6 months after the commencement of this Act”. We are recommending the same wordings, but together with the strategic plan the monitoring evaluation framework, inclusive of budget for one year. At least the budget for the first year to be submitted within six months, so from the commencement we know for the first 12 months, we can then allocate and then say, “this is the holistic target, this is where we need to be within the next 12 months.”

Can you please note as they go along, the different colour coding that you see is from the different organisations, that is why we are taking turns which is because, we have comprehensive where when we go back to our members, we explain and advocate to them and we also get their input. There could be some duplication that you will see, there are some repetitions but these repetitions are important for us whereby you can then see for yourself the collective, that this is important across the board from the different organisations.

MS. G. SERU.- Caution note - Clause 21 (5) (a) and (b). It is very important to clarify the intent of this clause, example, persons with disabilities have the right to form a representative organisations, Disabled Peoples Organisation, Deaf Association and et cetera under Article 29 of the CRPD, needs to be careful that this proposed clause is not going to interfere with this right, if the Government nominated Council decides to close down a particular DPO.

Clause 22 (b) and (c) allow a registration of a DPO to be revoked if it does not comply with terms imposed by the Minister. We do not yet know what these terms may be. In some countries, Government will be requested that organisations not engaged in advocacy on criticism of the Government. This is a possible risk and would limit the core activities a DPO would be involved in.

MR. S. LEDUA.- Part 5 – Accounts and Finance - Funds of the Council.

On Clause 23, we suggest if this could be mentioned that Persons with Disability or Disabled People’s Organisation (DPO) should have the opportunity to be actively involved in decision making process about the national policies, national plan of action, trainings and programmes including those directly concerning them.

MS. S. TINAI.- On the Annual Report – Clause 25, we recommend that Annual Reports of the Council should be circulated to all members and affiliates which includes Disabled Peoples Organisation before it is submitted to the Minister. That way persons with disabilities will be able to have a fair knowledge on what the Council has done in terms of disability issues and shadow the report.

Clause 29(a), buildings, roads, transportation and other indoor and outdoor facilities including schools, housing, medical facilities and work places, we suggest that the CRPD, Article 9 be better incorporated into Clause 29 of the Bill to reflect this.

Clause 29(a), to promote access for persons with disability to new information and communication, technologies and system including the internet, sending and receiving appropriate information in accessible formats such as large prints, audio and other means of communication that will ensure persons who are blind and vision impairment may be able to send and receive information in ways that is appropriate to them.

Clause 29(b), to promote the design, development, production and distribution of accessible information and communication, technologies and system at an early stage so that these technologies and systems become accessible at a minimum cost.

Clause 29(c), information, communication and other services including electronic service and emergency services. At the moment there is no requirement for Government to provide information in sign language for a deaf person to use. This clause could be greatly strengthened by amending it to say, “give and receive”. Communication in sign language, Braille or other form of communication that will provide a basic or asking resources for interpreters and for Government to provide information in sign language. This should be contentious as it is consistent with the wording used in Clause 40.

Clause 29(f) - accessibility could be strengthened by amending “to forms of life assistance and intermediaries including guides, readers and professional sign language interpreters to facilitate accessibility to buildings, services and other facilities open to the public and adding the word “services” would mean, for example, the right to access to health, education and community services that are open to the public, for example, through the provision of sign language interpreters.

MR. S. LEDUA.- Clause 29 talks about accessibility from (a) to (f). This clause also required the inclusive of the national building code, even though persons with disability have the right to access public infrastructure, the reasonable access of the building was not inclusive, therefore, we recommend the importance of inclusion as to the building code.

MR. J. WAKANIYASI.- For children with disabilities, Clause 30(1): “In all actions concerning children with disabilities, the best interests of the child shall be primary consideration,” inclusive of support to parents/guardians of the children, this is very very important.

I guess if we are looking at the time, I know you all have a very busy schedule, I guess you understand what we have been doing with the way we have been presenting. We will leave this information with you, I am pretty sure you fully comprehend on the why and the processes that we have undertaken. As mentioned, we have worked for long hours on this. We have actually stayed up sometimes over the last week till 2 or 3 o'clock in the morning is because, one was continuing our current work in ensuring that services be provided, we also realise how important this is. For us, it is very important, and you the Committee should also look at the efforts that have been put in place.

Some of the grey areas that might not be indicated clearly there is, you look at things like the data collection and the importance of data. The current baseline of who is providing what service at what given time. Whilst being hospitalised, I acknowledge the Honourable Veena Bhatnagar who is here as Assistant Minister for Health, is that whilst a person is hospitalised, you get the best treatment but the minute when discharged to go home, the services is reliant on civil organisations such as ours.

In the provision of these mobility in appliances to ensure that the individual gets that dignity of service or that continuity of rehabilitation, this is why we keep saying that we are an extended arm of the services that is being provided. So we will not continue which might take up the next 2-3 hours in going through the process.

I guess you have a fair idea and you understand on how we have structured today in preparing for today's submission. For us, like you said that it is very important and there are some grey areas but we believe at the end of the day, the footnote that we are trying to say is that if it is something to do with persons with disability, then our involvement and inclusion into that would then provide at least a better understanding because if you fill up a room (and this has always been our argument) of different national issues and if you do not have a person with disability who is there to speak and voice the persons with disability, we often probably will be put on the back burner.

It is the same way that if you get to realise that, now there is a split or the Pacific Region has been crying out to the international community in saying that the Pacific needs to have its own representations and in its own time to speak because when we were involved with Asia and the Pacific and the African countries, often our issues are left out is because we make a smaller number and other issues take precedence but that does not mean that the problem will go away. So we are hopeful that you take on the efforts and the plight of persons with disability is because it is a growing number. The process is growing and there is a lot of people out there that are looking for direct dependent on actually having that change in their lives, having that recognition, having that sense of dignity and right. We believe it is not a cry out or a plea but we believe it is time that in order for us to progress forward, in order for Government to meet the sustainable development goals earmarked for 2030, it cannot be achieved without the interaction and involvement of persons with disability. We believe that the Bill provides an opportunity that with appropriate service, support and assistance we want to become self-reliant. We could move out of the charity model and not be reaching out for hand-outs but we could be productive members of society that are actually contributing to national development and national building. However, we need to come together now and start working towards that. Thank you.

MR. CHAIRMAN.- Thank you, Sir. You have any other presenter or you have completed?

MR. J. WAKANIYASI.- As mentioned if we continue, there is further notes on the Bill itself, that is then, we are hopeful that you then take the time to read through the continued submission of the Bill, but I am sure that over the last 30 minutes with the presentation, how we have been processing it, you get to realise the difference of the colour coding and you get to realise which areas impact of what we feel. There are some areas we are hoping for a no compromise, as I mentioned. For some areas, we are hoping that there needs to be that continued consultations and discussions in order to make that a reality.

Mr. Chairman, there are women's issues and youth issues. If you look at the National Employment Centre (NEC), the number of people who are registered with NEC, whilst talking to Mr. Cagilaba, Director, NEC, there are about 39,000 people who are registered under NEC and of the top of his head, in one of the advisory meetings, he said that there were about 2,800 of them that indicated they have a disability. Sadly, is that there has been no training since the establishment of NEC on disability specific or inclusive is because one, they do not have the knowledge, skills or the know-how and the other is the training concept. The training that is provided is focused on output.

So, some people do miss out, if you are saying, if one teacher ratio, 1 teacher to 20 students, you might need 1 to 5 when it comes to disability. In order to gain the output and the outcome that is expected to be gained. You need to look at this in its specifics, because there is no one size fits all,



you cannot have that with disability. You cannot say that this particular wheelchair is sufficient for everyone, because you need to look at the person's disability at the user's need, the environment the person lives in, the disability that they have, you cannot have the same thing or as soon as it comes to visually impaired or for sign language interpreters.

As you can see, we are here with Ms. Leona, she has adapted to the two interpreters who are here. This is whereby we can then start one as we go forward, how we can improve to ensure that this service is stressed out. With the end result and I am sure that everyone's goal in life is for independence and financial security. That is every child's goal and that is every parent's dream for their children. It is the same for persons with disability, it is absolutely no different - exactly the same. However, it is up to Government, and it is up to people like us who are up here, if we can be here consulting and discussing on one issue, and let us take this from here out there and continue on that approach.

MR. CHAIRMAN.- Thank you, Sir. I must thank all the members of the Fiji Disabled People's Federation who are present here. For your information, our Secretariat is taking down the points you have raised today. After receiving all the submissions, the Committee will sit and that is where we are going to make our recommendations that will go back to Parliament. Be rest assured we have heard from you and we assure you that as a Committee we will make sure that we see how best those recommendations can be accommodated in our recommendations that will be going back to Parliament. Once again thank you very much. I will now allow our Honourable Members if they do have any clarification or questions, I will allow them at least about 5 minutes.

HON. A.T. VADEL.- Thank you, Mr. Chairman. First of all, I must thank the Members of the Fiji Disabled People's Federation for their presentation this morning. Just to say a few things, I was a member of the Disabled Persons in the West way back in 1980s, and I do not know actually what we were dealing with during those days, because half of the time our Committee did not have a quorum. You rightly said that the Committee should be owned by the disabled people themselves, because they are the drivers of this legislation. Those are my experiences in the West for the last three years from 1985 to 1988. So, when I left Lautoka to come to Suva, that was the last I heard of the Committee and I do not know what actually happened from there on. I agree with you in the formation of the Committee, the Councils and also the DPOs and I agree that people with disability should be in that Committee to actualise this rather than having a vision without actualising the Bill or activities on the ground for the institution.

My question is, in this new formation of the Council, is that being approved by association or the Federation itself?

MR. J. WAKANIYASI.- Yes. There were extensive consultations over a period of time in 2012 and 2013, but we were talking about the UNCRPD itself and it is very important. Disability is a cross cutting issue, isolating it to one Ministry would not really be able to address it. So the representation to Council is very important. That is why if you see the makeup of the Council that we are now requesting for, are quite senior positions within the relevant ministries - Ministry of Health, Ministry of Education, we are talking about Deputy Secretaries to be there.

The representation then from the Persons with Disability, just a few days ago, I think on Monday or Tuesday when we were going through this, at one time we were saying what the appropriate number is? Should we have one per DPO to be there? Should we not say 3, shall we say 5? I say, for me 3 is suffice for persons with disability to be there and if they do not do their part, when they come there, shoot them because the thing is that, getting appropriate people to be there because one, the numbers of people that are out there that are actually waiting or expecting or needing these services is

massive. So, I believe that, and I have always believed that sometimes if we make a Council or a Committee too big, it is very hard to have a quorum. When asking that, already you are asking a Committee that is already made up of 13 people to push that further to an even greater number. The quorum size of whereby 8 people, and if you have 3 already from the disability sector, and we are well supported by the civil society sector. All civil societies in as far as partnership, so NGOs that are relevant, that will only strengthen this, but it is also very important to have the right Government components to be in it because if you look at our recommendations today, one is, we are asking for visibility of who we are and we are asking for accountability of who Government is, and we meet in between to ensure that there is compliance on both sides; that we are visible, our efforts are recognised.

At the same time Government be supportive, accountable and be part of that process. So it is a twin track approach by working together because if we are saying, “okay, it is about us, the Committee should be all of us and just us.” We have always advocated for inclusion, we no longer want to isolate ourselves. We do not want Government to be building special schools, we want Government to be building inclusive schools and having that transition. From the current special schools and then having the transition whereby as far as the deaf community is concerned, we also want the news in the afternoons to have captions. We want the vocational centres, maybe right now you might need to establish vocational centres specifically for persons with disabilities, towards that transition. But I think the two key words at the end of the day is reasonable accommodation is not sufficient on its own, but reasonable accommodation towards progressive realisation, then you are completing the statement, you are completing what we are lobbying for and what we are advocating for is that we are hopeful that one day to be part of the party.

MR. CHAIRMAN.- Thank you, Sir.

HON. A.T.VADEI.- My last question is, who do you think will be your shadow reporting if the Government does not provide or not in compliance with the ratification? Who do you think will be the best institution?

MR. J. WAKANIYASI.- The Disabled People’s Organisation themselves. That is why we are asking that when time the report is prepared, if it could also be submitted to the DPOs is because, one, we are affiliated to the Council. The current structure, we are affiliated and I am pretty sure that the process that we are still will be affiliated. So that way if the Council puts on paper that we have done all these, we have reached 93 per cent of our target and we the people who are the targeted population do not feel that, then we can then shadow the report and say that, “hang on, the 93 percent is....”, say for example, if we are talking about the accessibility to transport, if Government provides the current free bus fare process and say that we have achieved 80 percent of accessibility for persons with disability, how about for those who are physically impaired or who have severe disability who cannot access bus or cannot afford the taxi?

So the thing is that, you could make the percentage by working on an easy component and isolate the important one that could be part of the sustainability component. You have that offset, that is where we say that if we shadow, you can say, “yes, the 93 percent that is mentioned of output was only made possible because 80 percent of the concentration was on these easy areas” but the large areas that we are hopeful for was, the outcome was actually less than 50 percent. So in that way we can have a clear indication as to what should be the primary and priority for the following year. That is why the review, that is all part of the monitoring and evaluating. So every time we do evaluation, when the report for the Minister is ready, it then goes back to the Council and say, “the Council has said this to the Minister but the DPOs are saying this.” Because the DPO’s and the people that are represented to the Council is one and the same. We could then work on it from there.

MR. CHAIRMAN.- Thank you, Sir for your clarification. I will just allow one more question.

HON. M.M.A. DEAN.- Thank you Honourable Chair. It was rather a very fascinating presentation by the Fiji Disabled People's Federation and I allude you for your concerns in regards to the Bill. Do not mind my phone usage in the middle of your presentation, I was taking photos and doing some recordings because your presentation was rather very interesting and I need to keep it for my reference.

I just want to ask one question, has there been any efforts in getting some Memorandum of Understanding (MOU) between the Federation and other Government Ministries in particular with the Ministry of Employment, because I am also concerned about the end result? Everyone wants bread and butter on their table irrespective of the situation they are in, whether they are disabled or not. So has there been any efforts to have an MOU or are you planning to have some efforts with the relevant Ministries to assist you in this regard?

MR. CHAIRMAN.- Thank you Honourable Dean.

MR. J. WAKANIYASI.- Yes, there has been processes and MOUs with some of the organisations. I note that also with the National Council, the Fiji Police Force and also with the Fiji Taxi Union for the first 20 kilometres.

I know for the organisation that I am with, we are now also relooking at the approach for an MOU with the Ministry of Health and Medical Services. This is an appropriate service provision because currently the difficulty on that MOU is the tripartite concept. The three party concept to have an MOU because one is that our development partners who is Australia-based provides the equipment, we are national-based and together with the Ministry of Health, we are now looking also at working with the Fiji National University (FNU) for our training. For some of the service provisions that we have to be embedded into their curriculum. There is also a MOU for disasters that is currently in place with the MDMO and some directly with the medical facilities that are on the ground with Medical Superintendents at hospitals. I have these little clusters of agreements embedded in some of these areas but for your information, we often work very well when it comes to our immediate contact points. Often is the time when we apply for MOU and when they say to get this better recognised and to have the process better, as we climb up the ladder is where we start having barriers.

For example, we go for physiotherapy at CWM Hospital every Tuesday and Thursday and we have one every Wednesday at the Tamavua Rehabilitation Centre where we provide service and equipment. We have the only WHO qualified technicians to provide these services but we work very well with the physiotherapists. The physiotherapists have undergone the training to be clinicians but the time we take that up from there to try, we are supported by the Medical Superintendents in these sectors, they give us the approval, we have the agreement with them, but when we try and have one that is national so we can build a hub for the Western and Northern Divisions is when time all the red tape and the different legislations that come into play and that process takes so long that by the time we get it, there will be a paradigm shift. That is why I said, this is important so by the time we lay that platform, that is the pathway in saying, "this is the process, this is the pathway."

The funding opportunity with the Attorney-General again he was at Brown Street for the budget, and I think he was surprised and shocked himself on Friday on the budget submission that we provided. We said, "Hooray, you are talking about the new changes as far as the annual calendar has



now changed, but for 2016 we have not received our budget allocation from Government. We are putting the submission, we were told that the deadline was in January and in January it was all done.

So these are some of the teething problems that we are hopeful that this Bill would take away. We can say, “okay, if this is the problem, let us sort this out, let us put this behind us and let us move forward with the new process”, because at the moment all that is happening is that I am on this side of the table and you are on that side and we are pointing fingers and you are telling me that these are the other priorities. *Tropical Cyclone Winston* came and changed everything as well, is that an excuse?

MR. CHAIRMAN.- Thank you Sir, for your clarification. Very quickly Honourable Veena Bhatnagar.

HON. V.K. BHATNAGAR.- Members of the Federation, thank you very much for the very strong presentation and some very strong recommendations. So the Committee will be definitely taking all that into consideration and of course the inclusion of the people in the organisation in question is important.

MR. CHAIRMAN.- Thank you Honourable Members. On behalf of the Standing Committee on Social Affairs, I thank all the members from the Fiji Disabled People’s Federation and your team. I was discussing with our Secretariat that in the week after next, we will be visiting some of the institutions. I have also informed him if he can liaise with you so that we can also visit some of your institutions before we actually sit and report back to Parliament. So once again thank you very much for your presentation.

For the information of the Honourable Members, I think the Ministry of Women, Children and Poverty Alleviation are here so we will hear et their presentation straight after this. Thank you members for the submission today.

The Committee adjourned at 11.21 a.m.

The Committee resumed at 12.35 p.m.

**Submittee: Ministry of Women, Children and Poverty Alleviation**

**In Attendance:**

1. Mr. Josefa Koroivueta - Permanent Secretary
  2. Mr. Rupeni Fatiaki - Director
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MR. CHAIRMAN.- Thank you, Honourable Members. I would like to welcome the team from the Ministry of Women, Children and Poverty Alleviation. I am pleased that you are here to present to the Committee on the very important Bill that is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). The time I have allocated to you is 30 minutes for presentation and 10 minutes for question time. I now give you the opportunity to present to the Committee.

MR. J. KOROIVUETA.- Mr. Chairman and Members of the Standing Committee, firstly, I just like to make the humble apologies to seek your forgiveness for we have been the cause for inconvenience to the Committee on two occasions. It was not intentional, Mr. Chairman, Sir, but we are happy that you could give us this opportunity. At the outset, Sir, may I say that the Ministry fully applauds this Bill, I think it has been long in waiting? It represents that we have taken the right to legal leap in the right direction to ensure that the Rights of People living with Disabilities are accounted for, cared for and also we would be able to be responsible for in meeting up to their expectations within their Constitution and the progressive realisation of their rights and also with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Mr. Chairman, we as a Ministry were fully involved in the construct of this Bill and we felt it was a Bill that had undergone quite a comprehensive consultation in its making and there was a good composure of inputs into the makeup of the Bill for that matter. The Ministry feels that this Bill is the first and the only legislation that will uphold the rights of persons with disabilities, and I think that the support for the Bill and the realisation of the Bill will certainly mean that the old FNCDP Act will now be put to rest and gives rise to a very right based approach for people living with disabilities. It also opens a new door that we have been waiting for, so that the rights of people living with disabilities are fully realised in all aspects and also in all measures.

It will certainly look at the services for people living with disabilities. It certainly deals with organisations, institutions, sectors whether it is in the Civil Service or Public Sector and certainly puts a very comprehensive platform where we will take disability as a cross cutting measure and that there will be a certain formula in place whereby each of the sectors will have to account for the areas of services dealing with disabilities. So, we felt that the Bill is very comprehensive. The Bill has carefully considered the landscape that we have in Fiji right now, but there are certain things that we felt as a Ministry that will need to be accounted for, as we have some situational undertakings which will give us a ground measure when we move to implement this Bill on how far we progress as a nation. For this, we need to have a very careful costing study on the impact the Bill will have on various sectors that we have, also situational report basically, looking at the services the organisation is dealing with because in our experience, Mr. Chairman, we have dealt with these disability organisations for some time and we quite understand the turmoil or the maybe frustration that they have and there is a bit of disunity.

I feel that within the Bill, there is the avenue there to organise these organisations so that we deal on a common platform. In fact, the Bill allows that all organisations providing services for people living with disabilities will now have to be registered under the Council, and there is a certain terms of reference or operating procedure for which they will all have to be aligned on, and they have to be under the watch of the Council.

So, there is an issue there about transparency, accountability, credibility as well and it also allows that there is uniformity when we are dealing with people living with disability. We also saw that there is a number of inequalities that has been dealt with within the Bill; equality to education, equality to justice, freedom of movement to liberty, education, health et cetera. However, I feel that as we move with the Bill will be dealing with the issue about equity because even though we might provide equality, but the issue of equity has to be taken into consideration. We may provide equality for all, but there will be an issue of disproportionate benefit that will be provided to people with disability. So, I think the issue too about equity needs to be dealt with as we move towards the realisation of the Bill.

We support the Bill and impress upon the Standing Committee that Fiji should now move onto ratifying the Convention. In doing so, it gives us a very advantageous position within the international community to demonstrate the Constitutional commitment that we have on the rights of people with disabilities and also putting ourselves there, that we are here to be measured, to be accounted for, for the instruments of measurement that is being benchmarked or given out by the United Convention.

We do know, Mr. Chairman, that there will be issues about budgetary allocations and budgetary resources but what we would like to mention to the Standing Committee that since disabilities is a cross cutting issue, there will be issues about budgetary implications, maybe no single allocation would allow for it because it will be at various different positions, whether it is in the corporate, whether it is in the private NGOs, CSOs within the Government, but we feel that there could be some organisations done within basically to determine what is Fiji's stand on this particular place. And of course, we can measure as we go on how much budget has been made and certainly look at the impacts that is made on the different aspects of the Bill, and also the provision of services to people living with disabilities.

We feel that people living with disabilities look forward to see this Bill passed in Parliament, and I think they are just waiting for that opportune time. I think it is a welcome in the right direction for people with disabilities. We know that in the Bill we would be the lead agency, and on that frontier we have braced ourselves on the work that is needed to be undertaken so that we will be accountable for what is in the Bill, both to Parliament and also to Cabinet and also to the higher authorities which is carefully enshrined in the Bill. Having said that, we as a Ministry have had some experience along the similar pathway when we are dealing with the Convention on the Rights of Children. So we have actually been the lead agency in that regard and we have sort of used that platform to set us up for this Bill on a much better horizon, knowing the weaknesses that we had in the implementation of the CRC and what are the strengths that we need to build upon. Maybe, Mr. Chairman, if I will just allow for Director Social Welfare to continue.

MR. CHAIRMAN.- Yes, Sir.

MR. R. FATIAKI.- The Honourable Members of the Committee, adding to the comments made by the Permanent Secretary, we believe that the existence of the Bill sets in motion the legal framework that will encourage communal and national participation in the care and protection of people with disabilities. We are fully aware at the moment that there is a lot of work that has been

done within the community with different civil societies and NGOs, but for a legislation to serve as a check and also to ensure that the protection and safety is covered, in the past we did not have it.

This Bill enables not only serving as a framework that will encourage communal and national participation but it also serves as a framework where you can bring in to line all those who are currently rendered that service is abused because we are fully aware that there are people who can come over night claiming to be working with the disabilities with an ulterior motive. The Bill brings that kind of work into check because there is a legislation, for example, what the Permanent Secretary had mentioned, all NGOs and Civil Societies that will be working with disabilities will have to be registered with the Council, and so that gives us the framework and the guideline to ensure that your safety and protection are covered, not only that, but the Bill enables us to check on those who are wanting to work with persons with disabilities.

Likewise, the Bill also requires any ruling Government of the day to provide resources and funding for the implementation of the recommendations which again is in line with the Constitution. So whatever ruling Government is on the day, the Bill requires that there will be a need for commitment and contribution to resources and for funding to ensure that the recommendations of the Bill are implemented. If we are to ratify the Convention then it requires us as a nation to periodically report to the United Nations on the progress that we have achieved so far in line with the Convention likewise our local legislation which is the Bill.

I think the existence of the Bill helps us to also improve. The Bill is, I would say, an initial legislation but once you have that Bill coming into practise, it gives us as a nation to continue to improve other legislations that is going to be related to the Bill. For example, in accessibility and travelling, I mean there can always be improvements of our legislations or amendment of current legislations that will contribute to the Bill, but the Bill is the main document that would enable other legislations to comply with and make amendments so that it addresses the needs of the persons with disability.

MR CHAIRMAN.- Thank you, Sir. Would you like to say anything else?

MR. J. KOROIVUETA.- Yes, Sir, just in closing I wanted to say that this Bill puts us as a State in a very powerful stand in how we have made our constitutional commitment and certainly we will raise our flag in the United Nations circle that we as a State have made this commitment and this is the way forward. It is like a promise that we have made not for ourselves but for people living with disabilities, that we mean as a nation will take them on board to be included in our society in whatever the frontier, whether it is a formal or informal sector, whether it is in the Civil Service or corporate NGOs and that we are basically giving them that opportunity in life that has never been given to them before. Thank you, Mr. Chair.

MR. CHAIRMAN.- Thank you PS for your presentation and the Committee understands it is a very important Bill. It is long overdue. I would like to raise one clarification, most of the submissions we have received, they are talking on the implementation part as we discussed the ratification of this. I know it is not an easy thing, you would not be able to do it in a short time, you will need time, but is there any targeted timeline? When do you expect our country to be ready to ratify?

MR. J. KOROIVUETA.- We were actually looking at if we could do it by this calendar year, but that is subject to higher authority and approval.

MR. CHAIRMAN.- So we are targeting for at least one year?

MR. J. KOROIVUETA.- Yes, Honourable Chair.

MR. CHAIRMAN.- Thank you PS.

HON. A.T.VADEI.- Thank you PS and Director for the presentation regarding this very important document. This is in Committee stage, we have not finalised it yet before it is presented in Parliament. We also note that you were supposed to come on Monday and with your busy schedule you are appearing today. You will also nominate a country for us to visit in relation to those that have implemented this Bill. So after this, you will give the names of those countries, whether regional or international to bolster and re-affirm some of what we have heard from the presenters that have presented to us.

My question is, that if this Bill is going to be passed, how long will it take for the Ministry to provide a National Plan of Action to capture all the values, all your plans, budgetary financial and the commitment from down the society right up to the Government as a commitment by Government. How long will it take your Ministry?

MR. J. KOROIVUETA.- Thank you very much, Honourable Member and also Honourable Chair. As a Ministry, we know that we are the lead agency, but it all comes under the Fiji National Council. I think what is being enshrined within the Bill is to do it within six months; the Strategic Plan. So I think in this submission we made note to that, the various plans that needs to be put in place, so there be Strategic and also the Annual Plans. It has to be a very comprehensive plan, like I said because it is a cross-cutting agenda across a number of agencies in that regard. So it needs to be a budget done in consultation with multi-stakeholders in that regard, but I think it should not be more than six months.

MR. CHAIRMAN.- Thank you PS. As you have said, you are giving a time line of six months or maybe it will go further. In that line have you requested for the budget allocations of what you are planning to do ahead?

MR. J. KOROIVUETA.- No, we have not requested for a budget allocation specifically for this particular activity, but we feel that we can do it with the number of partners that we have. They certainly can come on board because I think with an agenda such as this, we certainly will be expecting quite a number of partner agencies and donors and that is why in the written submission we said, one of the issues moving forward, they need to put in place a donor or partner agency co-ordination forum basically, because we wanted to ensure there is no double or triple dipping by different agencies and the money that they put in is streamlined towards special benefit or measure and no one is really doing any double funding on any particular activity in that regard.

MR. CHAIRMAN.- Thank you PS.

HON. M.M.A. DEAN.- Thank you PS and Director for your presentation. I just have one issue to raise and I will supplement that with a question and this is in regards to the MOUs. What we have heard from the submissions from the different organisations that are part of disabled organisations, the problems they have in finalising the MOUs. They say they start the process and somewhere because of some legal barriers, they are not able to do so. So, I am anxious to know if there is any MOU between your Ministry with other organisations which deal with disabilities? Thank you.

MR. CHAIRMAN.- Thank you, Honourable

MR. J. KOROIVUETA.- We have it with the Fiji National Council and the disability organisations are affiliates to the FNCDP in that regard, but certainly with the Bill coming into effect, that will certainly change. We certainly do what we call “Grant Agreement” with some of the organisations dealing with disabilities and like every other Grant Agreement, it has to be cleared by the Solicitor-General’s Office and we have made known to them that, unless and until that is done then only can funding be made available to their organisations.

