



PARLIAMENT OF THE REPUBLIC OF FIJI

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

REPORT ON THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS



Parliament of the Republic of Fiji

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CHAIR'S FOREWORD

I am pleased to present this Report of the Fiji Parliament Standing Committee on Foreign Affairs and Defence (SCFAD), on the review of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

This report contains the Committee's recommendation and views on the treaty. It also provides a summary and examination of written submissions and oral evidence received during the Committee's meetings from 27th April to 10th May 2018.

The ICESCR was adopted in 16th December, 1966 by the UN General Assembly and entered into force ten years later. The ICESCR, together with the Universal Declaration of Human Rights (UDHR) and the ICCPR, constitute the International Bill of Human Rights. The ICESCR defines a broad set of rights related to the economic, social, and cultural elements of life that states must provide to their citizens. The specific rights relate to: housing, education, labour, environment, health, cultural rights (including language and religion), and self-determination. It also covers the right to take part in cultural life and the right to enjoy benefits from science and inventions.

The Committee received many well written and thoughtful submissions from a diverse range of views; Government ministries, political parties, CSOs, NGOs, academia, UN and other regional and international agencies. It is worth noting that during the Committee's review a record thirty four (34) women prominently participated in the submissions and consultations.

Importantly addressing human rights through the Bill of Rights in the Fiji Constitution for all Fijians is critical to implementing the needs of national sustainable development in light of the challenges posed by climate change. The Committee notes the Fijian Government's goal of ratifying all human rights treaties and conventions by 2024 as noted in the 5-year and 20-year National Development Plan.

On behalf of the Committee, I sincerely thank all those that came forward to make submissions and air their views on this important treaty.

On behalf of the Standing Committee, I commend this report to Parliament



Hon. Netani B. Rika
Chairman

LIST OF ACRONYMS

CCF	Citizens' Constitutional Forum
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CJ	Chief Justice
CRPD	Convention on the Rights of Person with Disabilities
CSO	Civil Society Organisations
DPP	Director Public Prosecutions
FEO	Fijian Elections Office
FFP YW	Fiji First Party Youth Wing
FLP	Fiji Labour Party
FLS	Fiji Law Society
FWCC	Fiji Women's Crisis Centre
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
MOD	Ministry of Defence and National Security
MITA	Ministry of iTaukei Affairs
MOFA	Ministry of Foreign Affairs
NFP	National Federation Party
NFPYW	National Federation Party Youth Wing
NGOs	Non-Governmental Organisations
NMR	National Mechanism for Reporting and Follow Up
SPC RRRT	Secretariat of the Pacific Community-Regional Rights Resources Team
SCFAD	Standing Committee on Foreign Affairs and Defence
SO	Standing Orders
SODELPA YW	Social Democrat Liberal Party Youth Wing
UNCAT	United Nation Convention Against Torture
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UN OHCHR	UN Office of the High Commissioner on Human Rights
USP	University of the South Pacific
UN SDGs	United Nations Sustainable Development Goals
UPR	Universal Periodical Review

RECOMMENDATION

The Committee recommends that:

Parliament ratifies the International Covenant on Economic, Social and Cultural Rights (ICESCR) without reservation.

PART 1

1.0 INTRODUCTION

The Parliament Standing Committee on Foreign Affairs and Defence undertook a review of the proposal by the Government of the Republic of Fiji for Parliament to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.1 The Standing Committee on Foreign Affairs and Defence Roles and Responsibilities

The Standing Committee is established under Standing Orders 109(2)(e) of the Parliament of the Republic of Fiji and is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.

Under SO 110(1)(e) the Committee is mandated to review international treaties and conventions ratified by the Government and monitor their implementation.

The Committee comprises five Honourable drawn from both sides of the House in a bi-partisan manner.

1.2 Committee Members

The Members of the Standing Committee on Foreign Affairs and Defence are:

- i. Hon. Netani Rika (Chairman)
- ii. Hon. Howard R. Politini (Jnr) (Deputy Chairman)
- iii. Hon. Jilila Kumar
- iv. Hon. Ratu Suliano Matanitobua

During the Standing Committee's meetings, the following Alternate Members:

- i. Hon. Samuela Vunivalu
- ii. Hon. Ro Kiniviliame Kiliraki
- iii. Hon. Ratu Tevita Niumataiwalu

1.3 Procedure and Program

The Standing Committee on Foreign Affairs and Defence met in the Parliament Complex from Monday 23rd April 2018 to discuss and plan their strategy for receiving public submissions.

The Committee conducted public hearing and submissions from stakeholders in the Parliament Complex between 27th April to 10th May 2018 on the ICESCR.

Date	Submittees
27/4/18	Mr Kevin Deveau (UNDP consultant)
1/5/18	SPC/Regional Rights Resources Team (RRRT)
2/5/18	United Nations Office for the High Commissioner on Human Rights (UN OCHR)
3/5/18	Office of the Solicitor-General
4/5/18	Human Rights and Anti-Discrimination Commission
	Director Public Prosecutions
	Social Democratic Liberal Party (SODELPA) Youth Wing
	National Federation Party Youth Wing
7/5/18	School of Governance, Development and History Politics-USP
	Fiji Women Crisis Centre
8/5/18	Professor Konai Helu Thaman -USP
9/5/18	Office of the Chief Justice
	Fijian Elections Office
10/5/18	Ministry of Foreign Affairs
	Ministry of iTaukei and Native Lands Commission
	Citizens' Constitutional Forum
	Fiji Labour Party
	National Federation Party
	Ministry of Defence and National Security
	FijiFirst Party Youth Wing
	Fiji Law Society

PART 2

2.0 BACKGROUND

On 16th April, 2018 the treaty was referred to the Standing Committee on Foreign Affairs and Defence Committee for its deliberation.

Under section 51 of the Constitution, “an international treaty or convention binds the State only after it has been approved by Parliament.”

The ICESCR has legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable condition, to social protection, to adequate standard of living, to the highest attainable standards of physical and mental health, to education and enjoyment of the benefits of cultural freedom and scientific progress.

- 2.1 The ICESCR is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came into force on 3 January 1976. The ICESCR commits States Parties to respect the economic, social and cultural rights of individuals, including the right to work, family, education and cultural life.
- 2.2 The ICESCR was drafted in 1966 alongside the International Covenant on Civil and Political Rights as an attempt to enforce provisions in the Universal Declaration of Human Rights of 1948. Currently the ICESCR has 71 signatories and 167 States Parties.
- 2.3 The ICESCR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States Parties on how rights under the ICESCR are being implemented. States Parties must report initially one year after acceding to the Covenant and then every four years unless Committee requests any additional reports. The Committee normally meets in Geneva and normally holds three sessions per year.

Articles of Summary

- 2.4 The ICESCR has a total of 31 Articles which are divided into 5 parts. Part 1 which is made up solely of Article 1 recognises the rights of all peoples to self-determination, including the right to freely determine their political status and freely pursue their economic, social and cultural development.

- 2.5 Part 2 (Articles 2 – 5) of the ICESCR obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 2.6 Part 3 (Articles 6 – 15) of the ICESCR lists the rights themselves. These include rights to work (Article 6); to the enjoyment of just and favourable conditions of work (Article 7); to form and join trade unions (Article 8); to social security, including social insurance (Article 9); to the widest possible protection and assistance for the family, especially mothers, children and young persons (Article 10); to an adequate standard of living (Article 11); to the enjoyment of the highest attainable standard of physical and mental health (Article 12); to education (Articles 13 and 14); and to take part in cultural life (Article 15).
- 2.7 Part 4 (Articles 16 – 25) of the ICESCR governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognise the competence of the Committee to resolve disputes between parties on the implementation of the Covenant.
- 2.8 Part 5 (Articles 26 – 31) of the ICESCR governs ratification, entry into force, and amendment of the Covenant.

PART 3

3.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN

3.1 Requirements for Implementation

- 3.1.1 The ICESCR is monitored by the United Nations Committee a (separate body to the United Nations Human Rights Council), which reviews regular reports of state parties on how rights under the ICESCR are being implemented. State parties must report initially one year after acceding to the covenant and then every four years unless committee requests any additional reports. The committee usually meet in Geneva and normally holds three sessions per year.
- 3.1.2 The ICESCR has not been ratified most of the rights contained in it have been incorporated into the Fijian Constitution under Chapter 2 of the Bill Rights.
- 3.1.3 One of the obvious consequences of accession of the treaty is the reporting obligations that Fiji will meet on a periodical cycle.
- 3.1.4 Ratification would mean the government is held accountable internationally and on a national level with regards to ICESCR and ICCPR implementation.

3.2 Impact of Ratification

- 3.2.1 It is prudent to note that in 2010, the Fijian Government in its Universal Periodic Review Report made a commitment towards ratifying all core human rights instruments within 10 years. At the last reporting cycle of 2014 in Geneva, before the Human Rights Council, the Fijian Government reaffirmed its commitment to ratifying all core human rights instruments which the ICESCR is a part of.
- 3.2.2 The ratification is also in line with the Fijian Government's goal of ratifying all human rights treaties and conventions by 2024 as noted in the 5-year and 20-year National Development Plan.

3.3 Ratification will also provide the following benefits to Fiji –

- 3.3.1 It will complement and further strengthen Fiji's constitutional provisions under the Bill of Rights;
- 3.3.2 With over 160 States having become a party to ICESCR, the ratification of ICESCR will raise Fiji's international standing in the Human Rights Council community;
- 3.3.3 It will promote cooperation and strengthen international relations with other State Parties who have acceded to or ratified the Convention;
- 3.3.4 It will ensure cultural democracy in the curriculum of formal education from early childhood education to university level;
- 3.3.5 It will ensure that people and communities have access and resources necessary for participation in the culture of their choice;
- 3.3.6 It will ensure adequate housing; adequate standard of living and adequate Health (physical and mental) is attained;
- 3.3.7 It will ensure the right to self determination;
- 3.3.8 It will ensure the right to join a trade union and strike;
- 3.3.9 It will ensure the right to social security and social insurance;
- 3.3.10 It will ensure participation in cultural life, and benefit from scientific progress; and
- 3.3.11 It will strengthen the implementation of good governance programs for traditional leaders.

3.4 Challenges

- 3.4.1 Lack of consultation on the ICESCR nationwide especially remote rural areas.
- 3.4.2 The treaty to be translated into the vernacular languages during the awareness phase of implementation for members of the public.
- 3.4.3 Lack of time for stakeholders especially NGOs to properly scrutinize and raise awareness on the treaty.

- 3.4.4 Lack of resources and leadership in conducting national awareness on the treaty
- 3.4.5 Need to develop a National Mechanism for Reporting and Follow Up (NMR) for Treaties and Conventions at a National Level.
- 3.4.6. Develop systems of checks and balances to hold businesses to account for breaches of workers' rights pertaining to decent work and decent pay.
- 3.4.7. Linking sustainable development to the Human Rights in terms of addressing the SDGs.
- 3.4.8 Linking women's rights and children's rights to sustainable development through the SDGs.
- 3.4.9 Challenges posed globalisation and modernity to indigenous rights to land ownership and loss of culture, identity and traditions.
- 3.4.10 Need to review the national minimum wage.
- 3.4.11 Need to acknowledge the right of people to join trade unions.
- 3.4.12 Need to protect indigenous rights, knowledge, culture and traditions.
- 3.4.13 Cost implications in the national awareness of the treaty on a national scale needs to be considered.

3.5 Way Forward

The Committee strongly recommends that sustainable and stronger measures be implemented by the executive to properly monitor and evaluate on the treaty implementation after ratification to ensure all national laws and policies reflect Fiji's Global Commitment to meeting the needs of the Sustainable Development Goals.

3.6 Stakeholders Observations

There was a general consensus from the stakeholders to the Government to ratify the treaty.

3.7 Gender Analysis

The Parliament of Fiji Standing Orders 110(2) specifically states that a committee shall ensure that 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 is satisfied that the matters considered in this report, impacts on both women and men equally and as such, ratification of the Treaty will assist in upholding the rights of all Fijians. It is worth noting that during the Committee's review a record thirty four (34) women prominently participated in the submissions and consultations.

PART 4


4.0 Conclusion

The committee noted that Parliament's ratification of the Treaty will require the necessary commitment from the Government and the relevant agencies in terms of effective implementation of domestic legislation, systems and processes to ensure that all SDGs are achieved in a progressive and sustainable manner. The Committee has concluded that Fiji's ratification of the Treaty will provide the impetus for Fiji to take a leadership role on Human Rights in the Pacific Region. The evidence provided by key stakeholders provides overwhelming support for ratification. The Committee recommends Parliament to expedite ratification of the Treaty.


5.0 CONSIDERATION OF CONVENTION ARTICLE BY ARTICLE

The Committee considered the Treaty Article by Article and agreed with the Articles as summarized below:


A copy of the Treaty is attached as Appendix 1.



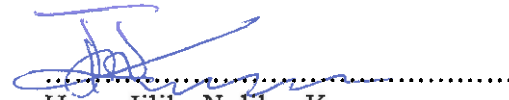
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(Chairperson)



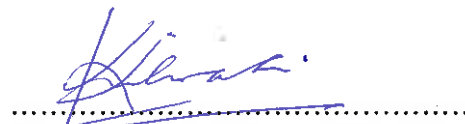
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Hon. Howard Politini (Jnr)
(Deputy Chairperson)



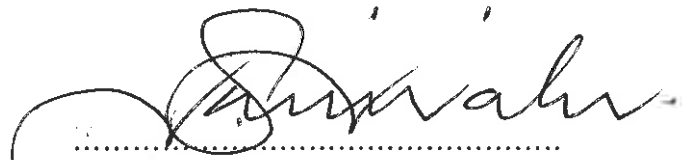
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Hon. Ratu Suliano Matanitobua
(Member)



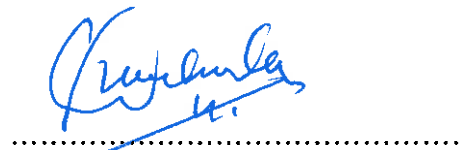
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Hon. Jilila Nalibu Kumar
(Member)



.....
Hon. Ro Kininiviliame Kiliraki
(Alternate Member)



.....
Hon. Samuela Vunivalu
(Alternate Member)



.....
Hon. Ratu Tevita Niumataiwalu
(Alternate Member)

APPENDICES

APPENDIX 1

ICESCR ARTICLE BY ARTICLE & ARTICLES OF SUMMARY



Notice of a Motion

Notice:

That the Standing Committee on Foreign Affairs and Defence review the following treaties-

- 1. *International Covenant on Civil and Political Rights; and***
- 2. *International Covenant on Economic, Social and Cultural Rights.***

Name of member submitting the motion: Attorney-General

Signature of member to move the motion: _____

A handwritten signature in black ink, appearing to read "Attorney-General", written over a horizontal line.

Date Submitted: 13 April 2018

Date for the motion to be moved: 16 April 2018

For staff use only

Date and time received: _____

Name of person receiving the form: _____

UNITED NATIONS
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
(ICESCR)

1.0 Summary ICESCR

- 1.1 The ICESCR is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came into force on 3 January 1976. The ICESCR commits States Parties to respect the economic, social and cultural rights of individuals, including the right to work, family, education and cultural life.
- 1.2 The ICESCR was drafted in 1966 alongside the International ICESCR on Civil and Political Rights as an attempt to enforce provisions in the Universal Declaration of Human Rights of 1948. Currently the ICESCR has 71 signatories and 167 States Parties..
- 1.3 The ICESCR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States Parties on how rights under the ICESCR are being implemented. States Parties must report initially one year after acceding to the Covenant and then every four years unless Committee requests any additional reports. The Committee normally meets in Geneva and normally holds three sessions per year.
- 1.4 The ICESCR has a total of 31 Articles which are divided into 5 parts. Part 1 which is made up solely of Article 1 recognises the rights of all peoples to self-determination, including the right to freely determine their political status and freely pursue their economic, social and cultural development.
- 1.5 Part 2 (Articles 2 – 5) of the ICESCR obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 1.6 Part 3 (Articles 6 – 15) of the ICESCR lists the rights themselves. These include rights to work (Article 6); to the enjoyment of just and favourable conditions of work (Article 7); to form and join trade unions (Article 8); to social security,

including social insurance (Article 9); to the widest possible protection and assistance for the family, especially mothers, children and young persons (Article 10); to an adequate standard of living (Article 11); to the enjoyment of the highest attainable standard of physical and mental health (Article 12); to education (Articles 13 and 14); and to take part in cultural life (Article 15).

- 1.7 Part 4 (Articles 16 – 25) of the ICESCR governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognise the competence of the Committee to resolve disputes between parties on the implementation of the Covenant.
- 1.8 Part 5 (Articles 26 – 31) of the ICESCR governs ratification, entry into force, and amendment of the Covenant.

2.0 Requirements for Implementation

- 2.1 ICESCR although not ratified, has been incorporated into the Fijian Constitution under chapter 2 of the Bill Rights.

3.0 Impact of Ratification

- 3.1 It is prudent to note that in 2010, the Fijian Government in its Universal Periodic Review Report made a commitment towards ratifying all core human rights instruments within 10 years. At the last reporting cycle of 2014 in Geneva, before the Human Rights Council, the Fijian Government reaffirmed its commitment to ratifying all core human rights instruments which the ICESCR is a part of.
- 3.2 Ratification will also provide the following benefits to Fiji –
 - (a) it will complement and further strengthen Fiji's constitutional provisions under the Bill of Rights;

- (b) with over 160 States having become a party to ICESCR, the ratification of ICESCR will raise Fiji's international standing in the Human Rights Council community; and
- (c) it will promote cooperation and strengthen international relations with other State Parties who have acceded to or ratified the Convention.

International Covenant on Economic, Social and Cultural Rights
Adopted and opened for signature, ratification and accession by General Assembly
resolution 2200A (XXI)
of 16 December 1966

entry into force 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.




Article 31




1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.




2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

APPENDIX 2

SUSTAINABLE DEVELOPMENT GOALS (SDGs) RELATED TO THE TREATY

Sustainable Development Goals		Related human rights *
	End poverty in all its forms everywhere Targets include eradicating extreme poverty; implementing social protection measures; and ensuring equal access of men and women to economic resources.	<ul style="list-style-type: none"> • Right to an adequate standard of living [UDHR art. 25; ICESCR art. 11; CRC art. 27] • Right to social security [UDHR art. 22; ICESCR art. 9; CRPD art. 28; CRC art. 26] • Equal rights of women in economic life [CEDAW arts. 11, 13, 14(2)(g), 15(2), 16(1)]
	End hunger, achieve food security and improved nutrition, and promote sustainable agriculture Targets include ending hunger and malnutrition; improving agricultural production, sustainable and resilient food production; correcting trade distortions, and ensuring functioning food commodity markets.	<ul style="list-style-type: none"> • Right to adequate food [UDHR art. 25; ICESCR art. 11; CRC art. 24(2)(c)] • International cooperation, including ensuring equitable distribution of world food supplies [UDHR art. 28; ICESCR arts. 2(1), 11(2)]
	Ensure healthy lives and promote well – being for all at all ages Targets include reducing maternal mortality; ending preventable child deaths; ending or reducing AIDS other diseases; universal health coverage, affordable essential medicines, sexual and reproductive health care; vaccine research, and access to medicines.	<ul style="list-style-type: none"> • Right to life [UDHR art. 3; ICCPR art. 6], particularly of women [CEDAW art. 12] and children [CRC art. 6] • Right to health [UDHR art. 25; ICESCR art. 12], particularly of women [CEDAW art. 12]; and children [CRC art.24] • Special protection for mothers and children [ICESCR art.10] • Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)] • International cooperation [UDHR art. 28, DRTD arts. 3-4], particularly in relation to the right to health and children's rights [ICESCR art. 2(1); CRC art. 4]

 <p>4 QUALITY EDUCATION</p>	<p>Ensure inclusive and equitable quality education and promote life-long learning opportunities for all</p> <p>Targets include universal access to free, quality pre-primary, primary and secondary education; improving vocational skills; equal access to education; expanding education facilities, scholarships, and training of teachers.</p>	<ul style="list-style-type: none"> • Right to education [UDHR art. 26; ICESCR art. 13], particularly in relation to children [CRC arts. 28, 29]; persons with disabilities [CRC art. 23(3), CRPD art. 24]; and indigenous peoples [UNDRIP art. 14] • Equal rights of women and girls in the field of education [CEDAW art. 10] • Right to work, including technical and vocational training [ICESCR art. 6] • International cooperation [UDHR art. 28; DRTD arts. 3-4], particularly in relation to children [CRC arts. 23(4), 28(3)], persons with disabilities [CRPD art. 32], and indigenous peoples [UNDRIP art. 39]
 <p>5 GENDER EQUALITY</p>	<p>Achieve gender equality and empower all women and girls</p> <p>Targets include eliminating discrimination and violence against women and girls; valuing unpaid care and domestic work; ensuring the full participation of women; access to reproductive health care; and equal access of women to economic resources.</p>	<ul style="list-style-type: none"> • Elimination of all forms of discrimination against women [CEDAW arts. 1-5] and girls [CRC art. 2], particularly in legislation, political and public life (art. 7), economic and social life (arts. 11, 13), and family relations (art. 16)] • Right to decide the number and spacing of children [CEDAW arts. 12, 16(1)(e); CRC art. 24(2)(f)] • Special protection for mothers and children [ICESCR art. 10] • Elimination of violence against women and girls [CEDAW arts. 1-6; DEVAW arts. 1-4; CRC arts. 24(3), 35] • Right to just and favourable conditions of work [ICESCR art. 7; CEDAW art. 11]
 <p>6 CLEAN WATER AND SANITATION</p>	<p>Ensure availability and sustainable management of water and sanitation for all</p> <p>Targets include ensuring universal and equitable access to safe, affordable drinking water, sanitation and hygiene for all; reducing pollution; increasing water-use efficiency; and promoting participatory management of water and sanitation services.</p>	<ul style="list-style-type: none"> • Right to safe drinking water and sanitation [ICESCR art. 11] • Right to health [UDHR art. 25; ICESCR art. 12] • Equal access to water and sanitation for rural women [CEDAW art. 14(2)(h)]

7 AFFORDABLE AND CLEAN ENERGY 	<p>Ensure access to affordable, reliable, sustainable and modern energy for all</p> <p>Targets include ensuring universal access to affordable, reliable and modern energy services.</p>	<ul style="list-style-type: none"> • Right to an adequate standard of living [UDHR art. 25; ICESCR art. 11] • Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)]
8 DECENT WORK AND ECONOMIC GROWTH 	<p>Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all</p> <p>Targets include promoting sustained economic growth; improving resource efficiency in production and consumption; full and productive employment and decent work for all; eradicating forced and child labour and trafficking; protecting labour rights including those of migrant workers; and increasing access to financial services.</p>	<ul style="list-style-type: none"> • Right to work and to just and favourable conditions of work [UDHR art. 23; ICESCR arts. 6, 7, 10; CRPD art. 27; ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work] • Prohibition of slavery, forced labour, and trafficking of persons [UDHR art. 4; ICCPR art. 8; CEDAW art. 6; CRC arts. 34-36] • Equal rights of women in relation to employment [CEDAW art. 11; ILO Conventions No. 100 and No. 111] • Prohibition of child labour [CRC art. 32; ILO Convention No. 182] • Equal labour rights of migrant workers [CMW art. 25]
9 INDUSTRY, INNOVATION AND INFRASTRUCTURE 	<p>Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation</p> <p>Targets include affordable and equitable access to quality infrastructure; employment generating industrialisation; access to financial services and markets; innovation and technology transfer, and increasing access to ICT.</p>	<ul style="list-style-type: none"> • Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)] • Right to access to information [UDHR art. 19; ICCPR art. 19(2)] • Right to adequate housing, including land and resources [UDHR art. 25; ICESCR art. 11] • Equal rights of women to financial credit and rural infrastructure [CEDAW art. 13(b), art. 14(2)]



Reduce inequality within and among countries

Targets include promoting higher growth rates for the bottom 40 per cent; promoting social, economic and political inclusion; reducing inequalities in opportunities and outcomes; ensuring social protection for all; securing participation in economic decision making; facilitating migration, and reducing transaction costs for migrant remittances.

- **Right to equality and non-discrimination** [UDHR art. 2; ICESCR art. 2(2); ICCPR arts. 2(1), 26; CERD art. 2(2); CEDAW art. 2; CRC art. 2; CRPD art. 5; CMW art. 7; DRTd art. 8(1)]
- **Right to participate in public affairs** [UDHR art. 21; ICCPR art. 25; CEDAW art. 7; ICERD art. 5; CRPD art. 29; DRTd art. 8(2)]
- **Right to social security** [UDHR art. 22; ICESCR arts. 9-10; CRPD art. 28]
- **Promotion of conditions for international migration** [CMW art. 64]
- **Right of migrants to transfer their earnings and savings** [CMW art. 47(1)]



Make cities and human settlements inclusive, safe, resilient and sustainable

Targets include ensuring access to housing, basic services and public transport for all; participatory planning of human settlements; safeguarding cultural and natural heritage; and strengthening resilience to disasters.

- **Right to adequate housing**, including land and resources [UDHR art. 25; ICESCR art. 11]
- **Right to participate in cultural life** [UDHR art. 25; ICESCR art. 15; ICERD arts. 5, 7; CRPD art. 30; CRC art. 31]
- **Accessibility of transportation, facilities and services** particularly of persons with disabilities [CRPD art. 9(1)], children [CRC art. 23], and rural women [CEDAW art. 14(2)]
- **Protection from natural disasters** [CRPD art. 11]



Ensure sustainable consumption and production patterns

Targets include achieving sustainable management and efficient use of natural resources; improving waste management; promoting sustainable public procurement; ensuring access to information; and building capacity for sustainable development.

- **Right to health** including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12]
- **Right to adequate food and the right to safe drinking water** [UDHR art. 25(1); ICESCR art. 11]
- **Right of all peoples to freely dispose of their natural resources** [ICCPR, ICESCR art. 1(2)]



Take urgent action to combat climate change and its impacts

Targets include strengthening resilience and adaptation to climate change and natural disasters, including in marginalised communities; implementation of the Green Climate fund.

- **Right to health** including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28]
- **Right to adequate food & right to safe drinking water** [UDHR art. 25(1); ICESCR art. 11]
- **Right of all peoples to freely dispose of their natural wealth and resources** [ICCPR, ICESCR art. 1(2)]



Conserve and sustainably use the oceans, seas and marine resources for sustainable development

Targets include reducing marine pollution; conserving coastal ecosystems, coastal marine areas and fish stock; securing market access for small scale fishers; protection of marine biodiversity.



- **Right to health** including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28]
- **Right to adequate food & right to safe drinking water** [UDHR art. 25(1); ICESCR art. 11]
- **Right of all peoples to freely dispose of their natural wealth and resources** [ICCPR, ICESCR art. 1(2)]



Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

Targets include the sustainable management of freshwater, mountain ecosystems and forests; combatting desertification; halting biodiversity loss; combatting poaching and trafficking of protected species.

- **Right to health** including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28]
- **Right to adequate food & right to safe drinking water** [UDHR art. 25(1); ICESCR art. 11]
- **Right of all peoples to freely dispose of their natural wealth and resources** [ICCPR, ICESCR art. 1(2)]

 <p>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</p>	<p>Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p> <p>Targets include reducing all forms of violence; ending violence against and trafficking of children; promoting rule of law and justice for all; reducing illicit financial and arms flows, corruption and bribery; developing effective institutions; participation in decision making at all levels; legal identity for all.</p>	<ul style="list-style-type: none"> • Right to life, liberty and security of the person [UDHR art. 3; ICCPR arts. 6(1), 9(1); ICPED art. 1] including freedom from torture [UDHR art. 5; ICCPR art. 7; CAT art. 2; CRC art. 37(a)] • Protection of children from all forms of violence, abuse or exploitation [CRC arts. 19, 37(a)], including trafficking (CRC arts. 34-36; CRC-OP1)] • Right to access to justice and due process [UDHR arts. 8, 10; ICCPR arts. 2(3), 14-15; CEDAW art. 2(c)] • Right to legal personality [UDHR art. 6; ICCPR art. 16; CRPD art. 12] • Right to participate in public affairs [UDHR art. 21; ICCPR art. 25] • Right to access to information [UDHR art. 19; ICCPR art. 19(1)]
 <p>17 PARTNERSHIPS FOR THE GOALS</p>	<p>Strengthen the means of implementation and revitalize the global partnership for sustainable development</p> <p>Targets include strengthening domestic and international resources; debt sustainability; technology transfer and capacity building; promoting trade; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; measurements for progress, disaggregated data.</p>	<ul style="list-style-type: none"> • Right of all peoples to self-determination [ICCPR, ICESCR art. 1(1); DRTD art. 1(1)] • Right of all peoples to development, & international cooperation [UDHR art. 28; ICESCR art. 2(1); CRC art. 4; CRPD art. 32(1); DRTD arts. 3-5] • Right of everyone to enjoy the benefits of scientific progress and its application, including international cooperation in the scientific field [UDHR art. 27(1); ICESCR art. 15(1)] • Right to privacy [UDHR art. 12; ICCPR art. 17], including respect for human rights and ethical principles in the collection and use of statistics [CRPD art. 31(1)]

(*) This table is intended for illustrative purposes only. The listing of relevant rights is not exhaustive. Under international human rights law, and under the 2030 Agenda for Sustainable Development, data for all targets needs to be collected and disaggregated by the prohibited grounds of discrimination under international human rights law, including the respect, protection and promotion of human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status. Obligations regarding international assistance and cooperation also apply to all Goals.

List of international human rights instruments:

- 1948 – Universal Declaration on Human Rights ([UDHR](#))
- 1965 – International Convention on the Elimination of All Forms of Racial Discrimination ([CERD](#))
- 1966 – International Covenant on Civil and Political Rights ([ICCPR](#))
- 1966 – International Covenant on Economic, Social and Cultural Rights ([ICESCR](#))
- 1979 – International Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#))
- 1984 – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT](#))
- 1986 – Declaration on the Right to Development ([UNDRTD](#))
- 1989 – Convention on the Rights of the Child ([CRC](#))
- 1990 – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ([CMW](#))
- 1993 – Declaration on the Elimination of Violence against Women ([DEVAW](#))
- 2000 – Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict ([OP-1](#))
- 2006 – Convention on the Rights of Persons with Disabilities ([CRPD](#))
- 2006 – International Convention for the Protection of All Persons from Enforced Disappearances ([ICPEP](#))
- 2007 – Declaration on the Rights of Indigenous Peoples ([UNDRIP](#))

APPENDIX 3

VERBATIM NOTES

1. REGIONAL RIGHTS RESOURCES TEAM-SPC
2. OFFICE OF THE UNITED NATION HIGH COMMISSIONER FOR HUMAN RIGHTS
3. OFFICE OF THE DIRECTOR PUBLIC PROSECUTION

STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE

[Verbatim Report of Meeting]

HELD IN THE
COMMITTEE ROOM (WEST WING)

ON

TUESDAY, 1ST MAY, 2018

VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE HELD IN THE COMMITTEE ROOM (WEST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON TUESDAY, 1st MAY, 2018 AT 12.00 P.M.

Interviewee/Submittee : Regional Rights Resources Team (RRRT) & the Secretariat of the Pacific Community (SPC)

Attendance:

- | | | |
|--------------------------|---|-----------------------------|
| 1. Mr. Miles Young | - | Director |
| 2. Ms. Jayshree Mangbhai | - | Senior HR Advisor |
| 3. Ms. Rose Martin | - | Senior Human Rights Advisor |
| 4. Mr. Martin Child | - | Senior Human Rights Advisor |
| 5. Ms. Danica Waiti | - | Team Leader |
| 6. Mr. Sonal Aujla | - | Communications Assistant |
-

MR. CHAIRMAN.- Honourable Members, we have with us this afternoon the team from the Secretariat of the Pacific Community (SPC) and the Regional Rights Resources Team (RRRT) and we have with us: Mr. Miles Young, Ms. Jayshree Mangbhai, Ms. Rose Martin, Mr. Martin Child, Ms. Danica Waiti and Mr. Sonal Aujla.

I take this opportunity, on behalf of the Honourable Members of the Standing Committee on Foreign Affairs and Defence, to welcome you again this afternoon and we are very appreciative with your response to our invitation and we believe with your experience and knowledge, you will assist us in putting down a Report in regards to these Treaties that we are scrutinising now: the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

So, after your submission then it will be question time, and we are looking forward to your presentation this afternoon. With no further ado, I now give you the floor.