The challenges that we as a Ministry face, Mr. Chairman, is not with grant itself by it is with the acquittal by the different services organisations. So, it is the acquittal that becomes a hindrance towards further grant disbursements. We have talked about it and we said that maybe in the new era that all organisations now need an Annual Report and an Audited Financial Report to ensure that everyone is accountable, transparent and everyone is playing on the same playfield.

MR. CHAIRMAN.- Thank you PS.

HON. V.K. BHATNAGAR.- Thank you PS and Director for the presentation. Just one concern, time and again when the presenters were giving their submissions, a lot of times the recommendation was on the composition of the Council. They said that it should be inclusive of the people in the organisations in question, that is the disabled people, and they said that is not included in the composition of the Council. Do you want to highlight something on that, or what do you think?

MR. J. KOROIVUETA.- There is a clause in the Council that says that “... at the discretion of the Minister he can have three selected NGOs.” So, I think that they can certainly come in there.

HON. V.K. BHATNAGAR.- Thanks for that PS. Actually that was brought up, but in some of these submissions they said that they need at least three. So, I wondering if the Minister would be recommending three from the disabled associations because there are quite a lot of them. Let us see how we go about it.

MR. CHAIRMAN.- So, that means that three members which is stated in the Bill will be coming from the disabled organisations?

MR. J. KOROIVUETA.- Would very well be, Mr. Chairman, but there is also the option to include them as observers which is also captured within the Bill. So, there is no closed door basically, they can come in for a specific agenda or specific activity or for a specific matter for that regard. So, it is pretty flexible to us as we are reading.

HON. V.K. BHATNAGAR.- That is exactly what they were pointing out, the specification is not there but I do not know whether we want to put it specifically because that is exactly what they kept on recommending that the specification is not there.

HON. A.T. VADEL.- Thank you Mr. Chairman, just to add on to what I asked before on Clauses 42, 43 and 44 that is on Education and Health. There is no mention of early detection or early intervention. The Bill only states that once it is a grown up, how can you factor that in the Bill so that it may include those children and also with that regard, the centralised data collection that might come in. So, how can you formulate that in your National Plan of Action?



MR. J. KOROIVUETA.- I think Mr. Chairman, those are two very important matters that certainly the Council will have to deal with and without proper data collection, then you obviously cannot put up a very strong policy in that regard. Initially the early detection certainly can come in the form of a policy for that matter, to go hand in hand to with the Bill. I note an important issue, we are talking about challenged children for early detection so that they will be given the early intervention to ensure that they are cared for, for the disabilities they have in that regard.

MR. CHAIRMAN.- Thank you Honourable Members, PS would you like say anything else before we close for today?

MR. J. KOROIVUETA.- I would like to thank the Standing Committee for allowing us this time and apologies again.

MR. CHAIRMAN.- Thank you PS and also Mr. Fatiaki for your presentation to the Committee. As I have said we have been receiving submissions and a lot of views are being taken note of, but I feel that the separate institutions have been trying to put their views in and see how best they will be accommodated, but this Bill is catering for all who are disabled in the country. On behalf of the Committee, thank you very much PS for coming forward and giving us that information. If we will require further information, the Secretariat will liaise with you.

The Committee adjourned at 1.03 p.m.



The Committee resumed at 3.00 p.m.

**Submittee: Ministry of Local Government, Housing and Environment**

**In Attendance:**

Mr. Joshua Wycliffe - Permanent Secretary

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MR. CHAIRMAN.- Thank you, Honourable Members. I would like to welcome the Permanent Secretary from the Ministry of Local Government, Housing and Environment Mr. Joshua Wycliffe and they are here to present to the Committee on a very important Bill that is the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). For the information of PS we have been receiving submissions from various ministries and organisations and now I invite you Sir, to present to the Committee your submission.

MR. J. WYCLIFFE.- Thank you Sir. *Bula vinaka* and good afternoon Honourable Members. We are glad to be here this afternoon to present our side of the contribution within our Ministry towards Bill No. 12 of 2016 – Bill on Rights of Persons with Disabilities. We have done a comprehensive/collective input impacting all our Departments which is Housing, Local Government, Town and Country Planning and also Department of Environment. I had a Powerpoint presentation, the soft copy was sent but I am happy to discuss that one by one and please if the Honourable Members would have any questions, I am more than happy to be interrupted and asked questions.

I will start with the background of this whole thing, the Ministry of Local Government, Housing and Environment in submitting this document and through this discussion fully supports the Bill and there are various reasons which we will highlight today.

The provisions for housing in Clause 46(1) and Clause 46(2)(d) requires, “Persons with disabilities have the right to an adequate standard of living for themselves and their families...” this includes adequate food, clothing and a roof over their heads and with a continuous improvement of living conditions. So this directly impacts all our departments within our Ministries. Pursuant to sub-clause 1, the right to an adequate standard of living includes “access to the housing, not just acquiring a house or renting a house but also being able to enter into a dwelling and come out of a dwelling with suitable standards.

This work activity, although in a small way has started within the agencies that we have but this Bill would actually make it mandatory and helpful to make sure that everyone has access. This means access to living conditions which means your everyday bathing, washing, hygiene and things like that. So what we would like to do as a Ministry is to contribute, request and recommend that a holistic approach be taken. Elsewhere in the region, other countries follow this approach where it is holistic, when you take a household, the living conditions which comes under the sub-clause means there is a case by case thing. So if is the person who is living in that house has disabilities, for example, mental disability or physical disability, then agencies come together and put together a package for that person living in the house. So, that is the approach that as a Ministry we would like to have, work collaboratively with other agencies and put together a package for the people would live there.

When this Bill goes as we support it, we would ensure that all Government Housing Programmes which is of Housing Authority, Public Rental Board and HART, which is our housing side of agencies would take care of it and our Department of Housing within our Ministry will ensure

that this is adopted and all our Housing Grant Programmes as well. So taking into consideration whatever assistance the Government provides, we will recognise disabilities as well. That is as far as housing goes.

Now with the Local Government, we have already had towns and cities that have been promoting disability friendly environments. The Town Planning Act (Cap. 139) has general provisions under the 1999 where it has specific requirements for developers on a developed a town or a city to provide disabled car parks, ramps and footpath for public facilities to be disabled friendly. This would also include putting up appropriate signage showing that there are disabled parking available and disabled access to public hygiene facilities like toilets. Any new municipal infrastructure including all sporting facilities should have facilities put in place, so anything that is being developed newly under the municipal infrastructure would need to be disabled friendly. So this Bill would actually directly impact that and push this as way forward.

A key example of where this is happening now is Nausori Municipal Market which it is designed to ensure it is easier for disabled people to access and has a disabled restroom and also footpaths for the disabled people. This Bill would again support us to be ensuring this to happen and other municipal councils as well using Nausori as an example.

One of the key challenges faced as noted in the towns and cities has been the movement of mentally disabled people and that is growingly seen or being recognised in the local town councils that we see. This review is largely welcomed to address disabled people and mentally and like I said earlier, like how we put a housing package together for disabled people, we look at mentally disabled people as well and see how a holistic approach or multi-agency approach can be taken, for instance working with mental health and being able to put a package that is comprehensive along with the Local Government. This would go a long way in supporting that.

Another key area that Local Government would promote is involving disabled people into economic activities. After *TC Winston*, Local Councils are going in a large way to have economically resilient towns and cities. So we really want to make this economic activity strong so involving the disabled people into the economic sector, there are countries that I have seen where disabled people have telephone booths, small vending machines or small vendor businesses that they could do. It is happening to some extent already with municipal markets, we would like to have this formally done if this Bill goes through, and we support it.

The Disabilities Bill will help assisting service people under a formal sector and cover a broad range of issues that we face, if there are any by defining what discrimination is, by defining rights especially during and after disaster. When the disaster comes and goes, people get a blanket relief, so many things go to so many people in an affected region, so many households are identified and support is provided. But with a Bill like this what happens is then we could look at possibly having a special balanced treatment towards disabled people, considering that they are not like the other people who receive relief and relief help. Post disaster management, we could have disabled people included as well. It probably is happening informally now but this Bill would help it to be more formal.

In terms of Town and Country Planning, the role of the Department comes in at the implementation stages, as in the regulations part of the Bill, in particular under Clause 29 which talks about the accessibility. It provides us with they have to have a reasonable adaptation of buildings and infrastructure towards disabled people, like I said earlier, ramps, having disabled toilets, disabled hygiene facilities, lifts, escalators and also to reasonable access to all indoor and outdoor places, and like I said, car park and sanitation.

Additional areas that could possibly get included when this Bill gets enacted or if it is successful is:

- open spaces or recreation reserves to be set aside for access for wheelchairs and people with disability;
- providing provisions to include residential zones where we could have high-rise and multi-storey buildings;
- subdivisions that we do under Town and Country Planning, we could ask for concrete footpath at least on one side of the road to provide wheel chair access again and walker friendly framework;
- specific schedule and regulation on facilities for the disabled is also being recommended as part of the amendments and the revision of the town planning laws that are going in.

So that is basically the summary of what we would like to and how we would like to support this Bill and our contribution. Honourable Members, if there is anything else that we could answer, please feel free to ask us now.

MR. CHAIRMAN.- Thank you PS for that presentation. Very important information has been given to the Committee and that will help us during our report writing back to Parliament. Actually some of the views that you have presented to the Committee, if this Bill goes through Parliament and becomes law, what actually is the timeframe you are looking at to get all those facilities available for the disabled people?

MR. J. WYCLIFFE.- Thank you, Mr. Chairman. These are major changes to what we are doing. Although the size of changes that we have to make is not as large as the majority of the population, this would require lesser amount of time but if you go to say nowhere in the world, is it perfectly disabled friendly. Things are always evolving constantly but from our perspective, we have got 13 to 14 town councils coming up totally. So, to make it all disabled friendly would take at least one to two years to come up with a proper timeframe for that. Under housing, similar timeframes from there on we will have to identify the number of disabled houses and set aside so many stocks and the fresh ones that we build, so, I am looking at about one to two years.

MR. CHAIRMAN.- Thank you PS. Honourable Anare Vadei.

HON. A.T. VADEI.- Thank you PS and the team for coming forward to present your support to this Bill. It is quite long overdue document and I believe that it is right time now that we work towards it. There are few questions that I have, what sort of rehabilitation work will you install in parks to assist rehabilitation programmes for the disabled?

MR. J. WYCLIFFE.- First and foremost, what we do is, in a service oriented model, we first identify the size of the need and then put a proper plan in terms of designing rehabilitation work. In answering your question as to what type, like I said, if you talking about parks, we will ensure that the parks have disabled friendly, like for instance, with ramps for wheelchairs to be brought in, also recreational activities within the park for the disabled people and especially the disabled children and also proper signage within the parks that will show how rehabilitation can be successfully done.

Again the timeframe to be able to do that would go at least easily about a year, we will have to identify park after park and town council after town council and establish the rehabilitation work.

MR. CHAIRMAN.- Thank you PS.

HON. A.T. VADEI.- My next question is on the OHS Evacuation. What sort of drills will be put into place in your municipalities, not to forget the disabled in those communities, in the housing and public places in your municipalities?

MR. J. WYCLIFFE.- Thank you. The way forward on that would be first and foremost having a proper signage installed in different apartments for housing, and in public facilities in terms of assembling areas and things like that. Secondly, we also will look at one other option where we have announcement PA systems in buildings and public areas where if there is an emergency like you mentioned, there is a clear cut information announcement made to disabled people. Thirdly, if it is a public place, we do have wardens who lead the emergency drills and the wardens would be specially trained. When we talk about municipalities, wardens would be trained as to specifically attend to disabled people in terms of not just rescue work but prevention work as well in time for the emergency work so they can be cleared and rehabilitated outside.

MR. CHAIRMAN.- Thank you PS.

HON. V.K. BHATNAGAR.- Thank you PS and the team from the Ministry of Local Government, Housing and Environment. Thank you for your presentation and in your presentation you highlighted the current and the future or proposed developments. You also mentioned that there needs to be a multi-sectoral approach. I fully agree with you and I believe that given this approach and having this positivity, we will achieve most of the rights in the proposed Bill. So, thank you for your presentation.

MR. J. WYCLIFFE.- Thank you Madam.

HON. M.M.A. DEAN.- Thank you PS for your presentation and I also welcome my former Economics Teacher, Mr. Azam Khan and I am happy to see you. I believe you are the Director now and I applaud you for your appointment.

I only have one issue which I believe has been very well said in your presentation in regards to the implementation. The submissions we have been getting, we have been a bit concerned about the practical aspects of how we can accommodate the provisions of this Bill and apply it in real life scenario. I am happy to say that given your presentation, after inferring as to what you had to say, that you will undertake measures to cater for the disabled people especially in terms of municipalities and town council areas, so I just wanted to ask that question, but I think you have already answered that in your presentation. I applaud your department for the future plans that you already have in place to cater for this Bill in your act and the measures that you will be undertaking. Thank you.

HON. A.T. VADEI.- Mr. Chairman, I have got my two questions. First one, do you agree that there is a need for a National Plan of Action, because I saw your composition of the Council, you are one of them. So, my question is, will there be a national plan of action for this Council with the funding of these activities to be factored in that plan of action for our country, if this goes through as a law?

MR. J. WYCLIFFE.- Thank you, Sir. One thing I can categorically say is that we will have to take a multiple agency, multiple sectoral approach and there is no doubt about it. Fiji is seeing this for the first time and there are other models from our neighbours and other countries elsewhere, where they have multi-sectorally worked very successfully together and come up with a plan and so, the

multi-sectoral plan towards that, engaging and you have rightfully done it so far, you have brought in all the agencies together and you are listening to them. Now, that you are going to be summarising your report, putting it back and that report will form the basis for a plan where all sectoral agencies will work together on that and obviously with PS level or Director level we come together and form a panel and that panel will decide on the way forward having milestones and how the milestones can be approached and achieved and final outcomes out of that milestone with timeframes like Honourable Pillay had asked. We have timeframes for each of those and we approach it together. So, like I said, yes, I support a multi-sectoral approach and the plan will come out of the Report that you prepare and present to the Parliament again and we take it from there, and the funding will have to be from there too, obviously.

MR. CHAIRMAN.- Thank you PS.

HON. A.T. VADEI.- In regards to the development of national parks in the local municipalities, will this be an additional burden to the rate payers or what do you propose?

MR. J. WYCLIFFE.- Thank you very much Honourable Vadei. At this point in time we have no such plans of putting up extra rates. We will have to make do with what we have at this point in time.

MR. CHAIRMAN.- Thank you PS. Would you like to say anything before I close for today.

MR. J. WYCLIFFE.- Thank you very much for having me and my colleagues here, we appreciate the opportunity to be able to meet with the Parliament Standing Committee and provide our views. Thank you once more.

MR. CHAIRMAN.- On behalf of the Standing Committee on Social Affairs, I would like to say thank you PS. The Committee really appreciates the presentation and as we will be sit together later in the formation of the report, your submission will really assist us. I request that you to join us for a cup of tea before you go.

The Committee adjourned at 3.19 p.m.

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AFFAIRS HELD IN THE COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON TUESDAY, 21<sup>ST</sup> JUNE 2016 AT 9.55 A.M.**

**Submittee: Pacific Disability Forum**

**In Attendance:**

- |    |                      |   |  |
|----|----------------------|---|--|
| 1. | Mr. Katabwena Tawaka | - | Programme Manager                        |
| 2. | Ms. Angeline Chand   | - | DPO Development Officer                  |
| 3. | Mr. Shane Antonio    | - | Disability Inclusive Development Officer |
| 4. | Ms. Naomi Navoce     | - | Gender & Youth Officer                   |
| 5. | Ms. Laisa Voreti     | - | Research & Development Officer           |

MR. CHAIRMAN.- Thank you, Honourable Members. On behalf of the Standing Committee on Social Affairs, I would like to welcome Ms. Angeline Chand and the team from Pacific Disability Forum. Today, they are here to present to the Committee on the very important Bill, Bill No. 12 of 2016 on the Rights of Persons with Disabilities.

Welcome, Madam and Sirs, and now I give you the opportunity to present to the Committee.

MS. L. VORETI.- Thank you very much, Mr. Chairman. Good morning Honourable Members. This morning we bring warm Pacific greetings from the Pacific Disability Forum and thank the Committee for the opportunity to make submission and present on Bill No. 12 on the Rights of Persons with Disabilities Bill 2016. May I take this time to explain to our colleague, Ms. Angeline, those us who are present in the room.

Ms. Angeline, the Mr. Chairman, Honourable Pillay is seated on your far end at the centre facing myself, on your right at the far end is Honourable Salote Radrodro, next to her is Honourable Anare Vadei, on the opposite side to the far end is Honourable Veena Bhatnagar and at the far end at the corner, next to Honourable Bhatnagar is the secretariat. Thank you.

To your right is Kata, to your left is where I am sitting, next to me is Naomi and on the other side of Naomi is Shane. Thank you.

Thank you Mr. Chairman. Let me briefly introduce the team and we bring apologies from the Chief Executive Officer of the Pacific Disability Forum, Mr. Setareki Macanawai, who is away on travel duty. We are here with our Head of Programme, Mr. Tawaka; Ms. Angeline is our DPO Development Officer, she looks after all our DPOs in the region; to my far left is Mr. Shane Antonio and he looks after our disability inclusive development programme; Naomi is our Gender and Youth Officer and I am Laisa, Research and Development Officer.

For the presentation today we will take turns to present parts of our submission. I will start with the introduction and will conclude as well. Naomi will talk briefly on the background of persons living with disabilities. Shane will speak on the political mandate. Our Programme Manager, Mr. Tawaka, will briefly touch on some of the issues for consideration of the Bill, and then I will conclude and will be happy to answer questions and queries later on. We apologise, our written submissions will be delivered to your office today.



A submission presented by the Pacific Disability Forum to the Fiji Parliament Standing Committee on Social Affairs, 21st June 2016. The Pacific Disability Forum welcomed and supports the endorsement of the Bill No. 12 of 2016 - *Rights of Persons with Disabilities Bill 2016* by the Fiji Parliament and reiterates its submission made to the Standing Committee on Foreign Affairs and Defence on the ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by the Government of Fiji at its earliest convenience. Legislating the Rights of Persons with Disabilities Bill 2016, Fiji will demonstrate to its neighbours in the region and international community of its commitment towards ensuring the protection, enjoyment and fulfilment of all human rights by all persons with disabilities in the country.

We recognise that persons with disabilities are amongst the poorest and the most marginalised members of Pacific communities, including Fiji. They continue to face many barriers to their full participation in society on an equal basis with others. Evidence suggests that numbers are increasing due to high rates of diabetes-related amputations and blindness, these are some of the common causes of impairments. The rising incidence of traffic and industrial accidents, and the ageing of populations will exacerbate the population of persons living with disabilities or the disability population.

MS. N. NAVOCE.- Honourable Committee Members, persons with disabilities are marginalised and disadvantaged minorities, whose voices are not adequately heard and whose concerns are not usually addressed. They often face prejudice, discrimination and rejection.

Honourable Members, persons with disabilities do not enjoy equal rights to development and participation in community life, and are disproportionately represented amongst the poorest members of the community. Persons with disabilities lack adequate access to public buildings, transportation, roads, information, justice, and services, and that includes hospitals, roads, workplaces and the courts. There is a building code which, I believe, we have - the Fiji National Building Code 1990, which ensures accessibility for persons with disabilities, but without proper monitoring and enforcement to ensure compliance.

Persons with disabilities do not enjoy equal employment and training opportunities or decent work on the open labour market; so are deprived of earning an income, making a living, and having the opportunity to live independently. I believe there is a quota system for the employment of persons with disabilities provided under the Employment Relations Promulgation 2007 – Section 84 (4) but it lacks implementation, monitoring and enforcement.

Honourable Members, persons with disabilities particularly children who are disabled are denied the opportunity of a quality education on the same basis as other children. I believe there is a quota system for the employment of persons with disabilities provided under the Employment Relations Promulgation 2007's Section 84(4)) but lack implementation, monitoring and enforcement.

Honourable Members, persons with disabilities particularly children with disability:

- are denied the opportunity for quality education on the same basis as other children; and
- continue to be shut out of the regular education system for a range of reasons, including fear, anxiety or the shame of the part of their parents, prejudice from the community or the absence of accessible buildings, ramps, transportation, curricula and teaching/communication formats to accommodate the full education system for children with disabilities.



Mr. Chairman and Honourable Members, for women with disabilities, we:

- are subjected to multiple forms of discrimination because for our gender and because of our disability, in particular women with social disabilities and women with intellectual disabilities;
- experience a higher rate of family based violence, abuse, sexual harassment and exploitation than other women in our community; and
- face obstacles in accessing health services, including reproductive health services due to distance, transportation difficulties, stigma and prejudice.

Thank you, Mr. Chairman and Honourable Members.

MR. S. ANTONIO.- Good morning, Honourable Committee Members, as mentioned, I will be presenting on the political mandate of the secretariat's submission this morning.

The Fiji 2013 Constitution upholds a wide range of constitutional rights for persons with disabilities. For example, Section 26 - Right to equality and freedom from discrimination states, and I quote:

“(1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.”

It goes on to state in Section 26(3), I quote:

“A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her —

- (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language...”

including disability.

It also goes on to say that the proprietor of a place or service must facilitate reasonable access for persons with disabilities to that establishment.

Furthermore, Section 42 -Rights of persons with disabilities states, and I quote:

“(1) A person with any disability has the right —

- (a) to reasonable access to all places, public transport and information;
- (b) to use sign language, Braille or other appropriate means of communication....”

It also states that a person with disability must have access to necessary materials, substances and devices relating to the person's disability.

Section 42(2) & (3) states, and I quote:

- “(2) A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights.
- (3) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.”

Honourable Committee Members, these Sections in the Constitution are consistent with the following Articles on the Convention on the Rights of Persons with Disabilities which is Article 5 - Equality and non-discrimination and Article 9 – Accessibility.

The Fiji Government has had a National Policy on Disability in place since 2008 which is based on the principles of inclusiveness, the removal of exclusionary physical, social and cultural barriers, and the protection of human rights. The Policy is aligned to the Biwako Millennium Framework and CRPD. Thank you.

MR. K. TAWAKA.- Honourable Members of the Standing Committee, my task is to try and talk about some of the issues for consideration. We have three broad areas that we would like to bring forward to your attention while we fully support the endorsement of the Bill.

The first one is on page 4 of the Bill. I feel it is important that we look into the definition of disability that is highlighted in the current Bill. We have currently a few definitions and somehow, it may lead to confusion. We have 'deemed to be disabled', we have 'impairment' and then we have 'persons with disabilities'. What we are proposing is because the Pacific Disability Forum currently focuses its work along the CRPD and not to be driven by other documents or the way people think.

We know that there are three types of approaches to disability. We look at it from a medical prospective, we look at it from a charity and PDF believes to look at it from a rights-based prospective, and given the definitions that are currently in the Bill, it highlighted all these areas. First, it looks at health and that becomes the impairment, we would like to refer it back to the current definition that is in the CRPD which is on the latter bit of page 4 where it talks about persons with long term physical, mental, intellectual et cetera.

We are suggesting that the words 'deemed to be disabled' be removed from the Bill because it focusses on the health status of the person. It may lead to discriminatory decision making when people looking at health and not at the physical being of a person where the definition talks about that. That is the first consideration we are asking for.

The second one is the composition of the Bill itself. We believe the heading of the Bill talks about the rights of persons with disabilities and we have....

HON. S.V. RADRODRO.- I apologise, Mr. Chairman, can I just intervene. Can we go back to the first point of consideration, which part of the Bill you are referring to in there?

MR. K. TAWAKA.- On page 4, then we have definitions, the first one, third line that has 'deemed to be disabled'. The next one is 'impairment', it all leads to the broader definition of disabilities. But if you look at the current explanation it is more focussed on health-related diseases.

The last one, when you look at the persons with disabilities, according to the CRPD it stops at the words, "equal basis with others." Within the Bill, it is added "but does not include -

- (a) tendency to set fires;
- (b) tendency to steal;..."

For us, Honourable Committee Members, this is more as a behaviour. It is not a person of a being, it is more or less whatever aspires from the behaviour that you tend to set a fire, so we believe that it takes us away from the actual definition of being a disabled person. So, we are suggesting more changes to that when we define the work later, it does not discriminate the way we think.

If I may move on, the second one is the composition of the Bill itself. Currently I believe there are seven major parts of this Bill and the Bill is for the Rights of Persons with Disabilities. From Parts 2 to 5 we are talking about a structure. It contradicts the title, so we are suggesting if the rights could move forward and links with the name of the Bill, so that the emphasis is on the right and not on the structure of such a body. That is our suggestion for that particular Part.

The third one is more or less an insertion of a critical member that needs to be within this Bill. I would like to re-enforce the work that we do in terms of the work with the Convention on the Rights of Persons with Disabilities and according to Article 4.3 it highlighting the central role of disabled person's organisations because they are the ones who live in and out of disability.

There is slogan that says "nothing about us without us", so in order to ensure that that is implemented they need to be within the decision-making upfront and if they are not upfront then people will be doing decision-making assuming what they think is best. It is always good to sit with them in the same room, discuss with them in the same room and come out with programmes and implementations plans for that. Those are the three broad areas we would like to bring out our consideration. Thank you very much.

MS. L. VORETI.- Thank you, Honourable Members. Mr. Tawaka has reiterated on consideration for the definitions around disability and one of the biggest stigma we face as persons living with disability, sometimes people look at us as being sick because we have a disability and we are more discriminated on that basis.

In concluding the presentation this morning, I would like to draw the attention of the Honourable Committee Members to the development at the regional level. In the region, 10 countries including Australia and New Zealand have ratified the Convention for the Rights of Persons with Disabilities. Out of the 10 countries, minus Australia and New Zealand, if I take the eight there is only one country in the region who has a comprehensive Disability Act that is compliant with the Convention, and this is the Republic of the Marshall Islands. Marshall Islands acceded to in March 2015 and the Disability Act came into force in October 2015.

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The other country in the region who has a Disability Act is Cook Islands but they have the Disability Act 2008 and they ratified it in 2009. So, their Disability Act is not fully compliant with CRPD but after their first reporting there has been recommendations for the country to look into making sure that the Disability Act is in compliant with CRPD. In the region, countries have ratified CRPD and have progressed beyond ratification into adopting appropriate legislation and conducting law and policy reforms.

The Republic of the Marshall Islands is the only country in the region that has a comprehensive Disability Act that is compliant with the CRPD. Fiji, through the enactment of this Bill will demonstrate again, its leadership in the region on issues concerning persons with disabilities and the Pacific Disability Forum commends the efforts of the Fiji Government to make the right real, for persons with disabilities in Fiji, and ensuring that the rights and the interests are protected, promoted and enjoyed by all Fijians living with disability.

Thank you, Mr. Chairman and Honourable Members.

MR. CHAIRMAN.- Thank you, Ms. Angeline Chand and the team for presenting to the Committee. Thank you for supporting the Bill. Your views have been taken note of by our secretariat and surely this Committee will sit at a later stage together before reporting back to Parliament and those views will be discussed upon.

Now, I would like to give the opportunity to our Honourable Members for any clarifications and questions.

HON. S.V. RADRODRO.- Thank you, Mr. Chairman, and a big thank you to the team for your presentation this morning. I am glad that you have highlighted very pertinent and important issues in terms of the implementation or the enforcement of the Act. You have focused there and what I would like to ask, even though you are sort of the recipient organisation in terms of the enforcement of this legislation, in view of the implementation or the monitoring even though you have highlighted that this is the place that we in Fiji needs a lot of improvement on and I believe it is mainly due to resource challenges that we have and in terms of monitoring and evaluation, how does the Pacific Disability Forum get your information from in terms of the enforcement of the Bill and in terms of the monitoring and evaluation?

MS. A. CHAND.- Thank you, Honourable Member, as for the Pacific Disability Forum, we have member disabled peoples organisations in the 19 Pacific Island countries. So, the information we get is through them, through our regional partners as well and at the international level, we also work with the International Disability Alliance which supports ratification reporting for national disabled people's organisation.

In terms of your question on resources, the Convention is very clear on the words 'progressive realisation', things that we could do now, for example, we have 17 special schools in the country. A start off with that would be converting some of those schools as resource centres, so I do not think it will require a lot of resources. However, appreciating that some policies and legislation recommendations will take time and this could be addressed through progressive realisation.

HON. A.T. VADEI.- Thank you Mr. Chairman. We are in the process of domesticating this Bill to enact as a law in our country. This will be a multi-sectoral approach to the issue. What I

am asking is; how long do you think will take to formulate a national plan of action so that we can drive, otherwise we are going to make the law and no one is going to implement it? So that you can have a budgetary allocation and can have the approval of the Parliament.

MS. L. VORETI.- Thank you, Honourable Vadei. Can I just retract when you mentioned domestication of this, domestication for us would mean this Bill to enact the Convention and, of course, resources is always a constraint but for CRPD it talks about international cooperation. So, the Pacific Disability Forum along with countries that have ratified and are looking into policy reforms and are thinking about legislation to make it compliant, we work with development partners, that have the expertise and support in that case. For example, when the work was done in Marshall Islands, it was one of the projects that PDF was co-ordinating and PDF together with PIFS and UNESCAP worked on a legislation and compliance review for Marshall Islands.

I believe for us, apart from our national member, our first point of contact with the national government will be the ministry where we are housed and that would be the Ministry of Social Welfare. It would require consultation for an Action Plan to action the current policy and that Action Plan needs to be costed and that is where financial resources will come in. Once it is costed, then I am sure it will go into Parliament for endorsement and, of course, our national government might give only so much to resource that, and that is where we can look to other avenues like other development partners because disability is a cross-cutting issue and I can tell you that some of the UN agencies have specific areas that they work on disability, for example, UNICEF is around Early Intervention Childhood Education, WHO on community-based rehabilitation, ILO on employment and livelihood, UNESCAP is on data, legislation policy and compliance review. Of course, there is UN WOMEN and the others. So, we can always strengthen regionalism, and for international cooperation there are others from whom we can seek other resources to make sure that the policy and the action plan is resourced and, of course, some of these is progressing realisation, some of it we can do it in fewer steps but not overnight.

MR. K. TAWAKA.- Just to add on, my understanding was how long. If I look back and use the regional hat and look at the disability movement across the Pacific, Fiji is the lead at the moment. Fiji has the strongest disabled persons Organisation. If you look up in Brown Street, they align disability where they have the blind, so we do not have that in the Pacific.

Most Pacific Island countries look up to Fiji for support and assistance. In Fiji, we have the FNCDP which is the Government arm of disability, and I believe this is part of the structure for this Bill. So, the mechanism is currently in place and I think there has been bits and pieces of how they have been doing work in terms of disability, but in order to ensure that you get the right people to come in and Laisa did talk about the UN Agencies because Fiji being the hub, they are the ones now providing the support for disability to the Pacific. So, most of the agencies around the Pacific based in Fiji are the ones supporting the other countries in terms of disability and I think Fiji needs to look at that to ensure that a plan can be implemented and ensure that we have the right budget also to do that. We are doing it more creatively and ensuring that we get the whole participatory approach, I think we can do that very quickly because we have the whole mechanisms in place. Thank you.

HON. A.T.VADEI.- Thank you for the answers. My second question is; there are small groupings of groups of rights of people with disabilities. For the full ratification, you will conduct self-assessment, regional assessment and the international assessment to the ratification of this Conventions. How will you formulate that in those areas because of different groupings that you have?

MS. L. VORETI.- Could you repeat the question, please?

HON. A.T.VADEL.- We have the Convention and you have supported the Bill because it will be ratifying the Convention. With the separate groupings of people with disabilities here in Fiji, how will you conduct your self-assessment in line with the regional assessment to the international organisation or the Convention itself?

MS. A. CHAND.- I guess as for the separate groupings that you have referred to of disabled people's organisation, my colleague has mentioned that there specific disability groups, for example, the United Blind Persons of Fiji looks at issues concerning persons who are blind or vision impaired, we have the Spinal Injuries Association who look at people who are physically disabled, we have the Fiji Association of the Deaf who looks at the plight of persons who are deaf or hard-of-hearing and we also have the *Psychiatric* Survivors Association which looks into issues concerning people with psycho-social disabilities.

As mentioned earlier they are all part of the Fiji Disabled Peoples Federation and they are all members of the Fiji National Council for Disabled Persons (FNCDP). So, I guess in terms of coordination at national level, we have the FNCDP. At regional level, we have the partners, the UN Agencies, the development partners and at international level we also work (as I alluded to earlier) with the International Disability Alliance. We see all these as complementary to our monitoring, evaluation and reporting on the Convention itself.

HON. A.T.VADEL.- I have a last question; in this Bill, the insurance company is not assisting in the facilitation. How will you work with these underwriters for future so that equal opportunities are given to people with disabilities?

MS. A. CHAND...- Thank you for your question. I guess that is a challenge, not just for Fiji but across the region and our colleagues from the other regions as well. For example, as I am a person with vision impairment, our work provides insurance to all staff, so when it comes to vision I get insurance on the grounds of exclusion on anything to do with my vision. I guess that is a challenge, it is something that we have to work towards, working with the insurance companies, like my colleague Naomi, she is on a wheelchair. Her exclusion would be on the grounds of physical disability. I guess the challenge is here and we have to work around strategies on how we can work with the insurance companies and the different stakeholders to see how we can encompass that.

HON. V.K. BHATNAGAR.- Thank you, Mr. Chairman. *Ni sa bula vinaka* to all of you and thank you for the presentation. Thank you for sharing your sentiments with us this morning.

Naomi, you did mention about persons who are differently disabled, they do not enjoy the rights. So basically when you look at the composition of the Council because you mentioned about health, justice and transport, I think we have got all the Permanent Secretaries there - Health, Justice, Transport, Education, Infrastructure, Youths and Sports and, of course, the Minister will be able to choose three of the NGO's which could be any one of you. Obviously, you mentioned that you need a representation there, so it depends on the Minister to have you also as a representative. Looking at the functions of the Council is so broad, do you think if the stakeholders and the disabled people's organisations work in collaboration with this Council, will you be achieving something there, especially the enforcement and implementation?



MS. N. NAVOCE.- Thank you, Honourable Member. As my colleague mentioned earlier, ‘nothing about us without us,’ I believe it is important to include persons with disabilities in the decision-making process, to have representations and a voice of persons with disabilities within the Council and within each Council’s Committee in terms of sharing the expertise that persons with disabilities have to be able to accommodate and have provisions for accessible transportation, public places, health services and including provision of other services that is available in Fiji.

We believe that persons with disabilities, because we live with experience in our everyday lives, we know what it is like to have the challenges and barriers that we experience in our everyday lives when we access services and facilities within Fiji, whether it is a public service, health service, access to justice or any other services that we have. So, it is important to include persons with disabilities, representatives and a voice of persons with disability within the Council and each of the Executive Committees. Thank you.

MR. CHAIRMAN.- Thank you for that clarification.

MR. K. TAWAKE.- Just to add on, what you had explained was the Minister and then we have the composition of that, and speaking from experience of how many years we have been trying to do advocacy to ensure that persons with disabilities are included. So part of our work, we have tried to work in disaster response, we have worked with inclusive education, we have gone to regional fora trying to ensure that disability is part of it and most of the time people with disability are left out. They are always left out and the slogan is for all people and because they are so minority and so marginalised that people tend to forget them. Given that this set of people that we have decided that the Minister picks, and then the three could be one of us or it could not be one of us, depending on the selection. So, what we are fighting for and what we are asking if they are, they should be part of it.

If you give them the ownership, for example, for us, if we are not given the ownership of something, I would not participate. For persons with disabilities who have been marginalised and have been kept home all the time, you give them ownership they will keep up their work and ensure the monitoring and implementation of this Bill. Thank you very much.

HON. S.V. RADRODRO.- Thank you, Mr. Chairman, and thank you again to the team for your responses and clarification on this very important piece of legislation. I noticed from the membership that there are three representatives from Government-appointed organisations. In the previous Council, your organisation has been a member of FNCDP?

MR. K. TAWAKA.- It is our national member.

HON. S.V. RADRODRO.- Who is the national member, which organisation?

MS. A. CHAND.- Fiji Disabled People’s Federation.

HON. S.V. RADRODRO.- So, in your view that will be the organisation again that might come in into one of those three?

MS. A. CHAND.- Yes.



HON. S.V. RADRODRO.- Thank you. Also, like you had correctly highlighted and it is also my main concern in terms of this Bill because at the end of the day, if there are no resources, the implementation will be very much challenged and this Bill will always, sort of, remain a piece of paper, so to speak. As stated in the Bill, FNCDP is the enforcement agency. I stand to be corrected but may be FNCDP's budgetary allocation has moved up to the tune of \$500,000 or something like that. In your view, from your organisation perspective, what would be the preferred or the ideal level of financial assistance that the Government should be giving to FNCDP to ensure that it carries out its enforcement role successfully to be really able to put some teeth into this piece of legislation? It is just an odd question and like I said, at the end of the day, it would be the resources that would determine of effectiveness or otherwise of this piece of legislation which again, I want to reiterate that it is a very important legislation that we want to implement not just to have a Bill, but to implement.

So, what are your views in terms of that allocation of resources?

MR. S. ANTONIO.- Thank you very much Honourable Committee members, I probably stand to be corrected by my team. I think in terms of the resource allocation, when we are talking about how much money is pumped into the enforcing body of Government, in many cases, we might see the risk of having checked off a certain box, that we have put in so much thousands into this programme over a certain number of years, but the impact might not be of what we had thought.

In terms of the work that we do at the Pacific Disability Forum, together with our national bodies is looking at how we can approach the inclusion of disability, not only through FNCDP considering the capacities that they might have in terms of expertise and human resources but how we can have a more holistic approach. By that I mean, instead of pumping say \$200,000 or \$300,000 or \$500, 000 into FNCDP and the hopes that they will have disability inclusion across education right through to employment, health, et cetera, what is the possibility of working together with the DPOs, FNCDP, and the various line ministries?

At the moment, I know that there is budgetary allocations but it is still silent on how much is given where, even in the health budget. So, I guess from where I am coming from is, yes under Bill, FNCDP is explicitly stated as the enforcing body but the reality is disability is cross-sectional. It cuts across many of the ministries so may be the approach might not have to be only FNCDP alone but looking at how Government, the executive arm holistically can work together to include disability in the different lines.

HON. V.K. BHATNAGAR.- Mr. Chairman, my last question.

MR. CHAIRMAN.- Just a last question, please.

HON. V.K. BHATNAGAR.- Thank you. I just want to know because there are a lot of disability groups around. So, do they come under you umbrella or they are all individual organisations?

MS. A. CHAND.- All disability NGOs are actually members of the Fiji National Council, so under the Fiji National Council's current Act, any organisation doing work in the area of disability nationally has to register with the Fiji National Council for Disabled Persons and these could be the special schools, the disability NGOs providing services and within that there are also organisations run and managed by persons with disabilities.

As we have been saying that is the Fiji Disabled People's Association, I guess they made a submission earlier last week. So, those are the groups we are talking about; it they are organisations that are actually run and managed by persons with disabilities. Currently, we have five of such organisations in the country. So, for us, our member in Fiji is the Fiji Disabled People's Federation, as well as the other disabled peoples' organisations.

MR. CHAIRMAN.- Thank you Honourable Members.

(Vote of thanks by Mr. Chairman)

We invite the Team to have tea before they leave.

The Committee adjourned at 10.50 a.m.

The Committee Interview resumed at 11.01 a.m.

**Submittee: Ministry of Education, Heritage and Arts**

In Attendance:

- |    |                      |   |   |
|----|----------------------|---|---|
| 1. | Ms. Litea Naliva     | - | Senior Education Officer, Special Inclusive Education |
| 2. | Mr. Josefa Verevou   | - | Teacher   |
| 3. | Mr .Fuata Fakataufou | - | Teacher   |
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MR. CHAIRMAN. – Honourable Members, welcome back and I wish to welcome Ms. Litea Naliwa, Senior Education Officer (Special Inclusive Education) from the Ministry of Education and her team. They are here to present to the Committee on the very important Bill that is Rights of Persons with Disabilities Bill No. 12 of 2016. I now give the opportunity to Ministry of Education to present to the Committee, thank you.

MS. L. NALIWA.- Thank you, Sir. Mr. Chairman, Honourable Viam Pillay and respectable Members of the Standing Committee on Social Affairs; a warm and special greetings from the Special Education Children all over Fiji, whose voices we are here to represent and whose needs we are here to communicate over this presentation. Allow me if I may, Sirs and Madams, to introduce my two colleagues who are with me this morning.

(Ms. Naliwa introduced her team)

On behalf of the Ministry of Education, I would like to make a submission to the Standing Committee on Social Affairs on the Rights of Persons with Disabilities Bill, Bill No. 12 of 2016. The purpose of this submission is to present the views of the Ministry of Education, Heritage and Arts on the Rights of Persons with Disabilities.

The Bill aims to:

- provide, uphold and enforce the rights of persons with disabilities in Fiji as provided for by the United Nations Convention on the Rights of Persons with Disabilities;
- allows for the establishment of the National Council for Persons with Disabilities;
- the registration of organisations that are service providers to people with disabilities; and also
- spells out the rights of people with disabilities.

So, the background in terms of education, the Bill will be a leverage for children with disabilities in all schools, educational institution and settings, providing them with the right to inclusive and life-long education without discrimination.

Sirs and Madams, the Ministry of Education, Heritage and Arts have been supporting the education of children with disabilities in Fiji since 1960. In 1958, there was a national breakout of polio in the country and six children with poliomyelitis were admitted at the .... Memorial Hospital here in Suva.

Red Cross was tasked by the Government to establish formal education for these children. There were joint consultations between the Ministry of Education and the Australian Government, which resulted in the need to have formal education for children with disabilities, and that ... Ward became the first special education classroom for children with disabilities in Fiji.

Today, Sirs and Madams, there are 17 special schools around the country, 15 are classified under the primary section and two vocational training centres for people with disabilities. There is a total of 1,023 students with disabilities who are attending the special schools, 84 are in the Access to Quality Education Programme pilot schools. There are 95 children in mainstream primary schools, 36 in secondary schools and 15 in mainstream vocational schools which totals up to 1,253 children with special schools across Fiji.

There are existing legislation - we are aware of Clause 42 which specifically outlines the rights of persons with disabilities. We are also aware of Clause 31 which states that “every person has the right to early childhood education primary and secondary educations.”

Sirs and Madams, there are no specific mention on the education of children with disabilities. In Clause 42 talks about the rights of people with disabilities as a whole, but does not specifically mention that the right of education. Likewise in Clause 31, it talks about the right to primary, secondary, early childhood and further education.

Also there is no mention of the Fiji sign language as a compulsory subject along with the *iTaukei* and Fiji Hindi languages. These two languages are taken as conversational languages in the classroom. The legislation does not specify the use of Fiji sign language in classrooms.

However, there are national platforms that support the education of children with disabilities which I have listed, as follows the:

- Fiji Human Rights Commission;
- Fiji National Council for Persons with Disability Act of 1994;
- Ministry of Education Strategic Plan 2015-2018;
- National Policy on Persons Living with Disability 2008-2018;
- Peoples Charter;
- Fiji Education Commission Report;
- UNCRC; and
- Incheon Strategy to Make the Right Real for persons with disabilities in Asia and the Pacific region.

As highlighted in the explanatory note of the Bill, the FNCDP Act 1994 is very limited in scope, and does not sufficiently address the needs of persons with disabilities. The UNCRPD Article 24 on Education requires that all children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability. It includes measures to ensure that the education of persons and in particular children who are blind, deaf and deaf blind is delivered in the most appropriate languages, modes and means of communication for the individual.

The Ministry of Education’s Inclusive Education Policy states that children with disabilities in Fiji have the same fundamental rights, freedom and responsibilities as their regular peers. All children have the right to the most appropriate educational programmes available to meet their individualised needs and students with special needs require specialised support services to provide them with

opportunities to achieve their potential and become contributing members of the society in a dignified and a meaningful way.

The Ministry of Education in Fiji through the endorsement of the Inclusive Education Policy is committed to progressively meet the needs of all students with special needs and it can do this in active partnership with the parents and the community. The Bill will affect all persons with special needs, and it can do this in active partnership with the parents and the community.

The Bill will affect all persons living with disability, their families and their communities. It will affect the schools and stakeholders of institutions where they will be educated. It will also the staffing, the funding and resources of the schools.

On gender equality, there is no particular mention of gender equality in the Bill, although some disabilities such as muscular dystrophy are prevalent only in males and cervical cancers only in females. While intellectual disability is more common in males and much lesser common in females and our special and inclusive schools have more males than females, it is assumed that the Bill requires a non-discriminatory approach and roll out, thus all persons with disabilities regardless of gender will benefit. A gender analysis of the legislation will best suit the Fiji National Council for Disabled Persons to carry out.

Sirs and Madams, on the transitional arrangement for the Ministry of Education, we are currently facilitating the transition of students from ECE to primary to secondary and even to tertiary level. These are students with special needs, transiting to the mainstream education system. So, we are actually doing the following:

- 1) Policy review - a review of the current Ministry of Education Policy in light of the current evidence related to effective means of achieving quality education for children with disabilities; and in relation to Fiji's international conventions and framework commitments and national legislation and policies. We are currently reviewing that right now and we are on the verge of consulting our disability organisations on the same.
- 2) There is an initiation of the implementation plan. The disability education stakeholders are now working together to prioritise key areas of action according to the policy. Discussions were informed by the experiences of people with disabilities themselves, as well as practices of the Ministry of Education and school staff. This Action Plan will be the action of progressive realisation of the rights of people with disabilities.
- 3) Consolidating the special schools to provide support to inclusion; Fiji special schools have a strong system of providing support to inclusion. Although mainstreaming students with disabilities is encouraged, the special schools will remain open for those children with very high support needs. Special school is still an option, and that is allowable in the Convention.
- 4) Curriculum and assessment, this is something that the Ministry has not really done now but it is part of the Action Plan that I have talked about. We are going to review the assessment policies and processes as they are related to children with disabilities, particularly Literacy And Numeracy Assessment (LANA) processes, which can create

pressure on schools which are trying to be inclusive. So, we are going to develop assessment options for students with disabilities that allows for differentiated assessment which focusses on the ongoing assessment of learning in a user-friendly and accessible way.

- 5) Develop accessible assessment options for students with vision impairment, for example, braille or computerised examinations, access to support people to read exam questions to them and assist them in documenting their answers.
- 6) Link vocational studies to primary and secondary schools.
- 7) Upskill teachers on differentiated curriculum and teaching.
- 8) Create resources and texts that incorporate early intervention and seek support from specialists to enable these. Part of the Action Plan is to encourage the teacher training institution to establish standardised teacher training modules in disability inclusion and to consider whether it is mandatory training or optional participation in training with incentives, such as preferential job placement for newly qualified teachers who have elected to undertake training in disability inclusion.
- 9) Ensure that training institutions comply with accessibility standards and determine the value of teacher aids, including sign language and braille teachers and consider options for their establishment, qualification and accreditation.
- 10) Health and specialist services, the ones that I have underlined is again, something that the Ministry of Education is not currently doing but is in the implementation plan to be done.
- 11) Develop a Memorandum of Understanding with the Ministry of Health in order to strengthen school level access to specialists, such as therapists who can support children with disabilities in schools.
- 12) Strengthen linkages between schools and maternal and child health services, to enable early identification of disability, community awareness programmes and home visits which incorporate health education.
- 13) Train kindergarten teachers the identification of children with disability and referral to maternal and child health services.
- 14) Review the Ministry of Educations Policy regarding volunteers and consider their engagement as support to inclusive education.
- 15) Advocate for the initiation of local university-level courses in specialist services, such as speech and occupational therapy.

- 16) Work with the Ministry for Women, Children and Poverty Alleviation to review all policies and action plans that relate to disability and early childhood development, for example, the new Disability Action Plan, and to ensure disability inclusion.
- 17) Acknowledging the importance of access to specialist early intervention services such as braille and sign language training, develop options for access to these by students with disabilities in areas outside Suva.

Mr. Chairman and Honourable Members, the issue raised in the Bill relating to education in Clause 4(c) is that, there is not enough emphasis on early intervention programmes in education. We would like to see that the Bill ensures that children with disabilities access early intervention programmes without discrimination and on equal basis with others.

Clause 5(1)(e) states, and I quote:

“Maintain a register of all organisations providing service to persons with disabilities and ensure that the independence of such organisations is maintained.”

We would also like to see that there is a statistical measure of persons with disabilities that should be included as a key role of the Council.

Clause 5(1)(f) states, and I quote:

“Organise seminars and workshops relating to the problems and needs of persons with disabilities and assist in the training of personnel involved in the care, training, education and rehabilitation of persons with disabilities.”

The core role of the Ministry of Education, Heritage and Arts is the education of persons with disabilities, however we welcome the specialised component that may have been the missing link now, that will be delivered from the Council.

On the composition of the Council, we are proposing that the Permanent Secretary for Education and Arts be the representative, instead of the Deputy Secretary that is mentioned in the Bill.

In conclusion, the Ministry of Education, Heritage and Arts calls on the Government of the Republic of Fiji to endorse the Bill of Rights for Persons with Disabilities.

MR. CHAIRMAN.- Thank you, Ms. Naliva for the presentation. Your views have been taken note of by the secretariat.

Just one information; you have stated that you have two vocational training centres for adults with disabilities. Where are they located?

MS. L. NALIVA.- Yes, Sir, the first one is the Fiji Vocational Technical and Training Centre at Brown Street, and the other one is the Veilomani Vocational Centre in Ba.

MR. CHAIRMAN.- So, the Committee wishes to visit those two Centres and our secretariat will liaise with you later on. Now, I will allow our Honourable Members for clarifications and questions.



HON. A.T. VADEL.- Thank you, Mr. Chairman, and thank you Madam for the presentation on this Bill. I have two questions one is on special schools. We have heard from the previous presentation that the tension of people with disability due to the curriculum provided by the Ministry of Education. How will you monitor and this curricula to be fair to children with disabilities in future if this Bill becomes law?

MS. L. NALIVA.- Thank you, Sir. As I have mentioned it, it is part of the Ministry of Education's implementation plan. We are currently reviewing the policy right now, to make sure that all children who have transited from the Special Schools to the mainstream setups are up to par with the curriculum. We are going to revise the present curriculum to make it accessible.

At the moment, I understand what is coming from the Special Schools, we are able to transcribe their curriculum into braille and we are also able to provide interpreters in sign language, who interpret the curriculum to the students. However, we are missing out on a whole lot of other things which I have mentioned in my presentation that we are going to review the implementation process of the curriculum delivery to our students.

One of the things that we are currently looking at is LANA whether or not LANA is going to capture their real ability - the actual ability of the students and if not, what other assessment procedures or what other means of assessment we can have in place of LANA. As it is we are using skill assessment for children with special needs and we still have to determine whether that is enough, whether that is sufficient for them to further their education and to be able to be productive citizens in terms of employment gains.

So, it is something that we are currently addressing at the moment but in the meantime, we are addressing the curriculum in terms of providing support in braille and sign language, but we are missing out on those with learning disabilities and intellectual disabilities as well. So, it in our pipeline and we are going to look at that.

HON. A.T. VADEL.- My next question is; have you signed any MOU with the Ministry of Health regarding collation of information for early childhood detection and intervention?

MS. L. NALIVA.- Sir, to my understanding about the signing of the MOU, we have not done that but we have a service within the Ministry of Education system that collates information and data from the Ministry of Health in terms of referral of babies, toddlers and infants with disability, so much that they are earlier detected and early intervened for the purpose of education later on. There is no formal MOU.

HON. S.V. RADRODRO.- Thank you, Mr. Chairman and thank you to the team for your presentation in enhancing our understanding and knowledge in view of the services that you provide. In terms of the Bill, I have three questions. The first one is; was your Unit are part of the consultation process in the formulation of the Bill?

MS. L. NAILUVA.- Yes, Madam. We were invited and we were part of the consultation programme.

HON. S.V. RADRODRO.- And the other question is; in your view and from your organisation perspective, are the definitions of the Bill as stated in Part 1 on page 4 clear and consistent with the definitions of other national and international legislation.

MS. L. NALIVA.- I take it that the definitions in the Bill are taken straight from the United Nations Convention on the Rights of People with Disabilities. We thought of agreed to this because we needed to have a uniform definition to be used all across and if we are to measure, we are consistent with the measure as well.

HON. S.V. RADRODRO.- Thank you and for the enforcement or the implementation of the Bill would require resources. The question is; what are the financial implications of the Bill and does your organisation have sufficient resources? What are your views in terms of the resources that have been allocated for you to be able to enforce this legislation effectively?

MS. L. NAILUVA.- Thank you, Madam. We know that this would not come overnight, it is a progressive realisation of achieving the rights, the dreams and aspirations of people with disabilities. It might mean a lot of resources in terms of funding and it might not also mean a lot of funding as well. To some, it is probably just the change of mindset and ideas, and also education on disability issues in itself, that will bring about a community of change.

In terms of the Ministry of Education, we are quite aware of the funding implications it has and we are thankful to the current Government for increasing the budget from the last year's budget to this year so we are able to double up the grant that we are giving to special education students, not only those who are attending special schools but also to those who are attending our mainstreaming inclusive schools. They get a total of \$500 per child. A mainstream child will just get \$250 whereas a child with special needs gets a \$500. That is a plus and we note that this will come with a lot of funding implications as well, but we believe that they should be given the proper recognition that they deserve.

HON. V.K. BHATNAGAR.- Thank you, Mr. Chairman and thank you, Madam, for the presentation. It was very informative. I do not actually have a question but just wanted to say that similar sentiments have been voiced by other presenters on gender equality and, of course, or representation of persons with disabilities and their Council. So, basically the committee will be sitting and reflecting on what has been presented. So once again, thank you for your presentation.

HON. A.T. VADEI.- Thank you, Mr. Chairman, and thank you Madam for the explanation given to the questions that has been raised. My last question is; you have formal and informal education. What sort of education awareness does the Ministry facilitate the parents with in regards to the rights of person with disabilities or the community at large?

MS. L. NAILUVA.- Thank you, Sir. Right now, our target area is the teachers in the schools and that is what the Ministry is working on. We have been going out to schools to conduct awareness training on disability issues because as I had mentioned in my presentation, our teacher training universities are not offering courses on special and inclusive education to begin with. So the focus of the Ministry right now is on the schools and the teachers in the schools to be able to teach a child with special needs when he or she is enrolled.

Further to that, we also do community outreach programmes in villages. When we do a school visit, we go out to the community as well and educate the communities on the rights of people with disabilities, education is their right and it is not a privilege that is given to them. We make them aware of the support and assistance that they will get if they send to the school. That is currently the level that we are in right now. We have not gone as far as media or newspaper or publications of that scope

because we are, sort of, aware of our budget limitations and the reflux that would come upon us. As it is, we are still targeting the schools and the teachers and its communities.

HON. A.T. VADEL.- My next question is that in the Bill, children are not to be removed from their homes or from their parents, education for this type of children, will they be home-based?

MS. L. NALIVA.- No, Sir. If I may Mr. Chairman, it particularly means that they would be attending the school that they would be attending if they do not have a disability. They will still be in their homes attending the school that their sibling would be attending instead of sending them to the special schools. As I have mentioned in the presentation, there are 17 special schools which are only based in town areas, so these children who are out in the remote and in the maritime regions they would not be sending the children to the special schools but to the schools that they would be attending if they do not have a disability.

HON. V.K. BHATNAGAR.- Being in the Ministry of the Health, I know that the Ministry of Health and Ministry of Education are working together. Do you think the partnership needs to be more strengthened?

MS. L. NALIVA.- Yes, Madam. We very much think that that should be one of the priority areas. We bank on the Ministry of Health to do early detection of disabilities in babies and toddlers and thus refer it at the earliest to our early intervention services which is the programme by the Ministry and we believe that the earlier the detection, the earlier the intervention, the better it would be for a person with disability. So, we very much encourage that.

MR. CHAIRMAN.- Thank you Madam. On behalf of the Committee I must thank you for the presentation and the clarifications you have provided to us. Your views have been taken note of and we will later sit as a Committee to see how we can address those issues prior to presenting to Parliament.

So, once again, thank you very much for your presentation.

MS. L. NALIVA.- Thank you, Honourable Members.

The Committee adjourned at 11.32 a.m.

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AFFAIRS HELD IN THE COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON THURSDAY, 23<sup>RD</sup> JUNE, 2016 AT 11.00 A.M.**

**Submittee:**     **Secretariat of the Pacific Community (SPC)**  
                          **Regional Rights Resource Team (RRRT)**

**In Attendance:**

- |    |                       |   |                             |
|----|-----------------------|---|-----------------------------|
| 1. | Mr. Romulo Nayacalevu | - | Senior Human Rights Advisor |
| 2. | Ms. Sainimili Tawake  | - | Human Rights Officer        |

MR. CHAIRMAN.- On behalf of the Standing Committee on Social Affairs, I wish to welcome the officers from the South Pacific Community. They are here to present to the Committee on this very important Bill, on the Rights of Persons with Disabilities, Bill No. 12 of 2016. Welcome Sir, and Madam. Now, I give the opportunity to you to present to the Committee.