MR. M. YOUNG.- Mr. Chairman and other Honourable Members of this Parliamentary Standing Committee on Foreign Affairs and Defence, *vinaka vakalevu* for providing the SPC Regional Rights Resource Team with this opportunity to make submissions on whether Fiji should ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Mr. Chairman, if you permit, I propose to make short opening remarks and then take questions from the Committee. As the Standing Committee will note, RRRT is the Human Rights Programme of SPC. SPC is an inter-governmental organisation owned and governed by 26 member States, comprising of the 22 Pacific Island countries and territories, including Fiji plus Australia, New Zealand, France and the United States.

I would like to just emphasise that SPC RRRT provides technical assistance to SPC members. We are not a political body nor an NGO nor an advocacy body. Our assistance is purely technical and only in response to requests from our member States.

Mr. Chairman and Honourable Members, in relation to the subject matter before the Standing Committee, SPC RRRT's position is that we support the ratification of both the ICCPR and the ICESCR, both covenants. There are many good reasons to ratify both, and I am sure the Committee has heard many submissions around these good reasons. So, rather than go through the

various reasons, what I and the team wish to do today in these opening remarks is to focus on the link between human rights, sustainable development and good governance. In other words, while ratifying the two covenants, support sustainable development and good governance. The reason, Mr. Chairman, for focusing on this link is because as I have explained earlier, SPC is in the business of supporting its members in that development process in achieving its development outcomes.

During the course of the “question and answer session”, we can also touch on other reasons if there are specific questions but these opening remarks will just focus on the link between human rights, sustainable development and good governance.

Mr. Chairman, RRRT believes that Fiji and your Committee in particular, Fiji, both support sustainable development and good governance. In fact Fiji has very publicly expressed its support for the Sustainable Development Goals (SDGs) including at the United Nations. When he addressed the General Assembly in September 2016, the Prime Minister, the Honourable Josaia Voreqe Bainimarama confirmed that sustainable development is at the forefront or is at the core of Fiji’s national agenda.

In 2017 (and this is a very interesting initiative), Fiji collaborated with the Danish Institute for Human Rights and ten other countries: Azerbaijan, Chile and Denmark, Ecuador, Luxembourg, Portugal, Rwanda, Sierra Leone, Thailand and Uruguay in preparing the Report, “Human Rights and the Sustainable Development Goals Receiving Synergies”.

Now, this Report which Fiji co-prepared states, and I quote, “Human rights and sustainable development are interdependent and mutually re-enforcing. In order to respond to the rising global inequalities and realising SDGs in a way that leaves no one behind, human rights obligations and commitments will need to be applied, implemented and protected.” The Report goes on to say, and I quote, “The SDGs are based around universal human rights. This explains why there is no particular SDG on human rights, in fact human rights are part and parcel of every one of the 17 SDGs. Over 90 percent of the SDGs targets are embedded in Human Rights Treaties. Thus without progressing on implementing these treaties, 90 percent of SDGs’ targets cannot be realized.”

So, Mr. Chairman, this Report, as I said, was co-prepared by Fiji. In a very succinct way, it explains why human rights is at the heart of sustainable development. Here in the Pacific, we have the Pacific Plan which (I am sure the Committee is aware of) was endorsed by Pacific leaders, including Fiji, and it states that the ratification and implementation of core Human Rights Conventions, including the two Covenants that we are talking about, are key goals for the Pacific Region.

More recently in 2015 we had the Denarau Declaration by Members of Parliament from Fiji, Kiribati, RMI, Nauru, Niue, Palau, Samoa, Solomons, Tonga, Tuvalu and Vanuatu and that Denarau Declaration affirmed Pacific leaders’ vision for good governance and human rights. The Declaration stated that human rights are essential cornerstones of good governance and the social economic and cultural development of Pacific Island nations. It also went on to state that human rights and good governance can be achieved when linked to Pacific cultures and values.

So, Mr. Chairman, good governance is key to addressing poverty and sustainable development. The ICCPR directly supports good governance by enshrining civil and political rights, including freedom of expression, movement, thought, conscience, religion and the right to

vote and stand in Elections. The ICESCR meanwhile directly addresses some of the key development issues in Fiji, for example the right to education, health, work to an adequate standard of living, including food, clothing and housing.

Honourable Committee Members, Fiji is a leader in the Pacific, we all know that. Ratifying the ICCPR and ICESCR will demonstrate this country's leadership on human rights. It would demonstrate this country's leadership on the sustainable development goals because Fiji will highlight the importance of that relationship between human rights, sustainable development and good governance.

Mr. Chairman and Honourable Members, we conclude our opening remarks and we are happy to take questions. *Vinaka Vakalevu.*

MR. CHAIRMAN.- Thank you, Director, for that short information that you have rendered to us. Honourable Members, it is question time, questions are open.

HON. RATU K. KILIRAKI.- Mr. Chairman, through you, thank you, Mr. Young, for the presentation as your role to address human rights in relation to sustainable goals and good governance. There is your point of proposing that Fiji should ratify the two Covenants. Whilst going through some of the comments from various presentations in written form, especially in these statements regarding the cultures and traditions as you have mentioned that it augurs well with the developments addressed in the Sustainable Development Goals whereas there are some other concerns of the western liberalization of the Pacific countries that have more implications on the ratification of these two Covenants whereas you are more focused on the SDGs as a basis for ratifying the two Covenants. Can you give a comment on those two different points of views in regards to your side to ratify the two covenants? Thank you.

MR. M. YOUNG.- Thank you, Honourable Member, as I said, the opening comments were only focused around that link but there are other good reasons and this is an opportunity for us to elaborate on those other good reasons. RRRT, as you know, we do work across the Pacific and addressing this question around alignment of rights with culture and values have been something that as an organization, as initiative, we have addressed in the last 25 years that RRRT has been doing this work perhaps even more, and I will perhaps turn to some of my colleagues because they are the ones who have been in the field and have worked on these issues around rights, culture and values and perhaps I could invite Ms. Rose to my right.

HON. H.R.T. POLITINI.- Thank you, Mr. Young, how successful have you been in terms of synergizing the Treaties with the cultural, like the indigenous communities - that is the question?

MR. M. YOUNG.- Yes, so perhaps there is Ms. Rose to my right and Ms. Jayshree to my left and also Mr. Martin and perhaps also on human rights and religion, culture and religion, perhaps we could answer it that way. Ms. Rose, would you like to start?

MS. R. MARTIN.- Thank you, Mr. Chairman and Honourable Members, some of the work that we do with regards to aligning human rights and culture is when we talk to governments and people in countries and communities, especially in the Covenant on Economic, Social and Cultural Right, which states that the right to practice our cultural practice, et cetera, so what we are saying is that, the values that our culture have are aligned to the human rights principles because our culture, values respect, cohesively living together, et cetera. So, these are also the same principles that human rights advocate and have.

So, in a way when we talk about human rights and culture we make that link and in saying that, human rights is about enabling us to positively develop, to live together in harmony which are some of the values that our culture has as well as religion.

The other thing as well is that we also talk about rights with responsibilities. Those two always go together and so we also think (Ms. Jayshree might comment on this further), we have a project that we are working on and one of the key aspect of the project is looking at what the culture says and what human rights says and trying to merge those two together as well as religion. So, that is an example of how we align cultural values together with human rights values. Thank you.

MR. M. YOUNG.- Just to add very quickly, there is a lot of resources that we have developed, things like videos, pamphlets, things like that which look at this link between rights, culture and religion. I am sorry, we did not have the opportunity this morning to bring it and show it to you because these are the types of tools that we take out to all the communities and we show them to community members to show how they align. Perhaps on another occasion, we could do that.

MS. J. MANGBHAI.- Just very briefly to add to what Ms. Rose has shared, a lot of focus in the last couple of years, in particular, was really being around and having those open conversations when we go into countries because we realize there are many different actors that come in and talk about human rights and there is often quite strong perceptions about what rights are and what they are not, and how they get translated on the ground. So, for us it has always always been about, just as Ms. Rose was saying, looking at rights but looking at that in the context of our culture and looking at what we understand by fairness and equality in our culture, how do we demonstrate mutual respect and also talking those frank conversations about how our cultures are changing and how people are moving in and out of our region and how do we protect and create by Calico citizens, citizens that are rooted in their culture and understandings of our values but also are able to move to other countries or interact with other people from other countries and respect each other's religion or culture.

So, there has been a lot of our discussions and a lot of the work that we do around education, the support for the work we do to national human rights institutions as they translate rights on the ground in ways that communities understand and can make rights real for communities. I also would like to say in particularly in relation to the Covenant on Economic, Social and Cultural Rights so you look at that, you will see that a lot of those rights lend themselves to a more collective bent because we are looking at the wider systems of education and health, so it also allows for those broader conversations of where we are at as a country as we progress, and where we would like to be in terms of everyone being able to celebrate and enjoy their life to the fullest. Thank you.

MR. M. YOUNG.- Our work is around inclusion and respect, making sure that no one gets left behind, that is really a lot of what our work is about.

HON. H.R.T. POLITINI.- Thank you, Mr. Chairman, thank you, Ms. Rose and Mr. Young, what is the perception like when you are working with grassroot communities, do you work with grassroot communities? Do you engage with the iTaukei Affairs Board to go to the grassroot communities?

MR. M. YOUNG.- Yes, currently, as I understand it, we do not have any projects in Fiji because Fiji is at a level where capacity is quite good, and you have a lot of actors in Fiji that can do that work. Of course, if an invitation or request from the government comes to us to do that work, we would respond but we do a lot of grassroots work with other communities across the Pacific and my colleagues can speak to the responses that they have received.

HON. RATU S. MATANITOBUA.- Thank you, Mr. Chairman, thank you, Mr. Young, can you comment on the feedback from the local religious people about that?

HON. H.R.T. POLITINI.- This is a good forum because we have two high chiefs.

MR. M. YOUNG.- Yes.

(Laughter)

HON. H.R.T. POLITINI.- So it is important to see how you can engage.

MS. R. MARTIN.- I will give an example of my trip to Tuvalu in the last couple of weeks. So, we spoke to education stakeholders and they also invited civil society organizations and their chief, a member from their *Kaupule* (this is like the local chief). At the moment in Tuvalu, there is a lot of talk about human rights and because they are also going through the review of their Constitution, there was a lot of information exchange. We had this session where we talked about human rights, we went through their values and principles and we also asked them to look at their own culture and bring out the values and principles that align to human rights and we talked about rights and responsibilities.

So they received that really well and they said that this is the kind of information that we need to share with everyone so that they know the development like what Mr. Miles was saying, about tagging it along with sustainable development and using human rights core principles and values to ensure that we achieve the highest impact for everyone is really important. So, it was well received by the local people and I think it was also a recommendation that this is the kind of information that needs to go out when we are talking about human rights to people.

MR. M. YOUNG.- Mr. Chairman, could I just add one thing, so RRRT commenced in 1995 so we have been around for about 32 years and in all that time we have worked in the Pacific. So, this is a Pacific-born and bred human rights' initiative.

I am from Lautoka; Ms. Jayshree is from Suva, we are a multicultural team but we are from this part of the world, and so our work is very much routed in Pacific values, Pacific culture. We know that we have to do that because this is our part of the world, and we would not have been doing this work for 30-odd years if we did not focus and root our work in Pacific values, Pacific culture. I know that when RRRT started this work wayback in 1995, this issue was a big issue, alignment with local cultures and values but over time we have managed to break down those misunderstandings.

As you can see now, if you look through this table that I have here, the number of countries across the Pacific that have ratified human rights' Treaties, the core Treaties, is expanding. Now in many countries, through our work, we know that a number of countries are looking at establishing human rights' institutions as well. So, there is this understanding that, yes, it is aligned, If you look at it within the context of Pacific values and Pacific culture, there is alignment and it can help

with sustainable developments. So, that conversation has evolved over the years and I have to admit that it was a difficult conversation but it is now becoming much easier. As I said, it is around the Pacific context, and that is why RRRT has been so successful over the last 32 years.

MR. CHAIRMAN.- Just a comment on Ms. Rose's brief for us, I can see you are using Tuvalu, it is not a very good example because Tuvalu is a small island.

(Laughter)

MR. CHAIRMAN.- You can convince them, to talk about Fiji, PNG it is quite big, and we still experience that there is the portion of the population that are yet to be touched. Those are the areas, especially indigenous who live in the rural and, for example, here in Fiji, the educated, the working people in the city, they are familiar but those in the rural areas, awareness and consultations are needed for them to understand the rights because most of them do not understand the human rights. It is just a comment.

MS. R. MARTIN.- Perhaps I can also add that I absolutely agree with you. I mean Fiji is unique in many ways in the Pacific but I would also like to share with you part of the work that we do. There has always been a recognition that we cannot only be talking human rights in the capitals, but that we need to actually be taking rights out to communities or to other areas. In a way, we are uniquely placed because we have country focal officers in many of the other Pacific countries where we work, and they are the ones who are locals on the ground who are often doing the community outreach in the local language, they know the context, they know the culture, they know how to work.

So, part of the work we do are also around education and human rights education with the Ministries of Education and other parts of the Pacific have really been about: how do we support Ministries of Education and teachers in schools, not only in the capitals but in remote areas, so that their many challenges and being remote of not being connected to the capitals, and all of their issues also can be explored and understood in the context of human rights. Thank you.

MR. M. YOUNG.- Mr. Chairman, can I just add one thing, just to go through the process, the way we work is that, a request will come from the member so in this particular case, Fiji, we will then work with the State to develop a programme and it will be in consultations. So, we do not just simply go out and do it ourselves. Whatever we do is in consultation with the member States and we ensure that, as Ms. Jaysree said, there is wide inclusive consultations.

MR. CHAIRMAN.- Honourable Kumar, I believe you have a question.

HON. J.N. KUMAR.- Thank you, Mr. Chairman, thank you, Mr. Young and your team for your contribution so far this afternoon. Something that interests me is when you talked about these three things, like human rights connect with sustainable development and good governance in order for these two Conventions to be ratified, and you further suggested that we need to ratify these Conventions, thank you.

My question is: in order for Fiji to ratify these Conventions, do you think that we should have some reservations, ratify with reservations or ratify without reservations? We need to know your opinion on that. Thank you.

MR. M. YOUNG.- Perhaps I will invite one of my other team members to speak on this.

MR. M. CHILD.- Thank you, so, yes, you have the option of ratifying with reservations under any of the Articles that are not identified as core Articles of the Conventions. Our recommendation is that you ratify without reservations. The reason for that is, we see the realisation of these Conventions as a gradual process anyway and some of our countries have exercised reservations, they would normally only do so with the view to eventually withdrawing those reservations. So the practical effect of making a reservation there is not much of one, it is an aspirational progressive process and so our view was, should Fiji decide to ratify these Conventions, they should ratify without reservations with the view to implementing all of the provisions over time.

HON. J.N. KUMAR.- Thank you, Mr. Chairman, just in line with my question, as we all understand that human rights have some conflicts with cultural values and norms, do you think that the Pacific countries or even Fiji is ready to ratify the Conventions without reservations?

MR. M. CHILD.- Yes, I think that Fiji is ready. A number of Pacific countries have ratified Conventions without reservations, and like I said, those that have reservations have mostly withdrawn them now. I think some of those fears around conflicts of rights and culture, those were also present when in the past Fiji has ratified other Conventions such as the Convention on the Elimination of Discrimination Against Women (CEDAW). I also think it has been our experience that those fears have not in fact being realised and actually religious and cultural leaders have been some of our strongest allies with getting the message of these Conventions out to communities for raising important issues like Violence Against Women, that is one of the main issues under that Convention. So, yes, I think that Fiji is most definitely ready.

HON. J.N. KUMAR.- Thank you for your opinion.

MR. CHAIRMAN.- Honourable Howard Politini, I believe you have a question.

HON. H.R.T. POLITINI.- Thank you, Mr. Chairman. I think this is just a comment, first of all, as I was going through the two Conventions, I think it was like a proud moment because I know it is all incorporated in our 2013 Constitution and now we are in the process of ratifying, and I think rightfully that they have chosen an organisation like you to also look into the affairs of the Pacific, in terms of our cultural obligations and norms.

I think the smarter approach to this was actually to localised it first rather than people looking at the United Nations as a big guy with a stick forcing the countries to implement that. So, basically I do not know whether the 2013 Constitution is already incorporated to the Charter to the Bill of Rights. So, for me, the Government and even Honourable Members here, as we are all on a by-partisan approach, it is a problem for us be given the Treaties to look through before we table them in Parliament. *Vinaka*.

MR. M. CHILD.- Yes, *vinaka*.

MR. CHAIRMAN.- Honourable Ratu Kiniviliame Kiliraki.

HON. RATU K. KILIRAKI.- Mr. Chairman, if I can follow on from that, does the current Constitution totally address the issue of human rights or whether there is a need for amendments, can you comment on that?

MR. M. YOUNG.- Thank you, Honourable Member, at this stage I think we have not done an in-depth analysis. I think if the recommendation from this Committee is to proceed then there will be a process involved. Part of that process will be a need to look at the Constitution, Fiji's legislation, its jurisprudence and see what else is needed to give effect domestically to the Conventions and I would be a little hesitant at this stage and I think my team will agree that it is a bit too early at this stage, without having done that analysis of whether there is enough in the Constitution around Chapter 2 to meet Fiji's obligations.

So, perhaps that is the key issue I think that will need to be looked at and that will be an extensive process involving the Office of the Attorney-General, for example, and others but yes, there is a Bill of Rights Chapter. Interestingly, and I just put this as a comment: there is also a provision around limiting those rights so that is interesting as well, so that needs to be looked at too.

HON. H.R.T. POLITINI.- It will be limited rights which is just based on times of natural disaster, that is the only time that there are limitations to that.

MR. M. YOUNG.- Under the Constitution, the Rights and Freedoms which are set out in Chapter 2 (I am just looking at the relevant provisions), may be limited by laws which are necessary, so there could be a law which the Parliament may enact to say that this Bill is necessary to restrict some of the rights in Chapter 2. That limitation is perhaps far greater than what many other Constitutions have, that is appropriate in an open and democratic society so it is slightly different to what a lot of other Constitutions say about limiting rights.

This one just says if it is necessary then you could limit it. I do not think there is any jurisprudence in Fiji around what is necessary as I can recall, so this is a matter that I think will need to be discussed when you have this investigation or analysis of whether Fiji around the jurisprudence, the Constitution and laws in Fiji.

HON. RATU K. KILIRAKI.- Mr. Chairman, if I can go to SDGs, if you may follow the progress of Parliament in regards to the comment whether the Government has a Baseline Report on addressing the 17 Sustainable Development Goals whereas the Parliament itself, under the Madam Speaker, has prepared the Baseline Assessment Report on the SDGs in the country but from the Government side, they still have to come up with the progress of the Baseline Report on SDGs.

On that part, where do you base your proposal for ratification even though the Honourable Prime Minister has been on the international stage stating the comments that you have raised, but on the ground, there is no report to be able to justify those comments from the Government side in addressing the Sustainable Development Goals. We see free education, the rights, et cetera, but the report is not there, and I am talking from the report and how will you be able to say that Fiji ratifies, coming on the context of the SDGs' good governance for the human rights. Can you comment on that?

MR. M. YOUNG.- Yes, I think we come back to the covenants and human rights in the role that human rights play in this journey towards sustainable development and I think our position is that, human rights support, help or add value in the pursuance of these goals. Whether Fiji is actually achieving its targets or not, we cannot comment on that but what we are saying is that, if you use human rights well and it is about you using it well, then it will help you help Fiji to achieve its sustainable development goals.

MR. CHAIRMAN.- Let me comment, when you ratify a treaty or convention, we have the commitment of reporting back so when we report back, that is when they see the implementation and the progress of the government, seeing all the things that need to be done so they report back to the United Nations, so the United Nations knows the progress of what is happening.

Honourable Members, any other question? Honourable Howard Politini.

HON. H.R.T. POLITINI.- Thank you, Mr. Chairman, after Fiji ratifies and then we will have twelve months before there is a universal period of review then after that, it is four years. In the past in Fiji, we have had NGOs who are anti-government, reporting on things that were not really happening here, because there are provisions there in the whole body that allows communication from independent bodies. To ascertain the genuineness of that, like may be the State does not keep to its obligation, what if the reporting is incorrect?

MR. M. YOUNG.- There are mechanisms to check the veracity of reports, so if an NGO says "X", "Y" and "Z" and if that is false, if that is misleading or incorrect then there are mechanisms to call them out on it, and if an NGO or any other body does that then they lose credibility moving forward. They need to ensure that their reports are honest and credible, because if it is not, then they will be caught out. We spend a lot of time supporting NGOs to prepare shadow reports and that is what we say to them, "If you prepare and submit a report which is false, then you lose credibility, we will not support you or we will not support false reporting."

However, I think also we need to look at it from a different perspective because sometimes these reports can be a good thing. What it does is, it gives an alternative view, it allows governments to say, "All right, this is what another part of society or the community is saying. Let us look at it from that perspective as well." So, yes, I admit sometimes those reports may not be as well-written or as well-researched but I think more and more, with technical assistance and with others' support, the shadow reports are becoming better. As I said, it could be a way of giving another perspective and it also depends on how the parties look at it and make use of that report.

So, the UPR process is around dialogue and discussion, yes. I think Mr. Martin and others have been involved in that process more deeply than me so their perspectives would be useful.

MR. M. CHILD.- One thing I would just like to add on to that is just really to emphasize that the reporting processes that are attached to these Conventions where you will periodically submit a report to the Human Rights Committee and then you will engage in a dialogue with them. Two things first, that dialogue is between the government and the committee. So, the committee will consider all information before them, including some information provided by NGOs. The NGOs do not get to participate in that dialogue, it is between the government and the committee.

The second thing I would say about that is that during these dialogues the government is not on trial, it is not a review process, it is a dialogue and the outcome of this is to get good, strong recommendations that are useful to you as the government, to further progress and implement the Conventions. So, you do not get a report card or there is no verdict. It is about getting good, strong recommendations and it is useful to have alternative perspectives, including NGO reports to strengthen that process but at its call, that process is about a dialogue between the government and the experts that sit on the committee.

HON. H.R.T. POLITINI.- All right, thank you.

MR. CHAIRMAN.- Honourable Ratu Kiniviliame Kiliraki

HON. RATU K. KILIRAKI.- Mr. Chairman, on international obligation, it is being commented that most Pacific States have very limited resources. I can quote your Report in November 2008: "RRRT noted that the location of most offices of the UN and Europe admit that it is very difficult for Pacific people to identify with them, even UN offices located in the Pacific are regarded as inaccessible. So, in terms of financing to adhere to these international obligations that mostly appear to be more pressing for the Pacific Islands, even with donor assistance, ratification and implementation will result in significant costs for individual States, keep an eye on the threshold of its obligations and the financial constraints. For Fiji noted that the task of fully complying with every reporting and implementing obligation under the core Treaties and the Protocols could be insurmountable. So, Pacific States see this as onerous geared for larger States and based on assumptions that are not relevant in the Pacific."

So, can you give a general comment on those because you are the RRR Team, as I have quoted your comments?

MR. M. YOUNG.- Thank you for that, so the process of reporting and meeting commitments, is onerous, it is burdensome on Pacific States however, there is a few reasons why I think that the added burden of these two Conventions is actually not particularly significant. The first is that Fiji is already meeting its commitments under existing Treaties so that is ratified and also participating in the universal period of review process that has been mentioned. This supports and strengthens that process but what goes into these reports is a lot of information that you will have already assembled to participate in those other processes.

The other is that the United Nations is aware that this process is burdensome and they are working on means to actually streamline it and make it more accessible, more affordable for small countries through remote dialogues and video linkups and through the simplified reporting procedures that we are now advocating to roll out in the Pacific.

MR. CHAIRMAN.- Honourable Jilila Kumar.

HON. J.N. KUMAR.- Thank you, Mr. Chairman, for your contributions. My question is: what are your opinions on some of the advantages of ratifying these two Covenants or Conventions?

MS. J. MANGBHAI.- I think a lot has been said about the advantages and I will just pick out a couple of points here. I think for me, based on my experience in working in this space is that, it creates this space where it also provides the government some sort of framework or guidance that the government can aspire to support the government in meeting its development needs and aspirations. So, say, for example, if you ratify the Convention then it sets standards for the government to meet, and in that way, I think the burdensome or the burden that it puts on the government is not as much as the benefit that the government will derive from ratifying the Treaties and the Covenants, because in that process, the dialogue itself and the civil society engagement create that healthy environment for information exchange, as well as to increase knowledge of what else is going on in the different parts of the country so that the government can have that information to inform its development strategies, needs, et cetera.

Also in the Covenant on Economic, Social and Cultural Rights, Article 2 also states that developed countries also can access assistance from international organisation to help you with the

implementation of these Conventions. So, it provides that kind of provision in there for you to work in partnership with international and regional organisations to implement the Conventions and the Covenant.

MR. M. YOUNG.- One thing I might add to that if I may, I also just want to mention the flexibility that has built into these Conventions and to the Human Rights Treaties generally is that the obligation that is on the State is to implement all appropriate measures to secure these rights, all appropriate measures. That flexibility takes account of the fact that contexts are distinct that can address some of the issues that you talked about earlier in terms of potential conflicts with villages or culture concerns. It also addresses the issues of limited resources. Appropriate measures take that into account what can be achieved with what you have or what resources you can access.

HON. J.N. KUMAR.- *Vinaka*. Thank you.

MR. CHAIRMAN.- It is not a question but a comment and probably I would like you to have the response from all of you. The two international Covenants, one states two things: it provides a class of rights that protect individual's freedom; and it also states the right of self-determination. So, it is focused on individual holistic approach and to see the Pacific Islands as they are communities, they do things in the approach of a communal setting and a different example here in Fiji, the different ethnic groups we have.

Most of these ethnic groups are more or less individualistic rather than the tradition is communal. So, self-determination probably is a hard approach for communal community to go for this self-determination of business, et cetera, and most of them will rely on their leaders for that approach to do that. So, we see the difference in the business community, just because of the different setting, communal and individualistic and that approach of self-determination will go to it and fast to achieve that, rather than the communal setting, it is a slow process. So, I just want to ask your view on that.

MR. M. YOUNG.- I will start, that is a very good question and thank you for posing it. Perhaps if I could flip it around, communities are made up of individuals and I think a key part of any community is not to leave anyone behind, so everyone needs to be looked after and in our communities here in Fiji, we practice that. We work as a community, we do things together as a community, we bring everyone in. So, it is about inclusion, being inclusive, not excluding people so I think that approach is consistent with our values and cultures, making sure that no one gets left behind. That is an introduction, perhaps my team can say more on that.

MS. R. MARTIN.- This is something that we face when we go out and talk about human rights, that it is about individuals and not about community whereas we operate as communities as groups of people. I think the other way of looking at it is that if we protect the rights of these individuals, it is because like what Mr. Miles is saying is that community consists of individuals. So, we are basically protecting the individuals in that group and also there are also notions in the two Covenants that it is focusing on groups, so the right of the individual to be part of a trade union, it kind of also talks about groups. I think, I will pass it on to Mr. Martin.

MR. M. CHILD.- Thank you very much for that, as Ms. Rose said, a notion that we come up against quite often is that human rights is an individualistic way of thinking, that is not how we look at it at all. It is something that we stressed when we do human rights trainings in the communities, rights only have meaning in the context of a community. If one man is living alone

on an island, he has no human rights, rights has no meaning or usefulness in his life. It is only when we come together in communities and societies that rights start to have meaning for us.

The notion of individualism and that business mindset that you mentioned is about getting ahead of other individuals. It is about securing the advantages of one individual over others and that is not what human rights is about.

Human rights, as Mr. Miles mentioned, is about leaving no one behind and I think that resonates strongly with our Pacific cultures.

MR. CHAIRMAN.- Thank you, Ms. Jashree

MS. J. MANGBHAI.- Yes, I think they have said a lot of the points that I would think of. Another thing, I think, would be, to come back again as we are always talking about human rights, we are always talking about obligations and that our rights end when we start to infringe on the rights of others. I think that to me is a very good starting point to talk about the mutuality of rights, that these rights are not things that we always want to exercise alone, we exercise them in relation to others who exercise in relation to our communities. So, I think to me, that is one thing that we are always emphasizing.

I have seen this coming just recently from Kiribati where there was a lot of discussions amongst curriculum writers in saying, "It is because of human rights that our children are becoming bad, they think they have the right to everything and they have the responsibility for nothing."

So, when we talk about human rights we are not talking about the right to do anything that you want to, we are talking about how we live together as a community and respect and make sure that everyone equally grows together. Thank you.

MR. CHAIRMAN.- Why I pose that question because I see this gap. There is a gap and my view was that it says a lot, like civilization, for example, here in Fiji, civilization is just more than a hundred years. When you talk about the other ethnic groups, they were thousands of years ahead so that automatically prepares that generation and ethnic group to this situation of self-determination and protection. So, I believe human rights should also view those areas so you can bridge the gap, so it is not only like the RRRT, it is also the commitment of the government, traditional settings, so this is very important, to leave no one behind, we have to take that in consideration, so we all move together and definitely with God who can help us.

MR. M. YOUNG.- Absolutely

MR. CHAIRMAN.- Honourable Jilila Kumar.

HON. J.N. KUMAR.- Thank you, Mr. Chairman, the RRRT (your organisation), you look after Pacific Island nations and now Fiji is on the verge of ratifying these two Conventions and we are also thinking of other Pacific Island nations that need to ratify also these two Conventions, and this is very important in terms of sustainability, economic sustainability, environment sustainability, social sustainability, et cetera. So, as an organisation (your organisation), what sort of advocacy, what sort of strategies, and how would you strategize or how would you advocate these two Conventions to other Pacific Island nations so that they can also ratify these two Conventions because as you have said, that "No man is an island", so we have to work together as Pacific people. Thank you.

MR. M. YOUNG.- Thank you, Honourable Member, as I said in my opening remarks whether Fiji likes it or not, Fiji is a leader in the Pacific and I think Fiji would set an example if it does go down the path of ratifying both Conventions. I think other Pacific Island countries will look towards what Fiji is doing and say, “All right, let us think seriously about it” but also if you look at things like, for example, the Pacific Plan, the Denarau Declaration, that is where other Pacific Island countries have leaders in particular, Honourable Members of Parliament have said, “We need to support human rights and ratify core treaties”, including the two that we are talking about. So, I think there is already a momentum, a push that if Fiji goes down this path, I think it will signal to others that, yes, we have a leader, the leading country in the region who is taking that path and set an example. Our strategy in our general work, we always promote the importance and benefits of human rights and treaties and if requests come from countries, as I said earlier, our work is in response to requests.

If requests come from countries to talk about the Convention, just as we have been invited here, we will make the effort to come and speak and to support it.

MR. CHAIRMAN.- Thank you very much. I think our time is coming to an end and I take this opportunity on behalf of the Honourable Members of the Committee on Foreign Affairs and Defence to convey our appreciation for responding to our invitation and submission today. I believe your submission will add a lot in our Report and we thank you for that. We thank you for the RRRT as well as the Secretariat of the Pacific Community for coming in and make the first submission on these two Covenants.

With no further ado, I once again thank all of you who are here and on behalf of the Committee, we wish you all the best.

With those few words, once again, Mr. Miles Young and your team, *Vinaka Vakalevu*.

MR. M. YOUNG.- *Vinaka Vakalevu*.

The Committee adjourned at 1.05 p.m.

STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE

[Verbatim Report of Meeting]

HELD IN THE
COMMITTEE ROOM (EAST WING)

ON

WEDNESDAY, 2ND MAY, 2018

VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE HELD IN THE COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON WEDNESDAY, 2ND MAY, 2018 AT 10.00 A.M.

Interviewee/Submittee : United Nations Development Programme (UNDP)

Attendance:

1. Mr. Dip Magar: Human Rights Officer (Office of the High Commissioner for Human Rights (OHCHR))

DEPUTY CHAIRPERSON.- Thank you, Honourable Members, this morning before us, we have Mr. Magar, who is the Human Resource (HR) Officer with the Office of the High Commissioner for Human Rights OHCHR (United Nations) based here in Fiji. He will be standing in for Dr. Massey, who is out of the country.

In saying that this morning, Mr. Magar, we welcome you and extend a warm welcome from the Standing Committee on Foreign Affairs and Defence. As stated when we met, we would like to hear your opinion on the two Treaties that are before the Standing Committee before they are tabled in Parliament. *Vinaka*.