MR. R. NAYACALEVU.- Mr. Chairman and Honourable Members of this Committee, thank you very much for your warm welcome for my colleague and I to be presenting to your Committee this morning. I give this time to my colleague Ms. Tawake who will be presenting this submission of the Organisation on our behalf.

MS. S. TAWAKE.- Thank you very much, Mr. Chairman for this opportunity. Good morning to you, Mr. Chairman and Honourable Members. As Mr. Nayacalevu has introduced me, I am the Human Rights Officer for the SPC, the Regional Rights Resource Team, and I am also the focal officer for disability inclusive development within the Secretariat.

Before we begin with our submission, we would like to congratulate the Government of Fiji for this approach in putting together, in the formulation and all the processes of the formulation of the Bill, and we are very thankful. I would like to also say here that I am a woman with vision impairment and the disability advocate for the past 20 or so years in Fiji and also across the Pacific. This move by the Government of Fiji is one that has to be remembered by all persons with disabilities because the Bill has come about to articulate the rights of persons with disabilities.

So far in the past, people with disabilities in Fiji have always craved for something for them to have, something that they can champion, so the formulation of this Bill and hopefully its endorsement will allow persons with disabilities to use and also to claim their rights as persons with rights. With that also, I would like to apologise for the delay of coming in to make this submission.

May I begin, the Secretariat of the Pacific Community (SPC) is a regional intergovernmental organisation that provides technical assistance, policy advice, training and research services to 20 Pacific Island countries and territories in development areas including; human rights, social policy, public health, statistics and demography, natural resources, management and economic development.

SPC brings particular expertise in law, human rights and gender equality through its Regional Rights Resource Team (RRT). On disability inclusive development, RRRT has worked in many countries in the Pacific providing technical assistance, training and advice in the ratification, implementation, monitoring and reporting of the Convention on the Rights of Persons with Disabilities (CRPD).

RRRT has also worked with disabled persons organisations and civil society organisations on raising awareness and promoting behavioural change on issues of persons with disabilities. SPCRRRT supports the Government of Fiji on the formulation and development process of Bill No. 12 on the Rights of Persons with Disabilities which will provide a legal framework on promoting and protecting the rights of women, men and children with disabilities in Fiji.

Part 1 – Preliminary: The object of the Act, RRRT observed that while the Bill in Part 2 has identified the objects of the Council, overall the Bill does not have an object. This could raise concern on the lack of clear guidance necessary for interpretation of the Act in the event that an interpretation may be called for to assist in realising the purpose of the Act. RRRT proposes that the Bill clearly indicates its objects which sets out its purposes of ensuring that persons with disabilities enjoy their human rights and fundamental freedom, and have equal access to information, services and the built environment.

On persons with disabilities, the Bill uses persons with disabilities interchangeably with persons living with disabilities. We respectfully submit that the Bill is consistent with the use of persons with disabilities as per the title of the Bill - Rights of Persons with Disabilities Bill.

Interpretation: The word ‘impairment’, we respectfully submit that the World Health Organisation (WHO) definition of ‘impairment’ is used. Impairment is a problem in body function or structure or an activity limitation, is a difficulty encountered by an individual in executing a task or action, for example, physical, mental, intellectual or sensory impairments.

On the word “disability”, we respectfully submit that the definition of ‘disability’ as stated in the Bill is confined to the definition stated in CRPD. Additional component of the definition as stated in the Bill does not fall within the perimeters of defining disability.

On ‘reasonable accommodation’, RRRT observed that the Bill is using ‘reasonable accommodation’ and ‘reasonable access’ interchangeably. There needs to be clarify between ‘reasonable accommodation’ and ‘reasonable access’ and how it is used in the Bill.

On the acronym of CRPD, the Convention acronym is ‘CRPD’ and not ‘UNCRPD’.

Part 2 of the Bill – National Council for Disabled Persons with Disabilities: As a national point and coordinating mechanism for disability, the Council needs to work with relevant Ministries on the establishment of focal points within such Ministries and development of disability inclusive policies for the effective implementation of the Act.

Article 4(3) and Article 33(3) on the Convention on Persons with Disabilities, states that that persons with disabilities and their organisations/representatives need to be actively involved in every process, including decision making on issues relating to persons with disabilities. In the spirit of “nothing about us without us”, we respectfully submit that there be specific representation on disabled persons organisation within the National Council instead of the three representatives from the NGOs appointed by the Minister.

The Human Rights based approaches requires that processes as prescribed in Section 2(2), giving the Minister wide discretionary powers beyond that can be exercised fairly. This section may be problematic as the Minister makes decisions based on what he or she will think fit and proper.

For the registration of organisations, Clause 5(b) allows the Council, subject to the approval of the Minister, to remove the name of any organisation that has not met the terms and conditions prescribed by the Minister. It is our respectful submission in order to avoid the wide exercise of discretion, that these terms and conditions be clearly identified either in the Schedule of this Act or its regulations as may be set by the Minister. This will clearly demonstrate and to clear conditions that need to be met instead of conditions that may be set by the Minister along the way. We further submit that there be specific representation of disabled persons organisations within the Advisory Council as may be appointed by the Council under Clause 12 of the Bill.

Part 3 – Administration: The ‘Indemnity’ clause in Clause 20(1) restricts the rights of persons affected by the decision of the Council to seek appropriate redress be it within the courts of other tribunals as may be established by law. This clause acts as an impediment in itself to the right to access justice and would impede on the rights of persons with disabilities under Article 4(b) and (c) of the Convention. In itself, it is an impediment on Article 13 of the CRPD which recognises that all persons, especially disabled persons have the right to access to justice. This conflicts with Section 49 of the Bill.

Part 4 – Registration: There are regional international organisations established in Fiji that are working on disability inclusive development across the different countries in the Pacific. These agencies include; SPC, the Pacific Islands Forum Secretariat, the University of the South Pacific, Pacific Disability Forum and relevant UN agencies. RRRT proposes that this section on ‘Registration’

is limited to national organisations and agencies only, and that further, a section be added that makes the Register accessible to the public.

Clause 21(7) of this section states that any organisation providing services to persons with disabilities that is not registered in accordance with this section commits an offence and is liable on conviction to a fine not exceeding \$100,000. We respectfully submit that it would be best that penalties are rendered to organisations or individuals that discriminate persons with disabilities. Therefore, we propose that this Clause focus on rendering penalties by way of either monetary or kind or social obligation to agencies or individuals that had evidently discriminated against persons with disabilities.

Part 5 – Accounts and Finance: Clause 25(1) and (2) provides for the reporting requirements under this Act. We respectfully submit that to promote further accountability on the functions and role of the Council, that the report once presented to Cabinet under Clause 25(2) be also submitted to Parliament for its consideration, given that the report provides for the activities of the Government on improving the rights of persons with disabilities, that this report becomes a public report for the purpose of accountability, transparency and good governance. We respectfully submit that the Minister presents the report to Parliament under a new Clause 3.

Part 6 – Discrimination on the Basis of Disability: The definition of ‘Discrimination on the basis of disability’, we note that while the Bill has a clear definition on the discrimination on the basis of disability, persons with disabilities, particularly women with disabilities continue to face multiple forms of discrimination because firstly, of their disability and also of their gender. We respectfully submit that the definition of ‘multiple discrimination’ is captured in the Bill. The term ‘multiple discrimination’ recognises that some individuals experience discrimination on the basis of more than one aspect of their identity. Multiple discrimination reveals both the structural and dynamic consequence of the interaction between two or more forms of discrimination or systems of subordination. It has an exponential impact on the lives of individuals and actively creates a dynamic of disempowerment.

Government’s role and responsibilities: The Bill clearly articulates on the rights of persons with disabilities. However, RRRT observed that the State’s obligation and its role in fulfilling these rights is not well detailed. The State’s obligation is to identify steps to ensure that it fulfils its obligation in positively promoting and protecting the rights of persons with disabilities in this sense.

The Bill needs to contain certain measures that the Government is required to do which include the abolition of certain laws and practices that are discriminatory to or violates the human rights of persons with disabilities. The Government must ensure that public officials and agencies do not



discriminate, based on disability or otherwise violates the Act. The Government must also take measures to eliminate discrimination by individual organisations and private enterprises, and the Bill need to state how Government will pool together its resources, such as budgetary allocation for the implementation of the Act. We respectfully submit, the role of the State in ensuring that appropriate measures are in place to safeguard the rights that are articulated in the Bill.

Thank you very much.

MR. CHAIRMAN.- Thank you, Madam, for the presentation. Your views has been taken note of by our Secretariat. Now, I will allow our Honourable Members for clarifications or any questions.

HON. S.V. RADRODRO.- Mr. Chairman, I thank the team for your very comprehensive presentation this morning. I have four questions to ask. I have not checked the international convention as yet but my understanding is that this Bill very much mirrors that of the international convention. So, have you picked out any clauses that have not been reflected in this Bill? Are there any? I mean, I am sure we all agree that this is a good piece of legislation but I am just mindful that may be there are some clauses that are not included. If there are, may be, what are the reasons they are not being reflected in this piece of legislation?

MS. S. TAWAKE.- Thank you very much, Honourable Member. Yes, we have looked at the Bill and we have also looked at the Convention. There are few Articles in the Convention that are not reflected in the Bill. These are: Article 4 – General obligations; Article 6 – Women with disabilities, Article (I cannot remember the number of the Article) but Article 10 – Right to life and also rehabilitation is not articulated in the Bill. Those are, on top of my head, I can remember. Also Article 31 on statistics and data collection and also Article 32 on international cooperation.

I am not sure why the Bill does not reflect those Articles. However, SPC proposes that these Articles are looked at clearly and if there is, in any way, be part of the Bill.

Article 32 on international co-operation, that is a very good Article because it talks about how a State that had ratified the Convention can be seek support from a developed State to implement the Convention on the Rights of Persons with Disabilities. So for us, if this is endorsed, this is the CRPD in Fiji. That Article allows the State to seek from any other countries that had ratified CRPD, for example, Australia, New Zealand or any the European country to support the implementation of the Bill on the ground. They also have an obligation to support the developing countries in the implementation of the CRPD.

I would also propose that we look at the Article on women on disabilities. There is a lot of violence on women generally. In almost everyday news we hear of some sort of indecent assault, sexual assault, rape on women and girls but it is sad to say that violence on women and girls with disabilities is underreported. So, perhaps we believe that if the Bill could contain some clauses on the safety and protection of women and girls with disabilities.

HON. S.V. RADRODRO.- Thank you for your very good response. I also applaud the presentation in terms of what you have highlighted, the absence of redress by the organisation that could be penalised under this Bill and like they say; ‘The devil is in the details.’ What are your views in terms of registration, those that have to register and if you breach that, then you are being penalised and it is \$100,000 which, in my view, is very harsh?

As I have said, there is really no details, for example, in my view, this Bill, particularly the registration part, could deter organisations from offering their services in terms of addressing those with disability because of the penalty and also because of the absence of redress. There is nowhere where they can take their issues, so it could sort of cut out some organisations that are actually providing services now. This Bill will sort of act as a deterrent, as you look at it from the perspective that it will address those living with disability, the rights of those members of our community but if these issues on the requirement for registration, the absence of redress and the hefty fines that are in the Bill, it could discourage those organisations that are actually offering those services.

MS. S. TAWAKE.- Thank you, Honourable Member. Yes, that particular course, as you have said, can cause deterrent. We believe that it would be best that there is some sort of effective co-ordination amongst agencies providing services for persons with disabilities, whether it is a service or an advocacy sort of service. However, we also believe that the \$100,000 is a bit too harsh. We would like to see the Bill as a tool that persons with disabilities can use to claim their rights. There are organisations that support persons with disabilities in asserting their rights, and I think that has to be mentioned. As we have mentioned in our submission, we are proposing that we do away with that particular clause because as you have said the same reason, it is a deterrent for we believe the more organisations that provide support to persons with disabilities, the better persons with disabilities can assert for their rights and continue to live independently in the various settings of their own communities.

MR. CHAIRMAN.- Yes, Sir?

MR. R. NAYACALEVU.- Mr. Chairman, if I may also add, this particular section (I think) will be problematic in terms of its applications, particularly within the law itself. The law recognises an individual, as well as a legally incorporated entity either a company that is registered under a

Company Act, for example. So, in this section, while there is a general clause that states that an organisation can be fined, legally it becomes problematic because you can only fine either a person or you fine an organisation, that is a legal entity. So, if an organisation is not a legal entity, it cannot be fined for that matter.

Secondly, the Clause itself could be worded to say, 'may', which gives discretionary authorities to the courts. I foresee that should this Clause be implemented, then the problem would be that this will become a criminal complaint that eventually goes to the Office of the DPP as the prosecuting authority in the nation, and then they will have to file the criminal proceedings in court. Then the court will be the one that adjudicates and eventually makes the penal sanctions that is provided for in this particular clause. My humble submission to the Committee is for this particular section to be relooked at, to look at whether it can actually work in practice as opposed to it just being a clause within the draft Bill itself.

I also thank the Honourable Radrodro for raising that view because then it takes us to the indemnity clause which, if you read it with Section 49 which provides the 'Remedies', there is a conflict of clause within this particular law because while there is an indemnity that basically precludes anyone from taking any action against a Council member, Section 49 then provides the legal redress that is available for people who are otherwise aggrieved by this legislation. So, you have an Act that says you cannot and you can at the same time. It will probably be a matter of legal interpretation by the courts, but I think to avoid that ambiguity, the Bill itself needs to provide some clarity in terms of its processes; do you want this matter to be challenged or you do not want to? If you do not want to, then you will need to look at the clause that actually says you can, and therefore, respectfully submitting that the Indemnity Clause might be worded too general, and it is problematic to Section 49 that does provide for constitutional redress on any matters arising out of this particular Bill.

HON. S.V. RADRODRO.- The other question is on the financial implications. The effective implementation or enforcement of this legislation, there are subsequent financial requirements. So, my question is, what are the financial implications to (I know you have a lot of money) the organisation, and are you adequately resourced to be able to implement this legislation?

MR. R. NAYACALEVU.- Thank you, Honourable Member. In terms of financial obligations, ultimately the Act and the processes of ratification of the CRDP when that comes through will fall squarely on the Government. This is one of the new Conventions in the International Human Rights Regime that does provide for progressive realisation. Ultimately, the Convention itself recognises the limitations of resources that may be available to a State party to the legislation and, therefore, recognises within the Clause of progressive realisation a grace period so to speak, for the State then to meet its obligations under the Treaty.

Organisations like ours, being inter-government organisations are funded by the Governments and, of course, the limitations of funding proves as an obstacle, probably from an organisational point of view to implement. The sole responsibility of implementation is the State. The State then can seek resources. Organisations like ours have technical resources to be able to assist the State in terms of training, capacity development and in terms of just building a culture of realisation of the Treaty basically and how the State can actually realise that. But the resources will ultimately come from the national budget and I believe that the Bill does provide provisions for how the State can actually resource the implementation of the legislation. I believe, Madam, to come to that point, the Bill should probably be very clear and very vocal about this concept of progressive realisation. If that is not worded, then I believe that in terms of looking at challenges to resourcing the Bill, there will be a lot, but if the State can stand and say; “Look, this is a progressive realisation as per Section....”, then that does provide some cushion to this issue of immediate resourcing versus progressive resourcing.

HON. S.V. RADRODRO.- My final question is still on the finances. Now, that the Budget is out, and the enforcement agency is FNCDP, and if I remember correctly FNCDP is only given (I believe) \$400,000 or \$500,000. In my view, that is quite insufficient to be able to kick-start the implementation of this Bill. How much of that will go to the Council? That money goes to FNCDP as an organisation, as a secretariat and also to look after other jobs. Also, the FNCDP spearheads that Council that will enforce this legislation. Also, part of the funding aspect of the Council is borrowing, that it could borrow funds. What are your views in particular to that Clause, in terms that it could borrow funds, bearing in mind that FNCDP is not a revenue generating organisation?

MS. S. TAWAKE.- With regards to your last question, Honourable Member, because of the nature of FNCDP, we feel that borrowing is not really a good option for FNCDP to take in order to implement the Bill or the National Disability Policy which is currently housed in their secretariat. We believe that should the Government ratify the CRPD and should this Bill be enacted, the insertion of international co-operation is very important to be part of the Bill, and also there are so many initiatives or programmes of Government - poverty alleviation, tourism, agriculture, there are a lot of programmes out there by the Government. We do not see a separate programme for persons with disabilities. It would be best to mainstream disability into these existing programmes because it would reduce costs, rather than the Government coming up with new programmes for persons with disabilities. So, a good advice would be, FNCDP needs to look at existing programmes of Government in various Ministries; from trade to agriculture, fisheries, social welfare, across to education, health, et cetera, and see the programmes that are relevant, that they could mainstream or have disability inclusive as part of the programme.

HON. V. BHATNAGAR.- Thank you, Mr. Chairman. Thank you SPC for the very comprehensive presentation and the Bill very well scrutinised by your organisation, I believe. You have come up with some very strong recommendations which obviously will be looked into by the Committee. The passing and enactment of the Bill will lead to the ratification of CRPD. However, in your presentation you said that you would rather have the WHO definition of 'impairment' than the CRPD which you feel is somewhat confined. Will you elaborate on that?

MS. S. TAWAKE.- Thank you so much, Honourable Member. Yes, we propose that the Bill also reflects the definition of 'impairment'. It is how we see the Bill in itself in defining 'impairment', and it is only restricted to down syndrome and vision impairment. With the WHO definition, because the Convention has also taken on that definition in Article 1 of the Convention, it talks about 'persons with disabilities may include those who have physical, intellectual or sensory impairments', that is also part of the WHO definition because impairment looks at the body functions and body structure. That is how impairment comes. A good example would be, for me as a person with visual impairment, the structure is that I am partially sighted, therefore my function is, I cannot see properly. That is clear in the WHO, which is also articulated but it does not really talk about WHO in the definition of the CRPD, but it has that component. It talks about the body function and body structure, and when it comes to disability, disability is the person with this impairment, for example, I myself interacting with the community and with the environment. So, if I come here and there is no person there to direct me and there is no large sign to tell me this is the Committee Room where the submission will be held, that is my disability, I will be lost. So, that is the disability. So, in our last submission on the ratification, we were proposing that the Bill be clear on the impairment and disability.

HON. M.A. DEAN.- Mr. Chairman, I also welcome the staff from SPC for their very valuable contribution. Suffice to say, I am very pleased with the fact that we find SPC also interested in the Bill and giving their submission. More so, I am very glad with the fact that the Human Rights Division in SPC will also be looking into this Convention and the Bill.

From what I believe about the role of SPC, with your submission, I am glad to learn that SPC is doing more than what we learnt way back in high school. I just have one thin line of clarification, perhaps you can enlighten me on this. It is not in actuality a question but when it comes to this Bill, what is the thin line of difference in terms of responsibility between the SPC and the Human Rights Commission?

MR. R. NAYACALEVU.- Thank you, Honourable Member, for your question. As I had mentioned in our submission, SPC is an inter-government organisation. So, the membership are at the moment about 20 States and Territories. The Fiji Human Rights Commission or the Commission itself or the UN are all separate bodies. The Fiji Human Rights Commission being a mechanism of the

Fijian Government. The UN system operates within the UN Frameworks, so we are the human rights programme of SPC, generally. We provide that assistance to all the member States basically around a whole range of issues relating to the treaties or women's convention, et cetera.

I hope, Honourable Member, that provides some clarity with regards to the differences between SPC and the Human Rights Commission.

HON. M.A. DEAN.- Yes, the reason why I asked is because the submission which was made by Mr. Raj, I found it very much similar as to what your organisation has submitted. Basically I think it is because the Convention applies to both organisations, probably that is why the submissions are more or so similar when it comes to human rights. So, I was just interested to know the actual difference in terms of roles and responsibilities. Thank you.

HON. V. BHATNAGAR.- Mr. Chairman and Honourable Members, just an odd question; do you think there may be organisations who, in the process of being there to assist the disabled organisations or they may seem to be like assisting the disabled organisations, but in reality would be doing so for their personal benefit and gain? Do you think there would be such organisations?

MR. R. NAYACALEVU.- Thank you for your observation, Honourable Member. I think, probably it is a subjective question, and then each organisations understanding human motives is one of the most difficult thing for us to actually dissect unless you cross-examine that probably in a court of law. But not only disability, there is a lot of organisations that are out there that ultimately may have interior motives or ulterior motives when it comes to certain issues. So, I guess it really will depend on the organisation.

HON. V. BHATNAGAR.- Why I asked this question was I mean, looking at the fine imposed. That would be one of the reasons why that heavy fine penalty is there in place to stop this kind of ulterior motives.

MR. CHAIRMAN.- Thank you, Honourable Members.

(Vote of thanks by Mr. Chairman)

The Committee adjourned at 12.30 p.m.

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AFFAIRS, HELD IN THE COMMITTEE ROOM (WEST WING), ON MONDAY, 13<sup>TH</sup> JUNE 2016 AT 10.08 A.M.**

**Submittee:    Fiji National Council for Disabled Persons**

**In Attendance:**

Mr. Sitiveni Yanuyanutawa, Executive Director and Chief Executive Officer

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MR. CHAIRMAN.- Thank you Honourable Members, welcome back. I would like to welcome Mr. Sitiveni Yanuyanutawa the Executive Director and CEO of the Fiji National Council for Disabled Persons who is here to present to the Committee in regards to the Bill – Rights of Persons with Disabilities Bill (Bill No. 12 of 2016).

Welcome Sir to today's meeting and I now give you the opportunity to present to the Committee.

MR. S. YANUYANUTAWA.- The Honourable Chairperson of the Standing Committee of Social Affairs and Honourable Members. Today we will be looking at the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016). My task today is to submit in support of the abovementioned Bill that will probably change the lives of persons with disabilities living in Fiji forever.

Since the establishment of the Fiji National Council for Disabled Persons (FNCDP) during the passing of the FNCDP Act of 1994 (Bill No. 21), the understanding of the disabled population in Fiji was not that significant. FNCDP was given the core function as the Government Focal Point to maintain a co-ordinating mechanism for disability services in Fiji. However, the lack of sound legal framework to assist persons with disabilities in order to exercise their rights was non-existent.

When Fiji signed the UN Convention on the Rights for Persons with Disabilities (UNCRPD) on 2<sup>nd</sup> June, 2010, it had professed to the world our need to care the rights of persons with disabilities. We confirmed the forward momentum by signing the Regional Framework Asia Pacific in 2012 for a Decade of Action 2013 to 2022 called Incheon Strategy, making the rights renowned. In 2012 and 2013 we continued the review of all legislations relating to disability and finally formulated a new legislation, it was a Decree then, ultimately now known as the 2016 Disability Bill.

By complying with a key regional instruments Incheon Strategy 2013 to 2022, and UNCRPD and the domestication of our legislation in upholding the rights of persons with disability, 2016 Disability Bill, Fiji will be in a good standing to ratify the UNCRPD.



FNCDP and its establishments looks forward to the challenges in the implementation of the 2016 Disability Bill but this is the much awaited legal framework that will be the game changer to the lives of persons with disabilities living in Fiji and their carers.

We stand and fully support the 2016 Disabilities Bill for its final endorsement by Parliament. May God Bless Fiji.

MR. CHAIRMAN.- Thank you Sr, for your presentation and the Committee also wishes to visit, I see that there is a Disability Centre in the North. The Secretariat will liaise with you and during our visit to the North, we would also like to visit the Centre.

Honourable Members, do you have any clarifications with Mr. Yanuyanutawa?

HON. S.V. RADRODRO.- Thank you, Mr. Chairman. In terms of the Bill, can you give us some other stakeholders that may have an interest on this Bill?

MR. S. YANUYANUTAWA.- Thank you, Honourable Radrodro. Honourable Members, under the Fiji National Council for Disabled Persons we have got 34 affiliates, including 17 Special Schools and they are all under the Council. Some of them will be coming in later in the week to present as well, including the Fiji Disabled People's Federation and the Psychiatrist Survivors Association. These are the individuals who have been into the Mental Health Facility and they are doing advocacy work. They are also based in our complex in Brown Street; the United Blind Persons, Fiji Association of the Deaf for the hearing impaired, they all are looking forward to their allocated time that they will be coming down and presenting in support of this Bill.

One clarification, Honourable Members, the disability, not only is it a cross cutting issue, it has different categories of disabilities and within these different disabilities, they have their own culture. Taking for example, for the hearing impaired, if we are in a conversation with a person who is deaf and dumb. One thing that usually offends them when you take the "eye contact" away from them. That is very offending, or if someone confined to a wheelchair comes in here, and address the Honourable Member or the honourable Standing Committee on Social Affairs, when we talk to them, it is kind of offending to them to engage in a conversation with them standing up and looking down on them.

Those are some of the things that we probably have to be aware including the visually challenged. Those who are visually challenged, it is very important that you need a lot of verbal guidance; when they come into the room, the actual location, topographical orientation of the room should be very clear to them and that is why disability is always very difficult to handle at times.

So, I am glad that Honourable Radrodro has highlighted that because she is probably familiar with the number of organisations that are affiliated under the Council, and probably she is familiar with them as well. *Vinaka*.

MR. CHAIRMAN.- Thank you, Mr. Sitiveni.

HON. S. V. RADRODRO.- Mr. Chairman, can I just ask a supplementary question to that? I thank Dr. Yanuyanutawa for his explanation but actually my question, because FNCDP as we have heard in the last session will be the enforcement agency for this Bill. What I was actually looking at is, how will the Bill affect the transport industry and these transport owners affect the construction or maybe the business owners in terms of building construction. I ask that question because of the implementation for enforcement purposes.

MR. S. YANUYANUTAWA.- Thank you, Honourable Members. If we go through the Bill, there is a mention under one of the sections there on Advisory Committees. The Advisory Committees under the current FNCDP Act of 1994, we have six Advisory Committees, but in the new Bill we have got eight Advisory Committees.

These Advisory Committees usually meet in Suva, most of the meetings are in the complex and one of the Advisory Committee is on Transport, Housing and Environment which is chaired by the Director Housing. On Legislation it is chaired by the Permanent Secretary for Justice; in Education it is chaired by the Director Primary, and usually the Senior Education Officer for Special Education sits in that Advisory Committee as well; and the Advisory Committee for Health is chaired by the Deputy Secretary for Health.

On the new Bill, we have got one for Women and Children which will be chaired by the Director for Women and the other one is on Employment and Opportunities which will be chaired by Director, National Employment Centre (NEC) from the Ministry of Labour. Those Advisory Committees are the ones that usually gives instructions and advise to the main Council. I hope I am answering your question there.

MR. CHAIRMAN.- Thank you, Mr. Sitiveni. Thank you very much for raising all those issues. Be rest assured those people even coming in the wheelchair or they do have any form of disabilities, they will receive all the respect from this Committee. All the organisations that you have informed the Committee, the Secretariat has already taken note of that and if there are any institutes which are willing to come and present, please contact the Secretariat. The advertisement is already in

the papers and they can just call him or send him an email and he will avail time for them so that they can come here and present to the Committee.

HON. A.T. VADEI.- Thank you, Mr. Chairman. I wish to thank Dr. Yanuyanutawa for his presentation this morning in support of the Bill of Rights of Persons with Disabilities (Bill No. 12 of 2016). My only question is, when can you come up with the implementation plan for the organisation as strategic plans in full ratification of this Convention? Because now we have these Bills which will assist you in the formulation of those strategic plans in compliance with the full ratification of the Convention. Can you just inform this Committee on that?

MR. S. YANUYANUTAWA.- Thank you for the question, Honourable Vadei. Fiji is actually doing it the orthodox way of doing things. We would like to get this Bill through Parliament first, and the honourable endorsement of the Bill by the Members of Parliament, like what I have mentioned, will give us probably a head-start in ratifying the UN Convention on the Rights of Persons with Disabilities.

Probably if I take you back, Honourable Members to the Incheon Strategy that was signed in 2012, it was signed by none other than the Madam Speaker, in her capacity as the Minister for Social Welfare, Women and Poverty Alleviation at the end of 2012. In one of the 10 goals of the Incheon Strategy, Goal Number 9 is the Acceleration of the Ratification of UNCRPD and the Domestication of the Legislation or the Disability Bill.

Most of our regional neighbours, even our Pacific Island nations are doing it the other way around. They ratify and then they come back and then they look for the Bill. We are doing it on the more of the orthodox way, we come up with a Bill first, we put it across to Parliament and if it is endorsed then we move into the next stage of ratifying. We hope that we will be able to complete that before the end of 2016.