MR. D. MAGAR.- Good morning and thank you, Honourable Chair, and good morning Honourable Members of the Standing Committee.

Before I start briefing you about the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), I will briefly introduce myself again: I am Dip Magar, from Nepal. I am working as a Human Rights Officer with the OHCHR's Regional Office in the Pacific. I arrived here in July last year, so it has almost been a year and before coming to the Pacific, I was working with OHCHR's Regional Office in Bangkok, OHCHR's Regional Office in Central Asia, Kyrgyzstan, and the OHCHR Mission in Nepal, so I have over eight years' experience working with OHCHR in particular, and also being associated with a number of other international organisations and NGOs in my country.

Thank you, Honourable Chair and Honourable Members of the Committee, on behalf of Dr. Chitralekha Massey, I would like to extend our sincere appreciation and thanks to the Committee for this wonderful opportunity to make our oral submission on the Covenant on Economic, Social and Cultural Rights (CESCR); and the Covenant on the Civil and Political Rights (CCPR) which you are going to consider ratifying or acceding into these Treaties. It is my honour and privilege to be here with you this morning and I also like to convey the acknowledgement of OHCHR for the intent the Fijian Government and the Parliament of Fiji have shown to be party to these Treaties.

Honourable Chair, before outlining the opportunities and implications related with the accession to these Treaties, let me highlight some key aspects of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Together with the Universal Declaration on Human Rights (UDHR), the two Covenants are known as the International Bill of Rights.

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the General Assembly in December, 1966.

There are two core International Human Rights Treaties. The International Covenant on Civil and Political Rights (ICCPR) sets out Civil and Political Rights which include, among others the:

- ✓ right to life;
- ✓ freedom from torture;

- ✓ freedom from slavery;
- ✓ right to be treated with humanity in detention;
- ✓ freedom of movement;
- ✓ right to fair trial;
- ✓ right to be recognised before law;
- ✓ right to privacy;
- ✓ freedom of religion;
- ✓ freedom of opinion and expression; and
- ✓ freedom of association and assembly among others.

The ICCPR also provides for the right to form a family, the rights of the child to registration and nationality. It also provides for the right to participate in the public affairs; whereas the International Covenant on Economic, Social and Cultural Rights sets out:

- ✓ our right to work;
- ✓ right to social security;
- ✓ right to adequate standard of living, including food, shelter and clothing;
- ✓ freedom from hunger; and the
- ✓ right to health and education.

It also covers the right to take part in cultural life and the right to enjoy benefits from science and inventions.

Honourable Chair and Members of the Committee, both the Covenants guarantee that the exercise of all these civil and political rights as well as economic, social and cultural rights shall be without discrimination of any kind as to race, colour, sex, language, religion, political, or any other opinion or on the basis of social origin, property or any other status. I think the Fijian Constitution of 2013 has a broad framework of these non-discrimination provisions, even broader than what these two Covenants do offer. The Covenants recognise the rights of the people to self-determination, that is, by virtue of these rights people living in a State party, they can clearly determine their political status and pursue their economic, social and cultural aspiration and development.

Honourable Chair and Honourable Members of the Committee, ICCPR and ICESCR (International Covenant on Economic, Social and Cultural Rights) do not create new rights for Fiji. In fact, the Constitution of Fiji has already recognised many of these rights, be it civil and political, or be it economic, social and cultural rights. I have gone through your Constitution and it offers a catalogue of these rights. So what would be the significance of the ratification? The significance is that, the ratification of these two Covenants will supplement and further help you strengthen your legal order to impose these rights. So I think there lies the significance, so it is a kind of complementarity that we are looking into, not trying to create a new, legal vision or a new order of rights.

Specifically on the International Covenant on Economic, Social and Cultural Rights, some people still tend to build economic, social and cultural rights as the rights that a country can implement only when there is a certain stage of development because you need resources while implementing economic, social and cultural rights, be it our right to health, education, social security or any another other rights, be it shelter or food.

While countries need resources to fully implement some Economic, Social and Cultural Rights (ESCR) by the very virtue of their nature, the Covenant imposes progressive realisation obligation to the State parties and that allows the State to progressively realise these rights. That means, based on the available resources, the countries can always strive or try to fulfil the realisation of these rights for its citizens, its people in a progressive manner. So the only aspect that we need to look into is: to what extent we can make a progress

that the government has an obligation to demonstrate that they are making progress, and I think Fiji is in a better position to do that because you have the resources and you are doing this for a long, long time.

So the Covenant does not create any other extra obligations, what it emphasises is you have to demonstrate and consistently strive for the realisation of economic, social and cultural rights of people in Fiji in a progressive manner. So that is what the International Covenant on Economic, Social and Cultural Rights creates, an obligation, and that is progressive realisation. So we need to look into this progressive realisation framework very closely, but having said that, there are some immediate obligations that the International Covenant on Economic, Social and Cultural Rights also imposes on State party.

That is, the Government should provide or create an enabling environment for its citizens, its people to enjoy the basic rights which we know as the “survival kit”, for example, no one should go hungry before they go to bed. So hunger is not the excuse when it comes to implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and when it comes to the Right to Education, for example, primary education is basic, compulsory and universal. Government cannot say that “I cannot guarantee you your primary education just because we do not have money, we do not have resources”, that is not an excuse.

So each Right under the International Covenant on Economic, Social and Cultural Rights has minimum core content, that is what we know as the survival kit. So Honourable Chair and Honourable Members of the Committee, I think Fiji is in a great position to ensure all these very minimum core contents of the Rights and it has been doing so, so I do not think that it would be a kind of extra burden for Fiji while ratifying the International Covenant on Economic, Social and Cultural Rights.

Human Rights obligations emanating from two Covenants require both: individual action; and international cooperation. According to the Universal Declaration on Human Rights, everyone is entitled to a social and international order in which the rights and freedoms therein can be fully realised and everyone has duties to the communities. Similarly, the International Covenant on Economic, Social and Cultural Rights declares that States should take steps individually and through international assistance and cooperation, especially, economic and technical to the maximum of their available resources with the view to achieve progressively the full realisation of the rights stipulated in the Covenant.

So one strong aspect of International Covenant on Economic, Social and Cultural Rights is that, it also creates the obligation on the developed countries to assist the developing countries to help them ensure these rights, so it is a kind of more an international cooperation that the framework of the Covenant provides. The Human Rights Committee established in accordance with Article 28 of the International Covenant on Civil and Political Rights (ICCPR) is the supervisory organ which monitors the compliance of ICCPR by the State parties, whereas the Committee on Economic, Social and Cultural Rights is the monitoring body of the International Covenant on Economic, Social and Cultural Rights. Both the Covenants enjoy a high number of ratification or accession and as of today, there are 170 State parties to International Covenant on Civil and Political Rights, and 167 countries have ratified the ICESCR. This year’s 70th anniversary of UDHR provides the momentum to subscribe to these universal values and standards, and ratify the Covenants. So I think it is a very right time also for Fiji to accede to these Treaties because we are celebrating the 70th anniversary of the UDHR, and Fiji being a member of the United Nations is in a better position to reiterate once again its commitment towards Human Rights.

There are two optional Protocols to the International Covenant on Civil and Political Rights, the first focusing on individual communication and second optional protocol on aiming at the abolition of the death penalty. The optional Protocol to International Covenant on Economic, Social and Cultural Rights enables the Committee on Economic, Social and Cultural Rights to receive and consider communications or complaints from individuals or groups of individuals provided that the State party, meaning Fiji accedes to these Protocols.

These optional Protocols are separate Treaties and apply to Fiji only if the country decides to ratify or accede to the optional Protocols but basically the optional Protocols, Honourable Chair and Honourable Members of the Committee, I would like to submit and humbly request you to also consider ratifying these optional Protocols because these optional Protocols provide the competency to the Committees to receive individual communication with the complaints of the violation or evidence of human rights if that occurs in the State party, but individuals or groups of individuals can only send the communication to the Committee if the national remedies are exhausted, meaning the complainant should justify that there are no national remedies available.

So it should be exhausted at the national level, even if the individual or the groups of the individuals when their rights are infringed if they go the National Human Rights Commission, if they go to the Court and even if they do not get remedy and then they can proceed for the international mechanism. But again when it comes to providing remedy or justice to the victims, the primary obligation is of the Government. This international mechanism can only help to hold the Government accountable and encourage the Government to provide justice to the victims. So at the end of the day, when we talk about human rights, Honourable Members and Honourable Deputy Chairperson, the responsibility, the onus is with the Government, with the State.

Honourable Deputy Chairperson and Honourable Members of the Committee, now I would like to touch upon why Fiji should ratify ICCPR and ICESCR. I think the obvious reason is the Constitution of the Republic of Fiji. As I have already shared with you, the 2013 Constitution of Fiji commits to the Commission and the protection of human rights and respect for human dignity. It incorporates a catalogue of both civil, political and economic, social and cultural rights under its Bill of Rights. All these rights derive from these International Human Rights Treaties, meaning from the UDSR, ICCPR and ICESCR.

In 2010 and 2014, Fiji was reviewed under First and Second Universal Periodic Review of the Human Rights mechanism. A number of member States of the UN who participated in the review, recommended Fiji to ratify the remaining International Human Rights Treaties, including the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

The next review of Fiji, under Universal Periodic Review (UPR) will be in October and November, 2019. There are a number of recommendations from the previous UPR around ratification, which requires Fiji to ratify the remaining International Human Rights Treaties, so if Fiji decides to accede or ratify these two Treaties, I think, it will demonstrate the progress of the implementation of the UPR recommendations as well. So when you go and engage with the members of the UN, through UPR process, which is almost kind of mandatory, that would help a lot.

I would also like to reiterate Fiji's part in the 20-year National Development Plan which you launched in Bonn during COP23. I think that document has rightly mentioned about the commitment of Fiji to ratify the remaining International Human Rights Treaties by 2024.

Fiji is already State party to some core International Human Right Treaties, for example, the Convention against Torture (CAT) and the Cruel, Inhuman or Degrading Treatment or Punishment, Convention on Elimination of Racial Discrimination (CERD), Convention on Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and last but not the least, Convention on the Rights of Persons with Disabilities (CRPD), and these International Conventions and Treaties particularly address the specific issues, be it torture or be it issues of women or children or persons with disabilities.

So, ratifying the two Covenants (ICCPR and ICESCR), we hope and firmly believe that that would contribute to more comprehensive and complementary human rights protection.

Mr. Chairman and Honourable Members of the Committee, accession would enhance even more Fiji's Regional, Pacific Human Rights leadership. We hope, specifically on climate change, that the two Covenants are key: the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights. The Human Rights Instruments would enable Fiji to have a strong basis for meaningful remedies, including judicial or the redress mechanism, proposed human rights evidence and violations.

The International Covenant on Economic, Social and Cultural Rights highlights that everyone has the right to enjoy the benefits of science and its application. Fiji plays a key role in developing new climate mitigation and adaptation technologies, including technologies for sustainable production and consumption. So, I think we hope that this international legal framework will provide more legal basis for Fiji to advance the technologies, even to combat the climate change and climate-related actions.

Now, I would like to touch upon, Mr. Chairman and Honourable Members, the impact of the ratification of these two Treaties to Fiji. One of the obvious consequences that the ratification would bring is both the Covenants like the International Human Rights Treaties will oblige Fiji to report to their respective Committees. In accordance with Article 40 of the ICCPR, the State party, meaning Fiji, should submit its initial report within one year after the Covenant comes into force and thereafter when the Committee requests.

Similarly, the ICESCR and ICESCR also oblige Fiji to submit its initial report within two years' time after the Covenant comes into force. So, this reporting obligation is one of the obvious consequences or the impact that Fiji will face. However, the reporting obligation should not be taken as a burden by a State party and, I, being a Treaty body, am the focal point within the Office of the High Commissioner and I am travelling a lot in the Pacific countries supporting the Government to meet the reporting obligation. I was in Vanuatu last week, before that I was in Kiribati and Majuro of the Marshall Islands. This is the voice that we often heard, the reporting burden but there are some clear benefits of the ratification as well. The review is based on constructive dialogue and it provides an opportunity for the State party to assist the progress made in promoting the enjoyment of the rights set forth in the Treaties.

Following the submission of the State report (whether it is initial or periodic), the Committee reviews the State and is using its concluding observation and recommendation and those recommendations are particularly helpful for a country to reform its legislation and policies and to come up with more targeted interventions.

The NGOs and civil society can take part in this process also through shadow reporting and they can provide the additional information to the Committee. So, the reporting cycle or reporting procedure is a kind of inclusive process which involves, not only the State but also the civil society and national human rights institutions.

Honourable Chair and the Honourable Members, most of the States in the region, as I said, after the ratification of the International Human Rights Treaties, they have voiced their difficulty in complying with the reporting obligations. This does not only apply to the countries in the Pacific but many other countries in many other parts of the world. Also they have struggled when it comes to timely reporting but there are some ways to deal with it.

In 2014, the General Assembly of the United Nations met with the Office of the High Commissioner for Human Rights (OHCHR) to support State parties in building the capacity to improve their Treaty obligation and to provide, in this regard, advisory services, technical assistance and capacity-building.

In 2015, OHCHR established the Treaty body, capacity-building programme and deployed dedicated Human Rights Capacity-Building officers in every Regional Office of the Office of the High Commissioner, and I am one of them for the Pacific. My major responsibility is to provide technical assistance to the

governments in reporting to Human Rights Treaty bodies, including providing training and supporting the States at the national level by building and developing institutional capacity for reporting and follow-up.

So, OHCHR's Regional Office for the Pacific is available to facilitate this support to the Government in the Pacific, including Fiji. As of April, 2018, we have already reached out to 150 Government officials from all 14 Pacific Island countries who benefitted from OHCHR trainings and technical support implemented in the area of Treaty body reporting.

In 2017 alone, OHCHR organised two 4-day Regional workshops on Treaty body reporting and Economic, Social and Cultural Rights at Nadi, in which around 50 Government officials from all 14 Pacific Island countries did participate. In addition, for the UN agencies like UNICEF, UN Women, and the Regional organisations like the Regional Rights Resource Team (RRRT) SPC, they have also been supporting the governments in the Pacific to meet their reporting obligations. In fact, we all work in collaboration to help the countries from the Region to engage with Treaty bodies, for example, in January, 2018, RRRT, UN Women and OHCHR, we jointly held a mock session on CEDAW for the delegation of the Fijian Government, led by the Honourable Minister for Women, Children and Poverty Alleviation before they flew to Geneva to engage with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee in a constructive dialogue. So reporting should not be considered as a burden. I think there are the technical support available around this area.

What is mostly needed, and I would like to emphasise this in particular, and I would like to bring this to your attention that Fiji needs to establish the National Mechanism for Reporting and Follow-up (NMRF), I would repeat, the National Mechanism for Reporting and Follow-up. It is primarily a coordination body within the Government to report and follow-up the recommendation of the UN Human Rights mechanism, be it Treaty bodies, be it Universal Periodic Review or be it special procedures.

Until now, Fiji has been reporting to CEDAW, Convention on the Rights of the Child (CRC), Committee on the Elimination of Racial Discrimination (CERD) and the Universal Periodic Review (UPR) in an ad hoc manner, meaning, the Ministry of Women, Children and Poverty Alleviation takes a lead role when it comes to preparing reports to the Committee on the rights of the child, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of Persons with Disabilities, whereas the Office of the Attorney-General takes the lead in preparing reports on the Committee on Elimination of Racial Discrimination (CERD) and the Convention Against Torture (CAT).

If Fiji establishes a separate coordination mechanism within the government to report and follow-up, I think that might lessen the burden of reporting and there will be a better coordination and cooperation among the Government ministries and departments when it comes to reporting and follow-up of the recommendations.

Fiji has already received about 300 recommendations from the UN Human Rights Mechanism and you have also voluntarily reported to Sustainable Development Goals (SDGs). So, if Fiji considers to set up a National Mechanism on Reporting and Follow-up (NMRF), that would help us a lot to coordinate and prepare the report in a more systematic manner and help Fiji to engage better with the human rights mechanism and the mechanism responsible for SDGs, such a coordination mechanism can be a viable option.

The National Mechanism on Reporting and Follow-up (NMRF) can be a separate institution, it can be a ministerial body or it can be an inter-ministerial mechanism and may be established by a Cabinet decision as in Samoa, Vanuatu and Kiribati or it can be established through a separate law, like what the Government of the Marshall Islands did when they studied the Human Rights Committee. OHCHR can provide technical support if the Government wants and we can share the sample TOR, the Action plan and the best practices from other jurisdictions and other countries.

Mr. Chair and Honourable Members, I will quickly go through some key points before I conclude: the ratification or accession to these Treaties might also require Fiji to reform its legislations and policies, that is another impact or consequences.

Fiji may need to carry out a legislative review to identify key gaps and challenges on the existing legislation and policies. But for this, there is a time, you will get time once you ratify both the Covenants. You will get almost two years to prepare your initial report but that is also a period during which you can identify key challenges or gaps or shortcomings in your legislation and policies from the lens of the International Human Rights Standards and from the lens of the Fijian Constitution. So, that can be one of the impacts.

I also like to touch upon the custom and traditions. Customary practices do not necessarily conflict with human rights principles. All cultures and civilisation in their tradition, customs, religions and beliefs share a common set of values and in particular in the Pacific, given the fact that we value and cherish the tradition and customs. We also need to look into the impact of the International Human Rights standards in our customary tradition and practices. I think there is more a kind of complementarity rather than the conflict.

It is only the handful traditions and practices such as post and already married, acquisition of witchcraft and any other forms of violence, particularly targeted against women and girls which diminish or discard their position in families and society and negatively affect the enjoyment of their human rights might be of concern from the prism of International Human Rights Law.

Public discussion and dialogue through mobilising media, academia, civil society organisations, awareness and education campaigns are what we need to raise. I think that would help a lot towards reconciliation, if required. Culture and tradition are dynamic, they change over time, so we should not take it from negative perspectives when it comes to ratification of International Human Rights Treaties and their application in the domestic context.

Regarding the impact of the ratification of these Treaties over NGOs and Civil Society Organisations, the ratification of these Treaties by Fiji may bring positive impact in the collaboration between NGOs and CSOs and the Government because the ratification, although it is done by the Government, although it is initiated by the Government, it is a nationally-driven and nationally wanted process. Both the Covenants provide the framework and guidance for the NGOs and Civil Society Organisations and the Government to engage in a constructive manner to promote the constructive dialogue.

Sometimes the Government cannot reach to the communities with provisions of services or assistance when needed. For example, if there is a disaster, the local NGOs and community-based organisations can be of assistance and may bridge the gap. Also the findings and public reports of the NGOs and particularly those who are on the ground to monitor the implementation of the Covenants' rights. They may inform the policymakers and help better reform the Legislation and Policies. The shadow reporting of the NGOs also help the Treaty bodies to have a better picture on the ground and make concrete recommendations.

Fiji has already demonstrated an example of how the Government and CSOs can better cooperate and collaborate, particularly, this was a case in the fight against climate change and the COP23 in which Fiji was leading from the front in Bonn. So I think that is always a better cooperation we can imagine because these International Treaties provide a framework for discussion and dialogue. In a nutshell, I would like to reiterate Honourable Chair and Honourable Members, the ratification provides a legal regime for accountability. It enables the realisation of Human Rights and strengthening adherence to the rule of law. It provides an opportunity to strengthen inter-governmental cooperation, particularly when it comes to reporting, the Ministries and Departments have to come together to input in the report.

The ratification improves the international profile of Fiji when it comes to Human Rights or commitment to Human Rights. It involves meaningful participation of civil society in the development process, be it SDGs or implementation of the International Covenant on Economic, Social and Cultural Rights, and it encourages a more effective system of technical support and cooperation.

Honourable Chair and the Members, finally, Fiji is a global leader in combatting climate change, the ratification of this and all the remaining International Human Rights Treaties will place Fiji at the forefront, not only in the Pacific and the Region but also at the global stage, when it comes to respect and commitment to Human Rights, in particular, the International Covenant on Economic, Social and Cultural Rights provides the legal basis and framework to protect individuals and groups from the adverse impact of climate change which is one of the growing challenges and concerns for the whole world, and more so to the Pacific Island countries, including Fiji.

I thank you for listening to me and I welcome any opportunity to answer the question of Honourable Chair and the Honourable Members. *Vinaka*.

MR. D. MAGAR.- *Vinaka*.

HON. MEMBERS.- Thank you, *Vinaka Vakalevu*.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar, that was a very comprehensive presentation concerning the Treaties this morning. I would again like to thank you for your presence here with us today. I think you have highlighted a lot of key issues, first of all, to look at our legislation to ensure that it comes in par with the Treaties. But in the third one, you touched also (which is important for Fiji) on the cultural aspect behind it.

I note that you have highlighted that it may be looked at as something that will complement our cultural obligations and laws and not be taken as an intrusion into our cultural obligation, things like Rights for Women and Children, those things are very paramount in our society. But in saying that this morning, the floor is now open for the Honourable Members, if you would like to raise questions to Mr. Magar, please, do so, thank you. Thank you, Honourable Vunivalu.

HON. S.B. VUNIVALU.- Thank you, Honourable Deputy Chairperson; thank you, Sir, for your presentation this morning.

I have got a few things that I want to raise today. This is with regard to this Bill of Rights. Looking back, this was adopted in 1966 but when we look at this Sustainable Development Goal (SDG) One, which is "No Poverty", sorry to tell you that, but because like in Mumbai and Delhi in India, they have the caste or family tradition for them to beg on the street wherever they stay. I think if you have been there, you must have experienced that, but they have their same family links and roots who are also in Fiji and they keep on practising that religion of begging, which sounds like it is their right.

Going back to Sustainable Development Goal No. 1 which is "No Poverty", I do not know what we can say about that because it is their right for them to beg. They stand on the road, they sit on the street, and when the police tried to stop them they would say that it is their religion. What I mean is, Fiji wants to ratify this but we are still having poverty in Fiji, the practice of begging. Thank you.

MR. D. MAGAR.- Thank you, Honourable Member. It is a very tricky question, I should recall.

(Laughter)

Of course, we need to respect the decision of what people actually want, if they want to beg on the street but the International Covenant on Economic, Social and Cultural Rights, and particularly the SDG 1 that you mentioned, which is about poverty. It is an obligation of the Government to raise people from the scourge of poverty and Government has to take the effort to ensure that people are not forced to live in poverty but when it comes to choosing the shelter or choosing the domicile, then may be as I mentioned in my presentation, the culture, the tradition that might change over time, maybe we need to raise the level of education and awareness. But the important aspect we need to look into under the framework of this Covenant is, we need to constantly dialogue and reach out to these communities, and we need to have their consent and we need to consult with them. So I think through dialogue, through consultation with this affected group of population that you are referring to, we can find a solution.

DEPUTY CHAIRPERSON.- All right.

MR. D. MAGAR.- Yes, it may not be the same, let us say, in the next 25 years, they might change and there might be change of perception. So I do not have any specific answer to your question but talking about the overall framework of these two Covenants, they emphasise on having consultations to ensure their participation in each and every development efforts, be it educational, be it health or be it social security or be it employment or any effort that the Government tries to come up with, to reach out to such kind of population groups. They have to be involved and I think with education awareness, we can have a better negotiation and better solution.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar. I think, rightfully, you have mentioned that begging is a personal choice. If you look at Fiji, the Government has created programmes that are available for those who are living below the poverty line, to get themselves out of poverty through the grant schemes, through agriculture, and I think a lot of that is already incorporated in the Bill of Rights. Yes, again we are looking forward to being in line with these two Treaties as the platform has already been set in the 2013 Constitution, thank you. Honourable Kumar?

HON. J.N. KUMAR.- Thank you, Deputy Chairperson. I just wish to also contribute to what Honourable Vunivalu asked. As the Honourable Deputy Chairperson had said that the Government has got a lot of schemes and policies to accommodate poverty in Fiji. A very good example is the Social Welfare Scheme, the Poverty Scheme. I think in Fiji, I would say that no one is supposed to be borrowing or asking money on the streets because all these people have been given assistance somehow or the other, not to live in that kind of condition, but this comes back to the amendment of the laws that are already in place, that is my opinion because a times comes when they are going to change the law, that means no one should be there on the street borrowing because the solid evidence is that the Government has provided all these policies, strategies to help people who are living under poverty. So my opinion, even in Fiji today, no one is supposed to be borrowing on the streets. Thank you.

DEPUTY CHAIRPERSON.- Thank you. Mr. Magar?

MR. D. MAGAR.- Thank you, Honourable Member. I absolutely agree with you that no one should be borrowing on the streets. But it is also important that the Government should ensure that no one should go hungry every day. The Government has the obligation under these Treaties if they ratify to have an assessment constantly on a periodic basis to do an assessment and come up with exactly how many people are there on the street.

The obligation of the Covenant on Economical, Social and Cultural Rights on the Government or on the State is, there should be a basic shelter and when it comes to basic shelter, it should not only be to cover our head but it is also to do with our culture because our home is also part of our culture, it should be adequate, it

should be furnished but respecting our values and culture, the way we want to live. So while we target these people, again I want to go back to my previous argument that we need to consult with that, we need to reach out to them and ask them what actually they want because we have all these schemes in place for them to come and take it.

So if the Government demonstrates that and when they engage with the Treaty body, they live in the community, I think these are the people in Geneva who supposedly are the experts, and they can share the best practices from all the countries as well. So the dialogue that happens between the Government and the Committee Members during these periodic reviews, this is constructive, this is not like standing in a trial room or in a court and defending. It is more a kind of constructive so we can get lots of the best practices from all the jurisdictions, from other countries to address this kind of particular issues that you have been facing. Thank you, Honourable Member.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar. Again if you look at the national level, in terms of Fiji, not only the arms of the Government are there but also the churches, the different religious organisations that offer rehabilitation, vocational training to assist those who are living at poverty level or below poverty. So maybe in the near future, there should be a law passed in Cabinet to ban begging because rightfully, as I said and you have mentioned it also, that it is a personal choice that people are doing.

MR. D. MAGAR.- Yes, that can be one option but you need to have a broad consultation before enacting that sort of law. So it is absolutely up to the Government how they want to respond to the problem but the requirement on these International Human Rights Treaties or laws is, there should be a meaningful dialogue and consultation with the stakeholders and the target groups, so we need to ensure that. Thank you, Honourable Deputy Chairperson.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar. Honourable Matanitobua?

HON. RATU S. MATANITOBUA.- Thank you, Mr. Magar, through you Deputy Chairperson, people are getting very smarter, the change of time, technology that make them smarter. My contribution is that, we have land, formal assistance and yet they are still begging.

HON. J.N. KUMAR.- Borrowing, begging.

HON. RATU S. MATANITOBUA.- Like the Honourable Deputy Chairperson said, they have not put a law as the Honourable Member has mentioned but in my view, people are getting more smarter, what we want to implement they abuse, that is my view.

HON. J.N. KUMAR.- Or maybe greediness.

HON. RATU S. MATANITOBUA. Yes.

DEPUTY CHAIRPERSON.- Thank you, Honourable Ratu Matanitobua. Mr. Magar?

MR. D. MAGAR.- Yes, absolutely, I have no more comment.

(Laughter)

HON. RATU S. MATANITOBUA.- Honourable Deputy Chairperson, through you, Mr. Magar, the Regional Rights Resources Team (RRRT) came yesterday, and after that I had a village meeting in the village for about two hours so after the meeting, I took out these two Conventions and explained to them, they were

very happy, right up in the Highlands in Namosi, so one of the elders raised his hand and asked me, “Ratu, we are very happy about these Conventions, can we have awareness?” They have no idea about this. This is from the Highlands, I am just raising this to you as to what you think, this is from the Highlands.

MR. D. MAGAR.- Thank you, Honourable Member. I do agree with you that there is a lack of awareness on the Covenants and the rights that these Covenants do for the people. I think one of the immediate actions that we have to go for after Fiji ratifies both the Covenants is to aggressively launch awareness campaigns about the Covenants and the rights that are provided for.

This is also one of the recommendations of the Universal Periodic Review (UPR) for Fiji, particularly in relation to raising awareness of population on human rights, because if we cannot raise awareness of the right holders about their rights then sometimes it is difficult for them to claim, even if there is a violation or appeals. For example, let us touch a little bit upon our Justice or Judicial System.

The court does not respond unless and until you bring the case in the court, unless you bring the petition in the court. I do not think that the courts in the Pacific are proactive when it comes to public interest, or there is still a lack of public interest litigation in this part of the world.

In some countries, the courts are very proactive, so if the judge reads a newspaper for his pleasure this is a problem in terms of enjoying his access to food, health care or any of the denial of economic, social and cultural rights. He or she can pick up that issue and already order the Government if they have to enact a new law or come up with some targeted programmes or interventions.

So, awareness raising particularly, reaching out to the right holders, those who live in the communities, in the villages, that is very important and I think that is the area we need to focus on. I think that is not only the responsibility of the Government, this is the responsibility of all, whether it is the NGOs, civil society organisations like the OHCHR or the regional organisations, we need to join forces, we need to join our hands together to reach out to the communities and make them more aware and educate them about their rights. Thank you, Honourable Members.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar. I believe that Fiji now has a conducive environment to implement these two Treaties. As we mentioned in the past that it has already been incorporated in our Bill of Rights (Chapter 2 of the Constitution), so the only thing now is, we rise up to a new level of responsibility ensuring that these rights are paramount in our legislation, in our laws in the country, but now we are reporting to an international body, basically we will be held accountable now at the international level.

Honourable Members, anyone else has any question?

HON. RATU K. KILIRAKI.- Thank you, Mr. Deputy Chairperson, if I can contribute: thank you for the comprehensive presentation, and you have rightly alluded to the fact that Fiji is rightly in a position to ratify. There is nothing much left for Fiji to give any reason not to ratify, but you have enlightened us on how Fiji has implemented the policies and the Government agenda in terms of addressing social and economic rights for people or for the country in terms of all the programmes that are in place, especially in addressing the 17 Sustainable Development Goals and the provision of the Constitution and all the well-articulated rights in Chapter 2, but there are some issues that come, especially for the Pacific as a whole, and their concerns for the resources.

They find that the Government does not have resources required to report or to implement these many other International Conventions given the geographical constraints to access international mechanisms, one of that is the location of most offices of the UN in Europe that made it difficult for Pacific people to identify with

them, even UN offices located in the Pacific are regarded as inaccessible, so these are the comments that come. I note that you have mentioned that for all those requirements that you are here in a position, you are located in Fiji, in that sense.

There is quote, "For Fiji noted that the task of fully complying with every reporting and implementing obligations under the core Treaties and their Protocols could be insurmountable. Although the Treaty bodies release guidelines on the content of State reports, Pacific States see that these are onerous, geared for larger States and based on assumptions that are not relevant in the Pacific. For Pacific smaller States, especially ongoing burden of reporting, is and will continue to be significant. This is reflected in a comment by Tuvalu during its UPR where it is noted that they have no objection to substance of ICCPR and ICESCR."

So, they regarded this as invasion of westernise people liberalisation of the Pacific.

(Laughter)

So, in the context of our culture, tradition, as you have mentioned and the religion perspective, it takes time to change, et cetera, so can you reply with some comments, please?

MR. D. MAGAR.- Thank you, Honourable Member, for the question, particularly in relation to the resources. I think this is one of the recurrent arguments when it comes to International Covenant of Economic Social and Cultural Rights and its application to the State party. As I have also reiterated in my presentation, the ICESCR imposes the progressive realisation application so we always struggle when it comes to resources.

Resources are never enough but the question is: how we optimally use the available resources. So, it says, when it comes to available resources under the ICESCR, it includes the resources available in the country and the resources that the country receives as a foreign aid. So, we need to calculate both and the State has to demonstrate that it is using, in a maximum manner, to implement the Covenant rights, be it health, be it education but this is what we have been doing for a long time, and no country is perfect, even Japan, Singapore, they are constantly periodically reporting on these Treaties to the Committees. So, it is a difficult question when it comes to resources. So, if we keep arguing that, we first need resources, we need economic development and only then can we ratify these Treaties, if we still hold those arguments, then it is difficult, what is the actual perfect stage for us to ratify these Treaties.

The key question is, we need to try our best to continuously making a progress and that is what the progressive realisation is. So the Covenant itself gives that leverage to the State parties, particularly the developing countries and it also creates obligation or responsibility on the developed countries to assist the developing countries, for example, if there is a disaster and if there is a hunger with a particular segment of population in a particular country, then it is the obligation of other countries to assist, to provide support so we can deal with the resource issues.