MR. CHAIRMAN.- Thank you, Mr. Sitiveni. Also for your information, I would like to say that while the Committee will be out after next week, maybe in the North or in the West, we will also take submissions when we are out there, like visiting the institutions in the North, somewhere in the North we will set up a place where we will receive submissions from the institutions or the members of the public who wish to give submission. That will also be informed by the Secretariat to the media and also to the people who wish to give their submissions. I believe, next week more ministries are coming to give their submissions and the time left we can also open submissions here, so that people can come straight and give submission which will be informed by the Secretariat.

Thank you, Sir, for presenting to the Committee. I must say that I agree with you that this is a very important Bill and this Bill will obviously change the lives of the people with any form of disabilities. Thank you, Sir, for your time.

HON. S. V. RADRODRO.- Mr. Chairman can I just ask one last question? Dr. Yanuyanutawa, when do you think this Bill will come into force and what are the transitional plans? Are there transitional plans in place? Thank you.

MR. S. YANUYANUTAWA.- Thank you for the question Honourable Radrodro. Honourable Members, I think we cannot really give a timeline, but we hope that by the second quarter or by the end of June or going into the third quarter that we will be able to get the response of Parliament.

Honourable Members, we are just the small fish, we are in the ocean, we will just wait for the final endorsement by Parliament to be able to move forward with this Bill. Right now we are looking at third quarter, but we hope that before we finish by December 2016 we will be able to get the Bill and operate on the transition plan. I know that there is a lot of things to do, a lot of work and a lot of modifications and first of all FNCDP will change its name from FNCDP to NCPD – National Council for Persons with Disabilities. So, those are some of the changes that we are looking at. We have not really had a good Enforcement Unit, we need to set that up as well. We need to probably set up a Legal Unit as well. We have already decentralised to the North, we have got a Northern Centre, we need to have a centre in the West as well. Those are some of the critical changes that will probably change the face of the National Council for Persons with Disabilities in the coming years.

As for what I have mentioned in my submission, Honourable Members, it will be the game changer, not only for persons with disabilities and their carers, but for the establishment of the National Council. Thank you.

MR. CHAIRMAN.- Thank you, Mr. Sitiveni.

HON. A. T. VADEI.- Thank you, Mr. Chairman. Looking at this new Bill and the work that you will be undertaking, my question is, what sort of budgetary allocation are you looking at to factor some of the major challenges that you plan to do in the next five or 10 years? Thank you.

MR. S. YANUYANUTAWA.- Thank you for the question Honourable Vadei. We are definitely looking for a bigger budget than the one that we are enjoying now. If we are able to accommodate all the things that are captured in the Bill, definitely there should be an increase. Honourable Radrodro will be familiar with the allocations that the Council used to receive for the last three or four years. Just last year we pushed our budget up to \$390,000 including the \$60,000 that

was being given to the Northern Disability Centre. We are going into a new direction of setting up of a new Enforcement Unit and even Legal Unit and other social issues like setting up of residential accommodation for persons with disabilities. Since we are being challenged, the social landscape have changed dramatically and a lot of people with disabilities have ended up on the streets begging, as most of them do not have a roof over their heads.

So, all those things will be definitely looked at for an increased budget for the Council and its affiliates.

MR. CHAIRMAN.- Thank you, Sir, for presenting to the Committee and the support you have already given to this Bill. We would like to reassure you that any person coming to present here, with any form of disability or if they present any disability they will get all the respect from this Committee. Once again thank you very much for presenting to the Committee.

Honourable Members, we will adjourn now and reconvene at 2.30 p.m.

The Committee adjourned at 11.00 a.m.

## **Annex E – Advertisement: Public Notice Calling for Public Submissions on the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016)**



### **PARLIAMENT OF THE REPUBLIC OF FIJI**

PARLIAMENT COMPLEX, GLADSTONE ROAD  
P.O. BOX 2352, GOVERNMENT BUILDING, SUVA  
PHONE 3225600. FAX: 3305325



#### **Standing Committee on Social Affairs**

#### **CALL FOR SUBMISSIONS**

The Parliament Standing Committee on Social Affairs is currently examining the following Bills and invites public to give its views:

##### **Heritage Bill (Bill No. 10 2016)**

The intention of this Bill is to fulfill one of Fiji's obligations under the World Heritage Convention, the Heritage Bill 2016 seeks to provide for the recognition, management and protection of places having world heritage values in Fiji.

##### **Rights of Persons with Disabilities Bill (Bill No. 12 of 2016)**

The Rights of Persons with Disabilities Bill 2016 seeks to provide for, uphold and enforce the rights of persons with disabilities in Fiji as provided for under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The copies of the Bills are available on the Parliament website [www.parliament.gov.fj](http://www.parliament.gov.fj) under the heading "Bills" or by clicking on the following links for each Bill:

1. Bill No. 10 of 2016 - <http://goo.gl/WX1KXX>
2. Bill No. 12 of 2016 - <http://goo.gl/40wHLx>

The Committee is calling for written submissions from interested persons or organizations wishing to express its views on the two Bills, by writing submissions addressed to:

The Chairman  
Standing Committee on Social Affairs  
PO Box 2352  
Government Buildings  
SUVA

as soon as possible but no later than Monday 4<sup>th</sup> July, 2016.

Please note that written submission can be send by email to [savenaca.koro@govnet.gov.fj](mailto:savenaca.koro@govnet.gov.fj) but for those parties who are interested in giving Oral submission can contact the Committee Secretariat, Mr. Savenaca Koro on telephone 3225695.



## **Annexe F - Written Submissions Received by the Standing Committee**

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**JOINT SUBMISSION TO  
THE STANDING COMMITTEE ON SOCIAL AFFAIRS,  
PARLIAMENT OF FIJI  
ON  
THE RIGHTS OF PERSONS WITH DISABILITIES BILL (No 12 of 2016)**

**Office of the United Nations High Commissioner for Human Rights,  
Regional Office for the Pacific (UNOHCHR)**

**&**

**United Nations Economic and Social Commission for Asia and the Pacific,  
Pacific Office (UNESCAP)**

### **I INTRODUCTION**

OHCHR and ESCAP are encouraged by Fiji's current efforts to move towards ratification of the *Convention on the Rights of Persons with Disabilities* (CRPD) and develop legislation aligned to the Convention. Such efforts are in line with the recommendations accepted by the Government during the 2nd Universal Periodic Review of Fiji to ratify all core human rights conventions, including the CRPD.<sup>2</sup>

The *Rights of Persons with Disabilities Bill 2016* (hereinafter the *Disability Bill*) repeals the *Fiji National Council for Disabled Persons Act 1994*, and introduces a number of positive reforms that are consistent with the CRPD. In particular, the Bill enhances the rights provisions under Fiji's existing constitutional and legislative framework as it specifically focuses on persons with disabilities and provides a more comprehensive set of rights for this marginalised section of the community.

The Government of Fiji is commended for the important steps it has taken towards protecting the rights of persons with disabilities in the country, including the drafting of the *Disability Bill*. The comments that follow are designed to draw attention to aspects of the Bill that currently fall short of the standards required by the Convention and could be improved. The submission also suggests ways in which these gaps might be addressed with a view to improving compliance.

### **II CURRENT LEGAL FRAMEWORK AS RELATED TO THE RIGHTS OF PERSONS WITH DISABILITIES**

#### *UN Convention on the Persons with Disabilities*

Fiji took an important first step by signing the CRPD on 2 June 2010, thereby indicating its intention to ratify in the near future. The issue of Fiji's ratification is currently before Fiji's Parliament.

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<sup>2</sup> See UPR recommendations No. 99.1-99.3 and 99.12-99.14 in A/HRC/28.8.



**on Social Affairs**

The 2013 Fiji Constitution upholds a wide range of rights for persons with disabilities. These are either explicitly stated as in Articles 26 and 42, or implied across the full spectrum of rights and freedoms comprising the Bill of Rights (Chapter 2).

Importantly, Article 26:

- recognises that all persons are equal before the law, upholding their rights to equal protection, treatment and benefit of the law;<sup>2</sup>
- clarifies that the right to equality includes the right to full and equal enjoyment of all rights and freedoms recognised in the Bill of Rights or any other written law;<sup>3</sup>
- identifies disability as a prohibited ground of discrimination (both direct and indirect);
- clarifies that no law or administrative action taken under law may impose a limitation or restriction on any person, whether directly or indirectly, on the basis of disability as a prohibited ground;<sup>4</sup>
- outlines specific rights of access, membership and admission for all persons to places and services open to the public including shops, hotels, restaurants, educational institutions and public transport;<sup>5</sup>
- requires proprietors of such places or services to “facilitate reasonable access for persons with disabilities to the extent prescribed by law”.<sup>6</sup>

Article 42 recognises certain rights of persons with disabilities, although these are subject to limitation by any law or administrative action. The main focus is on accessibility, in particular the rights to:

- reasonable access to all places, public transport and information;
- use sign language, Braille or other modes of communication;
- reasonable access to materials, substances and devices relating to their disability.<sup>7</sup>

In addition, Article 42 recognises the right of persons with disabilities to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable full participation in society and effective realisation of rights.<sup>8</sup> This important provision closely resembles *reasonable accommodation* which is a key concept in the CRPD, and also *procedural accommodation*, a similar but narrower concept linked to the right to access justice.

#### Human Rights Commission Decree 2009

The *Human Rights Commission Decree 2009* prohibits discrimination on the grounds of disability in relation to:

- employment, including recruitment;
- participation in a partnership, including making an application for partnership;
- participation in any trade, calling or profession;

<sup>2</sup> Article 26 (1).

<sup>3</sup> Article 26 (2).

<sup>4</sup> Article 26 (3) and (4).

<sup>5</sup> Article 26 (5).

<sup>6</sup> Article 26 (6).

<sup>7</sup> Article 42 (1).

<sup>8</sup> Article 42 (2).

- provision of training, or facilities or opportunities for training, to assist a person in gaining employment;
- membership of an organisation that exists for a trade, calling or profession, except for membership of a private club or provision of services or facilities to a member of a private club;
- provision of goods and services, including banking, insurance, loans and credit services;
- access to any place or transport open to the public;
- provision of land, housing or other accommodation;
- access to, and participation in, education.<sup>8</sup>

### III RIGHTS OF PERSONS WITH DISABILITIES BILL 2016 – SUGGESTED AMENDMENTS

OHCHR and ESCAP acknowledge the declared intention of the Disability Bill to “provide for, uphold and enforce the rights of persons with disabilities in Fiji as provided for under the CRPD”.<sup>10</sup> They particularly welcome the inclusion of Part 6 which outlines a wide range of CRPD related rights for persons with disabilities. Other positive features of the Bill are: the provisions recognising civil and constitutional remedies for any breach of these rights;<sup>11</sup> the role of the Human Rights and Anti-Discrimination Commission in the enforcement of rights;<sup>12</sup> and the responsibility placed on government to demonstrate lack of resources where it invokes such a claim to explain failure to implement any right enshrined in Part 6.<sup>13</sup>

Some areas of the Bill could be improved to better reflect the CRPD as well as to create a more robust and enabling legal framework for the full and effective participation in society of persons with disabilities on an equal basis with others. They include:

1. Language and definitions used in the Bill
2. List of the rights protected under the Bill
3. Strengthened protection of the rights currently included in the Bill
4. Registration requirements, criteria and penalties for non-compliance
5. Remedies and enforcement provisions
6. Consultations with and involvement of persons with disabilities through their representative organisations
7. The role of the Convention, including the jurisprudence of the Committee, in providing interpretative guidance when applying the legislation.

A preliminary comment could be made about the overall structure of the Bill. Considering that the Bill is primarily concerned with the protection of the rights of persons with disabilities, the structure could be revised so that Part 6, which spells out the rights, is brought towards the beginning of the text, rather than at the end, where it currently sits. The Bill could then go on to describe the institutional framework put in place to protect these rights.

#### 1. Language and definitions used in the Bill

There are several areas, including in clause 2, where consistency with the CRPD could be improved.

<sup>8</sup> Section 19, Human Rights Commission Decree 2008.

<sup>10</sup> See clause 1.1, Explanatory Note, Rights of Persons with Disabilities Bill 2016.

<sup>11</sup> Clause 49, Disability Bill 2016.

<sup>12</sup> Clause 50, Disability Bill 2016.

<sup>13</sup> Clause 2.7(3), Disability Bill 2016.



(i) "deemed to be disabled"

It is unclear why this phrase is included in the Bill since it is based on just two types of impairment and the only time the phrase is used substantively in clause 27 (4) of the Bill, the rights applied to those "deemed to be disabled" are applied to all persons with disabilities. The phrase also reinforces the former medical approach to disability as an illness or medical abnormality. This is inconsistent with the rights based approach of the CRPD which emphasises the disabling barriers that persons with impairments face on account of social prejudice and discrimination.

**Recommendation:** Remove this definition (and its corresponding reference in the Bill) as redundant and incompatible with the CRPD.

(ii) "impairment"

This detailed definition also seems out of place in the context of a rights based Disability Bill where the impairment itself is of less importance. The CRPD does not define impairment but it is understood to be an individual physical, psychosocial, intellectual or sensory condition that is long term and which may result in some kind of functional limitation. Impairments differ from what is usually considered to be the norm. If a definition is considered necessary in the Bill, it would be preferable to keep it general and open. This would be consistent with the non-definition of disability in the CRPD, which was deliberately done to avoid the risk of excluding certain types of impairments and closing the door on how the concept of disability might evolve in the future.

**Recommendation:** Amend the definition to make a general statement on impairment as a long term condition (physical, psychosocial, intellectual or sensory) which may or may not result in some form of functional limitation.

(iii) "persons with disability"

Reflecting the CRPD, the Bill does not define the term 'disability', recognising that disability is an evolving concept. Also, importantly, disability does not correspond to an individual impairment or illness, but as something that is socially constructed and relational, arising out of the interaction between individuals with impairments and the attitudinal, social, physical and environmental barriers they face in daily life. This social construction of disability is reflected in the definition of "persons with disabilities" in the CRPD, and in turn in the Disability Bill.<sup>14</sup> They:

"include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others..."

However, the Bill goes on to exclude from the definition those who show:

- (a) tendency to set fires;
- (b) tendency to steal;
- (c) tendency to physically or sexually abuse other persons;
- (d) exhibitionism; and
- (e) voyeurism

<sup>14</sup> Clause 2, Disability Bill 2016

These exceptions are misplaced and incompatible with the CRPD. They imply disability-based discrimination by associating these unlawful activities with persons with disabilities, in particular those with intellectual or psychosocial disabilities. All discrimination on the basis of disability is prohibited under the Convention (Article 5). The list of activities is a matter for the criminal justice system which should be applied to any apprehended person in accordance with due process and the safeguards under international human rights law.

**Recommendation:** Amend to remove the listed exceptions to the definition of persons with disabilities.

(iv) “discrimination on the basis of disability”

The definition of “discrimination on the basis of disability” proposed in Part 6 of the Bill is similar to the definition in the CRPD.<sup>15</sup> However, there is room for further strengthening this provision and its alignment with the CRPD. In particular, the ‘denial of reasonable accommodation’ should be included in the definition to enhance protection against discrimination.

**Recommendation:** Amend clause 27(1) to incorporate denial of reasonable accommodation in the definition.

(v) Rights based approach lacking in clauses 4 and 5

Clause 4 of the Bill outlines the objectives of the National Council for Persons with Disabilities. While the Bill, including its long title and explanatory note, explicitly recognises the purpose of protecting the rights of persons with disabilities in accordance with the CRPD, the objectives of the Council fall short. In particular, they reflect the medical approach to disability which is incompatible with the CRPD, for example by placing emphasis on “care and rehabilitation” of persons with disabilities, and “eliminating the causes of disabilities or impairment.” This approach is also reflected in clause 5 which deals with the functions of the Council, for example subclause 1 (b) – (e). Overall, the Council’s policy and advisory mandate emphasises the provision of services to the exclusion of any specified function to promote or implement the rights of persons with disabilities, save a passing reference to its responsibility as CRPD focal point in subclause 1 (q).

Clauses 4 and 5 also imply a narrower meaning of services. Under the CRPD, services are not only disability specific but also include those services available or open to the general public, where the key issue is the right to accessibility: recognised as critical to enabling persons with disabilities to live independently and participate fully in all aspects of life (Articles 9 & 19).

**Recommendation:** To improve consistency with the CRPD, it is suggested that: clause 4 (a) is amended to refer to organisations that represent, promote or implement the rights and interests of persons with disabilities, including by providing rehabilitation and other services; and clause 4(c) is amended to refer to work towards the full and effective participation and inclusion of persons with disabilities in society on an equal basis with others. Similarly, clause 5 (1) e) should be amended to refer to all organisations promoting or implementing the rights of and/or providing services to persons with disabilities.

These amendments recognise that disability results from interaction between persons with disabilities and attitudinal and environmental barriers, and create greater alignment with the CRPD. They are also consistent with the Council’s designated function as focal point for the CRPD (which is

<sup>15</sup> Clause 27(1), Disability Bill 2016.

itself consistent with the implementation mechanism required under Article 33 (1) of the Convention]; the Council's general responsibility to advocate for the implementation of all international conventions and human rights matters in Fiji;<sup>26</sup> and para 1 (a) of the Schedule to the Bill (see comments below).

## **2. List of the rights protected under the Bill**

The Disability Bill, particularly Part 6 (Discrimination on the basis of disability), incorporates most of the rights under the CRPD. However, there are a few rights that are missing. It is important for the Bill to be in line with the CRPD if it is to achieve its declared purpose, that is, to provide for the protection of the rights of persons with disabilities in accordance with the CRPD. The exclusion of certain key rights leaves gaps in the protection and enjoyment of rights by persons with disabilities.

**Recommendation:** OHCHR and ESCAP recommend that provision is made in the Bill, before it is finalised, to include in Part 6 of the Bill the following CRPD rights which are presently excluded.

- (i) the right of women and girls with disabilities to full and equal enjoyment of all human rights and fundamental freedoms**

Women with disabilities are given special attention under the CRPD – included both as a general principle (Article 3) and a standalone article (Article 6). This recognises the fact that women with disabilities have historically suffered multiple (intersectional) forms of discrimination, including greater susceptibility to violence, higher rates of illiteracy, and greater barriers to employment and decent work.

- (ii) the right to life**

This is a constitutional right for all persons in Fiji but its express application to persons with disabilities in the context of the Bill would be consistent with the CRPD (Article 10). Article 10 is itself consistent with other human rights treaties but it 'reaffirms' this inherent right in respect of all persons with disabilities, regardless of the nature or degree of their disability. This provides important protection against any attempt to devalue the life of a person with disability, regarding it as less valuable, less worthy of living, which has been common practice in many countries.

- (iii) the right to freedom from torture or cruel, inhuman or degrading treatment or punishment**

Article 15 of the CRPD expressly prohibits torture, cruel, inhuman or degrading treatment or punishment, including non-consensual medical or scientific experimentation. The CRPD Committee has clarified that the use of forced medical treatment for the perceived 'benefit' of a person with disability, including the use of neuroleptic (antipsychotic) drugs, and the use of seclusion (separate confinement) in all institutional environments on persons with disabilities (particularly those with psychosocial or mental disabilities), contravenes Article 15.<sup>27</sup> In light of the recent ratification of the Convention against Torture by Fiji in March 2016, the Bill would benefit from the explicit inclusion of the right to freedom from torture.

<sup>26</sup> Clause 5 (1)(p), Disability Bill 2016.

<sup>27</sup> See Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities - The right to liberty and security of persons with disabilities, adopted during the Committee's 14<sup>th</sup> session held in September 2015, para. 12.

(iv) **habilitation and rehabilitation**

Habilitation and rehabilitation do not in themselves constitute a right but they can be an important instrument to achieve other rights. They comprise services, programmes and other measures, particularly in the areas of health, employment, education and social services “to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life.” (Article 26)

**3. Strengthened protection of the rights under the Bill**

The suggestions that follow are aimed at enhancing the current rights provisions under the Bill and improving alignment with the CRPD. The Bill would be further strengthened by making clear government’s corresponding obligations. In the interests of clarity, such obligations provisions, in so far as they are incorporated into the Bill, should be clearly differentiated from the rights provisions.

**3.1 Existing rights**

(i) **Equality and non-discrimination (clause 28)**

Clause 28 would benefit from three additional provisions: firstly, a provision that explicitly prohibits discrimination on the basis of disability, including discrimination by association (discrimination against a person associated with a child or adult with disability); secondly, a provision that guarantees protection from discrimination for all persons with disabilities which should include reference to multiple or intersectional discrimination; and thirdly, a provision that creates an obligation to provide reasonable accommodation which is a pivotal concept under the CRPD to the extent that the denial of reasonable accommodation is regarded as an act of discrimination. These additional provisions would make the text more consistent with the CRPD, in particular Article 5 (equality and non-discrimination).

*Recommendation:* Amend clause 28 to include provisions to prohibit discrimination on the basis of disability, including discrimination by association; guarantee protection from discrimination for all persons with disabilities, including children, women and girls, and persons with intellectual and psychosocial disabilities; and specify an obligation to provide reasonable accommodation as a means of promoting equality and eliminating discrimination.

(ii) **Accessibility (clause 29)**

This clause is mainly drawn from the Constitution (Article 42). However, it falls short of Article 9 of the CRPD, in particular by limiting the right of persons with disabilities to *reasonable* access to physical spaces, transport and information, and not including communications, ICT technology, and public services. Under Article 9, persons with disabilities are entitled to access, on an *equal basis with others*, the physical environment, ICT, and other facilities and services open or provided to the public. This is necessary to enable them to live independently and participate fully in all aspects of life. In fact, accessibility is critical to their enjoyment of practically all rights under the CRPD and other treaties, so lack or denial of accessibility could be considered discriminatory.

*Recommendation:* Amend clause 29 (a) to remove the word ‘reasonable’ and add communications, ICT technology, and all facilities and services open or provided to the public.



### (iii) Children with disabilities (clause 30)

As it stands, this clause accurately captures the right of children with disabilities to express their views on all matters that affect them under Article 7 of the CRPD. However, in the interests of clarity and stronger alignment with the corresponding CRPD Article, it would benefit from a general provision to establish the right of children with disabilities to enjoy all human rights and freedoms on the same basis as other children. Globally, children with disabilities suffer multiple or aggravated discrimination based on their vulnerable age and disability. This can be particularly severe for children in institutional care where they are susceptible to forced interventions and treatment.

**Recommendation:** Amend clause 30 to include a general provision to establish the right of children with disabilities to enjoy all human rights and freedoms on the same basis as other children.

### (iv) Disaster and humanitarian emergencies (clause 31)

Clause 31 of the Bill addresses the rights of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters. Unlike Article 11, the corresponding CRPD provision, the Bill recognises the right of persons with disabilities to be reasonably accommodated in protection and safety interventions. While the corresponding definition of reasonable accommodation in the Bill is consistent with the CRPD, this concept is not applied in the context of Article 11. Instead, the CRPD adopts stronger language, obliging states to take “all necessary measures” to ensure the protection and safety of persons with disabilities in situations of risk. Amongst other things, this requires that all emergency and other services are accessible and that appropriate training is provided to emergency response personnel. It also implies tailor made adjustments necessary to meet the specific requirements of an individual (reasonable accommodation).

Clause 31 could be strengthened in two ways to improve alignment with Article 11 of the CRPD:

- recognising the role of international humanitarian and human rights law in situations of risk and humanitarian emergency, and the obligations of states under such law; and
- replacing the right to reasonable accommodation with the obligation of government to adopt all necessary measures to ensure security and protection for persons with disabilities.

**Recommendation:** Amend clause 31 to recognise obligations under international humanitarian and human rights law in humanitarian emergency, and to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disaster.

### (v) Equal recognition before the law (clause 32)

Equal recognition before the law and legal capacity is a crucial human right which affirms the right of persons with disabilities to be recognised as persons before the law, meaning they have the right and capacity to be holders of rights and obligations under the law. Simply put, it recognises the right of every adult to make his or her own choices and decisions in life. It has been common practice, globally, to deny legal capacity to persons with disabilities, especially those with intellectual or psychosocial disabilities who are deemed to lack mental capacity or competence. This is reflected in a wide range of discriminatory laws particularly those relating to guardianship and mental health care and treatment which allow for substitute-decision making, as well as laws which prohibit voting

or holding public office. The CRPD Committee has clarified that legal capacity (as distinct from mental capacity) is an inherent, non-derogable right that should in no circumstances be limited, even in an emergency or other crisis situation.

Clause 32 of the Bill addresses this important right. However, while subclauses (2) and (3) correspond to CRPD provisions in Article 5, subclause (1) only refers to the right to enjoy (i.e. exercise) legal capacity; the right to legal capacity itself is implied only in the heading (equal recognition before the law). An express provision would provide greater clarity.

In addition, there is a rather confusing mix of issues and terms in subclause (1), in particular the reference to the right to “... special measures to promote such equality and to support access to justice for persons with disabilities shall not be discrimination”. While this is a commendable effort to capture Article 12 (3) of the CRPD, the provision would benefit from being redrafted to remove any ambiguity. Article 12 (3) essentially requires states to ensure that persons with disabilities are able to access whatever support they need to exercise their own legal capacity and to make their own decisions (supported decision making). Article 12 (4) requires states to ensure that such support is appropriate and not imposed, and there are effective safeguards to prevent abuse and undue influence by the person providing support.

**Recommendation:** Amend clause 32 to establish the right of persons with disabilities to be recognized as persons before the law and to be able to exercise legal capacity on an equal basis with others in all aspects of life. The right to legal capacity should include the right to any (freely chosen) support a person with disability may need in any decision making process, with appropriate safeguards to prevent abuse. The right cannot be restricted or withheld in any circumstances, including emergency situations.

#### Access to justice (clause 33)

Unlike its corresponding provision in the CRPD (Article 13), clause 33 of the Bill does not establish a general right of persons with disabilities to access justice on an equal basis with others. It has a narrower scope, focussing only on the provision of procedural and age-appropriate accommodation to facilitate participation in all legal proceedings. To strengthen this provision, and alignment with the CRPD, it would be preferable to include a general right to access justice which could specifically include the right to access all legal processes and proceedings (as claimants, defendants, witnesses), free legal services, and procedural accommodation.

A corresponding definition of procedural accommodation should also be considered in lieu of subclause (2). While this concept is not defined in the CRPD, it is very similar to reasonable accommodation although it applies only to proceedings. Its purpose is to enable persons with disabilities to participate fully in judicial and administrative proceedings. As with reasonable accommodation, any adjustment or ‘accommodation’ must be tailored to the specific needs of the person concerned. It should also be appropriate to the age of the person.

**Recommendation:** Amend clause 33 to establish a general right to access justice, including the right to access all legal processes and proceedings, free legal services, and procedural accommodation. A corresponding definition of procedural accommodation should be provided.

### **Liberty and security of the person (clause 34)**

This clause derives from Article 14 of the CRPD which upholds one of the most precious rights of every person – liberty and security of person. It is noted that there is no general statement recognising this right as provided in Article 14 (a). Also, the use of the term ‘custody’ limits the scope of any ‘deprivation of liberty’ under the CRPD, which extends beyond correctional facilities to include other institutional arrangements such as hospitals, mental health facilities, or psychiatric wards.

The purpose of Article 14 is therefore to ensure that persons with disabilities enjoy the right to personal freedom and security like everyone else, and are not deprived of their liberty arbitrarily, unlawfully, or on the basis of consent by another person. It also seeks to ensure that any deprivation of liberty conforms to the general law, involves due process and the usual safeguards, applies the guarantees under international human rights law, and provides reasonable accommodation if required. Under no circumstances is it justified to deprive a person of his or her liberty on the basis of having or appearing to have a disability.

*Recommendation:* Amend clause 34 to insert a general provision that recognises the right of persons with disabilities to enjoy liberty and security of person; and redraft subclauses (b) and (c) to refer to the rights of persons with disabilities who are deprived of their liberty, rather than just persons in custody.

### **Protecting the integrity of the person (clause 36)**

This is a welcome provision that corresponds to Article 17 of the CRPD. The right to personal integrity, unprecedented in international human rights law before the CRPD, is a response to the involuntary treatment of persons with disabilities (adults and children), in particular forced medical treatment and placement (institutionalisation), forced sterilisation, and other involuntary interventions like abortions with substituted consent.

*Recommendation:* Consider amending clause 36 to recognise the specific right of women, girls and boys with disabilities, including those with intellectual or psychosocial disabilities, to be protected from coerced sterilisation and contraception and other forced medication i.e. in the absence of their prior, fully informed and free consent.