With regard to the reporting burden or obligation, I absolutely agree with you that it is difficult for the Pacific Island countries and I have increasingly realised that after I reached out to the governments and I started having conversation with the colleagues in the Government. But I think there is also a General Assembly mandate or request to the Treaty bodies to simplify the reporting procedure so now from 2014 onwards, the Treaty bodies have adopted the simplified reporting procedure under which the Treaty bodies send a list of questions, issues to the Government, the responsible Ministry or through the permanent mission if the Pacific Island countries do have their permanent mission in Geneva, of course, Fiji does have.

They send a list of questions and based on that list of questions, they need to develop a narrative or report, and this is already a one-step less. So the simplified reporting procedure would help a lot, and there is a

challenge in relation to time difference also, and the connectivity, the distance, it is really tough for the Pacific Island countries to travel to Geneva. It is expensive, time-consuming, but they have introduced the video conferencing. For example, this year only Palau, Solomon Islands, Marshal Islands have done the review under CRC from the UNICEF Office in Suva. So that would help and Vanuatu did it through video conferencing also, so there are some ways forward. We have already started looking into different options of how we can have the Governments to meet their reporting obligation.

I do not know but maybe a proposal might be also for the governments of the Pacific to work together, meaning to set up a regional mechanism that would also help a lot. We do not have mechanism on Human Rights until today, but I think that would also help us to take it forward. Thank you.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar, a note I picked up during your presentation and you have just mentioned it just before you closed your presentation, the setting up of a separate mechanism for reporting and follow-up procedures within the Government, is there any other island nation or in the region, maybe Australia or New Zealand have similar models in place where they hold their Governments and their Legislatures accountable?

MR. D. MAGAR.- Thank you, Mr. Deputy Chairperson, for your question. In particular, I want to share with you the example from Samoa. Samoa has the National Mechanisms for Reporting and Follow-Up (NMRF). They were established in 2016 and that has already developed the implementation plan of all recommendations from the Human Rights mechanism, including integrating the SDGs. So it is a separate body but hosted by the Ministry of Foreign Affairs and Trade; and also the Ministry of Women, Children and Social Affairs. They are co-chair of the National Mechanism for Reporting and Follow-Up (NMRF) in Samoa.

There is also representation of civil society and national human rights' institutions but only have the consultative status. They cannot take part in the voting if it happens so they are only there as an observer, so it is a very good body when it comes to coordinating the work of the Government, when it comes to reporting and follow-up of the recommendation. They have already come up with the implementation plan of all the recommendations with indicators, and they have also introduced a software application database.

They have the focal points in different Ministries and they have that database which they input from their respective Ministries against the indicators. Everything is in the central system so they have people sitting in the NMRF responsible for gathering those data and information and analysing them and when they have to report next to the Treaty bodies concerned, the information is already there. On top of that, they have also integrated the SDGs so they do not have to invent the wheel because whether you talk about SDGs, whether you talk about the UN Human Rights mechanism and reporting to them, it is the same kind of information that you need to play. It is only tweaking here and there and a little bit meeting their requirements and the narrative, that is it, so that would help a lot, so that is an example from Samoa.

Marshall Islands does have its Human Rights Committee, led by the Chief Secretary, and they are progressing a lot also. They established it with a separate legislation and they are working on having their own database and they are also trying to develop the implementation plan.

Vanuatu, also have the National Human Rights Committee, but it was established following a Cabinet decision. Kiribati has National Human Rights Taskforce so the names are different but it is basically the same coordination body within the Government and that makes it more predictable and it also helps people like us or organisations who can regularly be in touch with them and facilitate the support with whatever is required. Thank you, Chair.

DEPUTY CHAIRPERSON.- Thank you, Mr. Magar. We will have one more question as time has caught up with us. Honourable Kumar.

HON. J.N. KUMAR.- Yes, thank you. You stated a very interesting statement in regards to a significant aspect of ratifying these Treaties or two Conventions is that, these NGOs, civil society organisations and the Government, and that is that this is one way of working together simultaneously or gracefully, I would say they go through their reports. They always try to have this as one way of working together simultaneously or gracefully, I would say, but on the other hand, this has been an on-going thing that whenever NGOs or civil society organisations do their parallel reporting like in most cases, it is always contradictory to the Government's report so what do you say; what is your opinion on that, please?

HON. D. MAGAR.- Thank you, Honourable Member, for your question. Definitely, I do agree with you, sometimes there are contradictory information or reporting from civil society but when the members of the community consider or go through their report, they always try to seek the evidence, whether this is founded on evidence, indicators or statistics, et cetera. As I told you, this is a constructive dialogue so if they have any doubt or questions with regard to Government statement which they may receive different information from the civil society, there is always an opportunity for the Government delegation to clarify and encounter those information or arguments so it is a constructive dialogue.

We cannot stop the civil society from reporting. This is part of the process agreed within this framework but I think the Committee Members should also look into which information is founded on evidence and which is not, and they always dialogue or interact with the delegation or the members of the Government delegation before they reach the conclusion or before they issue the concluding observation. Before issuing the concluding observation and recommendation, the Government delegation will have their say, so there is another level or layer of screening the information, so I think the reporting process provides these different layers of screening and verifying the information before reaching the conclusion. So I think that would help, thank you.

MR. CHAIRMAN.- Thank you, Mr. Magar. The time has caught up with us this morning, first of all, I would like to thank you warmly for your comprehensive presentation this morning. You have highlighted a lot of very valid points, I think that should be put in as part of our contribution to the debate once this is tabled in Parliament. I think, first of all, one of the issues that we have always raised, the first submission came in yesterday was in terms of culture, and I think rightfully, you have said that the Treaties should only complement and not be looked at as an intrusion.

Secondly was the setting up of an independent separate mechanism for reporting and follow-ups as has been set up by the Parliament in Samoa and other Pacific Islands. So these are all important as it keeps Fiji accountable to our obligation on an international platform.

Again, thank you kindly for your presentation this morning and we wish you well in the rest of the years on your contract in Fiji, and hopefully we will continue to be working together as these things have been ratified by Fiji. Thank you once again.

The Committee adjourned at 11.20 a.m.

STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

THURSDAY, 3RD MAY, 2018

VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE HELD IN THE COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON THURSDAY, 3RD MAY, 2018 AT 10.00 A.M.

Submittee: Office of the Solicitor-General

In Attendance:

- | | | | |
|----|---------------------|---|-----------------------|
| 1) | Ms. Seema Chand | - | Senior Legal Officer |
| 2) | Ms. Ofa Solimailagi | - | Senior Legal Officer |
| 3) | Ms. Lyanne Vaurasi | - | DCLD (AG's Office) |
| 4) | Ms. Priyashna Mani | - | Intern (AG's Office) |
| 5) | Ms. Benita Kumari | - | Intern (AG's Office) |
-

DEPUTY CHAIRPERSON.- On behalf of the Standing Committee on Foreign Affairs, we extend a very warm welcome to you this morning. This morning we are all waiting to listen to your submission as we know that we have the two Treaties that are before the Committee before we table them in Parliament in a week's time. In saying that this morning, we open the floor now to you.

MS. S. CHAND.- Thank you, Honourable Chairperson, and good morning, Honourable Members. Thank you for accommodating this time slot, we know that we were supposed to give the submission last week, so we are very thankful and grateful that you have accommodated us this week.

So before I get into our submission proper, we were given a correspondence from the Committee on behalf of the Honourable Chairperson, and there are 10 questions that the Committee had asked and so our submission this morning will be specifically in relation to those 10 questions. If there are any further clarification that is needed by the Committee, we will be happy to submit clarifications at a later date.

So I will just get into our submissions this morning. The first question that we were asked in terms of the correspondence sent to us was: "What are the benefits of ratifying the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Right (ICESCR)?"

I will just give you a brief background: the Fijian Government, in its first UPR-Cycle (Universal Periodic Review Cycle) in 2010, affirmed to the Human Rights Committee in Geneva at the time that Fiji undertakes to ratify all core nine United Nations Human Rights Treaties and Conventions by the year 2020.

In our second cycle of review which was done in 2014, we reaffirmed that commitment, and so straight after our UPR review in 2015 I believe, Parliament had approved the ratification of the Convention of Torture (UNCAT) and that started a whole process of ratification of the core nine treaties.

Thereafter, in 2017, Parliament had approved the ratification of the Convention on the Rights of Persons with Disabilities (CRPD), and thus by the end of 2017 Fiji had ratified a total of five of the core UN Human Rights treaties and conventions, and I will just like to briefly take you through these conventions that we had ratified by the end of 2017.

The first Convention was the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), it is the 1965 Convention which was ratified by Fiji in 1973. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), was ratified by Fiji in 1995, and then we had the Convention on the Rights of the Child (CRC), which Fiji ratified in 1993, the Convention against Torture (UNCAT) as I had mentioned, we ratified this in 2016. The last Convention that we ratified last year was CRPD (Conventional on the Rights of Persons with Disabilities).

I will just briefly submit on the benefits of the ratified ICCPR and ICESCR. Firstly, the ratification of both the Treaties will complement Fiji's constitutional provisions under the Bill of Rights as much of it is derived from the rights set out in the ICCPR and ICESCR. It will also ensure Fiji's compliance with its international obligations, as I had mentioned before. We made an international commitment at the UPR by ratifying the core nine and so this is a step in the right direction.

With the 170 State parties having become a party to ICCPR and approximately 167 State parties to ICESCR, accession or ratification of the Conventions will raise Fiji's international standing in the Human Rights Council community. It will promote greater cooperation and strengthen international relations with other states parties who have ratified or acceded to ICCPR. Of course, it gives us an opportunity to learn best practices of implementation from those various State parties.

Finally, in bringing further consistency between international law and our Constitution, the ratification will allow Fijian Judges to apply general recommendations of the Human Rights Committee with ease under Section 7 of the Constitution.

Although Section 7 already allows the use of Conventions which are not ratified by Fiji but whose provisions are incorporated in Fijian laws as the ratification will allow an easier path for the development of International Human Rights jurisprudence in Fiji.

The next question we were asked was essentially on the number of countries regionally and internationally that had ratified the above two Treaties and their level of ratification in terms of international best practice. With the ICCPR, there is a total of 170 States parties. We understand that the following Pacific Island countries have ratified the two Treaties so far:

- i) Papua New Guinea in 2008;
- ii) Samoa in 2008; and
- iii) Vanuatu in 2008.

We also understand that countries such as Nauru and Palau, whilst have signed the Treaty, have not yet ratified or acceded to the Treaty. For the International Convention on Economic, Social and Cultural Rights (ICESCR), there are a total of over 160 States parties and the following Pacific countries have ratified the Treaty so far:

- i) Papua New Guinea in 2008; and the
- ii) Solomon Islands in 1982.

Once again, Palau has signed on to the Treaty but has not ratified.

In terms of the level of ratification and international best practice, I think it is really important to highlight to the Committee at this stage that no country in the world has achieved a 100-percent in terms of implementation of these Treaties in their respective countries. This is evident because what happened is that, every time a state party submits their report to the Committee on ICESCR or ICCPR, they have a constructive dialogue and they talk about their level of implementation and how far they have gone in terms of domesticating the Articles in their national legislations and policies.

Thereafter, once you have the constructive dialogue, the Committee actually gives you series of recommendations for better implementation. So, this means that there is no country that has achieved a 100-percent implementation, but all the state parties that have ratified them are working towards better, more effective implementation of the Articles of the Convention into the national laws and policies.

So, what the Committee looks at when assessing state reports is firstly, the legislative or policy compliance and how these are actually working on the ground and the progressive realisation of these rights are under the Articles for the respective Treaty. The Committee also looks at statistics and data collection in various areas to determine the state parties compliance with the Treaty. I will just briefly now talk about the two Conventions separately.

So, in relation to ICCPR, Australia recently had their constructive dialogue with the ICCPR Committee in the October/November 2017 Session. Their reports are also available online should our Committee members wish to peruse to read.

So the concluding observations: the Committee acknowledges the progress Australia had made in terms of enacting new legislation, amending legislation and introducing policies during that particular reporting cycle. For example, Australia has established an independent National Security Legislation, Monitor and Age Discrimination Commissioner.

Australia has also established a Standing National Human Rights Mechanism to strengthen engagement with the human rights reporting mechanism. I understand they have also amended the Australian Sex Discrimination Act of 1984 which now prohibits discrimination on the basis of sexual orientation, gender identity and inter-sex status, this was done, I understand in 2013.

If you look at some smaller developing island nations, Mauritius, also in the October/November Session 2017, had their constructive dialogue with the ICCPR Committee.

The Committee commended the Mauritius Government on the various institutional, legislative and policy measures taken by Mauritius such as the enactment of a Police Complaints Act fairly recent in 2013, various amendments to the Criminal Appeal Act, Criminal Procedure Act, the Equal Opportunities Act and the Legal Aid and Legal Assistance Act.

More recently, Norway had their constructive dialogue in March of 2018, so that is just a couple of months ago. In their constructive dialogue with the Committee, the Committee

welcomed the various legislative and institutional developments in Norway such as the various amendments to their Constitution to strengthen Human Rights Protection, in particular that option of a new Human Rights catalogue which reflected many of the rights contained under the Covenant.

The establishment in 2015 of the National Human Rights Institution which has been accredited with A-status by GANHRI (Global Alliance of National Human Rights Institutions); also in 2013 adopted the Sexual Orientation Anti-Discrimination Act; and in June 2017, adopted or enacted the Equality Indiscrimination Act, so these were some of the developments in Norway.

Now just briefly going on in relation to ICESCR, Australia's compliance was reviewed in the May, June Session in 2017 and here the Committee recognised again the various policies, institutional development and strengthening undertaken by Australia at the time. For example, Australia has developed a Youth Employment Strategy, a Remote School Attendance Strategy in 2014, a National Partnership Agreements on Universal Access to Early Childhood Education, this is the 2013, 2014 development. I understand it was also further strengthened in 2015, 2016 and 2017 respectively.

The National Aboriginal Torres Strait Island and Health Plans; the National Framework for Protecting Australian Children (and this is a 2009 to 2020 Plan) and various other plans to reduce violence against women and children and national disability strategy, et cetera, all of which really we also have in Fiji where we have the Women's Action Plan. We also have a Plan for the Rights of Persons with Disabilities, so we have also done similar things in Fiji.

In relation to ICESCR, more recently Bangladesh had its review also in March, and in the March Session, the Committee commended Bangladesh on the progress it had made since the succession to the Covenant in many areas, particularly regarding poverty reduction and the Committee noted that within 2016, the poverty rate was reduced from 38.4 percent down to 24.3 percent per capita, and per capita income has increased substantially and the life expectancy has increased to almost 71, 72 years.

The Committee also noted the state parties forthcoming graduation from the category of least developed country, so really the Committee acknowledges that when we do report under these Conventions. The Committees acknowledge the progress made by the state party in advancing various rights, including gender equality in the public sphere, initiatives to improve women's representation at all levels of decision-making, et cetera.

In the Fijian context, given our current Constitutional framework which includes a robust Bill of Rights provision, our road to ratification of these human rights treaties and conventions is relatively easy. Additionally, most, if not all the Articles enunciated in these treaties and conventions have been woven into the very fabric of our Constitution, thus making compliance and ratification of these instruments easier for us. For example, I will just take you through just a brief on the Articles of ICCPR and ICESCR and perhaps their corresponding section in the Constitution.

So, for example, Article 1 on the rights to self-determination is also related to Article 23 in terms of political rights. Articles 2 and 3 of ICCPR urge state parties to ensure that civil and political rights of the people are realised without discrimination against race, colour, sex,

language, religion, political or other opinion, birth or status. This corresponds with Article 26 in terms of the right to freedom and equality from discrimination in the Constitution.

Article 4 under ICCPR pertains to the provisions of the states of emergency and derogation of rights, and this again corresponds with Section 43 of our Constitution, in terms of the various limitations under states of emergency.

Article 6 of ICCPR guarantees the right to life and this is also part of Section 8 of the Constitution which also guarantees the right to life.

Article 7, in terms of Freedom from torture, cruel, inhuman or degrading treatment, corresponds with Section 11 of the Constitution, Freedom from cruel and degrading treatment.

Article 8 of ICCPR prohibits all forms of slavery corresponds with Section 10 of the Constitution, Freedom from slavery, servitude, forced labour and human trafficking.

Articles 9 and 10, Protect against arbitrary detention or arrests (and this is also articulated in our Constitution under Section 9); the Right to personal liberty; and Section 13, Rights of arrested and detained persons.

In relation to that, that was very brief, there are more obviously but I just wanted to be brief for the Committee and we can provide a full list should the Committee wish at a later stage so that the Committee can see exactly the corresponding sections.

So, very briefly in terms of ICESCR, Article 7 everyone has the right to just conditions of work, fair wages, ensuring a decent living for himself or herself and his or her family, equal pay for equal work, safe and healthy working conditions, equal opportunity for everyone to be promoted and including rest and leisure rights. This is in correspondence with Section 33 of the Constitution, in terms of the right to work and a just minimum wage.

Also there are various corresponding provisions in our labour laws, the Employment Relations Act which we can provide at a later stage should the Committee wish to take note of.

Article 11, everyone has the right to form and join trade unions and the right to strike and these are also set out in the Constitution. Sections 19 and 20 talk about the freedom of association and employment relations.

Article 19 of ICESCR, everyone has the right to social security, including social insurance and this corresponds with Section 37 of the Constitution, the right to social security schemes.

Furthermore, Article 11 of ICESCR, everyone has the right to an adequate standard of living for himself and his or her family, including adequate food, clothing and housing and this corresponds with Sections 35 and 36 of the Constitution, in terms of rights to housing and sanitation, and the right to adequate food and water.

So, essentially the Articles of ICESCR call for the right to just working conditions, fair wages, equal pay for equal work, safe and healthy working conditions, equal opportunity in the workplace, the right to form and join trade unions, the right to strike, the right to social security, including social insurance and the right to adequate standard of living for all citizens, including adequate food, water, clothing, housing, et cetera.

These are rights that are also expressly provided for under the Fijian Constitution and the progressive realization of these rights are also provided for under the Constitution.

The fourth question we were asked was: "What are the judicial and court processes to facilitate the implementation of the two Treaties?" I draw your attention to Section 7 of the Fijian Constitution which specifically provides that when interpreting and applying the rights set out under the Bill of Rights Chapter, "a court or tribunal or any other authority must promote the values that underlie a democratic society based on human dignity, equality and freedom and may, if relevant, consider international law applicable to the protection of these rights and freedoms under this chapter."

So, the provision is already there to give courts the discretion and the power to use international law when adjudicating matters in relation to a breach of the Bill of Rights or constitutional redress matters. That is already being articulated under the Constitution, and I understand from various judgments that the courts have already started applying the Covenants, not only ICCPR from judgments back from 2004, there are various judgments, I think, by her Ladyship Justice Shameem, where she has actually used ICCPR from 2004, 2006, I understand.

We do know that the Family Courts also apply the CEDAW Convention in their judgments when adjudicating on relevant family matters.

So, this means that when adjudicating matters concerning other civil or political rights or social, economic and cultural rights in court, the courts have powers to consider where relevant the application of International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), and judges may therefore look at the way in which ICCPR and ICESCR rights have been interpreted by the Human Rights Committee thus assisting in the interpretation of Fiji's Bill of Rights. In fact, Fijian judges have already taken the step, as I said before, in relation to prisoners' rights, the rights of children in custody and various other rights.

The other question we were asked to present on was: "What provision of ICCPR deals with persons under detention in police or correctional facilities?" On this, I draw your attention to Articles 9 and 10 of ICCPR that deal directly with the rights of arrested or detained persons. I know that the Honourable Committee Members already have a copy of the Articles so I will not read out the Article but what I will do is, I will draw the attention of the Honourable Committee Members to Section 13 of the Fijian Constitution.

Section 13 of the Constitution provides various rights of arrested and detained persons. So this actually again mirrors the rights under Articles 9 and 10 of ICCPR, I will not read out the section either so I will just move on. What we will submit is that, you know Section 13 Rights mirror ICCP Rights and they reflect the way ICCP Rights have been actually interpreted by the Human Rights Committee and the European Court of Human Rights. These bodies interpret rights in a purposive way and ask: what is the purpose of the right; what exactly is it in ICCPR or ICESCR; and how can we best interpret the right to actually give effect to its purpose?

I also want to highlight to the Committee that in terms of the Fijian context, the First Hour Procedure Project, which is currently being piloted by the Legal Aid Commission, the Fiji Police Force, the Judiciary and the Human Rights and Anti-Discrimination Commission, in effect have started the manifestation of Section 13 of the Constitution, where under the First Hour any person at the time of detention, it is not just at the time of arrest, but is actually at the time of detention so you do not even have to be arrested but at the time of detention or arrest, have the right to actually call for a lawyer, for a legal practitioner to then explain their rights to them before a caution interview is carried out.

I understand that the Legal Aid Commission (LAC) in this regard has this service for 24 hours and it is being piloted at various police stations. I also understand that the Fiji Police Force is also embarking on a pilot project to video-record interviews and thereby giving effect to Section 13 of the Constitution.

The next question that we were asked to present on was: “What are the provisions in ICESCR that deal with the Rights of Persons with Disabilities?” We submit that the Articles of ICESCR do not specifically deal with the Rights of Persons with Disabilities, instead the Articles of ICESCR use the phrase, “all persons or all people” and where applicable, the term referred to is “everyone” and therefore the Articles under the Covenant also ensure that persons with disabilities are not marginalised in their access to economic, social and cultural rights.

In any event, the Fijian Constitution in Section 42 expressly outlines the Rights of Persons with Disabilities and given that we have recently ratified the CRPD and enacted the Rights of Persons with Disabilities Act in 2018, the Rights of Persons with Disabilities are well protected under the Fijian laws. The Human Rights Committee has interpreted the Right to Equality generally as including the Rights of Persons with Disabilities, so there is no distinction.

The General Assembly has done the same, issuing standard rules on the equalisation of opportunities for Persons with Disabilities in 1993. The various Civil and Political Rights contained in ICCPR can be divided into four clusters: the first, the rights that refer to human existence; the second, liberty rights; third, associational rights; and fourth, political rights.

All categories are of relevance to disabled people. As we know from the two reports produced by the United Nations’ Human Rights bodies on Disabled Persons, all of these rights are frequently violated in the case of a person with disabilities. For example, an important human right for disabled persons is contained in Article 16 of the ICCPR where it says that “Everyone shall have the right to recognition everywhere as a person before the law.” This is a key due process right in the context of both civil and criminal commitment. Disabled persons, whether legally competent or incapacitated must not be treated as mere objects in any official proceedings.

The next question we were asked to present on was: “What provision of ICCPR deals with the rights of women and children?” Article 3 of the ICCPR specifically makes reference to the obligation of State parties to the Covenant to ensure that equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. These include:

- The right to marriage and family in Article 23;
- Sentences of death not to be imposed on pregnant women in Article 5 and in fact, the word “women” is mentioned only three times in the entire Covenant, that is not to say that women’s rights are not recognised under the Treaty.

The text of the Covenant uses gender neutral terms such as “everyone”, “all persons”, and thus ensuring that all persons, irrespective of gender have the various rights articulated in this Covenant, I think that is very important.

- Children’s rights are also articulated under Article 24 of the Covenant which pertain to the rights of the child, to protection as a minor by his or her family, society and

State regardless of his or her race, colour, sex, language, religion, national or social origin.

These rights are consistent with Section 41 of the Constitution under the Rights of the Child. More importantly, we have also ratified the CRC which sets out further rights that are compatible, not only with the Convention, but also with our national legislation and policies.

We were also asked to submit on, “What provision of ICESCR deals with the rights of women and children?” Article 3 of ICESCR specifically makes reference to the obligation of states parties to the Covenant to undertake and to ensure that equal right of men and women to the enjoyment of all social, economic and cultural rights set forth in the Covenant.

Article 7 deals with the fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work, not inferior to those enjoyed by men with equal pay for equal work.

Article 10 further deals with the right to maternity leave, and these provisions are also articulated in terms of Fijian laws under Part 11 of the Employment Relations Act which sets out various processes and procedures for maternity leave.

The above Articles are consistent with Section 33 of the Fijian Constitution under the “right to work” and with our Employment Relations Act in 2007, under Section 18 in terms of “determination of equal pay”; and Section 81 of the Act, in terms of “recovery of remuneration based on equal pay”, which allows any aggrieved woman to seek redress from the employment court accordingly.

In relation to Children, Article 10 deals with children and that special measures should be taken on behalf of children without discrimination. Children and youth should be protected from economic exploitation and the employment in dangerous or harmful work should be prohibited. There should also be age limits below which child labour should be prohibited.

I would like to draw the Committee’s attention to Part 10 of the Employment Relations Act in 2007 which expressly deals with the employment of children and the prohibition of child labour. Section 91 of the Act specifically states, and I quote:

The following forms of child labour are prohibited-

- (a) all forms of labour slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict;
- (b) the use, procuring or offering of a child for illicit activities in particular for the production of trafficking of drugs as defined in the relevant international treaties; or
- (c) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, and a person who engages a child in such prohibited form of child labour commits an offence.

Finally, we were asked questions in terms of challenges, lessons learnt and the way forward. What I would like to do now is, I would like to address all of these in our concluding remarks.

Given the robust legislative framework, ratification of these Treaties has been made easier. We have, as a result, made progressive steps to secure civil and political rights for all Fijians given the significant rights through constitutional reform to secure third generation rights which are social, economic rights or subsistence rights.

As a developing nation, one of the major challenges that may be faced by Fiji is the sustainability of subsistence rights and in ensuring that these rights are strengthened, given the constraints on State resources and competing demands of civil and political rights. It is therefore critical that we find a balance in recognising the indivisibility of these rights.

Without according greater privilege to one set of rights over the others, it is important to recognise that rights on the ICESCR, may be realised progressively by a state, in accordance with their national priorities and I believe that this has been taken care of under our Constitution. This does not mean that the lack of resources is an excuse, for instance, the failure to give the right to help. This does mean, however, that the State has given space to adopt progressive plans to realise the rights within its capacity and in accordance with its national priorities.

Fiji would not, for instance, be expected to instantly after ratification to provide free wheelchairs or free medical treatments to its citizens. However, Fiji would be expected to have a plan towards the gradual realisation of the rights under both the Conventions.

Honourable Members, that is our submission this morning and we welcome any questions or clarifications. *Vinaka*.

DEPUTY CHAIRPERSON.- Thank you, Seema, that was a very comprehensive presentation and I thank you for your efforts and also to your team.

In a nutshell, if I may just make a contribution this morning, contributed by a contributor towards Human Rights, and I share the same sentiments and it goes like this, "Greater realisation of Human Rights by ratifying the two Covenants or Treaties has the potential to empower the disadvantaged and marginalised and contribute to a more just, inclusive and fair society. Ultimately, the State with a strong commitment to Human Rights is likely to be a State that is well-governed, secure and stable".

Honourable Members, the floor is open now, if you have questions to raise towards the SG's Office.

Thank you, Honourable Kiliraki?

HON. RATU K. KILIRAKI.- Thank you, Deputy Chairperson. I once again commend the presentation as alluded to by the Deputy Chairperson that it is very comprehensive, which means that more or less all our questions have been addressed, but perhaps I can pose the question whether there is a national reporting and mechanism for these Treaties in the Government machinery?

MS. S. CHAND.- Thank you, Honourable Member, for your question. I think it is a very important question and there are existing internal mechanisms for the reporting of Treaties. For example, the CEDAW Report and the CFC Report which is the rights of the child as prepared by the Ministry for Women, Children and Poverty Alleviation.

The State reports are also prepared by various other Ministries in conjunction with other stakeholders. So it is not just one Ministry preparing or presenting the report, it is done through wide stakeholder consultation, not just within the Ministries and within the Government machinery but also consultations with various other stakeholders such as international organisations, our development partners, civil society groups, et cetera.

So, already internally, we have mechanisms to produce State reports and thereby send the delegations across to the Treaty body Committee for constructive dialogue processes.

DEPUTY CHAIRPERSON.- Honourable Kumar.

HON. J.N. KUMAR.- Thank you once again, Ms. Seema and your group, for that commendable contribution this morning.

My question is: what is your opinion or your Office's opinion whether Fiji is going to ratify these two Conventions with some reservations or without reservations? So, we would like to hear your opinion, thank you.

MS. S. CHAND.- Thank you, Honourable Member, for the question. The decision to ratify with reservations or without reservations is actually for Parliament to debate on and to make a decision. Our presentation is limited to the questions that we were asked and we were not posed with questions in terms of reservations, however, it is essentially up to Parliament to decide how to ratify the Convention.

DEPUTY CHAIRPERSON.- Thank you, Honourable Kumar.

HON. J.N. KUMAR.- The reason why I asked that question because like your Office, you are responsible for the laws of Fiji. I am talking about this in terms of the rights that are before us: the indigenous rights; cultural rights; gender rights. When we talked about gender rights, you know exactly what I mean, because now when we are going to ratify this Convention, it is going to affect the next generations or the generations to come. A very good example, a time comes we might come up with a law which allow gay marriages, for example, but that is contradictory to our beliefs, especially religion or cultural beliefs, so what do you think about that issue?

MS. S. CHAND.- Thank you again, Honourable Member, for your question. If you look at our current legislations: the Bill of Rights' provisions, Employment Act, et cetera, were in conformity and consistency with the Articles of the two Conventions. I cannot comment on any law that is made in the future simply because any law that is made in the future is done so by Parliament. So, Parliament, at the time approves certain legislations to be enacted and naturally it would go through its own process and in the end, it is Parliament that decides whether or not to enact a legislation or not, so I cannot comment on legislation that may be passed in the future.

What I can say is that, if the Committee so feels that reservations must be made then the Committee can then articulate that in its report essentially but our presentation today took you

through how the Articles of ICCPR and ICESCR, the Fijian laws are already in compliance thereof.

HON. J.N. KUMAR.- Thank you.

MS. S. CHAND.- Thank you very much for your question, I hope that answers your question.

HON. S.B. VUNIVALU.- Thank you, Ms. Seema, for your presentation this morning. I have got a few things to raise which we can share our opinions on. This is in regards to the crime rate in our country. In fact, the Government or the people want to minimise the crime rate. We cannot stop crime. When I say, “We cannot stop crime” it is because of Section 7 of the Constitution. The reason why I come back to the Bill of Rights (Section 7), is that the culprits, or if I can say, the criminals, they got their rights, as you have mentioned, and their rights end up in court. You have mentioned “detained person”.

MS. S. CHAND.- Yes.

HON. S.B. VUNIVALU.- They have been brought in by the police to be interviewed for certain incidents that happen, before that they will be given the chance, the police tells them, “If you have a lawyer you can call your lawyer.”

MS. S. CHAND.- Yes.

HON. S.B. VUNIVALU.- But the police acts on the Criminal Procedure Code (CPC) 132, Penal Code Cap 11 and the Traffic Act Regulations, et cetera. Despite the fact that they have been brought for rape, the evidence is there for whatever case and how serious the case may be, but a chance has been given again.

The Constitution is here and now they want to clarify these two Conventions.

But the main issue which I want to raise are the culprits that got their rights, and at times, they appear in court and win the case, acquitted.

HON. J.N. KUMAR.- Acquitted.

HON. S.B. VUNIVALU.- But there were evidence who saw all these things and I want to ask you, Ms. Seema, because we have got all the laws here, the Constitution, the Laws of Fiji, the Criminal Procedure Code, Penal Codes, again these SDGs, ICCPR and ICESCR, where will we stand in terms of crime rate? Thank you.

MS. S. CHAND.- Thank you, Honourable Member, that is a very good question and a very valid question, so thank you for raising that.

I will go back to the fundamental principle in Criminal Law (I am not a Criminal Law expert) because of the Solicitor General’s Office, we do practise Civil Law. However, there is a presumption of innocence of all persons when charged before conviction, and so when a person is brought into the Police Station, in terms of natural justice, procedural fairness, people must be given certain rights because you are presumed innocent until proven guilty by a Court of Law.