### **Living independently and being included in the community (clause 38)**

This clause corresponds to Article 19 of the CRPD. However, greater clarity would be achieved by unpacking its provisions in the context of the Bill. For example, the right to living independently in the community implies a right to access transport, work in the open market, admission to any public or private school and vocational training as well as to personal mobility support as outlined in clause 39 of the Bill. Similarly, the right to personal assistance necessary to support living in the community and referred to in clause 38 would be strengthened by specifying the right to select the personal assistant and determine the terms and conditions of service. All of these provisions would help persons with disabilities exercise choice and control regarding where they live.

*Recommendation:* Consider amending clause 38 to include specific rights to transport, work in the open market, admission to any school, and vocational training, and to establish that a person with disability who requires personal assistance under clause 36 (2) is entitled to select the personal assistant and determine his or her terms of employment.

### Respect for home and family (clause 42)

A number of observations are shared in respect of clause 42, aside from general drafting comments made above:

- (i) The reference to 'child abduction' appears to be misplaced and is not consistent with Article 23 of the CRPD, on which clause 42 is based.
- (ii) No specific provisions of the *Family Law Act 2003* are cited in subclause (4) so a comment cannot be made about its consistency with the Convention in respect of child separation. It is noted for example that the Act permits the nullification of marriage on the ground of one of the parties being deemed to be "mentally incapable of understanding the nature and effect of the marriage ceremony",<sup>38</sup> which constitutes disability-based discrimination and is inconsistent with the Convention.
- (iii) Notwithstanding the paramount best interests of the child, where separation of a child from a parent with disability is contemplated, every effort must first be made to consider whether additional support services would be sufficient to enable the child to remain with the parent. Failure to provide parenting support, including providing information and assistance with child rearing, would constitute a breach of Article 23.

**Recommendation:** Amend clause 42 to remove reference to child abduction; review the *Family Law Act 2003* against the CRPD; and include an additional provision that creates an obligation as outlined in (iii) above.

### Education (clause 43)

In addition to general drafting comments made above, consideration might be given to clarifying the term 'inclusive education' (which is distinct from integrated education and does not permit special education or schools). It would also help to unpack the concept of reasonable accommodation in the context of education, for example to include physical access to classrooms and other school buildings; accessible transport; alternative modes of instruction and accessible educational materials and curricula, including in Braille and sign language; assistive devices and support in classrooms; and adjustment to school entry requirements, curricula, examinations and pass marks.

**Recommendation:** Amend clause 43 to include definition of inclusive education and clarify right to reasonable accommodation in the context of education to include accessible school environments etc. as above.

### Work and employment (clause 45)

This clause corresponds to Article 27 of the CRPD. However, it falls short of the Convention in a few respects. For example, states parties are obliged under the CRPD "to take appropriate steps" to employ persons with disabilities in the public sector. They also have a responsibility to promote their employment in the private sector through affirmative action and other measures. Similarly, states have an obligation to ensure that reasonable accommodation is provided in the workplace. While these provisions, along with others listed in Article 27 (1) (e) – (k), are incorporated into the Bill (clause 45 (7) (a) – (g)), they are cast as discretionary affirmative action measures, not obligations.

<sup>38</sup> Section 32(2)(2), *Family Law Act 2003*.

The clause could be strengthened by recasting paras. (7) (a) – (g) as obligations in line with Article 27 (1) (e) - (k) of the CRPD. Consideration might also be given to explicitly recognising the equal right of women with disabilities to work and employment. Globally, women with disabilities face additional barriers to employment and decent work (intersectional discrimination), and they experience higher levels of unemployment.

**Recommendation:** Amend subclause (7) to clarify that the itemised measures are obligations, and include an additional provision to recognise and protect the right to employment of women with disabilities.

#### **Adequate standard of living and social protection (clause 46)**

Clause 46 corresponds to Article 28 of the CRPD. While the clause elaborates on the right to an adequate standard of living and social protection in subclause (2), it does not expressly recognise the right to social protection and to the enjoyment of that right without discrimination on the basis of disability consistent with Article 28 (2). The obligation to provide an adequate standard of living for persons with disability implies that social protection and poverty reduction programmes should be disability-responsive. This means taking into account the extra costs incurred of having an impairment (e.g. support services, personal assistance and mobility, assistive and communication devices), as well as the aggravated circumstances or special needs of women and girls or older persons with disabilities. Importantly, any special allowances, benefits and services that are disability related should be in addition to other social protection schemes available to the general population.

**Recommendation:** Amend clause 46 (2) to establish the right to social protection; and amend both subclauses (1) and (2) to clarify that the right to an adequate standard of living and social protection should be enjoyed without discrimination on the basis of disability, including type of disability.

#### **Participation in political and public life (clause 47)**

This clause is drawn from Article 29 of the CRPD. However, there is a need to simplify the provisions for greater clarity and accuracy. In particular, subclauses (a) – (e) are obligations drawn directly from the Convention but they follow on from a statement about rights, which is confusing.

In view of the significant barriers that persons with disabilities can face in exercising their right to vote, consideration should be given to inserting a provision on reasonable accommodation, including the right to vote with the aid of a personal assistant of the voter's choice. Subclause (a) could also be expanded to itemise accessible voting procedures, facilities and materials to facilitate independent and secret voting, for example, accessible polling stations and booths, voting information and ballot papers in accessible formats like Braille voting sheets, the availability of sign language interpreters, and arrangements to ensure that institutionalised persons (those with intellectual or psychosocial disabilities) have access to polling stations and are able to cast their vote.

**Recommendation:** Amend clause 47 to clarify subclauses (a) – (e); include a provision on reasonable accommodation; and elaborate on subclause (a) to illustrate a range of accessibility measures.

#### **Participation in cultural life, recreation, leisure and sport (clause 48)**

This is another provision where rights and obligations have been confusingly conflated. As it currently stands, clause 48 provides that it is persons with disabilities who “shall take appropriate measures to ensure that persons with disabilities...”. The drafting of this clause needs to be revised.

*Recommendation:* Amend clause 48 to distinguish rights from obligations and simplify text.

### 3.2 Government obligations

A wide range of general and specific obligations run through the CRPD. Some of these have already been mentioned. In addition, attention is drawn to the following:

Article 4: outlines the obligations of parties to the Convention, including the obligation to revise or abolish any laws, regulations, customs or practices that discriminate against persons with disabilities; mainstream disability through all policies and programs; and closely consult with and actively involve persons with disabilities through their representative organizations when developing and implementing disability policies and legislation.

Article 9: obliges parties to the Convention to ensure that all types of physical constructions and communications technologies are accessible. This requires numerous measures including identifying and eliminating obstacles and barriers that exist in buildings, public roads, transportation, ICT, schools, housing, medical facilities and workplaces.

Article 31: requires countries to collect statistics and data about disabilities to inform public policy and help develop better programmes and services, identify barriers to the rights of persons with disabilities, and assist with monitoring implementation of the Convention.

## 4. Registration requirements, criteria and penalties for non-compliance.

Any organisation providing services to persons with disabilities or intending to do so must be registered in accordance with Part 4 of the Bill.<sup>19</sup> It is an offence for an organisation to provide a disability service without registration, and a penalty of \$100,000 applies.<sup>20</sup> Clause 5(1)(e) of the Bill requires the Council to maintain a Register of all organisations and ensure that their independence is maintained. The Council must also keep a Register of projects designed to assist persons with disabilities.<sup>21</sup>

Several issues arise in respect of the registration requirements for disability organisations in the Bill.

### 4.1 Purpose of the Register

The purpose of the Register, as outlined in clause 21 (2), is for:

- implementing any projects which contribute to the wellbeing, development and care of persons with disabilities;
- establishing an umbrella body to streamline and benchmark standards regarding the development of persons with disabilities in relation to international practice; and
- affiliation of the Council to international agencies.

This raises a number of questions that should be clarified before the Bill is enacted:

<sup>19</sup> Clause 21(4), Disability Bill 2016.

<sup>20</sup> Clause 22(7), Disability Bill 2016.

<sup>21</sup> Clause 5(1)(e), Disability Bill 2016.

1. What will the Register's role be in relation to implementation of projects?
2. Is it the responsibility of the Council to establish an umbrella body to streamline and benchmark standards in relation to international practice? If so, this should be included in clause 3, which deals with the functions of the Council.
3. How will the Register facilitate affiliation with international agencies?

*Recommendation:* The Bill should clarify:

- the purpose of registration for organisations, and how the register will be used to achieve this purpose.
- the responsibility of the Council in relation to establishing an umbrella body to streamline benchmark standards.
- the role of the Register in facilitating affiliation of the Council to international agencies.

#### 4.2 Ensuring the independence of registered organisations

The inclusion of this particular function of the Council in clause 3 (1) (e) of the Bill is questionable. The provision does not indicate who or what organisations need to be independent of, or for what purpose. Nor is it in line with any objective of the Council, or with the CRPD.

*Recommendation:* The inclusion of this provision should be reviewed, as it does not appear to benefit persons with disabilities or their representative organisations, or to be consistent with the spirit and purpose of the CRPD.

#### 4.3 Criteria for registration

The Schedule to the Bill establishes a number of conditions for registration including a requirement that the organisation “be created specifically to represent the rights and interests of persons with disabilities” (emphasis added). While this condition is consistent with the CRPD, it contradicts clauses 3(1)(e) and 21(4) as they currently stand, which require only service providing organisations to register with the National Council. As noted above under comments on clauses 4 and 5 of the Bill, this reflects the former medical approach to disability which is inconsistent with the CRPD. It also implies a narrower meaning of services. Under the CRPD, services are not only disability specific but also include those services available or open to the general public, where the key issue is accessibility: recognised as critical to enabling persons with disabilities to live independently and participate fully in all aspects of life (Articles 9 and 19).

To address this discrepancy within the Bill and to ensure a more inclusive and rights based approach, it is recommended that clause 21 (4) be amended along the lines suggested above for clause 3 (1) (e), and that para. 1 (a) of the Schedule be amended to refer to organisations that represent, promote or implement the rights and interests of persons with disabilities, including by providing services to persons with disabilities. This would ensure that a wider range of organisations including representative (disabled persons) organisations, advocacy and other rights based organisations, service providers, and civil society organisations with a broader but disability inclusive mandate, are eligible for affiliation to the National Council. If this approach is acceptable, other provisions such as clauses 21 (2) (a), 21 (3) (b), 21 (5) (a), 22 (5), and 22 (7) would need to be similarly amended.

*Recommendation:* Assuming that the purpose of the Register is clarified, review the requirement that the organisation “be created specifically to represent the rights and interests of persons with disabilities” in para. 1 (a) of the Schedule with a view to broadening the criteria to include organisations that represent, promote or implement the rights and interests of persons with



disabilities, including by providing services to persons with disabilities. Also consider amending clause 21 (4) to refer to any organisation promoting or implementing the rights of persons with disabilities and/or providing services to persons with disabilities.

#### 4.4 *Reasons for removal of registration*

The Schedule to the Bill includes reasons for removal of an organisation from the Register.<sup>33</sup> While this is an important provision, some of the grounds appear onerous and impractical. For example, an organisation can be removed:

1. if it “is brought before the courts for any matter”. This offends the presumption of innocence principle and the right to a fair trial, both of which rights are guaranteed under international human rights law.
2. if the “conduct of the organisation brings the Council or its affiliates into disrepute”. The term ‘disrepute’ is not defined in the Bill and creates the potential for unfair treatment or victimisation. Further, the Bill does not specify who is to decide what is ‘disreputable’.
3. if it “makes no attempt to comply with service delivery standards set”. At present there are no service delivery standards. Organisations should be given a reasonable amount of time to comply with any new standards.

There is also no provision for procedural fairness to ensure that decisions to deregister an organisation are fair and reasonable. While the Council is required to report on, including providing reasons for, any deregistration undertaken during the course of the year, there is no obligation to conduct a proper investigation, including notifying the organisation of the suspected transgression, providing details, and inviting a response.

**Recommendation:** The following should be considered:

- (i) the grounds for deregistering an organisation should be aligned to the requirements for registration;
- (ii) if an organisation is required to comply with service delivery standards, these must be made available prior to the obligation for compliance;
- (iii) two grounds for removing an organisation from the Register should be removed:
  - (a) conduct bringing the Council or its affiliates into disrepute as this lacks clarity and transparency, and does not facilitate compliance;
  - (b) being “brought before the courts for any matter” which offends the right to be presumed innocent and the right to a fair trial;
- (iv) a provision should be included to ensure procedural fairness.

#### 4.5 *Right of review of a decision of the Council*

It is noted that a review mechanism to challenge a decision of the Council is not included in the Bill. This is a key aspect of administrative justice and the process of reviewing or appealing a decision of the Council to unregister, not register, or deregister an organisation should be outlined. Further, this should address any internal review mechanisms that may be put into place, as well as the right to appeal a decision of the Council in the High Court once internal remedies have been exhausted.

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<sup>33</sup> Schedule, para 4, Disability Bill 2016.

*Recommendation:* The right of an organisation to appeal a decision of the Council, both through internal review and through the Courts, should be recognised in the legislation.

#### 4.6 Excessive penalty

An organisation that is not registered in accordance with Part 4 and provides services to persons with disabilities is liable to a fine of \$100,000. This seems excessive and unnecessarily punitive. The penalty should be adjusted to be more proportionate to the failure to comply with the requirement to register. It should be aimed at encouraging compliance rather than being punitive.

*Recommendation:* The penalty should be reviewed with a view to applying a lower fine that is more commensurate with the failure to register.

### 5. Remedy and enforcement provisions

Clause 49 of the Bill deals with the civil and constitutional remedies for breaches of rights under the legislation. Consideration should be given to recognising other avenues in particular criminal prosecution and disciplinary proceedings (in the case of complaints against public officers). In respect of criminal proceedings, it should be noted that clause 35 (3) of the Bill already recognises the right of persons with disabilities who are victims of any form of exploitation, violence or abuse to have the matter investigated and, where relevant, prosecuted.

The title for clause 30 ("Enforcement of discriminatory acts") should be reviewed. This provision of the Bill allows the Council, any person living with disabilities or a NGO representing persons with disabilities, and the Human Rights and Anti-Discrimination Commission to enforce the rights included in Part 6. This should be broadened to allow for any person (a person with a disability, a parent or guardian of a child with disability, or any other person associated with or concerned for the welfare of a person with disability) to make a complaint if there is reasonable belief that a right has been infringed. This would be consistent with the concept of discrimination on the basis of disability in the CRPD, which includes discrimination by association.

The enforcement and redress mechanisms identified in clauses 49 and 30 could be further strengthened by:

- clarifying the jurisdiction of the Human Rights and Anti-Discrimination Commission to initiate an investigation into any alleged act of unlawful discrimination on the basis of disability or any other breach of rights under the Bill;
- establishing offences provisions, supported by appropriate penalties, including the offence of unlawful discrimination on the basis of disability; and
- ensuring that any mechanisms mandated to promote, protect and monitor implementation, including by investigating any alleged breach of rights under the Bill, comply with the requirements under Article 33 (2) and (3) of the CRPD, which emphasise the need for 'independent' mechanisms and the participation of civil society, in particular persons with disabilities and their representative organisations.

It should be noted that the *Mental Health Decree 2010* referred to in clause 30 does not comply with the CRPD to the extent that it contains a number of provisions that discriminate against persons with disabilities.

**Recommendation:** The title for clause 30 should be revisited and the provision should be broadened in scope to enable other interested parties and individuals that may be affected by disability-based discrimination to enforce the legislation. Other options for redress (criminal prosecution and disciplinary proceedings) should also be considered along with specific offences and penalties provisions.

#### 6. Consultations with and involvement of persons with disabilities

Under Article 4 (3) of the CRPD, it is incumbent on states parties to “closely consult with and actively involve” persons with disabilities through their representative organisations in the development and implementation of all legislation and policies to implement the CRPD and in other decision making processes concerning issues relating to persons with disabilities. This reflects a core value associated with the Convention since its inception: *nothing about us without us*.

There are a number of opportunities in the Disability Bill to comply with this requirement. They include clause 7 (Composition of the Council), clause 12 (Advisory Committees), and clause 13 (District Committees).

**Recommendation:** Amend clause 7 (k), clause 12 (2) (c), and clause 13 (2) (2) to mandate representation by an organisation representing persons with disabilities.

#### 7. The role of the Convention, including the jurisprudence of the Committee, in providing interpretative guidance when applying the legislation

To support the long title and explanatory note of the Bill, the Bill would benefit from inclusion of a specific provision that the legislation be interpreted in accordance with the Convention and that consideration must be given to decisions of the Committee on the Rights of Persons with Disabilities, including its case law and reports on inquiries, recommendations to states parties (Concluding Observations), General Comments and other interpretative guidelines. This would assist the Fiji courts in applying the law and addressing any gaps in the legislation that are not remedied prior to enactment.

**Recommendation:** Include a provision to interpret the legislation in accordance with the CRPD and give consideration to decisions of the Committee on the Rights of Persons with Disabilities, including its case law and reports on inquiries, recommendations to states parties (Concluding Observations), General Comments and other interpretative guidelines. The heading should also be reviewed.

## IV CONCLUSION

In line with Article 4 of the CRPD, a comprehensive review will need to be undertaken of all Fiji's laws following ratification to identify and remove any provisions that discriminate against persons with disabilities. As part of this process, it would be beneficial to review the *Rights of Persons with Disabilities Bill* to ensure full compliance with the Convention before its enactment. In the meantime, it is hoped that these provisional comments and recommendations from OHCHR and ESCAP will assist the Standing Committee on Social Affairs and the Fiji Parliament in their deliberations, and contribute to final revisions of the Bill.

As the Committee would be aware, the legislation, once enacted, will require financial resources for its effective implementation. It is hoped that the Government will make adequate provision in future national Budgets. Ratification will help Fiji to access financial and technical assistance from the international community which should cover some of the costs of implementation and overcome any capacity gaps. Technical assistance would include any assistance Fiji might need with developing CRPD compliant legislation. Such support is mandated under Article 32 of the CRPD (International Cooperation).

4 July 2016

**Written Submission by the Land Transport Authority**



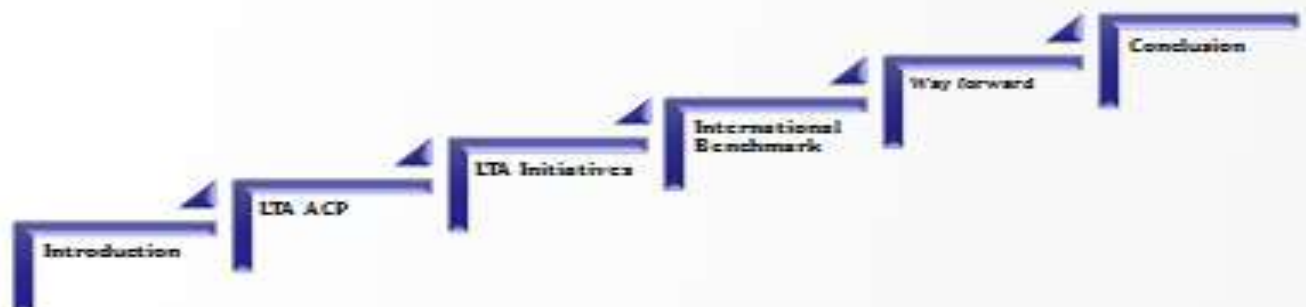
**LTA PRESENTATION TO PARLIAMENT  
BY CE & TEAM**

**LTA INITIATIVES DEDICATED TO  
ASSIST PHYSICALLY CHALLENGED  
INDIVIDUALS**



fppt.com

## **PRESENTATION OUTLINE**



fppt.com



# INTRODUCTION

- One of the core function of the Authority is :
  - ✓ *To ensure so far as is practicable the provisions of road transport passenger services adequate to meet the requirements of the public.*
- Under this core function, the Authority is inspired to assist and serve the physically challenged individuals of this nation.

tppt.com

# LTA ANNUAL CORPORATE PLAN

- **Goal 1 :**  
*To provide the best solutions to meet our customer's land transportation needs with emphasis on the modernization of the public transport sector.*
- **Objective :**  
*Enhance PSV Vehicle Standards for Buses, LMs & Taxis aligned to ISO 9000.*
- **Strategy :**  
*Research, Consultations with stakeholders and Develop standards for PSV vehicles dedicated to physically challenged persons.*

tppt.com



## LTA INITIATIVES

- Some of the initiatives carried out by LTA are as follows :
  1. Develop a Code of Practice for Vehicles Modified for People with Disabilities;
  2. Fiji Bus Quality Assurance Maintenance System Manual (QAMS);
  3. Already endorsed by the LTA Board to "Promote the use of wheel chair access public service vehicles (WAPSVs).

fgpt.com

## LTA INITIATIVES

1. Develop a Code of Practice for Vehicles Modified for People with Disabilities :
  - ✓ Provide guidelines for modification of vehicles to be used by people with disabilities such as :
    - a) Vehicle driven by drivers with leg disabilities;
    - b) Vehicle driven by drivers with arm disabilities;
    - c) Wheel chair occupant in motor vehicles;
    - d) Dumb and partially deaf.

fgpt.com

## LTA INITIATIVES

### 2. Fiji Bus Quality Assurance Maintenance System Manual (QAMS):

✓ System Components and Standards Section 1.0 :  
Management Information System:

- **Part E : Mobility Enhancement Strategy**
- The mobility enhancement strategy includes plan to make buses accessible to disable customers in accordance with relevant regulations.

ltppt.com

## LTA INITIATIVES

### 2. Fiji Bus Quality Assurance Maintenance System Manual (QAMS):

- **Part E : Mobility Enhancement Strategy**
- Bus operators will ensure that all staff are aware of the commitment to compliance with the Disability Discrimination Act.
- There must be plans put in place for fleet upgrade
- in consultation with the contracting body and replacement buses will be more accessible to persons with disabilities.

ltppt.com

## LTA INITIATIVES

3. Endorsed a board paper on "Promote the use of wheel chair access public service vehicles (WAPSVs).

- This paper was submitted for board endorsement during the June 6, 2016 board meeting in line with Goal 1 of the LTA ACP.

- It discusses approaches such as :

- a) To convert the existing PSV's locally with expertise available in Fiji;

- b) To import pre-converted PSV's;

- c) LTA Board's comment: To have a quota system.

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## LTA INITIATIVES

- Apart from items 1 to 3, the Authority also facilitates the following:

- Provide driving license for physically challenged individuals such as

Deaf/Dumb/Mute/Handicapped individuals should the need arises;

- Provide Equal Employee Opportunity.



## EXAMPLES OF WAPSVs



Figure 1 : Channel Ramp in Use



Figure 2 : Wide Ramp in Use



Figure 3 : "Port a Lift" Personal Transfer



Figure 4 : Wheelchair access for buses

## INTERNATIONAL BENCHMARK

1. The Land Transport Authority of Singapore
  - ✓ Use of vehicles such as wheel chair accessible Omni-buses;
  - ✓ Enhancement of public transport facilities – access routes made barrier free, existing stations fitted with extra lifts & overhead bridges fitted with shelters.

## INTERNATIONAL BENCHMARK

1. The Land Transport Authority of Singapore
  - ✓ Use of vehicles such as wheel chair accessible Omni-buses;
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## INTERNATIONAL BENCHMARK

2. The New Zealand Transport Authority has a Total Mobility Scheme which, provides:
  - ✓ Vouchers that discount the normal taxi fare by 50%, funding to help purchase and install wheelchair hoists in taxi vans and payment to the owner of the vehicle for every hoist trip made.

tppt.com

## INTERNATIONAL BENCHMARK

### 3. The Australian Department of Transport:

- ✓ Have subsidy schemes for the public with disability, taxi subsidy and lift incentive schemes;
- ✓ Taxi subsidy – pay only  $\frac{1}{2}$  of the taxi fare;
- ✓ Lift incentive scheme – provide lift incentive credits for use in wheelchair accessible taxis and minibuses.

fppt.com

## WAY FORWARD

- The Authority recommends that the Government of the day considers the following in order to facilitate the provision of PSV vehicles dedicated to physically challenged persons and look into the following areas:
  1. Mandate the policy of importation of buses that are friendly and more accessible to people with disabilities;
  2. Provide subsidy schemes for the public with disability similar to the one carried out in Australia;
  3. Provide subsidy for the importation of pre-converted PSV's.

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## CONCLUSION

- The Authority welcomes the Government initiative to enhance the life of the physically challenged people and looks forward to working closely with all our stakeholders to make this workable for all parties concerned.

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*"There is a plan and a purpose, a value to every life, no matter what its location, age, gender or disability."*  
(Sharon Angle)

THANK YOU FOR LISTENING

lgtf.com



## Ministry of Local Government, Housing and Environment

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15<sup>th</sup> June 2016

Hon. Viam Pillay  
Chairman  
Social Affairs Standing Committee  
Parliament of Fiji  
Government Buildings  
Suva

Dear Sir,

Re: **Bill on the Rights of Persons with Disabilities (Bill No.12 of 2016)**

The Ministry of Local Government, Housing and Environment is submitting its comments on the Bill on the Rights of Persons with Disabilities as follows:

### **HOUSING:**

#### **1.0 Background**

- 1.1 There are provisions for Housing in clause 46; sub-section 1 & sub-section 2 (d):
- (1) Persons with disabilities have right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
  - (2) Pursuant to subsection (1), the right to an adequate standard of living and social protection includes-
- (d) Access by persons with "disabilities to public housing programs"

---

## **2.0 Housing Sector Stakeholders Comments**

- 2.1 The Housing Statutory Authorities namely: Housing Authority and Public Rental Board have provisions to include Persons with Disabilities; their customers had included Persons with Disabilities.
- 2.3 The HART (Housing Assistance Relief Trust) have provisions for housing the Elderly and Persons with Disabilities in their Estates and Unit Accommodation.
- 2.4 The Peoples Community Network has provisions for housing the Elderly and Persons with Disabilities in their Estates and Housing Accommodation.
- 2.5 The Department of Housing in carrying Squatter Upgrading Projects and Programs, the Elderly and Persons with Disabilities were included as recipients.

## **3.0 Conclusions/Recommendations**

- 3.1 The Department of Housing supports the Bill 12 Rights of Persons with Disabilities including provisions stipulated in clause 46; sub-section 1 & sub-section 2 (d):
  - (1) Persons with disabilities have right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
  - (2) Pursuant to subsection (1), the right to an adequate standard of living and social protection includes- (d) access by persons with "disabilities to public housing programs".

The Department of Housing will include these provisions in all Public Housing Programs and Social Housing Grant Programs.

## **LOCAL GOVERNMENT:**

- 1. Towns and Cities have been promoting disability friendly environments. Town Planning Act (Cap 139) – General Provisions 1999 has specific requirements for developers to provide disable car park, ramps, footpath and other public facilities to be disable friendly.
- 2. New Municipal infrastructures including sporting facilities are all having disable facilities. For example Nausori Municipal market is disable-friendly designed including having a disable rest room and footpaths for the disabled.

3. The Town Planning Act Cap 139 and Subdivision of Land Act Cap 140 are under review and the suggestions by the Department of Local Government have been to have to have revised act consistent with Disable friendly policies.
4. Ministry of Local Government, Housing and Environment has been promoting the establishment of disable infrastructures with an aim to promote an inclusive based environment.
5. One of the challenges noted in towns and cities has been movement of insane people and the review is welcomed as such areas can be looked into and addressed effectively.
6. The participation of disable people in economic activities, with an aim to economically empower, has also been promoted by Towns and Cities in particular giving in excess in municipal markets to trade.

#### Proposed Submission on the Bill of Rights with Disabilities

7. Composition of Council section 7 is requested to be Permanent Secretary rather than Deputy Secretary representing Local Government, Housing, and Environment.
8. The disability bill shall assist in dealing positively with disable people. The bill covers the spectrum of challenges currently faced in terms of disability rights via defining discrimination, rights during disaster and humanitarian emergencies, access to justice, education, health and adequate standard of living.
9. Department of Local Government fully supports the bill and will work closely with the Council through the Permanent Secretary for auctioning the same in within Towns and Cities.

#### **TOWN AND COUNTRY PLANNING:**

The Bill is comprehensive in its policies.

The role of the Department of Town and Country Planning comes in at the implementation stages, as in the regulations part of the Bill, in particular on Section 29 – Accessibility :-

- a) to reasonable adaptation of buildings, infrastructure
- b) to reasonable access to all indoor and outdoor places

This already exists in our regulations (Town Planning General Provision) where car parking spaces and other facilities in the form of sanitary facilities, for the disabled shall be provided. However the current regulations are limited.

In being mindful of the Bill, these provisions that were lacking in the existing regulations will now be incorporated when the Town Planning General Provisions is amended in line with the proposed revised town planning laws. These includes, but not limited to;

- o *Open spaces or recreation reserves to be to be in areas that are easily accessed by wheel chairs*
- o *Provision to include Residential zones, where we have high-rise or multi-storey buildings.*
- o *in subdivisions we could ask for concrete footpath at least on one side of the road to provide for wheel chair and walker framework*
- o *A specific Schedule in the regulations on Facilities for the Disabled is also proposed as part of the amendments and revision of town planning laws.*

Please note that most of the existing provisions are also covered in the national Building Code.

Thank you,

Yours sincerely,



Joshua Wycliffe

**Permanent Secretary for Local Government, Housing & Environment**







2016

## Bill on the Rights of Persons with Disabilities (Bill No. 12 of 2016)

Review of Bill and suggestions to the standing committee on social affairs by  
the Fiji Crippled Children's Society and the Frank Hilton Organization  
Presented on 16<sup>th</sup> June 2016

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# Bill on the Rights of Persons with Disabilities (Bill No. 12 of 2016)

Review of Bill and suggestions to the standing committee on social affairs by the Fiji Crippled Children's Society and the Frank Hilton Organization.

## 1 Summary

The Frank Hilton Organization is the Suva Branch of the Fiji Crippled Children's Society. The Hilton Special School and the Hilton Early Intervention Centre are programmes that function under the Managing Authority of the Frank Hilton Organization.

The following document attempts to provide the Standing Committee on Social Affairs with suggestions for review of the said Bill with the focus mainly on Children with Disabilities, who can be considered as a most vulnerable segment of society.

The document also attempts to provide adequate rationale for highlighting and articulating the needs of children with disabilities based on the underpinning of the Convention of Rights of Persons with Disabilities.

The document attempts to highlight the following:

1. Provisions within the Bill to recognize the need for and ensure access to early detection, intervention, early childhood education, special/inclusive education and family support services, as the foundation by which to promote acceptance and inclusion within society.
2. Provision within the Bill to offer qualitative and quantitative means to assess, evaluate, review and ensure that all rights of persons with disabilities articulated within the Bill are adequately met with.



## 2 Background

The Fiji National Policy on persons with Disability 2008-2018, highlights 12 strategic areas in accordance to priority. It is noted that;

- |                           |   |
|---------------------------|---|
| Strategic Priority - (2.) | Prevention, Early Detection, Identification, Intervention, rehabilitation and Health; |
| Strategic Priority - (3.) | Effective Education services and programmes   |

This is based on the understanding that early detection and appropriate intervention, family support and education programmes can positively impact the growth and developmental of children with disabilities and developmental delays, thus providing for better quality of life and inclusion at all levels.

There is also sufficient data to prove that the above services provided at the earliest possible time in a child's life can have a significant impact on reducing the budgetary allocations for health, education and institutional care provided to persons with disabilities in later life.

### 2.1 Present context

It is noted that to date;

1. Hilton Early Intervention is the only registered facility providing intervention to some degree in Viti Levu.
2. No specific screening or testing for children born with disabilities or "at risk of" disabilities or developmental delays provided through health system.
3. No Early Childhood Education or pre-primary level education provided to Children with disabilities apart from Hilton Programmes.

It is commendable that the Ministry of Education Fiji, has adopted a policy on inclusive education which provides the necessary policy and regulations for children with disabilities to be educated in a least restrictive environment amongst typically growing peers.

However with no support programmes to children and their families during infancy and formative years of a child's life, the purpose of inclusive education is defeated, as successful implementation remains a struggle due to;

- (a.) Lack of support to families to understand and accept the child with a disability.
- (b.) Lack of support to child to meet developmental milestones.
- (c.) Delayed early developmental milestones leading to delay in participation in all aspects of society including timely and appropriate education services.
- (d.) Burden on family to provide additional care and appropriate health, medical and educational services.
- (e.) Lack of quality of life, limited independence and productivity.

## 2.2 Best Practice:

The Individuals with Disability Education Act (IDEA) of the United States, provides for specific and appropriate education to be provided to all children with disabilities from birth.

Part (c.) provides a state run early intervention programme for all children born with and identified with a disability from 0-2 years. - **INDIVIDUAL FAMILY SERVICES PROGRAMME (IFSP)**

Part (b.) provides a state run early intervention, early childhood education and special/inclusive education for all children with disabilities 3-21 years. - **INDIVIDUALIZED EDUCATION PROGRAMME (IEP)**

Under the (IDEA) programme, childhood development programmes, special and inclusive education programmes are mandatory and are offered from 0-21 years to all children with disabilities.

## 3 The Need

There is sufficient evidence to prove that timely identification and appropriate intervention at the earliest possible time in a child's life can significantly reduce the progression of a disability and alter the developmental trajectory of a child.

Children and their families who receive support during the formative years will be better equipped to be integrated in to all aspects of society thus promoting acceptance and inclusion at all levels.

Alongside the need to provide for support services during early childhood it is also imperative to encourage inclusion at all levels for successful integration of persons with disabilities into society. There is also sufficient evidence to prove that a child with a disability will thrive in a least restrictive environment amongst typically growing peers.

Assessment and monitoring mechanisms for successful implementation of the above is an essential requirement which will ensure compliance at all levels.

Therefore it is necessary to provide for;

- (a.) Adequate legislative measures to emphasize the need for and, safeguard the child's rights to such services and to ensure compliance at all levels.
- (b.) Emphasis on inclusive education where possible.
- (c.) Adequate legislative measures to ensure compliance, accountability and provide basis for review at all levels through collection and analysis of appropriate quantitative and qualitative data.



## 4 Recommendations

- 4.1 Provisions within the Bill to recognize the need for and ensure access to early detection, intervention and family support services, as the foundation by which to promote acceptance and inclusion within society.

In the absence of provisions within the Fiji Education Act to provide mandatory/ compulsory services to children from 0-3years. It is strongly recommended that adequate provisions within the Disability Bill should be made to ensure that the rights of children with disabilities to access early childhood development and education programmes is specifically articulated.

This can also lead to formation of a subcommittee of the National Council to draft strategies to further comprehensive development of programmes within line Ministries.

### 4.1.1 Suggested Review

- (a.) Amendments to - Part 2- National Council for persons with disabilities

- (i.) – Functions of the Council to include;

"- Encourage multi sector support programmes for Children and Families of children with disabilities at the earliest possible time in the life of a child to ensure access to services."

- (b.) Amendments to - Part 4 – Discrimination on the basis of disability

#### Accessibility

29.- All persons with disabilities shall have the following rights-

"Early Childhood Intervention/ development programmes and appropriate Health and Education services where available."



### Education

43.- (3) Such right shall ensure that-

"(d.) ...Early Childhood development and Early childhood Education (Free- where possible)..."

( e.) ...inclusive, quality Early Childhood development and Early childhood Education, and free Primary Education..."

### Health

"44. (3.) All infants identified "at risk of" acquiring a disability or developmental delay will have the right for compulsory screening and diagnosis at birth and necessary health care and family support services, including early identification, early intervention as appropriate...."

#### 4.1.2 Rational

(a.) Ensure emphasis and recognition of the Convention of the Rights of Children – "First the Child then the Disability"

- Based on the recurrent articulation of child rights within the CRPD

( r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

Article (3) General Principles CHILDREN'S SOCIETY - SUVA BRANCH

( h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

- (b.) Ensure priority and necessity for early identification, intervention, early childhood education/development programmes and family support programmes for children with disabilities are articulated and emphasized at all levels.

- Based on recognition of family as first unit of support to Child with a disability within the CRPD.

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

**Article (23) Respect for home and the family**

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families

**4.2 Provision within the Bill to offer qualitative and quantitative means to assess, evaluate, review and ensure that all rights of persons with disabilities articulated within the Bill are adequately met.**

**4.2.1 Suggested Review;**

- (a.) Amendments to - Part 2- National Council for persons with disabilities

- (1.) – Functions of the Council to include;

“Statistics and Data collection to ensure availability of a measurable and quantifiable means to review and ensure accountability”

- Statistics and Data Collection
- Desegregation of data and assess implementation of undertakings.
- Provide access to data and statistics to relevant stakeholders

#### 4.2.2 Rationale

- (a.) Ensure objective assessment of implementation through measurable outcomes.
- (b.) Ensure accountability of all stakeholders to work towards objectives outlined.
- (c.) Offer qualitative and quantitative means of monitoring progress in the view of ensuring dynamic and robust solutions and risk mitigations.

- Based on the provisions and guidelines within the CRPD.

#### Article 31 - Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.









# PACIFIC DISABILITY FORUM

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## RIGHTS OF PERSONS WITH DISABILITIES BILL 2016 (BILL No. 12 OF 2016)

### A SUBMISSION PRESENTED BY THE PACIFIC DISABILITY FORUM TO THE FIJI PARLIAMENTARY STANDING COMMITTEE ON SOCIAL AFFAIRS 21 June 2016

The Pacific Disability Forum welcomed and supports the endorsement of the *Bill No. 12 of 2016: Rights of Persons with Disabilities Bill 2016* by the Fiji Parliament and reiterates its submission made to the Standing Committee on Foreign Affairs & Trade on the ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by the Government of Fiji at its earliest convenience. Legislating the Rights of Persons with Disabilities Bill 2016, Fiji will demonstrate to its neighbours in the region and international community of its commitment towards ensuring the protection, enjoyment and fulfilment of all human rights by all persons with disabilities in the country.

Persons with disabilities are amongst the poorest and most marginalized members of Pacific communities, including Fiji. They continue to face many barriers to their full participation in society on an equal basis with others. Evidence suggests that numbers are increasing due to high rates of diabetes-related amputations and blindness, the rising incidence of traffic and industrial accidents, and the ageing of populations.

The Pacific Disability Forum would like to reiterate here its submission on the ratification of the CRPD on the following:

#### Persons with disabilities:

- are a marginalized and disadvantaged minority whose voices are not adequately heard, and whose concerns are not usually addressed. They often face prejudice, discrimination and rejection;

*"A PARTNERSHIP OF PACIFIC ORGANISATION OF AND FOR PEOPLE WITH DISABILITIES"*



# PACIFIC DISABILITY FORUM

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- do not enjoy equal rights to development and participation in community life, and are disproportionately represented amongst the poorer members of the community;
- lack adequate access to public buildings, transportation, roads, information, justice, and services, including hospitals, schools, workplaces, and the courts. There is a building code to ensure accessibility for persons with disabilities but without proper monitoring and enforcement to ensure compliance.
- do not enjoy equal employment and training opportunities or decent work on the open labor market, so are deprived of earning an income, making a living, and having the opportunity to live independently. There is a quota system for the employment of persons with disabilities provided under the Employment Relations Promulgation 2007 (84, (4)) but lack implementation, monitoring and enforcement.

## Children with disabilities:

- are denied the opportunity of a quality education on the same basis as other children;
- continue to be shut out of the regular education system for a range of reasons including fear, anxiety or shame on the part of their parents, prejudice from the community, or the absence of accessible buildings, ramps, transportation, curricula and teaching/communication formats.

## Women with disabilities:

- are subjected to multiple forms of discrimination on account of their gender and disability;
- experience a higher rate of family based violence, abuse, sexual harassment and exploitation than other women;
- face obstacles in accessing health services, including reproductive health services; due to distance, transportation difficulties, stigma and prejudice.





# PACIFIC DISABILITY FORUM

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## Political Mandate

The Fiji 2013 Constitution upholds a wide range of constitutional rights for persons with disabilities. For example, Article 26: *Right to equality and freedom from discrimination states;*

"—(1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law. A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her—

- (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; ...
- (b) The proprietor of a place or service referred to in subsection (5) must facilitate reasonable access for persons with disabilities to the extent prescribed by law."

*And Article 42 Rights of persons with disabilities states;*

"—(1) A person with any disability has the right—

- (a) to reasonable access to all places, public transport and information;
- (b) to use sign language, Braille or other appropriate means of communication; and
- (c) to reasonable access to necessary materials, substances and devices relating to the person's disability.

- (2) A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realization of their rights.



# PACIFIC DISABILITY FORUM

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- (3) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorize the limitation of, the rights set out in this section."

These constitutional guarantees are consistent with the following articles of the Convention on the Rights of Persons with Disabilities:

- Article 5 - Equality and non-discrimination
- Article 9 - Accessibility

The Fiji Government has had a National Policy on Disability in place since 2008 which is based on the principles of inclusiveness, the removal of exclusionary physical, social and cultural barriers, and the protection of human rights. The policy is aligned to the *Biwako Millennium Framework* and CRPD.

## Issues for consideration on the draft bill

1. Interpretation Part 1 (2) - The interpretation of "deemed to be disabled" directly violates CRPD article 1 which states "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

While the interpretation on "persons with disabilities" in the bill includes most of the language used in CRPD Article 1, the inclusion of three additional qualifying statements makes this interpretation non-compliant with the CRPD which Fiji has signed in June, 2010 and currently considering ratifying it.

We therefore recommend that the recognition of persons with disabilities contained in CRPD Article 1 sighted herein be used in this bill as its interpretation on persons with disabilities.

"A PARTNERSHIP OF PACIFIC ORGANISATION OF AND FOR PEOPLE WITH DISABILITIES"





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Furthermore, the reference to "deemed to be disabled" be removed from the bill due to the medical nature and health related conditions sighted therein.

2. National Council for Persons with Disabilities occupies Parts 2-5 of a Bill that is entitled "Rights of Persons with Disabilities" and one need to go right to Part 6 to read and understand what the title of this Bill articulates. We recommend that the parts of the bill directly concerning the rights of persons with disabilities be brought forward to the earlier parts of the bill and the parts concerning the National Council formed the latter parts of the bill.
3. Recognising the significance of the mentioned bill and importance of the National Council for Persons with Disabilities in ensuring that the rights of persons with disabilities are realised, we believe that it is equally important that the bill specifically state the inclusion of representation by the Fiji Disabled Peoples Federation (FDPF) the national peak body for Disabled Persons Organisation (DPO) as a permanent member of the Council.

This recommendation is directly linked to CRPD Article 4.3 highlighting the important role played by representative organisation of persons with disabilities. We also request the provision of reasonable accommodation to this representative to allow for full and effective participation. The notion of "nothing about us without us" is very important in ensuring the voice of persons with disabilities are expressed through their representatives at national level, and a guaranteed seat at this Council is a necessary requirement to achieve this goal.

## Regional Level

In the region, countries that have ratified the CRPD have progressed beyond ratification into adopting appropriate legislations and conducting law and policy reforms. The Republic of the Marshall Islands is the only country in the region that has a comprehensive disability act called the '*Rights of Persons with Disabilities Act 2015*' that is compliant with the CRPD. This was done by UNESCAP and PIFS through the UNPRPD (multi UN) project amongst ILO, UNESCAP, UNICEF, UNV, WHO and PDF.

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which ended in June 2015. Technical assistance was sought and provided for by PIFS and UNESCAP to the relevant government ministries in the Marshall Islands. Also this multi-UN project was coordinated by PDF amongst the partners. Other countries that have ratified and have under gone legislation review includes Nauru, Palau and Vanuatu and other countries planned for similar work are Kiribati and Tuvalu. These work are currently being carried out by UNESCAP and PIFS to support national capacities. The other country that has a disability Act is Cook Islands; Disability Act 2008, however, it needed to be amended to be compliant with the CRPD. Cook Islands ratified the CRPD in 2009. Fiji, through the enactment of this Bill will demonstrate its leadership in the region on issues concerning persons with disabilities.

The PDF commends the efforts of the Fijian government to "make the right real" for persons with disabilities in Fiji, and, ensuring that their rights and interest are protected, promoted and enjoyed by all Fijians with disabilities.

*Pacific Disability Forum*  
Suva  
Fiji

Submission to the Parliamentary Standing Committee on Social Affairs

on

Bill No. 12

RIGHTS OF PERSONS WITH DISABILITIES BILL 2016

Submitting Organisation: Secretariat of the Pacific Community Regional Rights Resource Team (SPC RRRT)



## INTRODUCTION

The Secretariat of the Pacific Community (SPC) is a regional intergovernmental organisation that provides technical assistance, policy advice, training and research services to 22 Pacific Island countries and territories (PICTs) in development areas including human rights, social policy, public health, statistics and demography, natural resources management and economic development. SPC brings particular expertise in law, human rights and gender equality through its Regional Rights Resource Team (RRRT). On disability inclusive development, RRRT has worked across many countries in the Pacific providing technical assistance, training and advice on the ratification, implementation, monitoring and reporting of the Convention on the Rights of Persons with Disabilities. RRRT has also worked with disabled person's organisations (DPOs) and civil society organisations on raising awareness and promoting behavioural change on issues relating to disability.

SPC RRRT supports the Government of Fiji on the formulation of Bill No.12 on the Rights of Persons with Disabilities which provides a legal framework on promoting and protecting the rights of women, men and children with disabilities in Fiji.

## GENERAL RECOMMENDATIONS

Rights of Persons with Disabilities as stipulated in the Convention on the Rights of Persons with Disabilities (CRPD).

RRRT observed that while the Bill has made provisions on the rights of persons with disabilities as required under the CRPD, RRRT observed that the Bill is silent in articulating a few of the rights included in the CRPD:

### Article 4: General Obligations

The bill clearly articulates on the rights of persons with disabilities however RRRT observed that state's obligation and its role in fulfilling these rights is not well detailed. The state's obligation according to the CRPD is to identify steps to ensure that it fulfils its obligation in positively promoting and protecting the rights of persons with disabilities.

RRRT respectfully submits that *the role of the state in ensuring that appropriate measures are in place to safeguard the rights articulated in the bill is specified through the functions of the council which is to review relevant laws, and lobby for the abolishment of those laws that are discriminatory to persons with disabilities.*

## Article 6: Women with disabilities

Composition of the Council, Section 7 of Part 2, RRRT supports the inclusion of the Director of Women as member of the Council however it is observed that the bill does not contain any specific measures to protect the rights of women with disabilities. Article 6 of the CRPD directs state parties to recognise the multiple forms of discrimination faced by women with disabilities and to take appropriate measures to ensure their full development and advancement and full and equal enjoyment of their human rights.

RRRT respectfully submits *that the State recognise the massive forms of discrimination faced by women with disabilities particularly gender based violence and ensure that all forms of violence against women with disabilities are prohibited “including those to which they are more vulnerable such as forced abortion, forced institutionalisation and forced sterilisation.”<sup>1</sup>*

## Article 8: Awareness Raising

According to this article, the State must increase awareness about the rights of persons with disabilities, utilizing appropriate channels of communication, such as media, education systems, public awareness campaigns and awareness-training programs. While the bill has provisions for article 8 e.g. Under Functions of the Council, 5-1(f), (g) and (i), RRRT observed that these awareness campaigns are only targeting carers of persons with disabilities, relevant ministries and the media.

RRRT respectfully submits *that the Functions of the Council are expanded to include community education and awareness raising campaigns for behavioural change to the various sectors of society. These campaigns should include promoting the use of rights based language when describing persons with disabilities whether orally, in writing (for example in policy documents) or through the media.*

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<sup>1</sup> United Nations General Assembly (2012), Report of the Office of the United Nations High Commissioner for Human Rights on the Thematic study on the issue of violence against women and girls and disability.

RRRT respectfully submits that all materials development for awareness or education purposes by any stakeholder for persons with disabilities is done in consultation with the Council and the National Umbrella DPO.

#### Article 10: Right to Life

This article states that “every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others”<sup>2</sup>

RRRT respectfully submits *that the Bill should include the Right to Life and in doing so, the Bill needs to state that persons with disabilities will be “protected from medical intervention or other practises that might lead to death” furthermore, the Bill needs to state “that effective investigations will be conducted on the causes of death whether death took place in homes, institutions such as residential care”<sup>3</sup> and hospitals or in the community.*

#### Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

This article states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation and State Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. In 2008, the Special Rapporteur on Torture referred to a number of situations faced by persons with disabilities that could amount to torture or cruel, inhuman or degrading treatment or punishment. In addition, Fiji ratified the Convention against Torture or Cruel or Inhumane Degrading Treatment which provides state’s obligation to make provisions for protection of its citizens.

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<sup>2</sup> Convention on the Rights of Persons with Disabilities

<sup>3</sup> IDA (2010), IDA Submission on List of Issues for Tunisia Committee on the Rights of Persons with Disabilities

RRRT respectfully submits *that the Bill include that persons with disabilities will be protected from torture or cruel or inhumane degrading treatment by society, carers either personal carers or carers in institutions, police and medical professionals and other state agents.*

#### Article 26: Habilitation and Rehabilitation

The goals of habilitation and rehabilitation as defined in CRPD are to “enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.” As with any other form of service or treatment, a rights-based approach to habilitation and rehabilitation requires the full participation and consent of persons with disabilities.<sup>4</sup>

RRRT respectfully submits *that the Bill include the rights of persons with disabilities to habilitation and rehabilitation. To this end, through the functions of the council, Government need to ensure that relevant rights-based programs and services particularly in the area of education, employment, health and social services are provided to persons with disabilities are established to allow for the full and equal participation of persons with disabilities in society.*

#### Article 32: International Cooperation

This article is not only limiting to the provision of aid program but also extends to exchanging and sharing of information and best practises, scientific research, education, cooperation between States, international organizations and civil society, particularly disabled persons organisations. It aims to aid a better implementation of the CRPD.

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<sup>4</sup> Website: <http://hrlibrary.umn.edu/edumat/hreduseries/TB6/pdfs/HRYes%20-%20Part%202%20-%20Chapter%209.pdf>

RRRT respectfully submits *that for the effective implementation of the CRPD, the Bill ensures that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities.*

Objects of Act: RRRT observed that while the Bill in Part 2 has identified the objects of the Council, overall, the bill does not have an object. This could raises concern on the lack of clear guidance necessary for interpretation of the Act in the event that an interpretation may be called for to assist in realising the purposes of the Act.

RRRT respectfully submit *that the bill clearly indicate its objects which sets out its purposes of ensuring that persons with disabilities enjoy their human rights and fundamental freedom and have equal access to information, services and the built environment.*

Persons with disabilities: The bill uses persons with disabilities interchangeably with persons living with disabilities.

RRRT respectfully submit that the bill is consistent with the use of *persons with disabilities* as per the title of the bill: Rights of Persons with Disabilities Bill.

## PART 1—PRELIMINARY

### Interpretation

2. “deemed to be disabled” means all persons in the following categories—

(a) blind and visual acuity (vision) of 20/200 (6/60) or less in the better eye with best correction possible; and

(b) persons with the condition known as Down Syndrome

RRRT observed that the intention of the bill is to accommodate persons with all types of disabilities which included persons with low vision who have permanent vision loss that cannot be corrected with glasses and also those persons with intellectual disability which caused by Down Syndrome and therefore “deemed to be disabled” is not a proper term to use. RRRT respectfully submit that this clause be deleted.

Section 2 states that “impairment” means a condition which may include—

(a) sensory impairments, such as those affecting sight or hearing;

(b) impairments with fluctuating or recurring effects such as rheumatoid;

(c) arthrites, myalgic encephalitis (ME)/chronic fatigue syndrome

(CFS);

(d); (e); (f); (g); (h); (i) .....

RRRT respectfully submit that WHO definition of impairment is used. “Impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action” e.g. physical, mental, intellectual or sensory impairments.” This is in accordance with international best practice.

“persons with disability” includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others, but does not include—

(a) tendency to set fires;

(b) tendency to steal;

(c) tendency to physically or sexually abuse other persons;

Rights of Persons with Disabilities— of 2016 5

(d) exhibitionism; and

(e) voyeurism;

RRRT respectfully submit to delete ‘ *but does not include* – (a) to (e)..’ RRRT observed that (a) to (e) does not fall within the parameters of the definition of persons with disabilities as stipulated in the Convention on the Rights of Persons with Disabilities.



“Reasonable Accommodation”: RRRT observed that the Bill is using ‘reasonable accommodation’ and reasonable access interchangeably. There needs to be clarity between reasonable accommodation and reasonable access and how it is used in the Bill. RRRT also observed that there is no interpretation of “reasonable access” in either the Bill or the CRPD.

RRRT respectfully submit that the *term “reasonable accommodation” is used in the Bill.*

“UNCRPD”: RRRT observed that the acronym UNCRPD is used in the Bill.

RRRT respectfully submit that the acronym *CRPD is used instead of UNCRPD.*

## PART 2—NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

### Objectives of the Council

4. The objectives of the Council are as follows—

(a) to act as a co-ordinating body for all organisations dealing with the care and rehabilitation of persons with disabilities;

RRRT observed that (a) expand its focus to, disability inclusive development and should not only be limited to care and rehabilitation of persons with disabilities. Therefore, objective (a) will be: *(a) to act as a co-ordinating body for all organisations involved in disability inclusive development.*

(c) to work toward eliminating the causes of disabilities or impairment.

RRRT observed that the elimination of impairment/disability has to be a component of public health whereas the Council should also focus on promoting accessible, efficient, effective and affordable health services, immunisation programs and health information to persons with disabilities. RRRT respectfully submit to delete objective (c).

(d) to promote the recognition of skills, merits and abilities of persons with disabilities, and their contributions to the workplace and labour market; and

RRRT respectfully submit the following addition to objective (d): to promote the recognition of skills, merits and abilities of persons with disabilities' *living independently*, and their contributions to *their families and communities including* workplaces and labour market; and

#### Functions of the Council

5.—(1) The functions of the Council are to—

(b) formulate a national policy that ensures that services are provided to all persons with disabilities in Fiji;

RRRT respectfully submit the following addition to (b), formulate a national policy that ensures *that accessible and affordable* services are provided to all persons with disabilities in Fiji;

(c) draw up a national plan of action for rehabilitation services for approval by Cabinet and implement such a plan;

RRRT respectfully submit the following deletion and addition; delete *for rehabilitation services* and replace with, *a disability inclusive development*. Therefore (c) will be, draw up a national plan of action on *disability inclusive development* for approval by Cabinet and implement such a plan;

d) seek financial assistance from government and aid donors and support financial assistance applications from registered organisations providing service to persons with disabilities;

RRRT respectfully submit that (d) is replaced with the following;

*d) Secure funding and technical support from government and development partners for the implementation of the national disability policy and national action plan and support financial assistance applications from registered organisations providing service to persons with disabilities;*

(g) regularly inform the appropriate ministries of the government of the problems and needs of persons with disabilities and seek solutions to such needs;

As a national point and co-ordinating mechanism for disability, the Council needs to work with relevant ministries on the establishment of focal points within such ministries and development of disability inclusive policies for the effective implementation of the Act.

RRRT respectfully submit that (g) be deleted and replaced with the following;

*(g) lobby the relevant government ministries for the formulation and implementation of disability inclusive policies and action plans.*

(2) The Council may perform any of its functions in co-operation and consultation with any person, association or organisation in the local, regional or international facet.

RRRT respectfully submit that Council perform its functions in co-operation and consultation with *persons with disabilities and their organisations as stipulated in Article 4 (3) and Article 33 (3) of the CRPD.*

#### Composition of the Council

7. The Council must consist of the following persons or their respective representatives—

(k) three representatives from any non-government organisation appointed by the Minister.

Article 4(3) of the CRPD states that persons with disabilities and their organisations need to be actively involved in every processes including decision making on issues relating to their development.

In the spirit of ‘Nothing About Us Without Us’ we observed that the Bill needs to have specific representation of disabled persons organisation within the National Council. In practise, there is only one representative from disabled persons organisations. Persons with disabilities are best advocates of their issues and it is always advisable that they are involved in every process of disability inclusive development.

RRRT respectfully submit *that an additional two representatives to be appointed by the Minister to represent disabled persons organisations. (k) five* representatives from non-government organisations *including two representative of disabled persons organisations* appointed by the Minister.

*We further submit that there be specific representations of disabled persons organisations within the Advisory Committee as may be appointed by the Council under Section 12 of the Bill.*

## PART 3—ADMINISTRATION

The indemnity clause in section 20 (1) restricts the rights of persons affected by the decisions of the Council to seek appropriate redress be it within the courts or other tribunals as may be established by law. This clause acts as an impediment in itself to the right to access justice and would impede on the rights of persons with disabilities under Article 4 (b) and (c) of the Convention.<sup>5</sup> In itself it is an impediment to Article 13 of the CRPD which recognises that all persons especially disabled persons have the right to access to justice.<sup>6</sup> This conflicts with section 49 of this bill

## PART 4—REGISTRATION

### Registration

There are regional/international organisations established in Fiji that are working on disability inclusive development across the different countries in the Pacific. These agencies include SPC RRRT, Pacific Islands Forum Secretariat, University of the South Pacific, Pacific Disability Forum and relevant UN agencies.