If the Court of Law has not convicted you of an offence because of lack of evidence or whatever, that is the Court's prerogative. But then you have mechanisms for appeal and so this is why we have the rights of the accused or detained persons, because of that fundamental presumption of innocence that until you are formally convicted or the court so deems that you have committed an offence and gives you the applicable sentence, you are presumed innocent. This is really in line with principles of natural justice and procedural fairness, and it is also to protect people from abuse of procedural fairness and natural justice. This is why because you do not know just because you are charged with an offence, it might not necessarily mean that you had committed the offence.

So you do need your day in court to prove also your case to the Judge or the Magistrate, so that the correct body adjudicates and either party then has the right to appeal and we have various appeal mechanisms: Court of Appeal and to the Supreme Court and there are many times where the Court of Appeal or the Supreme Court has overturned either convictions or the judgements of the lower courts but that is the mechanism, and that is because there is a right to the presumption of innocence and all citizens are accorded due process in line with professional fairness and natural justice. I hope that answers your question, Honourable Member. Thank you.

DEPUTY CHAIRPERSON.- Thank you, Ms. Seema, any other questions from the Honourable Members? Honourable Jilila Kumar.

HON. J.N. KUMAR.- Through you, Deputy Chairperson, thank you once again and the ladies.

As you have alluded to, Fiji had ratified these five Treaties: ICERD, CEDAW, CRC, UNCAT and CRPD. Now, two Conventions are in front of us and then SDGs. The concern is, through our experiences as Members of Parliament, while meeting the grassroots people when we used to go and visit them in the communities, schools, the concerns that they gave us that they still do not know all these rights. Even when these two Conventions came before us, we are sort of worried about these two. So, my question is, do you have any part to play in the consultations to the public because the reasons why we ratify all these rights are for the citizens of our country but the problem is the connectivity between us and them. Please, if you could just elaborate on that. Thank you.

MS. S. CHAND.- Thank you, Honourable Member, for your question and again it is an important question because whilst you are ratifying, these are things that the respective Committees, in their concluding observations, have brought up time and time again in relation to other States parties, whether it is Australia, New Zealand or any European country, in terms of the better implementation and enforcement of these rights. I understand you are talking about awareness here and we all have a part to play.

As legal advisors of the Government, our work is restricted to legal work, et cetera, but there are other Ministries I understand that work with CSOs. I know the Ministry of Women, for example, works with the Women's Rights, NGOs, to assist in taking information to various communities to educate communities on these international Conventions, what are their rights and obligations on State parties under the Convention and then how are these rights then translated in national legislations and policies because then it is the implementation thereof that has done it, as the Honourable Member had stated at the grassroots level.

So, I understand there would be more collaboration between various ministries and perhaps civil society actors in education, educating citizens of the rights and obligations under these Articles but also under the Constitution itself. I do know that Legal Aid also carries out awareness programmes in conjunction with other stakeholders, in terms of informing citizens of the various rights, in terms of Sections 13 and 14 in the community. So, I think, basically you have to take a multi-stakeholder approach and more collaboration on the ground as well as inter-ministerially. Thank you.

DEPUTY CHAIRPERSON.- Honourable Ratu Kiniviliame Kiliraki

HON. RATU K. KILIRAKI.- Thank you, Deputy Chairperson, can I pose another question for your comment; I picked up a point on one of the previous submitters in the last couple of days. It was the issue about the courts to be proactive in terms of any cases or breaches of these Conventions that are brought up in the public media and are not being addressed through the legal procedures. It was mentioned that some countries, the court takes it into its ownership to address that issue that comes in the media, to challenge that - what action has been done. You have just mentioned your role in the civil issues. Do you have this in place to address issues that do not come through the proper channel but is highlighted in the media and no action has been taken?

MS. S. CHAND.- Thank you, Honourable Member, for your question. In terms of Fiji's legal and judicial system, we have an adversarial system and not an inquisitorial system. What this essentially means is that, matters have to come to court for it to be addressed; for rights, violations of the Bill of Rights to be addressed. It must come to court for the court then to adjudicate on these matters. That is our system and so our rules do not cater for an inquisitorial system. Thank you.

DEPUTY CHAIRPERSON.- Honourable Members, any other questions. Thank you, Honourable Kumar.

HON. J.N. KUMAR.- Through you again, Deputy Chairperson. Thank you very much, Seema, for your answers to those questions. I think this will be my last question on optional protocols. I think when we went through this, we came across the International Covenant on Economic, Social and Cultural Rights (ICESCR), as one optional protocol which allows the parties to recognise the Committee on Economic, Social and Cultural Rights to consider complaints from individuals. Please, if you could elaborate on that. Thank you.

MS. S. CHAND.- Thank you, Honourable Member. I think the first step towards ratification is actually ratifying the Covenant and look at our ways of compliance with the Covenant.

Again, in terms of taking up issues or complaints against breaches of either the Bill of Rights or if we were to ratify these instruments or breach of the rights under these instruments, we already have a mechanism in place to address complaints and that is through the courts and the judicial system so any aggrieved member of the public has a right to constitutional redress in the event they feel that their rights under the Bill of Rights have been breached and the courts can adjudicate accordingly. So there is a mechanism that is already a competent mechanism, a competent judiciary to adjudicate on these matters, and I think that the first step would really be

in looking at the ratification of the Covenant and thereafter, you know taking a step further when we are ready. Thank you for your question.

HON. J.N. KUMAR.- Thank you.

DEPUTY CHAIRPERSON.- Thank you. Honourable Tui Namosi.

HON. RATU S. MATANITOBUA.- Deputy Chairperson, through you, on awareness, it can done after we ratify or before.

MS. S. CHAND.- Thank you, Honourable Member, for your question. Awareness is an ongoing process so you can do it before you ratify, after you ratify, it is ongoing, it really does not stop.

HON. RATU S. MATANITOBUA.- My concern is the Government, the Committee, is there a timeframe set for the Government to the Committee in Geneva on the issue?

MS. S. CHAND.- You can only present to the Committee if you are a State party to the Convention, otherwise there is no presentation. So once the Convention is ratified or is acceded to, thereafter you have various reporting cycles. You may have to submit a report within the first year of ratification to do a preliminary assessment of where you are in terms of compliance of the Articles and thereafter, I understand it is a four-year cycle.

DEPUTY CHAIRPERSON.- That comes under the Universal Periodic Review (UPR).

MS. S. CHAND.- The UPR is a separate four-year cycle and then you have all these other core nine Conventions and then you would have a constructive dialogue with the actual Treaty body or the Committee that looks after the Convention. So essentially the Committee is made up of experts, so you do your State report, it goes to the Committee, they have a look and then you are called to either Geneva or New York, wherever the Committee is sitting at the time to then present your State report.

Thereafter the Committee makes concluding observations and basically it is a constructive dialogue where they ask you questions, you respond and I understand usually it is a one day process, so it is a full day. After the constructive dialogue, the Committee makes recommendations.

The UPR is a report that is actually tabled before the Human Rights Council in Geneva, and so you are presenting to the Human Rights Council and you take recommendations from the actual Council in this regard. Thank you, Honourable Member.

DEPUTY CHAIRPERSON.- I think we will come to conclusions now. First of all, thank you, Seema, and we are also grateful to the Solicitor-General for your contribution towards the Standing Committee on Foreign Affairs and Defence this morning.

Just before I conclude, I must commend the Honourable Prime Minister, the Honourable Attorney-General for their vision for our country. Before these Treaties were brought in, it was something that was already captured in our Constitution, so it is nothing new.

Again, before concluding, I will just read again the remarks that was put in by a contributor to the Human Rights, it goes: “Ultimately, a state with a strong commitment to human rights is likely to be a state that is well-governed, secure and stable, and most importantly, not leaving any Fijian behind.”

Thank you, Seema, and your team.

The Committee adjourned at 10.52 a.m.

APPENDIX 4

SUBMISSIONS DOCUMENTS

1. REGIONAL RIGHTS RESOURCES TEAM-SPC
2. OFFICE OF THE UNITED NATION HIGH COMMISSIONER FOR HUMAN RIGHTS
3. HUMAN RIGHTS AND ANTI-DICRIMINATION COMMISSION
4. OFFICE OF THE DIRECTOR PUBLIC PROSECUTION
5. SODELPA YOUTH WING
6. NFP YOUTH WING
7. FIJI WOMEN'S CRISIS CENTRE
8. ASSOCIATED PROFESSOR KONAI HELU THAMAN
9. OFFICE OF THE HON. CHIEF JUSTICE
10. FIJIAN ELECTIONS OFFICE
11. MINISTRY OF ITAUKEI AFFAIRS & NATIVE LANDS COMMISSION
12. CITIZEN CONSTITUTIONAL FORUM
13. NATIONAL FEDERATION PARTY
14. MINISTRY OF DEFENCE AND NATIONAL SECURITY
15. FIJIFIRST PARTY YOUTH WING
16. FIJI LAW SOCIETY

Opening Address to the Parliamentary Standing Committee on Foreign Affairs & Defence

Parliament House

1 May 2018

Honourable Netani Rika MP, Chair of the Parliamentary Standing Committee on Foreign Affairs & Defence, and other Honourable Members of the Standing Committee.

Vinaka vakalevu for providing the SPC Regional Rights Resource Team with the opportunity to make submissions on whether Fiji should ratify the International Covenant on Civil & Political Rights (ICCPR) and the International Covenant on Economic, Social & Cultural Rights (ICESCR).

Mr Chair, if you permit, I propose to make some short opening remarks and then take questions from the Committee.

As the Standing Committee will know, RRRT is the human rights program of SPC.

SPC is an inter-governmental organisation owned and governed by 26 member states comprising the 22 Pacific Island countries and territories (PICs) including Fiji, plus Australia, New Zealand, France and the United States.

SPC RRRT provides technical assistance to SPC member states – we're not a political body, nor an NGO, nor an advocacy body. Our assistance is technical only and in response to requests from SPC member states.

In relation to the subject matter before this Standing Committee, **SPC RRRT's position is that it supports the ratification of both the ICCPR and the ICESCR.**

There are many good reasons to ratify both Conventions and no doubt the Standing Committee will hear many of them during its deliberations.

Mr Chair, for my opening remarks, I propose to focus on the link between human rights and sustainable development and good governance. In other words, why ratifying the ICCPR and the ICESCR supports sustainable development and good governance. The reason for focusing my opening on this, Mr Chair, is because the work of SPC is in supporting its members to achieve their development goals.

Mr Chair, RRRT believes that Fiji and your Committee both support sustainable development and good governance. In fact, **Fiji has very publicly expressed its support for the Sustainable Development Goals, including at the United Nations.** When he addressed the General Assembly in September 2016, Prime Minister the Honourable Josaia Voreqe Bainimarama, confirmed that **sustainable development is at the core of Fiji's national agenda.**

In 2017, Fiji collaborated with the Danish Institute for Human Rights and 10 other countries (Azerbaijan, Chile, Denmark, Ecuador, Luxembourg, Portugal, Rwanda, Sierra Leone, Thailand and Uruguay) in preparing the report "Human Rights and the Sustainable Development Goals – Pursuing Synergies".

The report states “Human rights and sustainable development are interdependent and mutually reinforcing. In order to respond to rising global inequalities and realise the SDGs in a way that ‘leaves no one behind,’ human rights obligations and commitments will need to be applied, implemented and protected.”

The report goes on “... the SDGs are based around universal human rights. This explains why there is no particular SDG on human rights – in fact, human rights are part and parcel of every one of the 17 SDGs. Over 90% of the SDGs targets are embedded in human rights treaties. Thus, without progress on implementing those treaties, 90% of SDGs targets cannot be realised.”

Mr Chair, this report, which was co-prepared by Fiji, succinctly explains why human rights is at the heart of sustainable development.

Here in the Pacific, the Pacific Plan, which was endorsed by Pacific Leaders including Fiji, endorses the ratification and implementation of core human rights conventions, including the ICCPR and the ICESCR, as key goals for the region.

More recently, in 2015, the Denarau Declaration by Members of Parliament from Fiji, Kiribati, RMI, Nauru, Niue, Palau, Samoa, Solomon Islands, Tuvalu, Tonga, and Vanuatu, affirmed Pacific leaders’ vision for good governance and human rights. The Denarau Declaration stated that human rights are essential cornerstones of good governance and the social, economic and cultural development of Pacific Island nations. The Declaration also stated that human rights and good governance can be achieved when linked to Pacific cultures and values.

Good governance is key to addressing poverty and sustainable development. The ICCPR directly supports good governance by enshrining civil and political rights, including freedom of expression, movement, thought, conscience and religion, and the right to vote and to stand in elections.

The ICESCR meanwhile directly addresses some of the key development issues in Fiji – for example, the right to education, health, work, and to an adequate standard of living, including food, clothing and housing.

Fiji is a leader in the Pacific. Ratifying the ICCPR and the ICESCR will demonstrate this country’s leadership on human rights. It will demonstrate Fiji’s leadership on the Sustainable Development Goals because Fiji will highlight the importance of the relationship between human rights and sustainable development and good governance.

Mr Chair, Honourable Members, we conclude our opening remarks and are happy to take questions.

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ORAL SUBMISSION TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS & DEFENCE, THE PARLIAMENT OF FIJI, ON THE REVIEW OF ICCPR AND ICESCR

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Regional Office for the Pacific

2nd May 2018

The Standing Committee on Foreign Affairs & Defence of the Parliament of Fiji requested the attendance of OHCHR at the Parliament precinct to inform the Committee on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and provide clarification on related issues. OHCHR briefed the Committee on 2 May 2018. This submission contains some of the key highlights of the briefing.

I. INTRODUCTION TO THE COVENANTS

Together with the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are known as International Bill of Rights. The two Covenants were adopted by the General Assembly by its resolution 2200 A (XXI) of 16 December 1966. They are two core international human rights treaties.

ICCPR sets out civil and political rights which include, among others, the right to life; freedom from torture; freedom from slavery; the right to be treated with humanity in detention; freedom of movement; the right to a fair trial; right to be recognized before the law; right to privacy; freedom of religion; freedom of opinion and expression and freedom of association and assembly. ICCPR also provides for the right to form a family, the right of the child to registration and a nationality, and the right to participate in the public affairs.

Whereas ICESCR sets out, among others, the right to work, rights at work, right to social security, right to adequate standard of living (food, shelter and clothing), freedom from hunger, and the rights to health and education. ICESCR also provides for the right to take part in cultural life and the right to enjoy benefit from science and inventions.

Both the Covenants guarantee that the exercise of the human rights enunciated in the treaties shall be without **discrimination** of any kind as to race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or any other status. The Covenants recognizes that all peoples have the right of self-determination. By virtue of that right they “freely determine their political status and freely pursue their economic, social and cultural development”. The realization of this right is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.

The Constitution of Fiji has recognized many of the rights provided by the Covenants. By accessing the two treaties, Fiji will complement and further strengthen its domestic legal order which, as stated by the Constitution, is based on respect for human rights, freedom and the rule of law (*Article 1 (b), Constitution of Fiji*).

Specifically, on the ICESCR, some still tend to view economic, social and cultural rights (ESCR) as rights that countries can implement only when they reach a certain stage of economic development. The Covenant requires States “to take steps” to the maximum of their available resources to achieve progressively the full realization of ESCR. The “progressive realization” means that a State’s compliance with its obligation to take appropriate measures is assessed in the light of the resources available to it. And the term “available resources” includes both domestic resources and any international economic or technical assistance and cooperation available to a State. It also refers to both public expenditure and all other resources that can be applied towards the full realization of ESCR.

Most importantly, the concept of progressive realization does not mean that the Governments should remain idle or not doing anything to implement the Covenant rights. Lack of resources cannot justify inaction or indefinite postponement. On the contrary, the Governments should take specific measures from the time the Covenant comes into force in order to demonstrate that there is a progress. Such measures may range from reforming legislation and policies to development and implementation of programmes and allocation of resources and other administrative arrangements, as appropriate.

Even though States may realize ESCR progressively, they must also take immediate action, irrespective of the resources, in the five following areas:

- ✚ **The elimination of discrimination-** Discrimination must be prohibited in, for instance, health care, education and the workplace immediately.
- ✚ **Economic, social and cultural rights that are not subjected to progressive realization:** For example, the right to form and join trade unions and the right to strike; the obligation to protect children from economic and social exploitation.
- ✚ **Obligation to take “steps”-** While full realization of ESCR may be achieved progressively, steps towards that goal should be must be taken within a reasonably short time. Such steps should be deliberate, concrete and targeted, using all appropriate means, including particularly but not only the adoption of legislative measures.

- ✚ **Non-retrogressive measures-** States should not allow the existing protection of ESCR to deteriorate unless there is a strong justification. For example, introducing school fees in secondary education which had formally been free of charge.
- ✚ **Minimum core obligations/ contents of the rights-** Under ICESCR, there are obligations considered to be of immediate effect to meet the minimum essential levels of each of the rights. For example, primary education which is free, compulsory and universal is minimum core content of the right to education; minimum essential food which is nutritionally adequate and safe to ensure freedom from hunger in relation to the right to adequate food; and essential drugs as defined under WHO Action Programme on Essential Drugs in relation to the right to health. If State fails to meet these minimum contents, also known as “survival kit”, because it does not have the resources, it must demonstrate it has made every effort to use the available resources to satisfy these core obligations.

Human rights obligations emanating from the two Covenants require both **individual action** and **international cooperation**. According to UDHR, everyone is entitled to a social and international order in which the rights and freedoms therein can be fully realized and everyone has duties to the community.

Examples of “steps” State party should take towards progressive realization

- ✚ Assessing the state of enjoyment of ESCR with disaggregation of data
- ✚ Formulating strategies and plans, incorporating indicators and time-bound targets which should be realistic, achievable and designed to assess progress in the realization of ESCR;
- ✚ Adopting necessary laws and policies, and making adequate funds available to implement plans and strategies
- ✚ Regularly monitoring and assessing progress
- ✚ Establishing grievance mechanisms so that individuals can complain

Supervisory bodies (or Committees)

The Human Rights Committee, established in accordance with article 28 of the ICCPR, is the supervisory organ which monitors the compliance of the Covenant by the State parties. Whereas the ICESCR has the Committee on Economic, Social and Cultural Rights as a monitoring body. The both Covenants enjoy a high number of ratifications/ accessions. As of April 2018, 170 States have been party to the ICCPR and 167 States have become party to the ICESCR. This shows the near universal recognition of these instruments. This year’s 70th anniversary of UDHR provides the momentum to subscribe to these universal values and standards and accede to the Covenants.

Optional protocols

There are two Optional Protocols to ICCPR. The first Optional Protocol establishes an individual complaint mechanism and the second Optional Protocol aims to abolish the death penalty. The Optional Protocol to the ICESCR enables the Committee on Economic, Social and Cultural Rights to receive and consider communications or complaints from individuals or groups of individuals. These

Optional Protocols are separate treaties and apply to Fiji only if the country becomes a party to them.

II. WHY SHOULD FIJI BECOME A PARTY TO THE ICCPR AND THE ICESCR?

Constitution of the Republic of Fiji

The Constitution of Fiji 2013 commits to the recognition and protection of human rights, and respect for human dignity (*Preamble*). It incorporates a catalogue of both civil, cultural, economic, political and social rights under the Constitutional Bill of Rights. All these rights derive from the International Bill of Rights. Fiji's accession to the ICCPR and ICESCR will help the country to further strengthen its legal framework to respect and protect human rights. By enforcing international human rights treaties, domestic implementation will be most effective.

Recommendations of the UN human rights mechanisms, including Universal Periodic Review (UPR)

In 2010 and 2014, Fiji was reviewed under the first and second UPR Cycle. A number of member States, who participated in the UPR review's interactive dialogue, recommended Fiji to ratify the remaining international human rights treaties, including ICCPR and ICESCR. Fiji supported these recommendations. The next review of Fiji's human rights records under 3rd UPR Cycle will take place during the 34th Session of Human Rights Council in October-November 2019 which will focus on the implementation of recommendations from previous UPR cycles. Therefore, the ratification of these and other remaining international human rights treaties will demonstrate Fiji's progress towards implementation.

The recommendations of treaty bodies, such as the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW) require Fiji to accede the two Covenants.

Similarly, the Special Rapporteur on the right to education and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, following their visit to Fiji in 2015 and 2016 respectively, recommended Fiji to ratify the two Covenants as well as other remaining international human rights instruments.

Fiji's 5-and 20-Year National Development Plan

The 5-and 20-Year National Development Plan commits Fiji to become a party to all human rights treaties and conventions by 2024.

Strengthening national protection mechanisms

Fiji has its Human Rights and Anti-Discrimination Commission (FHRADC) mandated by the Constitution for the promotion, protection and observance of human rights. Becoming a party to the Covenants will further support FHRADC in discharging its mandate effectively.

Fiji is already a State party to some of the core and thematic human rights treaties which include the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment (CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD). These treaties address specific human rights issues- i.e. torture, racial discrimination and/or specific groups, such as women, children and persons with disabilities. Accession to the two Covenants would contribute to a more comprehensive human rights protection empowering the disadvantaged and marginalised, and contributing to develop Fiji to a more inclusive, democratic and tolerant society.

III. IMPACT OF THE ACCESSION TO FIJI

Reporting

One of the obvious consequences that the accession to the two Covenants is they will oblige Fiji to report regularly to their respective Committees. In accordance with article 40 of ICCPR, the State party should submit its initial report within one year of the entry into force of the Covenant and thereafter whenever the Committee so requests (normally within 4/5 years). Whereas in the case of ICESCR, the State party should submit its initial report within two years of the entry into force of the Covenant and thereafter every four years on the progress made during the reporting period. Reporting requires time and can be onerous. However, the effort serves a wider purpose and provides clear benefits. The review by the treaty bodies is based on constructive dialogue and provides an opportunity for the State party to assess the progress made in implementing the rights set forth in the treaties. The Concluding Observations of the treaty bodies which contain recommendations to the State under review may serve further guidance to implement the treaty. The recommendations cover all aspects of the implementation from policy reform to allocation of resources and assessment of the plans and programmes with disaggregation of data.

Civil Society Organizations (CSOs), including NGOs, can also take part in this process through shadow reporting, whereas National Human Rights Institutions (i.e. FHRADC) can make their own submissions to the Committee concerned. However, the representatives of CSOs can only participate as an observer during the face-to-face dialogue that take place between the Committee and the Government delegation in Geneva, Switzerland.

Meaningful resources and capacity building

Most of the States in the Pacific region that have ratified international human rights treaties have voiced their difficulty in complying with the reporting obligations—as also do many other countries in other regions of the world. Insufficient human and financial resources have often been cited. Fiji is not exception to this. National reporting capacity can be strengthened over time with the assistance from donors, the private sector and UN agencies.

In 2014, General Assembly mandated OHCHR to support States parties in building the capacity to implement their treaty obligations and to provide in this regard advisory services, technical assistance and capacity-building. In 2015, OHCHR established the Treaty Body Capacity Building Programme and deployed dedicated

human rights capacity-building officers in every regional office, including in the Pacific (Suva) of the Office of the High Commissioner. There are currently 10 human rights officers based in OHCHR regional offices and six human rights officers at HQs Devoted to such assistance.

The major responsibility of the Human Rights Capacity Building Officer is to provide technical assistance to States for reporting to human rights treaty bodies, including by providing training and supporting the States at the national level to develop institutional capacity, report and follow-up.

The OHCHR Regional Office for the Pacific stands ready to extend this support to the Governments in the Pacific region, including Fiji. As of April 2018, around 150 Government officials from all 14 Pacific countries benefited from OHCHR trainings and technical support implemented in this area. In 2017 alone, OHCHR organized two 4-day regional workshops between May and November, focusing on treaty body reporting, national reporting and follow-up mechanism and ESCR and human rights indicators.

In addition, other UN agencies like UNICEF and UN Women and the regional organisations like Regional Rights Resource Team of Secretariat of the Pacific Community (RRRT/SPC) have also been supporting the Governments in the Pacific to meet their reporting obligations. In fact, we all work in collaboration to help the countries from the region to engage with treaty bodies. In January 2018, RRRT, UN Women and OHCHR jointly held a mock session on CEDAW for the delegation of the Fijian Government led by the Minister for Women, Children and Poverty Alleviation on the eve of their travel to Geneva to engage with the CEDAW Committee in a constructive dialogue. OHCHR remains committed to provide such support to Fiji in order to fulfil its reporting obligations under the both Covenants.

National Mechanisms on Reporting and Follow-up (NMRF)

An effective National Mechanism on Reporting and Follow-up (NMRF) is primarily a coordination body within the Government with the aim of reporting and following-up the recommendations emanating from UN human rights mechanisms (Treaty Bodies, UPR and Special Procedures). Until now, Fiji has been reporting to CEDAW, CRC and CERD and the UPR in an ad hoc manner and coordinated by different Government actors i.e. the Ministry of Women, Children & Poverty Alleviation takes a lead on CRC, CEDAW and CRPD reporting and the Office of the Attorney General lead the CAT and CERD reporting. By adopting a comprehensive approach, especially by setting up a national mechanism for reporting and follow-up to coordinate amongst various government ministries, Fiji can deliver more in an efficient and effective manner. Fiji has already received over 300 recommendations from the UN human rights mechanisms which it needs to implement and follow-up. It has also to report on SDGs. An NMRF with engagement, coordination, consultation and information management capacities can be a viable option.

The NMRF can be a separate institution, a ministerial body, or an inter-ministerial mechanism and may be established by a cabinet decision (as it is the case in Samoa, Vanuatu and Kiribati) or through a separate law (i.e. the Marshall Islands). OHCHR,

through its Treaty Body Capacity Building Programme and its UPR Trust Fund on Implementation, stands ready to lend its continued support to States, in particular on reporting, the establishment and/or strengthening of NMRFs, sharing best practices to enhance reporting and follow-up.

Support to reform legislation and policies

After ratification or accession to these treaties, another consequence normally anticipated is alignment of existing legislation and policies with the ICCPR and ICESCR. For this, Fiji may need to carry out a legislative review and identify gaps and shortcomings in the existing laws and policies related to the rights set forth in these treaties. Such a review will help the Government and national stakeholders to ensure greater compliance of existing domestic laws with these treaties.

Custom and human rights

Each nation has its traditions and customs that do not necessarily conflict with human rights principles. All cultures and civilizations through their traditions, customs, religions and beliefs share a common set of values, which include dignity, compassion and justice. However, if the traditional practices are harmful, such as forced and early marriage, polygamy, accusation of witchcraft and any other forms of violence, particularly against women and girls, they become a concern from the prism of international human rights law. Public discussion and dialogue, mobilization of media, academia, civil society organizations, as well as awareness and education, can help towards addressing this concern and promoting reconciliation. The UN treaty bodies, including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, can provide guidance and advice on this process. Since culture and traditions are dynamic, and change over time, they should not always be seen as an objection against universal values protected by international human rights law. It is only harmful traditional practices, which tend to weaken the position of women, girls and other vulnerable groups in the society when it comes to the enjoyment of their human rights, are incongruent to the international human rights law.

IV. THE IMPACT OF RATIFICATION OF THESE TREATIES TO NGOS, CSOS

The ratification of the two Covenants by Fiji may bring positive impact and result in better collaboration between NGOs/CSOs and the Government. Ratification or accession, although led by the Government, is a nationally driven and owned process. The both Covenants provide a framework and guidance for the national actors, including civil society and NGOs while engaging with the Government to advance the realization of human rights. In some situations, the local NGOs and community-based organisations, including churches can be of assistance and partners when it comes to reaching out the communities in need with services and support. The findings and public reports of the NGOs who are on the ground to monitor the implementation of human rights provided by the two Covenants may inform the policy makers and help the Government take more concrete measures, including addressing policy and resource gaps.

At international level, the NGO reports, also known as “shadow reports” may provide additional information to the Committee from the civil society perspectives. The Committees analyse the CSOs reports, including critical inputs, and may refer to it during the dialogue with the State party and ask the latter for clarification. The Committee would not rely on civil society reports only, without giving the State party an opportunity to express its point of view. In some cases, the NGO reports may offer critical input and help the review process to be constructive.

Fiji has already demonstrated an example on how the Government and CSOs/NGOs can better collaborate and cooperate in its fight against climate change. All national stakeholders have joined forces during Fiji’s presidency in COP 23 in Bonn and made it a success.

V. CONCLUSION

In a nutshell, accession to ICCPR and ICESCR:

- ✦ provides a legal regime of accountability;
- ✦ enables the realization of human rights and strengthens adherence to the rule of law;
- ✦ provides an opportunity to strengthen intra-government cooperation;
- ✦ improves the international profile of Fiji;
- ✦ involves meaningful participation of civil society in the development process; and
- ✦ encourages a more effective system of aid, technical support and cooperation.

Finally, Fiji is a global leader in combating climate change. The ratification of these and other remaining international human rights treaties will place Fiji at the forefront not only in the Pacific and the region, but also at the global level when it comes to respect and commitment to human rights. In particular, ICESCR provides a strong legal basis and framework to protect individuals and groups from the adverse impact of climate change, which is one of the growing global challenges and specifically in the Pacific region and Fiji. The ICESCR can also assist Fiji to play a key role in developing new climate mitigation and adaptation technologies, including technologies for sustainable production and consumption given that article 15 (b) provides for scientific progress and invention.

It is, therefore, desirable for Fiji to accede to ICCPR and ICESCR as a matter of priority.

Constitution of the Republic of Fiji	International Covenant on Civil & Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
RECOGNISING the indigenous people or the iTaukei, their ownership of iTaukei lands, their unique culture, customs, traditions and language; RECOGNISING the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language; RECOGNISING the descendants of the indentured labourers from British India and the Pacific Islands, their culture, customs, traditions and language; and RECOGNISING the descendants of the settlers and immigrants to Fiji, their culture, customs, traditions and language,	Article 27 : In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.	
8. Right to life	Article 6 : The right to life, and its protection by law.	
9. Right to personal liberty	Article 9 : Everyone has the right to liberty and security of person.	
10. Freedom from slavery, servitude, forced labour and human trafficking	Article 8 : Freedom from slavery or "forced and compulsory labour."	
11. Freedom from cruel and degrading treatment	Article 7 : The right to be free from torture or "cruel, inhuman, or degrading treatment." Prohibits non-consensual medical and scientific experimentation.	
12. Freedom from unreasonable search and seizure		
13. Rights of arrested and detained persons	Article 9 : Freedom from unlawful arrest or detention, and the right to habeas corpus, or to appear before a judge; provides victims the right to seek compensation. Article 10 : All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.	
14. Rights of accused persons	Article 14 : Everyone is equal before the law and is presumed	

Constitution of the Republic of Fiji	International Covenant on Civil & Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
	<p>innocent until proven guilty; accused persons have the right to a fair and speedy trial, with all decisions made public except as concerns juveniles, guardianship, or marital disputes. They also have the rights to translation, to free legal assistance, to ample time to prepare a defense, to be present during the trial, to examine witnesses, to be considered for pardon, and not to be tried twice for the same crime after a judgment has been made.</p> <p>Article 15 : Cannot retroactively charge someone for an offence when it was not designated as a crime at the time it was committed; each person must be fairly punished based on current law.</p>	
15. Access to courts or tribunals	<p>Article 9 Article 14</p>	
17. Freedom of speech, expression and publication	<p>Article 19: the right to hold opinions without interference, right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p>	
18. Freedom of assembly	<p>Article 21: The right to peaceful assembly</p>	
19. Freedom of association	<p>Article 22 : The right to freedom of association.</p>	
21. Freedom of movement and residence	<p>Article 12: Freedom of movement within and across national borders.</p>	
22. Freedom of religion, conscience and belief	<p>Article 18 : Freedom of thought, conscience, and religion.</p> <p>Article 27 : The right, for</p>	

Constitution of the Republic of Fiji	International Covenant on Civil & Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
	members of religious, ethnic or linguistic minorities, to enjoy their culture, to practice their religion, and to use their language.	
<p>23. Political rights</p> <p>23.—(1) Every citizen has the freedom to make political choices, and the right to— (a) form or join a political party; (b) participate in the activities of, or recruit members for, a political party; and (c) campaign for a political party, candidate or cause.</p>	<p>Article 1 : the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p>Article 25 right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:</p> <p>(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;</p> <p>(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;</p> <p>(c) To have access, on general terms of equality, to public service in his country.</p>	
<p>24. Right to privacy</p>	<p>Article 17 : The right to privacy and its protection before the law.</p>	
<p>26. Right to equality and freedom from discrimination</p>	<p>Article 2 : to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or</p>	

Constitution of the Republic of Fiji	International Covenant on Civil & Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
	other opinion, national or social origin, property, birth or other status.	
31. Right to education		Article 13: the right of everyone to education.
<p>32. Right to economic participation</p> <p>32.—(1) Every person has the right to full and free participation in the economic life of the State, which includes the right to choose their own work, trade, occupation, profession or other means of livelihood.</p> <p>(2) The State must take reasonable measures within its available resources to achieve the progressive realisation of the rights recognised in subsection (1).</p> <p>(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).</p>		Article 6 : the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
33. Right to work and a just minimum wage.		<p>Article 6 : the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.</p> <p>Article 7 : the right of everyone to the enjoyment of just and favourable conditions of work including fair wages, safe and healthy work conditions</p>
35. Right to housing and sanitation		Article 11 : the right of everyone to an adequate standard of living for himself and his family, including [...] housing, and to the continuous improvement of living conditions.
36. Right to adequate food and water		Article 11 : the right of everyone to an adequate standard of living for himself and his family, including

Constitution of the Republic of Fiji	International Covenant on Civil & Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
		adequate food, clothing and housing, and to the continuous improvement of living conditions. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger,
37. Right to social security schemes		Article 9 : right of everyone to social security, including social insurance.
38. Right to health		Article 12 : right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
39. Freedom from arbitrary evictions	Comes within a range of internationally recognized human rights, the human rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment, and freedom of movement.	
41. Rights of children 41.—(1) Every child has the right— (a) to be registered at or soon after birth, and to have a name and nationality; (b) to basic nutrition, clothing, shelter, sanitation and health care; (c) to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child— (i) whether or not the parents are, or have ever been, married to each other; and (ii) whether or not the parents are living together, have lived together, or are separated; (d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and (e) not to be detained, except as a measure of last resort, and when detained, to be held— (i) only for such period of time as is necessary; and (ii) separate from adults, and in conditions that take account of the child's sex and age	Article 24 : The right of every child to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. including the rights to status as minors, to a name, to be registered, and to a nationality. Article 23 : In the case of dissolution of marriage, provision shall be made for the necessary protection of any children. Article 10(3) : Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.	Article 10 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. Article 13 : right to education
42. Rights of persons with disabilities	Both conventions are founded on the principle of non-	

Constitution of the Republic of Fiji	International Covenant on Civil & Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
<p>42.—(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.</p> <p>(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.</p> <p>(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.</p>	discrimination and the rights guaranteed will apply equally to persons with disabilities.	



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

SUBMISSIONS BY THE DIRECTOR OF PUBLIC PROSECUTIONS IN RESPECT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

MADE TO THE FOREIGN AFFAIRS AND DEFENCE STANDING COMMITTEE OF THE PARLIAMENT OF THE REPUBLIC OF FIJI

Date: 4 May 2018

To: The Chairman of the Foreign Affairs and Defence Standing Committee:

INTRODUCTION

1. The Director of Public Prosecutions ('DPP') is constitutionally responsible for regulating criminal proceedings and to a degree, criminal investigations in Fiji. The Office of the Director of Public Prosecutions (ODPP) is an independent office by virtue of section 117 of the 2013 Constitution. The ODPP was first established under the Fiji Independence Act 1970.
2. The mandate of the ODPP is set out in section 117 of the Constitution. Section 117(8) empowers the Director of Public Prosecutions (DPP) to:
 - (a) institute and conduct criminal proceedings;
 - (b) take over criminal proceedings that have been instituted by another person or authority (except proceedings instituted by the Fiji Independent Commission Against Corruption);
 - (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public Prosecutions or another person or authority (except proceedings instituted or conducted by the Fiji Independent Commission Against Corruption); and



(d) intervene in proceedings that raise a question of public interest that may affect the conduct of criminal proceedings or criminal investigations.

3. The DPP has been requested by the Chairman of the Foreign Affairs and Defence Standing Committee to clarify certain issues relating to the possibility of Fiji ratifying the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. (ICESCR).
4. This Submission attempts to address the issues raised by the Standing Committee in its letter of invitation to the DPP dated 24th April 2018.

Questions 1 & 2: Benefits of Fiji Ratifying the ICCPR and the ICESCR (the Conventions)

5. Fiji has been independent since 1970 and has undergone significant economic, social, legal and political development during that period. It now constitutes a stable and mature democracy. Fiji has signed the UN Charter and is a signatory to the Rome Statute of the International Criminal Court. Various legal commentators have argued that the UN Declaration of Human Rights adopted by the UNGA in 1948 has become a binding part of customary international law. Whilst that assertion has not met with universal consensus, it is clear that the Declaration carries enormous moral and political effect. The two 1966 conventions (the ICCPR and the ICESCR) represent an international bill of rights which most countries of the world have signed and ratified. The last 20 years have seen an increase in signatories to the two conventions and now countries such as Pakistan, India and many other developing countries have signed and ratified these conventions.
6. Importantly in the regional context, besides NZ and Australia who have signed and ratified both conventions, Papua New Guinea (2008) Vanuatu (2008), Palau (2011), Nauru (2001) and Samoa (2008) have all felt able and willing to ratify the ICCPR. Papua New Guinea and Palau have also ratified the ICESCR.



7. The benefit to Fiji ratifying would be to signal its acceptance of international norms and best practice and to underline its status as a nation committed to the rule of law and respect for human rights. The voice and authority with which Fiji presents its views on myriad legal, political and diplomatic issues will be fortified in various fora when Fiji speaks as a State that has formally committed itself to these 2 international conventions.
8. There is also some evidence to suggest that inward investment into Fiji and its attractiveness as a place to do business will be enhanced by its voluntary commitment to these foundational human rights conventions. As Fiji moves forward and continues to develop, the values, safeguards and other protections of the Conventions may provide a further strengthening of the foundations of the country for the next phases of its development.
9. Ratifying the Conventions will allow Fiji to stand for membership of the UN Human Rights Committee and increase the diplomatic standing and strength of Fiji in the world.
10. If the decision is made to ratify the ICCPR, Fiji will have to consider whether it will make an Article 41 declaration. An Article 41 declaration provides that the UN Human Rights Committee may receive and consider communications to the effect that a state party claims that another state party is not fulfilling its obligations under the convention. It must be understood this provision may allow other states who have deposited Article 41 declarations themselves to file communications (which are essentially complaints) to the UN Human Rights Committee but it will also allow Fiji to make such communications itself against other States that have made an Article 41 declaration. The relevant provisions in this regard would be Articles 41 & 42 of the ICCPR.
11. It should be noted however that Fiji has adequate redress mechanisms to deal with complaints that an individual's human rights have been breached either through the constitutional redress provisions of the 2013 Constitution or with the assistance of the Commission for Human Rights and Anti-Discrimination. Fiji has adequate institutions



and laws in place to deal with complaints that Fiji is not fulfilling its obligations under the conventions and other human rights law. There are currently matters before Fiji's courts that are dealing with a number of human rights law claims.

12. Fiji should not make an Article 41 Declaration.
13. Although Fiji is yet to ratify the Conventions, it should be noted that Fiji's Constitution already incorporates the rights contained in the Conventions in its own Bill of Rights. (Please see attachment).
14. In addition, section 7 of the Fijian Constitution allows relevant international rights law to be used to interpret the rights and freedoms protected in Fiji's Bill of Rights. A number of international decisions concerning the interpretation and application of human rights have already been used in Fiji by the courts. Ratification of the ICCPR and the ICESCR will allow a greater depth of jurisprudence to be utilised in the courts of Fiji.
15. It should also be noted that ratification of the ICCPR and the ICESCR may have an impact on existing or proposed laws which will need careful scrutiny to ensure they are compliant with the rights contained in the ICCPR and the ICESCR. For example, Fiji's current Online Safety Bill and the Registration of Sex Offenders Bill will need to consider the impact of Article 17 of the ICCPR and the jurisprudence that is developing in relation to the State's obligation to respect the privacy of individuals.
16. To ensure compliance with any proposed law, it may be advisable in future to require proposed legislation to be certified in some manner by an independent body such as the Commission for Human Rights and Anti-Discrimination to the effect that the proposed law is in accordance with or does not derogate from, the rights recognised in the Conventions. There is a similar procedure in New Zealand where Section 7 of the NZ Bill of Rights Act 1990 requires the Attorney-General to draw to the attention of Parliament the introduction of any Bill that is inconsistent with the Act. The Ministry of Justice, which prepares this advice for the Attorney-General, requires a minimum of two weeks to review the draft legislation.



17. Finally, it should be noted that Fiji will be required to undertake any necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the ICCPR.(refer Article 2 (2) ICCPR).

OPTIONAL PROTOCOLS:

18. There are two optional protocols to the ICCPR and one optional protocol to the ICESCR which gives additional human rights protections.

ICCPR First Optional Protocol:

19. This protocol allows victims claiming to be victims of human rights violations to be heard. The UN Human Rights Committee which is established by the Convention, has the jurisdiction to receive, consider and hear communications from victims. The first Optional Protocol came into force with the Convention. There are currently 35 signatories and 115 parties to this protocol.

ICCPR Second Optional Protocol:

20. This protocol aims to abolish the death penalty. It was entered into force on July 11, 1991 and it currently has 37 signatories and 81 parties.

ICESCR Optional Protocol:

21. This protocol is a side-agreement to the Covenant which allows its parties to recognise the competence of the Committee on Economic Social and Cultural Rights to consider complaints from individuals.
22. The Optional Protocol was adopted by the UN General Assembly on 10 December 2008. It was opened for signature on 24 September 2009, and as of February 2013 has been signed by 40 parties and ratified by 22. Having passed the threshold of required ratifications it has entered into force on 5 May 2013.
23. The DPP has not been requested to comment on any of the optional protocols however would note that Fiji has adequate mechanisms to deal with complaints that an individual's rights under both the ICCPR and the ICESCR have been breached



through the constitutional redress provisions of the 2013 Constitution or with the assistance of the Commission for Human Rights and Anti-Discrimination.

24. For this reason, it is suggested it would be unnecessary and undesirable to consider adopting the Optional Protocols.

Question 3: Impact of ratification on the ODPP in terms of best practice

25. Countries may sign up to the ICCPR but it is important to note that after the ratification process States undertake certain responsibilities. The ratification of the ICCPR will constitute a yardstick by which Fiji's adherence to its commitments will be measured. Articles 14 and 15 of the ICCPR in particular deal with fair trial rights. The impact of these two Conventions in terms of international best practice will be to require the ODPP to have closer regard to the general comments of the UN Human Rights committee and the work of the UN Special Rapporteurs established under the special procedure mechanism of the UN Human Rights Council. This will require officers of the ODPP to be further trained in how the protections and requirements of the ICCPR and ICESCR should influence our work. It is only fair to note that the impact may be wider and directly involve training needs and improvements by the arms of law enforcement (e.g. Police). In practical terms, in terms of advice to the police I would expect that over time the requirements of the ICCPR as explained by the UN Human Rights Committee will also form part of the training/advice to the police provided by my office.
26. By Article 40 of the ICCPR and Article 18 of the ICESCR, Fiji will be required to submit reports to the UN Human Rights Committee regarding steps it has taken to uphold and incorporate the Conventions. My office will have to be consulted/provide information on these reports.
27. Article 23 ICESCR for instance which requires the holding of regional meetings and technical meetings for study and consultation will require the involvement and participation of my office.



Question 4: Judicial or Court (prosecution) processes to facilitate the implementation of the two treaties

28. As mentioned above, the courts of Fiji by virtue of section 7 of the Constitution are able to use international human rights law jurisprudence to interpret the rights contained in the Fijian Constitution. The Supreme Court also previously affirmed the use of international rights conventions in the interpretation of local laws in *State v Tevita Nalawa* [2009].

Question 5: Provisions in the ICCPR dealing with persons under detention in police or correctional facilities

29. Articles: 9, 10 and 7

Article 9

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
- 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
- 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
- 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
- 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Article 10



1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 7

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 free consent to medical or scientific experimentation.

30. Essentially the provisions relate to the periodical review of detentions and to the treatment of persons in detention. Even initially lawful detention becomes arbitrary and contrary to law if it is not subjected to periodic review.

31. Article 9 prohibits indefinite detention, however Article 4 permits a temporary derogation from Article 9 in "time of public emergency which threatens the life of the nation" and is subject to the principle of proportionality "to the extent strictly required by exigencies of the situation. Examples of categories of persons usually affected by indefinite detention would be common-criminals held in pre-trial detention without bail, those held as "security risks" i.e. Terrorists, asylum-seekers, persons under psychiatric illness.¹

¹ See : Compilation of General Comments and general comments adopted by human rights treaty bodies HRI/GEN/1/Rev.8/Add.1 11 June 2007 it was noted that para 9.1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as for example mental illness, vagrancy, drug addiction, immigration control



32. Those who are in detention (i.e. Deprived of their liberty) are entitled to a prompt trial/release (Art 9.3). And those who have been subjected to arbitrary detention are entitled to compensation (Art9.5)

Question 6: provisions in ICESCR dealing with rights of persons with disabilities before the Courts

33. The Convention does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Convention's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Convention. In addition, insofar as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Convention, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Convention that the rights "enunciated ... will be exercised without discrimination of any kind" based on certain specified grounds "or other status" clearly applies to discrimination on the grounds of disability.²

34. The main provisions for access to justice and rights before the courts are contained in the ICCPR but both conventions are founded on the principle of non-discrimination. So, courts will have to make sure that access to justice is available to persons with disabilities for sign-language as a means of understanding proceedings and giving evidence. Access to justice founded on non-discrimination makes it an obligatory affirmative obligation in terms of legislation to take account of people with disabilities in order to ensure that they are not discriminated against including rights of access to courts.

35. It should be noted that in Fiji, the Rights of People with Disability Bill 2016 deals in Sections 33 -26 with the fundamental rights of access to justice and proper treatment

² CESCR General Comment 5 09/12/94 (OHCHR)



in detention. Even without these conventions, we are giving particular to the rights of persons with disabilities before the Courts.

Question 7 Rights of Women and Children before the Courts guaranteed by ICCPR

36. The all-gender encompassing language such as “all-persons” , “no-one” and ‘every citizen’ aims at promoting gender equity and equality in the application of the ICCPR.

Therefore all women and children are guaranteed under Articles 14 and 15:

- Right to freedom from torture, inhuman and degrading treatment or punishment;
- Right to Liberty and security of person, and right to compensation for unlawful arrest or detention;
- Right to a fair trial;
- Right not to be punished without law;
- Right of appeal in criminal matters and right not to be punished twice for the same offence;

Additional Provisions relevant to children:

37. Article 14(4) – requires procedures to be such that will take into account their age and desirability of promoting rehabilitation.

38. Article 24: Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Question 8: Challenges

39. As mentioned, certain of the challenges will be ensuring Fiji’s laws are compliant with the rights under the Conventions. I have suggested a mechanism similar to that used in New Zealand whereby the Attorney-General draws to the attention of Parliament the introduction of any Bill that is inconsistent with the Act or possibly by



way of certification from an independent body such as the Human Rights and Anti-Discrimination Commission.

40. Due to the reporting requirements, Fiji will need to monitor its progress in all areas of the criminal justice system. This will require more resources and time dedicated to upgrading systems. We already have efficient systems in place but will need to review these systems and upgrade where necessary. We will be required to provide training to our own legal officers as well as police prosecutors, police officers, and other prosecuting agencies.

CONCLUSION

41. The Office of the Director of Public Prosecutions recommends ratification of the two Conventions but advises against making an Article 41 declaration and advises against adopting the optional protocols.
42. The Director of Public Prosecutions is pleased to have been invited to make submissions on the Bill. It is hoped that these submissions are helpful.
43. On behalf of the Office of the Director of Public Prosecutions, I wish the Law and Justice Standing Committee the very best as it undertakes its deliberations on the Bill.

Christopher T. Pryde
DIRECTOR OF PUBLIC PROSECUTIONS



Social Democratic Liberal Party

"Leadership that listens"

Youth Forum

Submission

To The Standing Committee on Foreign Affairs and Defence

On the Examination of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social & Cultural Rights

04th May, 2018

Salutations

The Honourable Chairman and Members of the Standing Committee – Ni sa bula vinaka, Namaste and As-salamu alaykum.

I thank this Committee for giving us the opportunity to present our views on the two Human Rights Covenants or treaties being considered by the Committee.

We express our gratitude that the Government is considering the ratification of the two key human rights covenants declared by the United Nations General Assembly (UNGA) as binding on States that ratify them, after the historic Universal Declaration on Human Rights was made in 1948 by the UNGA, the founding universal human rights instrument.

The Social Democratic Liberal Party and its Youth Forum strongly urge and support the proposal that Fiji ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

We pay tribute to and recognise the foresight and commitment of our former Leaders who signed the Refugee Convention, the Genocide Convention, and the Convention on the Elimination of Racial Discrimination (CERD), among others, while Fiji was a colony - the then First Minister the late, Right Honorable Ratu Sir Kamisese Mara.

We also recognise the visionary leadership of our Party Leader & Former Prime Minister Sitiveni Rabuka whose SVT Government signed the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as well as the ILO Convention No. 169 on the Rights of Indigenous & Tribal Peoples and participated in negotiations on the UN Draft Declaration on the Rights of Indigenous Peoples which was finally declared by the UN General Assembly in 2007.

We also commend the FijiFirst Government for signing the Convention Against Torture (CAT), albeit with reservations declaring some provisions are non-binding, as well as the Disability Convention. However, we note with disappointment the absence of the Fiji UN representatives on the occasion of the Declaration on the Rights of Indigenous Peoples in 2007 at the UN General Assembly.

Nonetheless, we commend you Mr. Chairman and the members of your Committee for this important work to consider the merits of ratifying the ICCPR and ICESCR, which we see as the parent Human

Rights Covenants, that later gave birth to the specific conventions for children, women, the disabled and other protected minorities and vulnerable groups.

Introduction

This year is the 70th Anniversary of the Universal Declaration on Human Rights (UDHR), which is the founding human rights instrument, that later birthed the two Covenants which are presently before this committee and the other human rights treaties or conventions for children, women, the disabled, and the minority and vulnerable groups.

As members of the Social Democratic Liberal Party, the SODELPA Youth espouse our collective vision *"to build a secure, peaceful, prosperous and stable nation through inclusive leadership and governance that will foster improved livelihoods, sustainable economic and social development, protection of our environment, and reduced vulnerability to the adverse impacts of climate change"*. We are united in our belief that Fiji needs strong leadership, and a transparent and accountable government.

The SODELPA Youth therefore believe that ratification of the ICCPR and the ICESCR is timely and a prerequisite for Fiji's progress.

Since ratification will ensure Fiji is working to meet basic international human rights standards on civil and political rights, and economic, social and cultural rights. It is an assurance to the people that the Government respects their human rights, is working to deliver on those human rights and will not itself be in breach of human rights in the exercise of the peoples' power which is exercised by the agencies of the Government, such as the Police, the Military, the Judiciary, the Parliament, and all the Agencies of Government that exist to serve the people.

We believe the current electoral laws and procedures are in breach of the ICCPR as recognised by the Multi-national Observer Group Report on the 2014 General Elections which urged Fiji to ratify ICCPR and we are aware that the Chairman of the Electoral Commission Mr. Suresh Chandra undertook in a meeting with political parties in 2017, that Fiji was considering ratification of the ICCPR.

For the ICESCR, we appreciate that its implementation is "progressive" i.e. the United Nations General Assembly recognised that economic, social and cultural rights cannot be realised or delivered by States or Governments, but can only be progressively realised depending on the economic situation of that particular country, and resources available, to be able to deliver to its citizens the various economic, social and cultural rights.

However, for the first generation civil and political rights in ICCPR, there is recognition that these do not require State resources but simply are rights to be guaranteed by the Government - the right to freedom of speech, the right to vote and choose our government, the freedom of assembly, the rights of detained persons - these civil liberties must be guaranteed and respected by all governments, because they are essential to a democracy, being means by which the people express their views.

Democracy after all being "government BY the people" rather than a select or chosen few enforced and maintained through draconian laws and an oppressive police or military.

Human Rights in Fiji have been curtailed since the 2006 coup, first through the Public Emergency Regulations, then the abrogation of the 1997 Constitution, the imposition of the Media Decree, the Public Order Amendment Decrees, the Crimes Decree and various other laws that impinge on the civil rights of our citizens.

It is a truism, that when government powers are unlimited, the people or citizens will not be free, so for the people to enjoy their rights and manifest their full potential, the exercise of state power or authority, must be limited. The most important tool for this limitation on state power, are usually the Bill of Rights of Constitutions, or a Human Rights Act, in some countries.

The SODELPA Youth hold the UDHR in high regard, yet as a Declaration, its application is limited, being a UNGA Declaration, it is non-binding, though we know that over the 70 years since it was made, some of the rights have become part of international law. That is why ratification of the Covenants and Conventions is important, because by ratifying, a State agrees to be bound by its provisions, and to be examined periodically by the UN Treaty Bodies and the Universal Periodic Review (UPR) on its respect or implementation of the Covenants and Conventions it has ratified.

We acknowledge that the 2013 Constitution Bill of Rights encompasses Human Rights, but, we do not support the undemocratic means through which it was foisted upon Fijians, an action that in itself is a violation of the will of the people.

We see the 2013 Constitution as a transitional Constitution similar to the 1990 Constitution that enabled elections and a return to a semblance of democracy, but like the 1990, the 2013 Constitution needs to be reviewed to truly reflect the Will of the People of Fiji.

We hereby declare our support for the call by the UN Treaty Bodies, as well as the Universal Periodic Review, for Fiji to ratify ICCPR and ICESCR.

Implications of Ratification of the ICCPR

Ratification of the ICCPR will mean a review of the Constitution, in particular the Bill of Rights and other Decrees including the Land Use Decree, the Regulation of Surfing Areas Decree, the Crimes Decree, the Media Decree, and the Public Order Decrees, and the Government will be obligated by Article 2 of the ICCPR to:

"legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Part 2 also provides that rights can only be limited "in times of public emergency which threatens the life of the nation," and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion."

Recommendation

1. It is recommended that Government Ministers and Ministries that have responsibility for enforcing and implementing laws that are affected by the ratification of the ICCPR undertake a review of the provisions that need to be amended and the Legislative Draftsmen be commissioned to draft the necessary amending Bills for presentation in Parliament upon ratification of the ICCPR.
2. It is recommended that there be no reservation or derogation from the articles of the ICCPR in order to 'preserve' the non-compliant

provisions of the Bill of Rights of the 2013 Constitution. Rather, that the 2013 Constitutional provisions be brought in line with the ICCPR.

The ICCPR and Elections in Fiji

The Multinational Observer Group (MOG) on the 2014 General Elections, in its report discussed the need for Fiji to ratify the ICCPR. This call has been supported by the Social Democratic Liberal Party, which in May 2017 made extensive recommendations to the Fiji Electoral Commission, for the reform of electoral laws and procedures.

The Multinational Observer Group (MOG) recommended ratification of the International Covenant on Civil and Political Rights (ICCPR). This has the objective of creating the enabling environment necessary for free and fair elections to be held in Fiji, an environment of political freedom once we remove the prevailing climate of censorship, intimidation and fear.

The Fiji Government delegation to the UN Human Rights Council in 2010 and 2014 led by the Attorney General Mr Aiyaz Khaiyum expressed Fiji's intention to ratify the ICCPR and the other human rights treaties. Ratification of the ICCPR will make it the law reform practice guideline for consistency and compliance with human rights values. In our submission, we recommended this be done prior to the 2018 Elections.

In its Universal Period Review (UPR) Report to the UN Human Rights Council (UN HRC) 26 August 2014 the Fiji Government said:

"The Government has made it an obligation to ensure that it ratifies all core human rights conventions to safeguard the rights of all citizens and it has therefore accepted recommendations 1 – 7. Fiji has set itself a timeframe of 10 years where it will endeavour to ratify all core human rights conventions". [A/HRC, WGC/20/FJI/1]

Further, on page 17 of its UPR report to the UN HRC, the Government stated that:

"The Government is committed to create an environment which is free of fear and intimidation and one which is conducive to dialogue on national political processes"

Ratification of the ICCPR will then require the legal Framework for Governance and Election laws in Fiji to be redrafted with the objective of compliance with the ICCPR and the enactment of enabling legislations. This was a stated desire of the Fiji delegation to the UN Human Rights Council in 2010 and 2014 led by the Attorney General, and repeated in the UPR Report to the UNHRC 17 December 2014. We urge the Government to act with urgency on its promise to ratify the ICCPR and enact the requisite enabling legislations, including consequential reform of the electoral laws, systems and processes.

The selective ratification of various human rights treaties like CAT, and the Disabled Peoples Treaty, and the derogations and reservations which render these ratifications hollow, must be rectified by the Government given these ratifications have no effect on the severe limitations of rights in the 2013 Constitution Bill of Rights. Ratification of the ICCPR should not follow the same route if the enabling environment necessary for free and fair elections is to be facilitated in the lead up to and during the 2018 general elections.

We welcome the undertaking in the Fiji Government Universal Periodic Review (UPR) Report to the UN Human Rights Council in 2014: "The Government is committed to create an environment which is free of fear and intimidation and one which is conducive to dialogue on national political processes" (page 17).

Ratification of the ICCPR will necessitate a review of existing laws, and given the elections coming up, in our joint submission with other political parties to the Electoral Commission in May 2017, we recommended:

Recommendation

3. That Fiji ratify and accede to the ICCPR

4. That the Commonwealth Secretariat be invited to send to Fiji an expert to review the electoral laws so they are consistent with the UDHR and ICCPR with a view to delivering free and fair elections to the people of Fiji in 2018.

5. That the legal framework for Elections in Fiji be reformed under the guidelines of the Universal Declaration of Human Rights (UDHR) and UN International Covenant on Civil and Political Rights so that Fiji will be in a position to ratify the ICCPR as soon as possible. We are willing to assist government with the electoral reform and to recommend independent legal and electoral experts to assist the review process.

Article 1 of ICCPR

Article 1 of the ICCPR affirms that all peoples have the right to self-determination, to freely determine their political status and pursue their economic, social and cultural development. It also affirms that all peoples may freely dispose of their natural wealth and resources. This calls to mind the provisions of the Mining Act, the Rivers and Streams Act, the Land Use Decree and other laws where the Government imposes its will on the indigenous peoples of Fiji. This also calls to mind the Two Rotuma Bills of 2015, which SODELPA has confirmed it will repeal, if enacted. This is reinforced by Article 1(2) which says a people may not be deprived of its own means of subsistence given the Rotuma Bill seeks to deprive them of their traditional fishing grounds and seas.

Recommendation

6. We commend Article 1 of the ICCPR to the Committee and urge there not be any reservation on this article.

Article 2 of the ICCPR

Article 2 requires all States Parties to the ICCPR to respect all the rights in the Covenant, without discrimination or distinction, and the State must implement legislative and other measures to give effect to the rights in the Covenant.

Article 2 also requires that persons whose rights under ICCPR are violated, will have an effective remedy in law. This is the right to restitution, or justice. We note that this right is repeatedly violated in the various Decrees promulgated since the 2006 coup, in the ousting of the jurisdiction of the courts of Fiji, from claims by those who have been tortured, unlawfully detained, the families of those killed by state agencies, those who were removed from the civil service arbitrarily, as well as communities and organisations affected by the Denarau Decree, the Natadola Decree, the Momi Decree, by arbitrary decisions made under the Land Use Decree. These 'ouster clauses' and immunity clauses in the Immunity Decrees, the Constitution and other Decrees, will have to be removed in order for our laws to comply with the ICCPR.

7. Article 2 of the ICCPR is commended to the Committee and urge there not be any reservation on this Article. Further that an urgent review of the Constitution and all existing laws and Decrees be undertaken by the Government, and its implementing agencies, to ensure we are compliant with our treaty obligations under ICCPR.

8. An urgent review of the Immunity Decrees, the Constitution, and various Decrees including the Media Decree, Land Use Decree, Surfing Areas Decree, Crimes Decree, Public Order Amendment Decree is necessary to remove immunity and 'ouster clauses' that prohibit the Judiciary from examining any claims from those victims of human rights violations and arbitrary decisions - they have a right to restitution and a remedy under Article 2(3) of the ICCPR.

The other provisions of the ICCPR

9. Due to time constraints we are unable to dwell at length on the whole ICCPR, however we commend the whole of the ICCPR Covenant to this honorable committee:

- a. We support Article 3 for equality between Men and Women
- b. We urge there be no reservations or derogation to any of the articles of the ICCPR as espoused in Article 4
- c. We support Article 5 and urge the Government to review the 2013 Constitution Bill of Rights to ensure all limitations are in line with the ICCPR
- d. We support the right to life and freedom from torture, in articles 6 and 7. We deplore the torture and taking of any life by the organs of the State including the police and military and urge the removal of immunity and ouster clauses that prevent restitution for victims of human rights violations. We also urge the Police to act with urgency to investigate all allegations of torture and unlawful deprivation of life. We also call for the return of the Ombudsmans Office to report directly to Parliament on allegations and the result of investigations into maladministration by government agencies, including allegations of torture and homicides.
- e. We are supportive of article 8 the prohibition on slavery and forced labour.
- f. We support article 9, 10, 11, 12 on the rights to liberty and security of person and urge that the Constitution be brought in line with this right. Article 11(2) is currently breached by the arbitrary travel bans imposed by the Prime Minister through the Immigration Department. A SODELPA Government will review and lift all politically motivated travel bans and expulsions that are in breach of Article 11 and 13.

- g. We support Article 14 but this is breached by the Immunity and Ouster Clauses already discussed in this submission.
- h. We support Article 15, 16, 17 of the ICCPR and urge there be no reservations on these articles.
- i. We support freedom of religion guaranteed by Article 18.
- j. We support Article 19 on freedom of opinion. This right is limited by the Media Decree, the Crimes Decree (sedition offences) Public Order Decrees and the Online Safety Bill as well as the Parliamentary Powers and Privileges Bill.
- k. We support Articles 20, 21, 22, 23, 24, 25, 26, 27.
- l. We support Article 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 on the Human Rights Committee(HRC).
- m. We support the submission of reports to the Human Rights Committee under Article 40
- n. We also urge the ratification of Article 41, 42, 43 to allow citizens to complain directly to the HRC.
- o. We also support Article 44 - 53 of the Covenant.

Recommendation

Ratification will see:

- a. The obligations to be fulfilled by States Parties to this Treaty, in Article 40 (1-5), will provide for a greater standard of accountability for the enforcement and protection of Human Rights in Fiji. We will welcome such measures, as the idea of exposure, scrutiny and redress for inaction of our progress (in Article 41 & 42) in terms of Human Rights by Member States should encourage the promotion and natural practice of full Human Rights. Ratification should also see controversial legislation and offences in the Crimes Decree repealed;
- b. Freedom of Expression and Assembly in Articles 19 and 22, respectively, will become entrenched and more direct measures should be taken to safeguard them. Ratification should also see unfair provisions in the Crimes Decree, relating to this, repealed;
- c. Traditional morals and principles of society will be safeguarded e.g. marriage between a man and a woman as stated in Article 23(1).

The impact of this Treaty on the work of SODELPA Youth will be positive and welcomed. SODELPA Youth activities revolve around advocacy, awareness and action on issues of concern to Fijian Youth. Fear of current legislation has been restrictive and hindered our activities, even resulting in one of our members being detained through processes that contravened Article 9(2). Ratification will allow us to operate more freely, as we anticipate that current unfair legislation will have to follow suit and reflect the Treaty. SODELPA Youth will be able to be more robust in achieving its aims through effective, peaceful means of demonstration, expression and awareness.

Time changes constantly and, with it, so does society, its values, rights and principles. What would have been a Right a century ago might be frowned upon today. For this reason, SODELPA Youth supports the provision on protocols as they will allow the Treaty to stay relevant and suitable to the ever-changing global landscape. We appreciate Article 51(2&3), as it reinforces sovereignty by allowing States to adapt, as they wish, to amendments to the Treaty.

Ratification will have minimal impact on the work of SODELPA Youth's Human Rights training and right to vote awareness. The impact it will have on the former would be the availability of progressive material to disseminate to Youth, as we anticipate that ratification will broaden rights provided for Fijians.

International Covenant on Economic, Social and Cultural Rights

We submit that the decision for Fiji to ratify the International Covenant on Economic, Social and Cultural Rights will have a positive impact as it would ensure that existing laws and policies are consistent with the ICESCR and SODELPA Youth is of the great hope that where necessary, amendments to these laws and policies would be carried out. It would also mean that it would open more opportunities for ordinary Fiji citizens to fully exercise their rights responsibly economically, socially and culturally as stipulated under this treaty taking into account the United Declarations of Human Rights.