RRRT respectfully submit that this section on registration is limited to national organisations and agencies only and that further a section be added that makes this Register accessible to the public.

Section 21 Clause (7) of this section states that any organisation providing services to persons with disabilities that is not registered in accordance with this section commits an offence and is liable on conviction to a fine not exceeding \$100,000. RRRT observed that this clause is too harsh and could prevent organisations from providing services to persons with disabilities.

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<sup>5</sup> 1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

<sup>6</sup> States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

We respectfully submit that this clause focuses on rendering penalties by way of either monetary or kind/social obligation to agencies/individuals that had evidently discriminates against persons with disabilities.

Human Rights best approaches requires that process as prescribed in Section 22 (2) giving the Minister wide discretionary powers be one that can be exercised fairly. This section may be problematic as the Minister makes decision based on what he/she will think “fit and proper” for the registration of organisations. Clause 5 (b) then allows for the Council, subject to the approval of the Minister to remove the name of any organisation that has not met the terms and conditions prescribed by the Minister.

*It is our respectful submissions to avoid the wide exercise of discretion that these terms and conditions be clearly identified either in the schedule of this Act or in regulations as may be set by the Minister in consultation with the Council. This will demonstrate clarity and clear conditions that needs to be met albeit a vacuum of such conditions and living that solely within the discretionary powers of the Minister.*

#### PART 5—ACCOUNTS AND FINANCE

Section 25 (1 and 2) provides for the reporting requirements under this Act. We respectfully submit that to promote further accountability on the functions and role of the Council, that the report once presented to Cabinet under section 25 (2) *be also submitted to parliament for its consideration. Given that the report provides for the activities of the Government on improving the rights of persons with disabilities, that this report become a public report for the purposes of accountability, transparency and good governance. We respectfully submit that the Minister presents the report to Parliament under a new clause 3.*

#### PART 6—DISCRIMINATION ON THE BASIS OF DISABILITY

Definition of discrimination on the basis of disability



While the Bill has a clear definition of discrimination on the basis of disability, persons with disabilities particularly women with disabilities continue to face multiple forms of discrimination based on the combination of both disability and gender-based discrimination, known as ‘intersectional discrimination’.<sup>7</sup>

We respectfully submit that the *definition of multiple discrimination is captured in the bill*. The term “multiple discrimination” recognises that some individuals experience discrimination on the basis of more than one aspect of their identity<sup>8</sup> and reveals “both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination”<sup>9</sup>. It has an exponential impact on the lives of individuals and actively creates a dynamic of disempowerment.

Section 27(3) states that in applying any right under this part, if the State claims that it does not have the resources to implement the right, it is the duty of the State to show that the resources are not available.

RRRT observed that the lack of resources should not be an excuse to deter the Government in promoting and protecting the rights of persons with disabilities. Nor should lack of resources hinder the implementation of the Act. The Government need to ‘take measures to the maximum of its available resources with a view to achieving progressively the full realization of the rights of persons with disabilities.’ Therefore, RRRT respectfully submits that *clause (3) be deleted*.

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<sup>7</sup> UNDP Report (2009), Pacific Sisters with Disabilities at the Intersection of Discrimination.

<sup>8</sup> For an insightful discussion into intersectional discrimination see Kimberle Crenshaw, “DE marginalising the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Anti-Racist Politics,” in *Feminist Legal Theory: Foundations*, ed. D Kelly Weisberg (Philadelphia: Temple University Press, 1993).

<sup>9</sup> “Intersectional subordination of women” in UN Division for the Advancement of Women, Gender and Racial Discrimination, Report of the Expert Group Meeting (New York: United Nations, 2000) <<http://www.un.org/womenwatch/daw/csw/genrac/index.html>

END.

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## Housing

- Pursuant to subsection (1), the right to an adequate standard of living and social protection includes-
- (d) access by persons with “ disabilities to public housing programs”
- This includes accessible housing, inclusive – including a holistic approach (physical, mental and any other form of disability)

Joshua Wycliffe - Permanent Secretary

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Persons with disabilities have right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions

Joshua Wycliffe - Permanent Secretary

2

## Housing

- This will be ensured in all government housing programs- e.g. Housing Authority, Public Rental Board and HART
- The Department of Housing will include these provisions in all Grant Programs

## Local Government

- New Municipal infrastructures including sporting facilities are all having disable facilities.
- A key example: Nausori Municipal market is disable friendly designed including having a disable rest room and footpaths for the disabled
- Ensure this is extended to other councils

## Local Government

- One of the challenges noted in towns and cities has been movement of mentally disabled persons
- This review is welcomed as such areas can be looked into and addressed effectively – again taking a holistic (multi-agency approach)
- Participation of disabled people in economic activities, economically empowering, is being promoted (Towns and Cities in particular giving in excess in municipal markets to trade)

Joshua Wycliffe - Permanent Secretary

7

## Local Government

- The disability bill will assist in servicing disabled people.
- Covering the spectrum of challenges currently faced in terms of disability rights via defining discrimination, rights during disaster and humanitarian emergencies, access to justice, education, health and adequate standard of living
- Department of Local Government fully supports the bill and will work closely with the Council through the Permanent Secretary for auctioning the same in within Towns and Cities.

Joshua Wycliffe - Permanent Secretary

8

## Town & Country Planning

- The role of the Department of Town and Country Planning comes in at the implementation stages, as in the regulations part of the Bill, in particular on Section 29 – Accessibility :-
- a) to reasonable adaptation of buildings, infrastructure
- b) to reasonable access to all indoor and outdoor places
- This regulation exists e.g. Car Park, Sanitation etc.

Joshua Wycliffe – Permanent Secretary

9

## Town & country Planning

- Additional areas that could be included:
- Open spaces or recreation reserves to be to be in areas that are easily accessed by wheel chairs
- Provision to include Residential zones, where we have high-rise or multi-storey buildings.
- In subdivisions, we could ask for concrete footpath at least on one side of the road to provide for wheel chair and walker friendly framework
- A specific Schedule in the regulations on Facilities for the Disabled is also being recommended as part of the amendments and revision of town planning laws.

Joshua Wycliffe – Permanent Secretary

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## **Submission by Ministry of Local Government, Housing and Environment on the Proposed Heritage Bill**

### **Background**

1. Town and Cities approved Town Planning schemes have relevant section and listings of heritage buildings where applicable. Levuka Town Planning scheme which has recently gone past the provisional approval period has listed heritage buildings under class A and Class B. Scheme statements for all Township boundaries have listed heritage buildings. It has been factored in for heritage protection and to promote the town's identity.
2. Through the approved Town planning scheme statements, Town and City Councils have been empowered to implement and or enforce the same. All Municipal Councils land use division consisting of Planning, Engineering and Building unit have been enforcing heritage planning and ensured that the sites are protected including the building(s).

### **Proposed Role of Towns and Cities in the implementation of the Heritage Bill**

3. Cabinet Decision 148/2011 was based on Cabinet information paper prepared by the Ministry of Education, National Heritage, Culture and Arts Youth and Sports.
4. Purpose of the paper was:
  - a. Inform on the submission of the nomination document on Levuka as Fiji's First World Heritage Site to the UNESCO World Heritage Centre
  - b. Other preparatory work required for preparing Levuka for the visiting technical review team appointed by UNESCO
  - c. Strengthening of Local Institutions such as Levuka Town Council as the entity that will be entrusted with the responsibility of sustaining the project.
5. For the purpose of the sustainability of the project the cabinet paper has noted that it considered vitally important because of the Return on Investment (ROI) for Government, that the Levuka Town Council as the local legal entity be strengthened. Levuka Town therefore should be considered as "special case" through the government regionalization program.  
The Ministry of Local Government, Housing and Environment is expected to undertake the necessary strengthening strategy it would require for Levuka in anticipation of the necessary development pressures associated with sites considered of outstanding universal value such as Levuka.
6. As per Cabinet Paper for Levuka, Towns and City Councils can become the management arm for heritage protection and promotion in within its town boundary. This shall allow the responsible Ministry for Heritage to use existing agencies developed in within towns and cities to implement the Heritage Bill.

### Views on Heritage Bill

7. The introduction of the Heritage Bill will greatly assist in the protection and promotion of heritage sites in Fiji. The bill is highly recommended as it has captured on the economic portion to promote heritage sites in Fiji.
8. There are existing heritage programs including the one that is in partnership with Hokkaido University Via the Japan International Cooperation agency for Levuka Town Council that would strongly benefit through this bill
9. Municipal Councils throughout Fiji have identified a number of public heritage properties and hope to see that through this bill these sites can be developed for tourism purposes. For example, the old Rewa Bridge has been in discussion for its retention for the purpose of promoting heritage.
10. Municipal Councils are interested to see the implementation of the bill so that heritage properties including museums can be developed.
11. Ministry of Local Government, Housing and Environment suggests that it be a member of the Council to ensure that the Heritage Buildings and places are safeguarded and consistent with relevant schemes and acts such as Town Planning Act – Cap 139, Local Government Act – Cap 125 and Public Health Act – National Building Code Regulations.
12. For the purpose of Fiji Register of Potential World Heritage places, Ministry of Local Government, Housing and Environment suggests to be a part of the team in determining and enforcing legislation for protection.
13. The establishment of operational trust fund is of high importance as the maintenance and upkeep of heritage buildings in conformity with National Building Code needs to be subsidized. One of the lessons learnt from Levuka is that building upkeep by property owners is a challenge given the financial constraints and such operational trust funds shall greatly assist. In addition, such national trust fund set up shall assist in promoting and marketing our heritage places for tourism purposes. It would be of great support if the bill could address this issue
14. The bill is requested to be in conformity and not in derogation to Town Planning Act, Local Government Act and Public Health Act.
15. Listing of Heritage properties is suggested to be kept at Municipal Councils level.

### Conclusion

16. Ministry of Local Government, Housing and Environment supports the establishment of the Heritage bill.

17. Ministry of Local Government, Housing and Environment would like to be a part of the implementation of the bill.
18. Ministry of Local Government, Housing and Environment would like to see that through this bill relationship in between Department of Heritage and Department of Local Government is strengthened.

## **MINISTRY OF EDUCATION, HERITAGE & ARTS**

### **SPECIAL AND INCLUSIVE EDUCATION**

#### **SUBMISSION TO THE STANDING COMMITTEE ON SOCIAL AFFAIRS ON THE RIGHTS OF PERSONS WITH DISABILITIES BILL (BILL NO.12 2016)**

##### **1.0 Purpose**

- 1.1 The purpose of this submission is to present the views of the Ministry of Education, Heritage and Arts on the Rights of Persons with Disabilities Bill (Bill No.12 of 2016.
- 1.2 The Bill aims to “provide, uphold, and enforce the rights of persons with disabilities in Fiji” as provided for by the UN Conventions on the Rights of Persons with Disabilities, (UNCRPD). It allows for:
  - the establishment of the National Council for Persons with Disabilities,
  - registration of organizations that are service-providers to people with disabilities
  - Spell out the rights of people with disabilities in Fiji.

##### **2.0 Background**

- 2.1 In terms of education, the bill will be leverage for children with disabilities in ALL schools and educational institutions and settings, providing them with the right to inclusive and life-long education without discrimination.
- 2.2 The Ministry of Education, Heritage and Arts have been supporting the education of children with disabilities in Fiji since, 1960. In 1958, there was a national outbreak of polio in the country and 6 children with polio-myelitis were admitted at the Beatty Keen Ward at the CWM Hospital. Red Cross was tasked by the government to establish formal education for these children. There were joint consultations between The Ministry of Education and the Australian Government, which resulted in the need to have formal education for children with disabilities. That ward, became the first special education classroom for children with disabilities in Fiji.
- 2.3 Today, there are 17 special schools in Fiji, 15 classified under primary and 2 vocational training centers for adults with disabilities.
- 2.4 A total of 1023 children with disabilities are attending the special schools, another 84 are in the *Access to Quality Education Program* pilot schools, and 95 in mainstream primary schools, 36 are in secondary schools, 15 in mainstream vocational schools totaling up to 1253 children with special needs in primary, secondary and vocational schools.

##### **3.0 Existing Legislations**

Section 42 specifically outlines the rights of persons with disabilities to: “1. (a) *reasonable access to all places, public transport and information, (b) to use sign language, Braille or other appropriate means of communication and (c) to reasonable access to necessary materials, substance and devices, relating to their disabilities.*

2. *A person with any disability has the right to reasonable adaptation of building, infrastructure, vehicles, working arrangement, rules, practices or procedures, to enable their full participation in society and the effective realization of their rights*

3. *to the extent that is necessary, a law, or an administrative action taken under a law may limit, or may authorize the limitation of, the rights set out in this section”*

Furthermore, Section 31 of the Constitution states” 1. Every person has the right to (a) *Early Childhood Education, (b) primary and secondary education (c) further education*

2. *The state must take reasonable measures within its available resources to achieve the progressive realization of the right (a) to free early childhood education, primary, secondary and further education and (b) to education for persons who were unable to complete their primary and secondary education*

3. *Conversational and contemporary I -Talkie and Fiji Hindi languages shall be taught as compulsory subjects in all primary schools (4) The State may direct any educational institution to teach subjects pertaining to health, civic education and issues of national interest, and any educational institution must comply with any such direction made by the State (5) In applying any right under this Section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that resources are not available.*

**3.1 There is no specific mention on the education of children with disabilities, or the mention of Fiji Sign Language as a compulsory subject along with I-Taukei and Fiji-Hindi languages.**

#### National Platforms that Supports the Education of Children with Disabilities.

- ▶ Fiji Human Rights Commission Act (1999)
- ▶ Fiji National Council for Persons with Disabilities (FNCDP) Act-1994
- ▶ Ministry of Education Strategic Plan 2015-2018
- ▶ National Policy on Persons Living with Disabilities 2008-2018
- ▶ People’s Charter for Change, Peace and Progress (2008) Pillars 4 and 9 Social Justice Act 2011
- ▶ Fiji Education Commission Report 2000
- ▶ United Nation Conventions on the Rights of the Child
- ▶ Incheon Strategy to “Make the Right Real” for person with Disabilities in Asia and the Pacific.

**3.2 As highlighted, and noted in the Explanatory note of the Bill, the FNCDP Act of 1994 is limited in scope, and does not sufficiently address the needs of persons with disabilities.**

#### **4.0 International Law: - UNCRPD.**

- 4.1 The United Nation Convention on the rights of People with Disabilities Article 24, on Education “**Requires that all children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability; it includes measures to ensure that the education of persons, and in particular children, who are blind, deaf and deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual**”
- 4.2 Inclusive Education Policy:-Children with Disabilities in Fiji have the same fundamental rights, freedom and responsibilities as their regular peers. All children have the right to the most appropriate educational programs available to meet their **individual needs**. Students with special needs require **specialized support** services to provide them with opportunities to achieve their potential and become contributing member of the society in a dignified and meaningful way. The Ministry of Education in Fiji, through the endorsement of the Inclusive Education Policy is committed to progressively meet the needs of all students with special needs children and in active partnership with parents and community.
- 4.3 The Bill will affect all persons living with a disability, their families and their communities. It will affect the schools and stakeholders of institutions where they will be educated, its staffing, funding and resources.

#### **4.4 Gender Equality**

There is no mention of gender equality in the Bill. Although some disabilities such as muscular dystrophy are prevalent only in males, and cervical cancers only in females, while, intellectual disabilities is more common in males (80%) and much lesser in females (50%) in females, and our special and inclusive schools have more males than females, it is assumed that the Bill requires a non-discrimination approach and roll out, thus all persons with disabilities will benefit. A gender analysis of the legislation will best suit the Fiji national Council for Disabled Persons to carry out.

#### **4.5 Transitional Arrangements for MOEHA**

##### **1. Policy review:**

A review of the current MoE Inclusive Education Policy in light of current evidence related to effective means of achieving quality education for children with disabilities, and in relation to



Fiji's international convention and framework commitments and national legislation and policies.

## 2. Initiation of implementation plan:

The disability - education stakeholders are working together to prioritise key areas of action according to the policy. Discussions were informed by the experiences of people with disability themselves, as well as practices of MoE and school staff. This action plan will be the action of progressive realisation of the rights of PWD's.

## 3. Consolidating the Special Schools to provide support to Inclusion

Fiji special schools have a strong system of providing support to inclusion. Although mainstreaming students with disabilities is encouraged, the special schools will remain open for those children with very high support needs. Special School is still an option, allowable in the Convention.

## 4. Curriculum and Assessment

- Review assessment policies and processes as they relate to children with disability, in particular LANA processes, which can create pressure on schools which are trying to be inclusive. Develop assessment options for students with disability that allow for differentiated assessment, which focus on the ongoing (formative) assessment of learning in a user-friendly and accessible way.
- Develop accessible assessment options for students with vision impairment, for example braille or computerised examinations, access to support people to read exam questions to them and assist them in documenting their answers etc.
- Link vocational studies to primary and secondary.
- Up skill teachers on differentiated curriculum/teaching.
- Create resources and texts that incorporate early intervention, and seek support from specialists to enable this.

## 5. Teacher Training

- Establish standardised teacher training modules in disability inclusion. Consider whether mandatory training, or optional participation in training with incentives such as preferential job placement for newly-qualified teachers who have elected to undertake training in disability inclusion. Consider also the inclusion of teacher trainees in Future Leaders programs. Consider mandating FHEC registration requirements to include inclusive education training.
- Ensure teacher training institutes comply with accessibility standards.
- Determine value of teacher aides (including sign language and braille teachers), and consider options for their establishment, qualification and accreditation.

## 6. Health and Specialist Services

- Develop Memorandum of Understanding with Ministry of Health in order to strengthen school-level access to specialists such as therapists who can support children with disability in schools.
- Strengthen linkage between schools and maternal and child health services, to enable early identification of disability, community awareness programs and home visits which incorporate health education.

- Train kindergarten teachers in identification of children with disability, and referral to maternal and child health services.
- Review MoE policy regarding volunteers, and consider their engagement as supports to inclusive education.
- Advocate for the initiation of local University-level courses in specialist services such as speech and occupational therapy.
- Work with the Ministry for Women, Children and Poverty Alleviation to review all policies and action plans that relate to disability and early childhood development; for example the new Child Disability action plan, to ensure disability inclusion.
- Acknowledging the importance of access to specialist early intervention services such as braille and sign language training, develop options for access to these by students with disability in areas outside of Suva.

### **5.0 Issues Raised in the Bill Relating to Education, Clause 43.**

5.1 There is not enough emphasis on Early Intervention Programs and in Education.

5.2 Functions of the Council,

5.3 (e) *Maintain a register of all organizations providing service to persons with disabilities and ensure that the independence of such organizations is maintained.*

***The statistical measure of persons with a disability should be a key role of the Council.***

5.4 (f) *Organize seminars and workshops relating to the problems and needs of persons with disabilities and assist in the training of personnel involved in the care, training, education and rehabilitation of persons with disabilities.*

***The core role of the MOEHA is the education of persons with disabilities, however welcomes the specialized components that will be delivered from the Council***

4.2 Composition of the Council (e) ***the Permanent Secretary for Education, Heritage and Arts.***

## **CONCLUSION**

**7. The MOEHA calls on the government of the Republic of Fiji Islands to endorse the Bill of Rights for Persons with Disabilities.**

## ANNEX G: CHINA STUDY TOUR REPORT

### SOCIAL AFFAIRS STANDING COMMITTEE

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**STUDY TOUR REPORT TO CHINA ON HERITAGE BILL (BILL NO. 10 OF 2016) AND RIGHTS OF PERSONS WITH DISABILITIES BILL (BILL NO. 12 OF 2016)**

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*9<sup>th</sup> August, 2016*

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## **INTRODUCTION**

In 2016, the Social Affairs Standing Committee had received the Heritage Bill (Bill No. 10 of 2016) and the Rights of Persons with Disabilities Bill (Bill No. 12 of 2016) to examine and make amendments to the extent agreed by the Committee and report it back to Parliament.

Initially, the Committee had met and planned its activities on how to examine the two Bills and further in the consultation process, the Committee was invited by the People's Republic of China to visit China to observe China's best practices for these two legislations.

The Committee decided to visit China based on the view that China has historical cultural heritage sites and had also ratified the two Conventions that deals with these two Bills and have already domesticated the two conventions into their national laws. The study tour to China was based on its traditional history in terms of the protection of its cultural heritage sites and the highly advanced facilities and services available for persons living with disabilities.

The study visit to China was possible through the support from the government of the Peoples' Republic of China through the Chinese Embassy based in Suva. The study visit was possible through the Ambassador of China to Fiji, His Excellency, Ambassador Zhang Ping's in considering the Committee's request to undertake a research and study tour in China on the two captioned Bills.

The Social Affairs Standing Committee had visited China from the 1<sup>st</sup> of August, 2016 and returned on the 8<sup>th</sup> of August, 2016. It was a fully funded trip by the Chinese People's Institute of Foreign Affairs (CPIFA) through the Embassy of China in Fiji.

The Committee took 7 Member delegation and these included the 5 Members and 2 Secretariat support Staff as listed below:

**Members:**

1. Hon. Viam Pillay - Chairperson
2. Hon. Salote Radrodro – Deputy Chairperson
3. Hon. Veena Bhatnagar - Member
4. Hon. Anare Vadei - Member
5. Hon. Ruvani Nadalo – Alternate Member

**Secretariat Staff:**

6. Mr. Lemeki Senibale
7. Mr. Savenaca Koro



The Committee visited 5 cities/provinces in China which was organised by the Chinese People's Institute of Foreign Affairs (CPIFA).

## **COMMITTEE OBSERVATION**

### **RIGHTS OF PERSONS WITH DISABILITIES**

In the observation, it was found that China was one of the first country to signed the United Nation Convention on the Rights of Persons with Disabilities. The Committee noted from China's Disabled Persons's Federation (CDPF) that it has a joint 4 - 5years workplan to support its services for persons living with disabilities.

The Committee also notice from the CDPF consultation that the first priority was the resources committed to the organization. It was noted that the first law on persons with disabilities was established in 1990 and then comes the law on education and employment which protects and covers the rights to protect disabilities persons in workplace as well as in the education systems. Also noted, once the above laws were established then the social and legal rights law were established.

Also noted, that CDPF looks at alternative ways like making government policy that supports the protection of persons with disabilities. The organization also stressed the need to liaise and work with other government departments to remove all barriers that hinders the facilitation of the the required services to persons living with disabilities. Nearly more than 20 provinces in China included Beijing had opened up a hotline that supports the Disabled people.

### **Rehabilitation**

The Committee was informed that CDPF had established about 400,000 places for childrens rehabilitation centers. The Committee noted that more children had enjoyed the subsidies and allowance given by the organization. The Committee was informed that the selection of children with disabilities were determined in health centers and community base. The institution help Government to promote and support the disabilities and the help came in through its rehabilitation program that it offers. The institution had organized with other institutions and with the help of the state finance

center had assisted the CDPF to provide better services. CDPF organized other organizations to do rehabilitation work in cities, town and communities. The institution also establishes service organization that provides better rehabilitation work to those societies that are affected by distance. It encouraged technical people to focus on the rehabilitation area. In China, the Rehabilitation University had offered study programmes on 10 different rehabilitation areas. Some of the key focus areas that were noted included the entrepreneurship, education, employment and the elimination of poverty alleviation.

#### **Penalties/Incentives**

Under the Chinese Disabilities Law, any company who employed more than 25 staffs from this group of people (persons with disabilities) will be granted a tax incentive. The compulsory employment policy had a quota system in which it encourages all companies to employ more than 1.5% of its workers from the disabled group.

#### **Financial Support**

The institution also provides financial support to those that are self employed. All trainings for persons living with disabilities are free of charge. It was noted that some of the benefits that are available to persons with disabilities were the minimum subsidy protection, social insurance, aging scheme and the services allowance. The Committee noted that under the Social Allowance policy, the minimum subsidy allowance outlines that more money were given to persons with disabilities compared to the bystanders. It was noted that under the Social Insurance Scheme, the insurance for persons with disabilities were also provided with its fees paid by Government. The Committee was informed that helping insurance on housing for persons with disabilities were also available. The Committee noted that CDPF was largely recognised in the international communities in which it established its position and be partners with some of the international organization including the United Nation in which it promotes human rights and social responsibilities.



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### **Data Collection/Reporting**

The Committee was informed that data collection was coordinated, provided and shared amongst the service providers once the law came into effect and during the implementation process.

The Committee noted that the UN Statics reporting role was undertaken by the CDPF and it takes the assignment from Government to provide report to the United Nation on the progress of the implementation of the UNCRPD, domestically.

### **Compliance of the Law**

It was noted that all policies for persons with disabilities are compulsory and if any company does not comply with the law in terms of recruitment of disabilities persons will pay Government the average income for each disabled person for the 1.5% out of the total employees of an organization and also includes the income tax. The Committee was informed that this policy was captured in China's National Employment Law. The Committee also noted that CDPF has introduce or domesticate the UNCRPD by stages as was in 2013, it introduced the accessibility policy and this was part of CDPF responsibilities to remove all barriers for persons with disabilities. The institution highlighted that it encourages all persons with disabilities to enjoy moving around the society and report back their experiences.

### **Chinese Legislative Approach in Protecting the Rights of Persons with Disabilities**

The Committee noted that in 1999, the Legislative Council had adopted a law on Rights of Persons with Disabilities (RPD). It was also mentioned that there were three (3) other laws adopted and these included, promote education for RPD, promote employment for RPD and promote facilities for RPD. The Committee noted that the RPD Law was revised in April 2008 and other laws which were also considered were the General Principal Law, Social Insurance Law, Employment Law and Education Law.

In addition, the Mental Health Law had included provisions on mental disorder to include rehabilitation. The Committee further noted that the 9<sup>th</sup> amendment to Criminal Law which was revised in 2015 had incorporated those who harm

disabilities person at any how will be charge under the Criminal Law. The Domestic Violence Law also captured the RPD.

In 2011, a round of inspection was conducted by the Internal Affairs Committee on the implementation of the RPD and its role was to study the interpretation of the RPD Law.

#### **Early Prevention and Early Detection**

The Committee noted the importance of Early Prevention and the Early Detection of persons with disabilities. China had adopted a special law on the well being of mothers and children and also has provisions on the protection of women, mother and children. It was noted that before a person get married he/she will be fully examined and this was in the law and was adopted by China in 1994.

In addition, the Committee was informed that in China different Sustainable Development Goals was coordinated by different Government departments.

## HERITAGE

In regards to Heritage Bill, the Committee visited few heritage sites which includes the Great Wall of China, the Forbidden City, Pingyao Ancient City and the Yalu River, Broken Bridge which connected China to North Korea.

The Committee noted that Chinese value their Heritage historical sites and protected and manages all its historical sites as the source of income to the people as well as Government through local and overseas tourist. The Committee noted that all sites were managed by individual city and province and used as an educational motivator for schools during school heritage sites tour. In this event, young Chinese were taught about the history of these sites and this was one of the factor that motivates Chinese in terms of their forefathers heritage history which contributes to their success in life nowadays.

The Committee noted that Chinese treasured these sites because it reminds them of their history and how their great grand fathers struggle in their traditional way of life. These traditional historical sites myths and legends plays an important role in the life's of Chinese which now determines China's position with the rest of other countries in the past century until today in terms of infrastructure development, land, trade, people and economy as a whole.

In terms of the heritage law, the Committee noted that all provinces in China that have cultural and historical sites had adopted and implemented the United Nation Convention on Heritage so that it can be recognized domestically as well as internationally on the World Heritage list.



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### **CONCLUSION/RECOMMENDATION**

In summary, the Committee is of the view that the study tour is much valuable for the Standing Committee on Social Affairs given the contents of the two Bills that are before the Committee. The observation and the information collected from relevant departments in China and the tour made to the Disabilities Rehabilitation Centres and the Heritage Sites gave the idea to the Committee on some of the best practices that the Committee could recommend in its reports for the two (2) Bills.

The study visit has broadens the knowledge of the Members and gives some insight on the best practices in terms of the services provided to persons living with disabilities with its legislation and these that can be recommended further in the two Bills before domesticating it.

Given the main objectives of the study visit, the Committee was satisfied with the opportunity to visit China and then further practically recommend some of China's best practices in their two reports.

#### **Recommendations:**

The following are recommended:

- a) The Department to note the Content of the Report; and
- b) The Department to support further relevant capacity building programmes specifically for the Standing Committees to broaden their knowledge base to become instrumental in their Constitutional role and to provide a sound technical advice in Parliament when it scrutinize a bill or any issue referred by Parliament to the Committee.



## **APPENDIX**

- 1) Study Programme
- 2) Country Profile of China
- 3) Pictures of the Tour