In everything that we do or make, there are always two sides of the coin and this treaty is no exception.

- i. In 2014, people as young as the age of 18 were granted the right to vote in a General Election, a move that SODELPA Youth welcomes. This not only allows but encourages many young people to be politically active and participate in deciding who they believe should handle the welfare of our country through the ballot box. Considering that almost 70% of our nation's population consists of young people living between the ages of 18 – 35;
- ii. The treaty ensures that people have the freedom to determine their political status or beliefs and not being coerced or to feel "obliged" to support one particular political ideology or belief as it is clearly stipulated on Chapter 2, Section 23 of the 2013 Constitution of Fiji;
- iii. Ratification will ensure that limitations on rights are to be determined only on society's general welfare, as stated in Article 4 and not only regarding the impact it will have on Government, as is currently the case in Fiji e.g. the offence of sedition in the Crimes Decree;
- iv. The SODELPA Youth welcomes Articles 7 - 10 and the positive impacts it will have on workers' rights and economic interests, in regards to fair labour practices, the right to strike and protecting the interests of young mothers;
- v. Stronger enforcement and protection of Social Rights in Articles 12 and 13 are something we look forward to in ratifying this Treaty, regarding common social problems such as the high infant mortality and the need to review the current education system at all levels;
- vi. The Provisions in Part IV that encourage international action and cooperation to achieve the rights in the Treaty will greatly assist developing countries, like ours in efforts to promote social and economic rights.

As election nears, we note the increase in political debates and engagements recently and this is something that should be expected. However, we see that certain powerful political leaders have made public utterances that have instilled fear in voters of gathering information from 'other' political

parties, despite it being their right. This is uncalled for and the implementation of this treaty will ensure that such situations do not undermine democratic processes. It is critical that the rights of voters must be respected and upheld. SODELPA Youth strongly believes that each and every potential voter must be made full aware of the existing electoral process and how they can play a role to ensure that the election carried out is free, fair and open. Taking into account the late rekindling of democracy and lack of knowledge about democratic processes among Fiji's youth, ratification will play a positive role in driving home the democratic freedoms we already advocate for and serve as a standard to what Fijians must expect legislation, regarding such freedoms and rights, to look like.

Lessons Learnt and Food for Thought

This opportunity to make our views known on the impact ratification of the Treaties will have is an enriching and empowering one as it broadens knowledge on the process involved and promotes the participation of Youth in democratic processes.

SODELPA Youth submit that, in future, more opportunities are given to Youth from all across the national spectrum to be consulted. In this way, it helps equip them to be better leaders and more aware global citizens.

Conclusion

To conclude, we thank the Chairman and Honourable Members for the invitation to participate in the Committee's examination of the Treaties.

The SODELPA Youth will welcome the ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The SODELPA Youth acknowledge that, in the past, there was legislation that effectively mirrored and enforced these Conventions. Due to unfortunate events over the last 12 years, Human Rights in general moved down on Government's priority list. Therefore, we look forward to the positive outcomes Ratification will bring, as there is a great need for the reinforcement and protection of human rights than ever before.

Thank You, Dhanyavaad, Shukriya and Vinaka Vakalevu.

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**Oral Submission to the Standing Committee on Foreign Affairs and
Defence on the International Covenant on Civil and Political Rights
and the International Covenant on Economic, Social and Cultural
Rights.**

**National Federation Party - Youth Wing
Friday 4th May 2018**

Honourable Chair and Members of the Committee, we would first like to thank you for extending an invitation to the National Federation Party - Youth Wing to present on the two treaties currently before this Committee. However, something that must be stated from the get-go is our desire to have been given more than 48 hours to compile and submit a response to what seems to be a very comprehensive set of conventions that have enormous ramifications in terms of our rights.

We say - Enormous ramifications because the covenants echo the language of the Universal Declaration of Human Rights and translate the principles of the Declaration into legal OBLIGATIONS for State Parties. It is therefore important that in order to fully realise the scope of what it would mean to ratify these treaties, we must first take an introspective glance at the 2013 constitution to determine whether the underlying values align with those of the treaties.

We'll keep it short Honourable Chair and Members of the Committee, THE PAINFUL REALITY IS THAT THE VALUES OF THIS ENFORCED CONSTITUTION DO NOT, AND WE REPEAT, DO NOT ALIGN WITH THAT OF THE TREATIES.

We acknowledge the commitment by Government in moving towards ratifying all core human rights instruments by 2020; as stated in the then military regime's Universal Periodic Review Report in 2010 and again recommitting to it at the last reporting cycle of 2014 by the current Fiji First Government before the Human Rights Council in Geneva.

It is at this juncture that we would like to state for the record; our support for the ratification of these conventions. However, we believe that in the context of Fiji's current legal framework, at the heart of which sits the 2013

Constitution, these treaties would be rendered useless when pegged against our current legislation.

Honourable Chair and Members of the Committee, not only do we have a SUBSERVIENT Constitution, but we also have LIMITATIONS in the constitution—SUBSERVIENT to the decrees now being referred to as “Acts” after they have been lumped together in a consequential legislation, passed by parliament without being brought to the floor of parliament for ratification individually and...

LIMITATIONS in the sense that the constitution authorises the enforcement of limitations to most rights in the constitution by including exception clauses which has the potential to curtail a person's ability to exercise their economic, social and cultural rights and civil and political rights.

Examples of these include: -

1. The Proposed Parliamentary Privileges Bill that is currently before the Parliamentary Standing Committee on Justice, Law and Human Rights. This Bill curtails the rights of individuals from criticising parliament.
2. Political Parties (Registration, Conduct, Funding & Disclosures) Decree, which prevents trade unionists and trade union staff from becoming members or even supporters of political parties whilst in employment. They have to resign to even become members of political parties. The restrictions on civil servants and members of the security forces namely the Military and Police are understandable but there have been cases of victimisation if they make or post personal comments on social media. However, We have very senior civil servants, in one case a permanent secretary and even independent constitutional office holders, making political statements and are allowed to do so with impunity. For example in 2014, the then Deputy Governor of the Reserve Bank and the then CEO of Fiji Revenue and Customs Authority spoke on radio about how a change of government would affect economic policies that were working well for Fiji. IT WAS, AND IS A CASE OF ANIMAL FARM as far as implementation and enforcement of legislation albeit draconian provisions of the Decree is concerned.

3. Media Industry Development Authority Decree is a regressive and draconian legislation, prescribing punishment for media owners, publishers and editors for mistakes that can be easily and expeditiously dealt with under other legislation. The Media Industry Development Authority is chaired by a person appointed by the Government. The 2013 Constitution also authorises prohibitions on freedom of speech, expression and publication. Legislation on how to regulate the media is one of the limitations in the Constitution.
4. Electoral Decree: Only cosmetic changes were made to the Electoral Decree 2014 by parliament in early 2017. Major recommendations of the Electoral Commission's 2014 Annual Report in respect of the 2014 elections and the Report of the MOG – Multinational Observer Group were not implemented. Both Reports are before the parliamentary standing committee on Justice, Law and Human Rights, and have been with them for the last two years. The next elections are around the corner, But the reports of the committee have not been presented to parliament.
5. It is important to re-state that these decrees are preserved in the constitution in Chapter 12 Section 173, aptly named the Preservation of Law.

THE authorisation of enforcement of the curtailment of rights is further made controversial through the lack of independence in the appointment of independent and constitutional offices that are tasked with the enforcement of Civil and Political Rights.

Independence in 132 and 133 of the constitution in respect of the composition of the Constitutional Offices Commission as well as that of the independent offices is highly questionable.

The COC or Constitutional Offices Commission is an apolitical body for all intents and purposes. It is chaired by the Prime Minister and has as members, the Attorney General, Leader of the Opposition, two nominees of the PM, one nominee of the Leader of the Opposition and the Solicitor General is the Commission's Secretary. The appointments are done by the President but on the recommendation of political office holders.

The nominee of the Opposition Leader is the Leader of the largest Opposition Party while the two nominees of the Prime Minister are very closely linked to the governing Fiji First Party. SO WHERE IS THE INDEPENDENCE?

Honourable Chair and Members of the Committee, we bring these pertinent concerns up merely to highlight the dilemma between what ratifying these treaties is SUPPOSED to signify, and our current legal framework, which seems to limit the full realisation of these treaties.

In essence, the National Federation Party – Youth Wing believes that ratifying these treaties is definitely a positive and progressive move in the right direction, BUT the current law and legislations NEGATE the positive aspects of the ratification of these treaties. So then the question begs: WHY RATIFY THESE TREATIES WHEN THE 2013 CONSTITUTION IS ESSENTIALLY CANCELLING OUT THE PROGRESS THAT WOULD ACCOMPANY THE RATIFICATION OF THE TREATIES?—the equivalent of taking one step forward and one step back, making this whole process a façade.

If the Government were serious with regards to affording and entrenching Economic, Social and Cultural Rights and Civil and Political Rights, the Code of Conduct Bill and the Freedom of Information Bill, which has been sitting with the Law, Justice and Human Rights Committee, would have been expedited just like the Online Safety Bill which was introduced in Parliament and then referred to Committee for a mere month for public consultations despite strong protests from our Leader Hon. Prof. Biman Prasad.

Unless there is a commitment by Government to reviewing and making the necessary legislative changes to conform and reconcile the 2013 constitution with the two treaties, we see this as a mere stunt aimed at misleading the international community into thinking that economic, social and cultural rights and civil and political rights are legislated when it is then clearly being diminished by our current legislative framework.

If the ratification of these treaties would accompany a review and subsequently an overhaul of current legislation, then we think that Fiji would be better for it.

Honourable Chair and Members of the Committee, once again we would like to thank you for the opportunity to present our views as a Youth Wing for your consideration and we look forward to reading the report this committee will be tabling in the next parliament sitting. Vinaka.



FWCC
Fiji Women's Crisis Centre

**FIJI WOMEN'S CRISIS CENTRE
SUBMISSION:**

**RATIFICATION OF THE
INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS AND
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL
RIGHTS**

Acronyms

CSO- refers to Civil Society Organisation

CEDAW- refers to Convention on Elimination of All Forms of Discrimination against Women

FWCC – refers to Fiji Women's Crisis Centre

ICCPR-refers to International Covenant on Civil and Political Rights

ICESCR- refers to International Covenant on Economic, Social and Cultural Rights

NGO-refers to Non-government organisations

UDHR – Universal Declaration of Human Rights

1. BRIEF ON FIJI WOMEN'S CRISIS CENTRE

The Fiji Women's Crisis Centre (**FWCC**) is a human rights organisation, based on the principles as set out in the *Universal Declaration on Human Rights (UDHR)*.

The goal of the Fiji Women's Crisis Centre (FWCC) is to eliminate violence against women in Fiji and the Pacific. FWCC implements this vision through an integrated and comprehensive program designed to prevent and respond to violence, by reducing individual and institutional tolerance of violence against women, and increasing available and appropriate services for survivors.

FWCC addresses the problem of violence against women using a human rights and development framework. This focus on human rights includes a gender and social analysis of the problem and permeates all aspects of FWCC's work, recognising that the root causes of violence against women are unequal gender power relations, and the lack of knowledge and belief in human rights¹.

2. INTRODUCTION

Human rights are inherent and inalienable rights all people have because they are human. These basic principles were first established by the UDHR and later by the ICCPR and ICESCR². Therefore, FWCC acknowledges governments commitment in ratifying the core international human right treaties which includes these two covenants

This submission will discuss the impacts of ratification of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

¹ Fiji National Service Delivery Protocol for Responding to Cases of Gender Based Violence *Standard Operating Procedures for Interagency Response among Social Services, Police, Health and Legal/Justice providers* June 2017, p.5

² Part 2, An overview of women's ESC rights under ICESCR and CEDAW, <https://www.escr-net.org/sites/default/files/ESCR-NET-Manual-Booklet-2.pdf>

3. DISCUSSION ON RATIFICATION OF ICCPR AND ICESCR

1. WHAT IS THE IMPACT OF RATIFICATION ON THE ICCPR AND ICESCR?

i. RATIFICATION CREATES A LEGAL OBLIGATION AT INTERNATIONAL LEVEL

Once Fiji has ratified the two conventions then it has to fulfil all the obligations outlined in the conventions³. This ensures that Fiji would give a domestic effect to the convention's provisions.

ii. ENFORCEMENT

Having the ICCPR and ICESCR being domesticated and enforced at the national level would mean that individuals in Fiji are able to enforce their rights at home. In Fiji's case, since the Constitution already mirrors most of the rights contained within the ICCPR and ICESCR, not much of extensive changes would be expected to be made to the Constitution. This would ensure that rights enshrined under the Bill of rights⁴ are strengthened.

iii. STATES CANNOT DENOUNCE ITS OBLIGATIONS UNDER ICCPR AND ICESCR

Even if the Constitution is abrogated and the legislations are revoked, ratification of the two conventions would not allow a State from withdrawing or denouncing its obligations.

³International Covenant on Civil and Political Rights <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> and International Covenant on Economic, Social and Cultural Rights <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

⁴ Constitution of the Republic of Fiji, Chapter 2-Bill of Rights, <http://www.pacii.org/fj/Fiji-Constitution-English-2013.pdf> (Accessed 4/05/18)

2. WHAT ARE THE POSITIVES AND NEGATIVES OF THE ICCPR AND ICESCR TO FIJI AND THE REGION?

Fiji already has provisions in the Constitution for the rights enshrined in the ICCPR and ICESCR however it would be good practice for Fiji to ratify this convention for the following reasons:

i. ACCOUNTABILITY

Ratification would mean that the government would be held accountable both internationally and domestically in ensuring that all its Citizens can and are enjoying their rights under the ICCPR and ICESCR.

ii. AWARENESS OF RIGHTS

Ratification of the ICCPR and ICSECR together with meaningful consultation will raise awareness of the particular rights at stake and improve human rights literacy.

iii. STRENGTHEN THE CLAIM TO INALIENABILITY OF RIGHTS PROTECTED BY THE ICCPR and ICESCR

Human rights are rights that humans have "simply in virtue of being human."⁵ The stronger their legal protection, the stronger their claim is to inalienability. The ICCPR and the ICESCR does not have a denunciation clause, therefore, if in the future, the constitution is abrogated and the domestic legislation is revoked, Fiji as a state party will still be unable to withdraw from the two conventions. In this way, human rights

⁵ "Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights," *Proceedings of the Aristotelian Society* 101 (2001), 1 at 2. Similar formulations are widespread in the literature. See, for example, Alan Gewirth in his *Human Rights* (Chicago 1982), 41; James Nickel, "Human Rights" in L. Becker and C. Becker (eds.), *Encyclopedia of Ethics* (New York 1992), 561; Peter Jones, "Human Rights" in E Craig (ed.), *The Routledge Encyclopedia of Philosophy* (London 2006), retrieved 14 June 2007, from <http://www.rep.routledge.com/article/S105>.

for individuals under the conventions is still protected and this in turn gives individuals a sense of security.

iv. DEVELOPMENT OF HUMAN RIGHTS IN FIJI

Fiji is fast evolving as a democracy. In any democratic country we need to have a robust human rights system in place. Ratification of the two conventions would enhance the good governance, stability, security and Accountability.

Ratification would bring greater realization and understanding of human rights, there would be prospects of empowering those that are disadvantaged and marginalized.

Furthermore it would also contribute to a more just, inclusive and fair society. This would improve the lives of people in Fiji. ICESCR provides for right to medical assistance, adequate housing, food and clothing.

v. IMPROVE FIJI'S REPUTATION IN THE INTERNATIONAL HUMAN RIGHTS COMMUNITIES.

Ratification would boost Fiji's reputation in the International Human Rights community. This would show the International Human rights communities that Fiji is willing to fulfil its commitment on ratification of all the core human rights conventions.

vi. ECONOMIC INVESTMENT

It has also been noted by OHCHR that an environment in which the rule of law is respected, it will attract a greater economic investment.⁶

⁶ Baird, Natalie, "To Ratify or Not To Ratify? An Assessment of the Case For Ratification of International Human Rights Treaties In The Pacific" http://law.unimelb.edu.au/data/assets/pdf_file/0004/1687162/Baird.pdf (accessed 2/5/18)

vii. TECHNICAL ASSISTANCE

Ratification would also mean the possibility of technical assistance and support from UN agencies and multilateral and bilateral donors, and NGOs may be made available to the State to assist in implementation and enforcing the convention on a domestic level.

viii. REPORTING OBLIGATIONS ON THE STATE

Ratification creates reporting obligations on the State party. This ensures that the state party is fulfilling its obligations under the Conventions.

3. WHAT IS THE IMPACT OF THE ICCPR AND ICESCR ON THE WORK OF LOCAL NGOS AND CSOS IN TERMS OF YOUTH RIGHTS AND WOMEN'S RIGHTS AS WELL AS RAISING AWARENESS IN FIJI AND THE REGION?

i. STRENGTHENING OF OUR WORK

The conventions recognises the rights of all people to self-determination, including the right to freely determine their political status, pursue their economic, social and cultural goals, and manage and dispose their own resources. It also ensures that infringements of human rights would not be used as justification in the name of Communal rights.

The rights contained in the ICCPR and the ICESCR are both related to tackling violence against women and discrimination against women, given that violence against women is a cause and consequences of women's unequal enjoyment of their human rights when compared to men. Therefore it aims to ensure equality for all which would strengthen FWCC's work in Fiji.

ii. ACCOUNTABILITY

Ratification of the two Conventions keeps the CSO's, NGO's and the State in check. It provides us with a check and

balance system ensuring accountability and transparency of our actions.

It would also assist us in holding the state and others accountable for any violations of any human rights.

iii. ADVOCACY

FWCC advocates for the improvement and realisation of women's rights in both of these conventions provide a great platform for the advocacy of woman's rights.

4. WHAT IS THE IMPACT OF RATIFICATION ON THE WORK OF FWCC IN TERMS OF HUMAN RIGHTS TRAINING AMONGST NGOS AND NATION STATES OF THE PACIFIC REGION?

As highlighted above, ratification of the ICCPR and ICESCR would be a powerful mechanism in which the rule of law in Fiji would be upheld and improved. The rights contained in the ICCPR are related to tackling violence against women, given that violence against women is a cause and consequences of women's unequal enjoyment of their human rights when compared to men.

Once ICCPR is ratified, the State would have an obligation to domesticate the convention and the State would have to ensure that measures are adequately taken to combat domestic violence which would include gender sensitizing trainings for judges, prosecutors, police, health officers and members of parliament.

Currently FWCC is the only accredited organization that facilitates gender sensitizing trainings. With the ratification of the conventions, this would solidify the State's working relationship with FWCC and trainings would be done to ensure ways in which discrimination and structural inequalities are removed.

5. WHAT ARE THE CURRENT CHALLENGES FACING FWCC, REGIONAL AGENCIES, NGOS AND CSOS IN RATIFICATION OF TREATIES AND PROCESSES INVOLVED?

Once a State ratifies the conventions, the only challenge is ensuring that the State fulfill its obligation under the convention and translate those

obligations the way the treaty expects it to be. For instance Fiji has ratified CEDAW however effective implementation and enforcement on a national level still needs to be strengthened. Gender neutral laws cannot be effective when we have yet to remove the discrimination and structural inequalities in access to resources, opportunities and services.

4. CONCLUSION

In a thriving democracy, the state respects and ensures people can enjoy their human rights. When violations of human rights occurs in a true democracy the state can be held accountable by its people. FWCC welcomes the government's commitment in taking the steps in the right direction of ratifying these two covenants. We also offer our encouragement for the government to ratify both the covenants without reservation to show true commitment

5. BIBLIOGRAPHY

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Some Comments on The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Konai Helu-Thaman (USP)

(ICESCR & ICCPR – two of about 9 instruments, promulgated to promote the IDHR).

- ICESCR – the focus of this presentation – Rights relating to economic, social and cultural life
- Only 3 PICs have ratified this covenant- Palau (2011); PNG (2008) & Solomon Is.(1982)

(Note: ICCPR- only 4 PICs have ratified it : Nauru - 2001); Palau (2011); PNG (2008); & Samoa (2008).

ICESCR – 31 articles.

Part I: focuses on self-determination, including rights to determine political status, & freely pursue economic social & cultural development.

Part II: (2-5): legislation recognizing rights and ways of dealing with violations of rights

Recognition of rights without discrimination of any kind on the basis of race, color, sex, language, religion etc.

Part III (6-15): list of rights themselves, such as: right to work, join trade unions, adequate standard of living, physical & mental health, education (13/14), participation in cultural life (15).

Part IV (16-25) – establishment of a Human Rights Commission

Part V (26-31)..Ratification & Amendments

Note: Although Fiji had not ratified this Covenant some aspects of it has been incorporated in the current Constitution (Chapt.2).

Possible challenges in the ratification of this Convention:

- The processes used as well as value underpinnings of these are experts driven & Western European so many non-European states with their own knowledge & value systems may find difficulties understanding & implementing some of the articles/recommendations.

- Most Pacific Island Nations perceive 'culture' in a holistic sense, of **as a way life** & this is reflected in their languages. Many European & Anglo-American people see culture as separate from economy, society etc. (see the three Pillars of the UN Decade of Education for Sustainable Development)
- Conflicts in the perceptions of individual vs collective rights (which in most PICs is linked to notions of personhood – relational vs individualistic)
- Predominantly male-focused & gendered roles & role implementation (except in matrilineal societies)
- Growing tendency to favour individual over collective rights especially by younger generations
- Possible contradictions with other instruments (e.g. UNDRIP)- However, recognition of fundamental human rights would take priority)

UN Declaration of Rights of Indigenous Peoples – Sept. 2007).

- Although not legally binding under international law, this Covenant resonates with all indigenous peoples around the globe.
- Was in the making for more than 20yrs but when it was finally passed, it was objected to by Australia, New Zealand, USA & Canada (although Canada changed its position in 2016).
- This instrument was meant to deal with human rights violations for approx. 370 million indigenous people in the world
- Many governments have not yet fully understood its impact although with the recognition of the role of Indigenous & local knowledge (now known as Traditional Knowledge) in Sustainable Development, more governments are beginning to start conversations on the role of TK in SDGs implementation.
- UNDRIP when used together with ICESCR would help improve the sustainable livelihoods & life chances of indigenous peoples everywhere especially in PICs where they are majority populations

Some possible implications of ICESCR for Education in Fiji & PICs (especially cultural rights in relation to languages, cultural & artistic production, participation in cultural life, cultural heritage, cultural diversity etc.)

Education

- **Concerted efforts to implement the Pacific Strategy for Culture & Education (2011) and the Pacific Strategy for Culture (2014)**
- Language policies. Allowing children to learn in their mother tongue especially at ECEC & Primary School Levels.
- Offering opportunities for students to study their own languages & cultures in high schools & tertiary institutions (as in other parts of the developed world)

- Ensuring cultural democracy in the curriculum of formal education, from ECEC to university.
- Including Cultural Literacy as an outcome of primary education (especially important in a multi-cultural context).
- Ensuring that people & communities have access to resources necessary for participation in the culture of their choice.
- Valuing, promoting & protecting cultural & artistic production (IPR).
- In relation to cultural justice in education, the promotion of research & study of Traditional Knowledge (Indigenous & Local knowledge) in Pacific higher education institutions (rather than deleting and/or marginalizing them).
- Establishment of an Indigenous Research & Education Institute at USP to provide resources for teaching & learning especially in predominantly indigenous student communities
- Developing cultural indicators of human development.
- Requiring a cultural audit of all formal educational institutions.
- Cultural competence as a criterion for all teachers (from ECE to university)

Other socio-economic rights which Fiji & some PICs are already dealing with, include:

- Housing
- Adequate standard of living
- Health (physical & mental)

Conclusion

Ratification of the ICESCR is important especially for Pacific young people as it deals, among other things, with **education** not only in regard to their right to education but their **cultural rights** as well, which include their right to learn in their own cultural language as well as to learn about their home culture(s), its history, knowledge & value systems and how these can help them live sustainable lives – in the spirit of equality, human dignity & non-discrimination



Practice Direction No. 1 of 2018

In order to grant access to the High Court, in cases where the applicant for Constitutional Redress does not have a legal practitioner to act for him or her in lodging an application under the High Court (Constitutional Redress) Rules 2015, Form HCCR 1 is to be used. A copy of the Rules is attached to that Form.

Judges may direct that further information is to be supplied more formally to the court by way of affidavit.

A handwritten signature in black ink, appearing to be 'A.H.C.T. Gates'.

A.H.C.T. Gates

Chief Justice

19 March 2018

uln

www.judiciary.gov.fj

Application for Constitutional Redress

[To be filled when applicants do not have a lawyer]

See High Court (Constitutional Redress) Rules 2015
[LN 41 of 2015] Laws of Fiji Vol. 1 p.800,241.

1. What was the date of the event, or action taken against you, which you say was against your rights under the Constitution? _____

2. If you have lodged this application more than 60 days after that event or action, explain why you are late in applying? _____

3. Are there any exceptional circumstances as to why the Judge nonetheless should hear this late claim? _____

2.

4. State what remedy you seek from the Court? Give details of what you ask, the nature of the claim for:

(a) a declaration _____

(b) an injunction _____

(c) any other order, remedy, or relief _____

5. If you complain about what has happened in court, it will be necessary to have a copy of the court record. What is the case number? Which court?

3.

6. You must serve a copy of this application on:

- (i) the other party
- (ii) the Attorney-General
- (iii) (in a criminal matter) the DPP.

- NB:**
- 1. This is a Civil Division application.
 - 2. However it can be heard by any judge, including a Criminal Division judge, who will exercise civil jurisdiction powers.
 - 3. Though you have lodged this form as your application for Constitutional Redress, the judge may order you to swear and file an affidavit in support setting out the facts of your case and claim and thus providing evidence, in accordance with the Rules.

9.1.18

[HC 11,120] Short title and commencement

1 (1) These Rules may be cited as the High Court (Constitutional Redress) Rules 2015.

(2) These Rules shall come into force on the date of their publication in the Gazette.

[HC 11,125] Exercise of jurisdiction

2 The jurisdiction and powers conferred on the High Court by section 44(3) of the Constitution of the Republic of Fiji shall be exercisable by a single Judge.

[HC 11,130] Application for redress

3 (1) An application to the High Court for redress under section 44(1) of the Constitution of the Republic of Fiji may be made by a motion supported by affidavit—

- (a) claiming a declaration;
- (b) praying for an injunction;
- (c) claiming or praying for such other order as may be appropriate.

(2) An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a Judge finds there are exceptional circumstances and that it is just to hear the application outside of that period.

[HC 11,135] Notification of motion

4 (1) Subject to paragraph (2), a motion under Rule 3(1) shall not be made without at least 3 clear days' previous notice to the parties affected by it, unless the High Court gives leave to the contrary.

(2) A Judge, if satisfied that the delay involved in giving notice as required by paragraph (1) would or might entail irreparable or serious mischief, may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as he or she thinks just, but any party affected by such order may apply to the High Court within 7 days of the making of the order to set it aside.

(3) A notice of motion under Rule 3(1) must state—

- (a) concisely the nature of the claim; and
- (b) the relief or remedy required.

[HC 11,140] Service on Attorney-General

5 If an application is made to the High Court for redress under section 44(1) of the Constitution of the Republic of Fiji in accordance with Rule 3 and irrespective of whether the Attorney-General is to be a party to the proceedings, the applicant or plaintiff must serve a copy of the motion and affidavit in support on the Attorney-General.

[HC 11,145] Reference by way of case stated

6 (1) A question referred to the High Court pursuant to section 44(5) of the Constitution of the Republic of Fiji by a person presiding in any subordinate court must be by way of case stated.

(2) The case shall be stated within 14 days of the decision of the person presiding in the subordinate court to refer the question.

(3) The case must—

- (a) set out the facts which have been proved or admitted and the question which is referred to the High Court for its decision;
- (b) be signed by the person referring the question;
- (c) be transmitted, by the person referring the question, to the Chief Registrar.
- (4) The person referring a question under paragraph (1) must cause copies of the case to be served upon—
 - (a) the party, if any, at whose request the case was stated;
 - (b) any other parties to the proceedings affected by the question;
 - (c) the Attorney-General in all matters; and
 - (d) in the case of a criminal matter, the Director of Public Prosecutions.
- (5) Upon receipt of a case transmitted pursuant to paragraph (3), the Chief Registrar must set down the case for hearing and notify—
 - (a) the party, if any, at whose request the case was stated;
 - (b) any other parties to the proceedings affected by the question;
 - (c) the Attorney-General in all matters; and
 - (d) in the case of a criminal matter, the Director of Public Prosecutions.
- (6) The High Court hearing a case referred to it under this Rule may—
 - (a) amend the case or order it to be returned to the court by which it was stated for amendment; and
 - (b) draw inferences of fact from the facts stated in the case.
- (7) The Attorney-General and, in the case of a criminal matter, in addition the Director of Public Prosecutions, is entitled to appear and be heard in proceedings for the determination of a question referred to the High Court pursuant to section 44(5) of the Constitution of the Republic of Fiji.
- (8) The Chief Registrar must notify the court by which the question was referred of the decision of the High Court upon the question.

[HC 11,150] Practice and procedure

7 Except as otherwise provided in these Rules, the jurisdiction and powers conferred on the High Court in respect of applications made by any person in pursuance of either section 44(1) or 44(5) of the Constitution of the Republic of Fiji are to be exercised in accordance with the practice and procedure, including any rules of Court, for the time being in force in relation to civil proceedings in the High Court, with any variations the circumstances require.

[HC 11,155] Existing Rules revoked

- 8 (1) The High Court (Constitutional Redress) Rules 1998 is hereby revoked.
- (2) Any application for redress made under the High Court (Constitutional Redress) Rules 1998 continues as if these Rules had not been made.

[The next page is 802,441]

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Introduction

The Fijian Elections Office ["FEO"] welcomes Parliament's move to review the International Covenant on Civil and Political Rights ["ICCPR"] and the International Covenant on Economic, Social and Cultural Rights ["ICESCR"].

The Multinational Observer Group in its report on the 2014 Fijian General Election recommended for Fiji to consider becoming a party to the ICCPR as in doing so would improve protections for electoral rights in Fiji.

For this submission we will focus only on specific articles of the two (2) Conventions that deals particularly with political rights.

Analysis

Our view on the ICCPR is as stated below:

Article	International Covenant on Civil and Political Rights	FEO Comments
<p>Article 2(1) – Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>	<ul style="list-style-type: none"> o Section 53(1) of the Constitution of Fiji prescribed the Electoral System in Fiji. The Election of Members of Parliament is by multi-member open list system of proportional representation under which each voter has one vote, with each vote being of equal value, in a single national electoral roll comprising all the registered voters. <p>The current electoral system does not discriminate registered voters from exercising their political rights compared to the previous electoral system whereby registered voters exercised their political rights by voting on racial line.</p> <ul style="list-style-type: none"> • In the previous voting system (Alternative Voting) there were seventy-one (71) seats in the House of Representatives, twenty-five (25) were "open seats" and forty-six (46) were communal seats. For the communal seats candidates and voters were from an ethnic group. The seats were reserved on racial basis. 	
<p>Article 19 – (1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it</p>	<ul style="list-style-type: none"> o The 48 hours media blackout before Election Day as well as the restriction of campaign within the 300 meters radius of the polling venue and polling station ensures that the political rights of the registered voters are not interfered with even to the moment when they enter the polling station to cast their vote. These provisions in the law ensure that secrecy of ballot is maintained and promotes genuine election results that reflect the will of the electorate. 	

<p><i>special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law are necessary.</i></p> <p>Article 25 – Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives, (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballots, guaranteeing the free expression of the will of the electors. (c) To have access on general terms of equality, to public services in his country.</p>	<ul style="list-style-type: none"> o The principle of equal suffrage dictates that no vote should carry proportionally more weight than the other. This was compromised in the previous electoral system due to the uneven numerical distribution of voters in the seventy-one (71) single-member constituencies. <ul style="list-style-type: none"> • Out of the forty-six (46) communal seats, twenty-three (23) were reserved for Fijians, nineteen (19) for Indo-Fijians, one (1) for Rotumans and three (3) for General Electors (those that were not on any of the other electoral rolls). <p>With the current electoral system, registered voters see themselves as Fijians in a single electoral roll with each voter having one vote, with each vote being of equal value.</p> <ul style="list-style-type: none"> • It must be noted that, on 16 September 1968 the United Kingdom of Great Britain signed the ICCPR and made reservation to article 25 (b) stating that they reserve the right not to apply sub paragraph b until the introduction of equal suffrage between different electoral rolls for election in Fiji. <ul style="list-style-type: none"> o Section 52 of our Constitution also states that Members of Parliament shall be chosen by secret ballot in free and fair elections. To protect the political rights of registered voters in choosing the candidate of their choice without interference the FEO in its voting process has included a voting screen which allows the voters to cast their vote in secrecy.
<p>Article 27 – In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their</p>	<ul style="list-style-type: none"> o The FEO conducts voter awareness to registered voters. Taking into consideration the multi-ethnic groups that exist in the country, it ensures that awareness materials are printed in various languages. One such publication is

group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.	the Election Information Booklet which has been printed and distributed in English, i-Taukei, Hindi, Chinese, Rotuman and Banaban language.
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Our view on the ICESCR:

International Covenant on Economic, Social and Cultural Rights	
Article	FEO Comments
Article 8(1) (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedoms of others.	<ul style="list-style-type: none"> Under section 154 of the Electoral Act, 2014 the FEO is also responsible for the conduct of elections of all registered trade unions. This ensures while members are free to join any trade union, they also have the right to select the office holders of the trade union through secrecy of the ballot.
Article 13 (1) The States Parties to the present Covenant recognize the rights of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.	<ul style="list-style-type: none"> On section 55 (1) of the Constitution every citizen who is or will be the age of eighteen (18) years and over on or before the date of the issue of the Writ for the next election of Members to Parliament has the right to be registered as a voter. In ensuring that eligible voters are made aware of their electoral rights the FEO has introduced this year the "Introduction to Elections: A Learning Module for Year 10 Social Science" module that forms part of the Social Science curriculum. <ul style="list-style-type: none"> The curriculum discusses the current electoral system of the country. It looks at registration of voters, voting process, counting process, allocation of seats and other aspects of election process.

General Comments

The 2013 Constitution and other relevant electoral laws are fairly compliant with the ICCPR and ICESCR. As such, the ratification of the two (2) Covenants would not impact the work of the FEO with regards to the conduct of elections.

As discussed earlier the ratification of the covenant will only ensure that the FEO progressively amend and implement its existing electoral procedures to continue advocating on the importance of periodic, free and fair elections that is necessary for good governance.

With regards to the provisions on protocols to the ICCPR, we are all aware that there are two (2). The First Optional Protocol to the ICCPR allows individuals to bring complaints to the United Nations Human Rights Committee for a breach of the ICCPR. Before a complaint is brought to the United Nations Human Rights Committee the matter should be raised in domestic courts. Currently, registered voters and nominated candidates have the right to raise their issues with the Supervisor of Elections, Electoral Commission and the Court of Disputes Returns.

The Second Optional Protocol to the ICCPR aims to abolish death penalties. This has already been captured in various legislations whereby the death penalties have been revoked.

Conclusion

Ratification of the covenants would bring about a greater level of transparency, accountability, adherence to human rights and create and promote favourable electoral conditions that will benefit all stakeholders of the FEO. Fiji, in participating in a global platform needs to ensure that various widely accepted international norms are captured by it in its domestic laws and the modern Electoral Act, the Constitution and other laws are prime examples of our adherence. Hence, we humbly submit that the parliament should take necessary pro-active steps in ratifying these treaties.

Submitted by:

Mohammed Saneem, *Supervisor of Elections*
Ana Mataiciwa, *Legal Compliance Coordinator*
Ravneel Chand, *Research Officer*

What is the impact of the above treaty on the work of Ministry of iTaukei Affairs in terms of the Civil & Political Rights of ordinary iTaukei segment of the modern Fijian community?



- ICCPR [Part 1 Article 1(2)]
- ICESCR [Part 1 Article 1 (2)]
- ✓ Vanua Structure: Communal/Collective Ownership of Resources
- ✓ iTaukei Land is owned by Tokatoka, Mataqali, Yavusa
- ✓ Land Lease requires 60% consent by Landowners
- ✓ ITLTB is the Custodian of Itaukei land legislations...."may consult landowners"
- ✓ Government owns resources. Qoliqoli/Fishing grounds/boundaries owned by Government, iTaukei owners only have the right to use e.g. Fishing Reservation on Cultural Rights



What is the impact of the above treaty on the work of Ministry of iTaukei Affairs in terms of the Civil & Political Rights of ordinary iTaukei segment of the modern Fijian community?

- ✓ Disposing of Natural resources without prejudice
- ✓ Reservation on Cultural Rights
- Part 2 Article 3:
 - ✓ Patriarchal Society e.g. Registration on VKB to register on Father's side





MINISTRY OF ITAUKEI AFFAIRS

PRESENTATION TO THE


STANDING COMMITTEE ON FOREIGN AFFAIRS

&

DEFENCE

i. International Covenant on Civil and Political Rights

ii. International Covenant on Economic, Social and Cultural Rights



What is the impact of ratification on the International Covenant on Civil and Political Rights (ICCPR)?

What are the positives & negatives of the above Treaty to Fiji and the Region?

- **Positive** : it provides a guideline for states to ensure that civil & political rights are respected.
- **Negative** : We don't have any negative comments but have concerns on Cultural Rights.

What is the impact of the ratification on the work of the Ministry of Taukei Affairs in terms of Human Rights and Indigenous Rights training and the right to vote of all Fijians in the imminent 2018 General elections?

- Strengthen the works currently done by the Ministry through encouragement of the Taukei community in the democratic process. Awareness in partnership with CSOs.
- Transparency and Visibility of Government Eg. Walesi, Talk Back Show, Government Road Show
- Financial Literacy Programme – Encourage Economic participation



There is a provision on protocols in the above treaty, please explain?

- ICESCR [Part V Article 26 - 31]
✓ Protocols are addressed and acknowledged, there are existing mechanisms in place to address non-compliance of some components of the Covenant



What is the impact of ratification on the International Covenant on Economics, Social & Cultural Rights?

- ICESCR [Article 27]
 - ✓ "... to use their own language." Particularly in schools from Year 1
 - ✓ iTaukei Community in international context is a minority
- Article 15
 - ✓ Strengthening existing strategies on the safeguarding of the Traditional Knowledge & Expression of Culture [TK & EC]

What are the positives & negatives of the above Treaty to the iTaukei younger population (Young workers and young voters) and the various segments in Fiji especially in the poor & remote communities?

- Positive:
 - ✓ Ensures accessibility to health services & schools to remotely located iTaukei community
 - ✓ More knowledge to exercise their right to vote
 - ✓ Merit based system where every iTaukei is given equal opportunities and nepotism is removed.




What are the current challenges facing the Ministry of iTaukei Affairs, in ratification of treaties and the process involved?

- ✓ Awareness to change mind-set of the iTaukei people & the traditional leaders


What is the impact of the treaty in the Ministry of iTaukei Affairs, raising the awareness and importance of free, fair and open elections and good governance in Fiji and the Region?

- Vanua Structure:
 - ✓ Influence of Traditional Leaders on the iTaukei communities. In the Covenant, the individual's right to vote is exercised without fear of victimization.
 - ✓ Ensures separation of the Vanua & Politics
 - ✓ Strengthens the implementation of good governance programs currently in place for traditional leaders



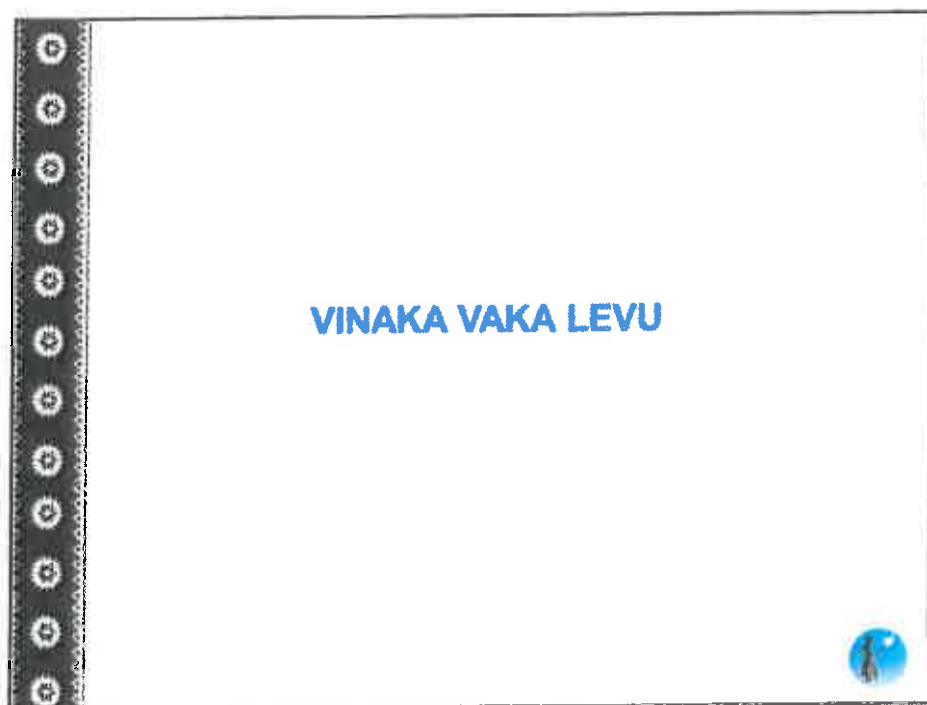
Way Forward

- ✓ MTA will support Government's ratification of the two [2] above-mentioned Covenants with exception/due consideration of our legislation & issues raised in the Ministerial Statement
- ✓ e.g. : Traditional Knowledge & Expression of Culture [TK & EC]
- ✓ TLFC Legislation and Policies eg VKB Registration;



Lessons Learnt and Food for Thought

- ICESCR [Part III Article 9] "Right of Everyone to Social Insurance"
- ✓ Provincial Levy to include Social Insurance for each Province & Government to subsidize
- Article 12 (D) "Assure access to all Medical services & medical attention in the event of sickness"
- Article 13 2(a) Primary education shall be compulsory & accessible, available free to all. Eg. Year 1 Students boarding or walking long distances/miles to and from school or having to cross flooded rivers





ITAUKEI AFFAIRS

- i. International Covenant On Civil And Political Rights ; and
- ii. International Covenant On Economic, Social And Cultural Rights

We wish to acknowledge and thank the Committee; in seeking the Ministry of ITaukei Affairs views on the two Covenants that are currently being discussed by this August body. For our purpose we shall make a few statements in relation to both the documents before; looking at the documents independently.

1. RIGHTS

Honourable Members, In relation to the Covenants that is being discussed it must be first understood that these were drafted concurrently, in an attempt to enforce provisions of the Universal Declaration of Human Rights of 1948. More importantly, in the discussion of 'rights', Honourable members we are here to look at the protection of positive and negative rights. Positive rights; which is focused on *making a person free to do something*; from another perspective, some may argue ***these rights are characterised by the fact that the State is required to take positive action to protect them.*** Honourable Members, these refer to our economic, social and cultural rights, also viewed as second generation rights.

Civil and political rights, however are referred to as first generation ' or 'negative rights, some often have a negative view of freedom, because its related to when ***a person is free from something***, such as persons free from State Interference with a person's life. Honourable Members, there is no distinction between positive and negative rights because there is often the need for state interference for 'negative rights' to be protected. For example the right to a fair trial, can only be protected by the State providing the necessary resources to ensure that that right is protected through construction of courthouses, and acquiring the necessary human resources.

Honourable Members, perhaps the question that must be asked is how will we address the issue of Communal rights and individual rights. How do we address the individual rights in relation to the common good, will it be taken at a case by case basis, the task seems

daunting, however, I am assured that this August body will be able to address the challenge.

2. Self Determination

Honourable Members, self-determination was formalised during the post war decolonisation period, aimed to legalise independence of budding countries to facilitate their statehood. It is defined as ***the process by which a country determines its own statehood and forms its own government; and the process by which a person controls their own life.***

Honourable Members, the right to self-determination is a fundamental right enshrined in the Charter of the United Nations including the Covenant of Human Rights, it further states that by 'virtue of those rights they are free to determine without external interference, their political status to pursue their economic, social and cultural development.' The UN World Conference on Human Rights that took place in Vienna in 1993 affirmed, that self-determination is part of international law on Human Rights, and that compliance with this right is a fundamental condition for the enjoyment of other human rights and fundamental freedoms; be it civil, political or cultural. Nonetheless, Honourable Members there is no agreement on the content, applicability and implementation of the right to self-determination. Nevertheless, it must be acknowledged that both Covenants (**International Covenant on Civil and Political Rights (ICCPR)** and in article 1 of the **International Covenant on Economic, Social and Cultural Rights**), refer to self-determination in Article 1. As such, we wish to recommend that we, ***as a nation determine what self –determination will entail.***

Honourable Members, be assured that we would not be the first to go down this trail, in fact the Australian Human Rights Commission in defining self-determination, referred to it as a right for 'peoples' and not individuals. Honourable Members, further to that right in considering the rights and its application to the Aborigines and Torres Strait Islanders as first peoples, the Human Rights Commission has and I quote:

- *Self-determination is an 'ongoing process of choice' to ensure that Indigenous communities are able to meet their social, cultural and economic needs. It is not about creating a separate Indigenous 'state'.*
- *The right to self-determination is based on the simple acknowledgment that Indigenous peoples are Australia's first people.*
- *The loss of this right to live according to a set of common values and beliefs, and to have that right respected by others, is at the heart of the current disadvantage experienced by Indigenous Australians*

(Unquote).

What is resounding, is the association of self – determination and the recognition for their common beliefs and values.

3. International Covenant On Civil And Political Rights

The ICCPR covers a number of different rights namely,

- The right to life (Article 6)

- Freedom from torture, cruel, inhuman, or degrading treatment or punishment (article 7)
- The right to liberty and security (Article 9)
- Right to fair Trial (Article 14);
- Right to privacy (Article 17)
- Freedom of thought, conscience and religion (Article 18);
- Freedom of expression (Article 19);
- Right to assembly and association in Articles 21 and 22, and the
- Right to equal protection in the law (Article 26)

Honourable Members, It must be acknowledged that most of the rights in the COVENANT ON CIVIL AND POLITICAL RIGHTS are inherent in the 2013 Constitution of the Republic of Fiji, which is further integrated in the various laws that are in place. Nevertheless, there are grey areas that must be made transparent in relation to the International Covenant on Economic, Social and Cultural Rights.

4. International Covenant on Economic, Social and Cultural Rights

Honourable Members, I wish to draw your attention to Article 4 in relation to the statement, ***"in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights are solely for the purpose of promoting the general welfare in a democratic state."*** Honourable Members, the question raised is who would determine, what general welfare in a democratic state would entail. There is a need for clarity, on the characteristics of general welfare, whether this be benchmarked internationally or regionally is something that must be made clear.

Honourable Members, it must be acknowledged that the Covenant on Economic, Social and Cultural rights places emphasis on the family in Article 10, nevertheless there is concern with regard to Article 10 (3) in relation to registration in the Volanikawabula. You will note that there is a distinction made with regard to the registration of children in the VKB, in relation to parenting. The current practice is as much a protection mechanism, but also a clear distinction of rights and obligations within the Mataqali, hence we are adamant that the current practice should not be considered as a discriminatory process.

Honourable Members, Article 6 highlights the State obligation for the provision of necessary technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development. The optimal word being 'steady', Honourable Members, I call for emphasis on the iTaukei Language Curriculum. We must place more weight on the iTaukei language being taught in schools; in particular that the curriculum also acknowledge the differentiation of dialects. We need to reassess our curriculum, and be adamant on instructing children in our language; it will improve understanding and bridge the divide in our multicultural community, more importantly it will increase the level of academics in the state, Tonga is an excellent representation.

Conclusion

Honourable Members, in going through the Covenants, one must acknowledge what leaps we have taken as a nation, with regard to integrating the principles of the Universal Declaration of Human Rights in our Constitution including our various legislations. Nevertheless, we must be cautious in adopting the Covenants without first understanding and determining as a nation what self- determination and 'general welfare' would entail, more importantly how to balance communal rights to that of the individual and the achievement of the common good.

In trying to make a distinction between civil rights and political rights, I believe it was best stated in Vienna when discussing the 1993 Vienna Declaration and I quote;

"All human rights are universal, indivisible, interdependent and interrelated. "

"unquote"

This phrase must be the deciding factor when addressing 'rights' within Fiji.

- Vinaka -

PERMANENT SECRETARY ITAUKEI AFFAIRS

INTRODUCTION

Please, do kindly find appended below are our clarification in response to the issues you have raised:

#	STANDING COMMITTEE ON FOREIGN AFFAIRS & DEFENCE ISSUES	MINISTRY OF ITAUKEI AFFAIRS RESPONSE
1 2	What is the impact of ratification on the International Covenant on Civil and Political Rights [ICCPR]? What are the positives & negatives of the above Treaty to Fiji and the Region?	Positive: It provides a guideline for states to ensure that civil & political rights are respected. Negative: We don't have any negative comments but concerns on Cultural Rights.
3	What is the impact of the above treaty on the work of Ministry of iTaukei Affairs in terms of the Civil & Political Rights of ordinary iTaukei segment of the modern Fijian community?	The following Articles ICCPR : ICESCR <ul style="list-style-type: none"> • Part 1 Article 1(2) <ul style="list-style-type: none"> ➤ Disposing of Natural resources without prejudice. ICESCR <ul style="list-style-type: none"> • Part I Article 1 (2) Reservation on Cultural Rights <ul style="list-style-type: none"> • Article 1, Item 2: <ul style="list-style-type: none"> ➤ Vanua Structure: Communal/Collective ownership of resources. ➤ iTaukei Land is owned by Tokatoka, Mataqali, Yavusa ➤ Land Lease requires 60% Consent by landowners or TLTB is the Custodian of Itaukei land. legislations...."may consult landowners" ➤ Government owns resources. Qoliqoli/ Fishing boundaries owned by Government, owners only have the right to use e.g. Fishing • Part 2 Article 3 <ul style="list-style-type: none"> ➤ Patriarchal Society e.g. Registration on VKB to register Father's side.
4	There is a provision on protocols in the above treaty, please explain?	ICESCR <ul style="list-style-type: none"> • Part V Article 26 – 31 <ul style="list-style-type: none"> ➤ Protocols are addressed and acknowledged, there are existing mechanisms in place to address non-compliance of some components of the Covenant
5	What is the impact of the	Vanua Structure:

	ratification on the work of the Mini in terms of Human Rights and Indigenous Rights training and the right to vote of all Fijians in the imminent 2018 General elections?	Strengthen the works currently done by the Ministry through encouragement of the iTaukei community in the democratic process. Awareness in partnership with CSOs.
6	What is the impact of ratification on the International Covenant on Economics, Social & Cultural Rights?	ICESCR <ul style="list-style-type: none"> • Article 27: <ul style="list-style-type: none"> ➢ "... to use their own language." Particularly in schools from Year 1 • Itaukei Community in International context is a minority • Article 15 • Strengthening existing strategies on the safeguarding of the Traditional Knowledge & Expression of Culture [TK & EC]
7	What are the positives & negatives of the above Treaty to the iTaukei younger population (young workers and young voters) and the various segments in Fiji especially in the poor & remote communities?	Positive : Ensures accessibility to health services & schools to remotely located iTaukei community Positive : More Knowledge to exercise their right to vote Positive: Merit base system where every iTaukei is given equal chance to employment, and nepotism is removed.
8	What is the impact of the treaty in the Ministry of iTaukei Affairs, raising the awareness and importance of free, fair and open elections and good governance in Fiji and the Region?	<ul style="list-style-type: none"> • Vanua Structure: Chief decides for everybody. In the Covenant, the individual's right to vote is exercised without fear of victimization. • Ensures separation of the Vanua & Politics • Strengthen the implementation of good governance programs currently in place for traditional leaders
9	What are the current challenges facing the Ministry of iTaukei Affairs, in ratification of treaties and the process involved?	<ul style="list-style-type: none"> ➢ Awareness to change mind-set of the iTaukei people & the traditional leaders.
10	Lessons Learnt and Food for Thought	ICESCR <ul style="list-style-type: none"> • Part III Article 9 <ul style="list-style-type: none"> ➢RIGHT OF EVERYONE TO....SOCIAL INSURANCE ➢ Provincial Levy to include social insurance & govt. to subsidize • Article 12 (d)Assure access to all medical services & medical attention in the event of sickness" • Article 13 2(a) -- Primary education shall be compulsory & available free to all. Eg. Year 1 Student boarding having to cross flooded rivers

11	Way Forward	<p>➤ MTA will support Government 's ratification of the Two [2] abovementioned Covenants with exception/due consideration of our legislation & issues raised in the Ministerial Statement e.g. : Traditional Knowledge & Expression of Culture [TK & EC] -TLFC legislation;</p> <p>Continuing institutional strengthening of Traditional iTaukei leader's knowledge to be competent in dealing with emerging issues. This will enable them to effectively & efficiently clearly demarcate rights & responsibilities</p>
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SUBMISSION BY THE CITIZENS' CONSTITUTIONAL FORUM

PARLIAMENTARY STANDING COMMITTEE FOREIGN AFFAIRS AND DEFENCE

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THURSDAY 10 May 2018

INTRODUCTION

The Chairman Honourable Lieutenant Colonel Netani Rika and Honourable Members of the Parliamentary Standing Committee on Foreign Affairs and Defence ("the Committee").

We thank you for this opportunity to present the Citizens' Constitutional Forum (CCF) submission on the following treaties:

- i. **International Covenant on Civil and Political Rights ("ICCPR");**
- ii. **International Covenant on Economic, Social and Cultural Rights ("ICESCR").**

The CCF is a non-governmental organisation based in Suva with more than 20 years' experience in community education and advocacy on Fiji's Constitution, democracy, human rights and multiculturalism.

The CCF notes that the Committee has outlined certain issues in its letter dated 26 April 2018 for clarification in terms of the Treaties concerned. However, the CCF will also be making additional submissions in terms of recommendations.

1. IMPACT OF RATIFICATION ON THE ICCPR AND ICESCR

The CCF acknowledges that the laws contained in the Treaties, although not ratified by Fiji, have substantially been included in the domestic laws. Nevertheless, it is prudent that Fiji ratifies the treaties as they will provide a positive impact. These impacts could be seen as follows:

- a. Officially reflect Fiji's efforts in transitioning to committing to the International Bill of Rights. The International Bill of Rights is made up of the Universal Declaration of Human Rights, ICCPR, ICESCR, First Optional Protocol to the ICCPR and the Second Optional Protocol to the ICCPR.¹ Fiji in ratifying the two treaties would see an approval of both legal and moral obligations at an international level to protect and promote human rights;
- b. The Treaties provide measures or the means in which they should be implemented in domestic laws as well as providing effective legal remedy for the breach of the relevant rights. These can be found in Articles 2 to 5 of the two Treaties respectively. For instance, the need for legislation on Freedom of Information could now be focused upon in ensuring that it is passed through the measures provided in these treaties. A 1998 Report by a UN Special Rapporteur on Freedom of Opinion and Freedom of Expression stated:

"Although international standards establish only a general right to freedom of information, the right of access to information, especially information held by public bodies, is easily deduced from the expression 'to seek [and] receive...information' as contained in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights."²

Therefore, the ratification of these Treaties in implementing the rights which have not been substantially included into domestic laws will have more reason to be enforced in law.

- c. The impact of ratifying the Treaties will not be heavily placed on Non-Governmental Organisations and Civil Society Organisations but more so on the State and the people of Fiji. In ratifying the Treaties, this will assist the Government in terms of holding it accountable to recommendations which it undertakes to comply with. This in turn will provide a more robust legal mechanism in protecting human rights within Fiji. The people of Fiji will also be ensured not only by domestic laws but also by international laws (i.e the Treaties) of the protection of their human rights.

¹ <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> [Accessed: 7 May 2018]

² The Right to Information in International Human Rights Law, <http://www.corteidh.or.cr/tablas/r30698.pdf> [Accessed: 10 May 2018]

- d. At a national level, ratifying the Treaties will also hold independent bodies created by the Constitution of the Republic of Fiji 2013 to utilize their functions in monitoring the compliance of international human rights treaties. For instance, pursuant to Section 45 (4) (g) of the Constitution of the Republic of Fiji, the Fiji Human Rights Anti-Discrimination Commission monitors compliance by the State with obligations under treaties and conventions relating to human rights.³ This will also in turn ensure accountability on such institutions who have been tasked with the responsibilities as stated.
- e. NGOs and CSOs will also have the responsibility of assisting the Government in complying with such human rights treaties by way of raising awareness on the relevance of these treaties through; research, reports, surveys and community level outreach. These organizations have an important task of providing shadow reports as well to the Human Rights Committee. CCF emphasizes the need for the realization that these necessary functions of the NGOs and CSOs heavily assist the Government in improving its legal framework and the protection of human rights of the people of Fiji.

2. RECOMMENDATIONS

- a. The CCF commends the Government for its efforts to ratify the core international treaties as stated in June 2010.⁴ However, we strongly submit that these treaties be ratified without reservations (or atleast substantiated reservations) to allow the people of Fiji to fully enjoy the human rights concerned.
- b. If reservations and or declarations are to be made, a further consultation process with the people of Fiji, NGO's, CSO's and other relevant stakeholders would be necessary to specifically address the same.
- c. A sufficient and thorough timeline for consultations regarding the ratification of international laws is needed noting that thorough research and direct consultation with the people of Fiji and relevant stakeholders are necessary.

³ Constitution of Republic of Fiji 2013, Section 45

⁴ <http://www.refworld.org/country,,UNHRC,,FJI,55b749a44.0.html> [Accessed: 10 may 2018]

- d. The way forward in terms of International Treaties is for Fiji to consider ratifying the First Optional Protocol and the Second Optional Protocol to the ICCPR. The First Optional Protocol focuses on the receipt and consideration of communications from individuals with claims of violations to any of the rights in the Covenant. Whereas the Second Optional Protocol focuses on the abolition of the death penalty. Although Fiji has abolished the death penalty, ratification of such Optional Protocols strengthens Fiji's commitments to promoting and protecting human rights.

**Submission to the Parliamentary Select
Committee on Foreign Affairs & Defence**

**On the Ratification of the International
Covenant on Civil and Political Rights (ICCPR)
and the International Covenant on Economic,
Social and Cultural Rights (ICESCR)**

**Thursday May 10, 2018, by National Federation
Party Leader, Professor Biman Prasad**

Honourable Chairman and Committee Members

Before I start on my submission, I wish to put on record our strongest disgust at the manner in which a Member of this Committee as Acting Chairman, responded to the submission by representatives of the NFP Youth Wing on Friday 4th May.

Also for the record, our Youth Wing were pleasantly surprised to have been invited by the Committee, even though they were only given less than 48 hours notice AND they stayed up until the early hours of Friday morning, to make sure that they got what they wanted to say, right. Our young people, are also students, consultants and candidates -- time is a precious commodity, and yet they honoured the outreached hand of "consultation" from Honourable members of this august Parliament.

Honourable Howard Politini's comments and agitated manner was most unbecoming of a Member of Parliament especially when we recall the

Acting Prime Minister, who only at the last sitting of Parliament, lauded the valuable approach of seeking input from our young people.

I quote the actual comment by the Honourable member of the Committee directed at our Youth Wing General Secretary, Mr Dylan Kava because I am quite sure that we can ALL learn from it and perhaps resolve, in moving forward, that this is not how we should behave in The People's Parliament as elected representatives:

I quote, "I'll interrupt you right now. Your contribution, this morning is non-constructive. We had a Youth wing before you, very constructive on the ratification of these treaties. You beginning to sound like your Leader! Be constructive in your contribution when you come to this House!" – Unquote

*I don't mind if you
quote*

Honourable Chairman and Members, all of us as Members of Parliament must know and understand the role and workings of a parliamentary select committee. This becomes significantly important when our youth are concerned. Our youth are politically enlightened, unafraid to speak their mind and raise hard questions.

This is exactly how it should be because if we cannot reconcile different views in leadership and come to solutions together, we should think very carefully about our roles as elected representatives of the People.

Let me just add a bit of light-heartedness to this issue, Honourable Members. Please allow me to share a real-life situation where our party, was invited to speak to some young people in November last year.

During the course of the discussion, the topic then turned to the issue of "sex education" that the young people felt needed strengthening at the

school education level because, as they told us very pointedly, it was happening among their peers and the information they were getting at school was doing nothing to prevent teenage pregnancies. They were concerned about the rate of teenage pregnancies and young parents among their peers.

As you can imagine, our party representatives were all momentarily stunned and then after a few laughs with the young people where they had to laugh at THEMSELVES first (because their body language gave away their discomfort on such a topic) -- the discussion finally turned into one where REAL solutions were then discussed.

My point is, Honourable Chair and Honourable Members, we all have to embrace the space of difficult conversations, and perhaps as we're all from a different era, re-learn the art of real listening, and real engagement. I myself can confirm that despite my experience as someone supposedly LEARNED in Economics, this has been a steep learning curve for me also. And for that I am very thankful to our young people, for whom, I too learn MUCH from. I mean, they're the first people I turn to when I need help with my mobile phone!!

Thank you Honourable Chair and Honourable Members of the Committee for your indulgence, please allow me to now turn to the matter of the 2 International Treaties before you for consideration.

The ratification is long overdue. The Multinational Observer Group (MOG) that observed the 2014 general elections had recommended in

its final report that Fiji needed to ratify the ICCPR. However, we believe this is being rushed through now as part of a campaign to win a seat on the UN Human Rights Council this year.

But it should not be forgotten the Government's reporting obligations as a State Party, will be complemented by shadow reports from civil society, and this too forms a valuable part of transparency and accountability at the international level.

In addition, unlike the *Talanoa* that we like to do everywhere else, except here where it matters the most, ratification will compel a rethink in how the State likes to normally do things. When we accept visits from UN Rapporteurs as we have in the recent past, these too are valuable reporting mechanisms as part of our obligations.

Most critical however is the codification of these Treaties into domestic law. That is where we as Legislators come in. We cannot fast-track, nor ratify with reservations, nor spin-doctor our obligations, because we should be walking into these international obligations with our eyes wide open.

If we are also serious about the full acceptance of international human rights laws, which both these 2 Treaties are central Treaties for, at the national level much will be required of our Anti-Discrimination and Human Rights Commission. Primarily, that this body MUST comply with the Paris Principles in order to qualify as a bona-fide "national human rights institution".

Independent national human rights institutions must be extremely effective in serving as a link between a Government and civil society. It must be an institution that can hold up a mirror to the State and will enable the State to strengthen itself. I therefore urge the Committee to also consider how this body becomes autonomous – in its finances, administration and membership.

That, I believe, was the intention of the submission of our Youth Wing. The laws that we have at present do not presently align to these Treaties and, we agree with them -- we should ratify, but we have A LOT of work to do to align to these international laws. Ratification is but a first, small step.

In their 2014 report, the MOG noted that Fiji had not ratified the International Covenant on Civil and Political Rights (ICCPR) and recommended that Fiji should consider becoming a party to it, so as to improve protection for the electoral rights of all Fijians.

The ICCPR amongst a lot of things states that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

More importantly Honourable Chair and Committee Members the ICCPR stipulates that:

"There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent".

This, together with the recommendation of MOG is important given what Government has done or has been doing, backed by laws and limitations in the 2013 Constitution that derogate the political rights and protection of electoral rights of all our people, contrary to what the Covenant states.

As far as we are concerned Honourable Chair and Committee members, the review and possible ratification of the ICCPR and ICESCR, while welcome, has come too late, with the dissolution of parliament happening anytime within the next ~~six~~⁵ months until October 6th and the election period now kicking in with the last possible date of elections in the third week of November, unless of course Government falls or loses confidence.

It is our belief that this is coming a little too late in the day, when elections in all likelihood are going to be held under the same restrictive and regressive laws, that needed substantial amendments as per the recommendations of MOG and the former Electoral Commission in its Annual Report of 2014. Apart from cosmetic changes, nothing has been done.

Both Reports have been before the parliamentary select committee on Justice, Law and Human Rights for almost 2 years. The committee has not reported back to parliament. Yet the Honourable Chairman of that Committee was quick to assure this parliament last month that they would be ready within a month to have a report ready on the Online Safety Bill referred to it last month.

So, Honourable Chair and Committee members, this goes against what the ICCPR states on the protection of electoral rights of all our people. Above all, it is about electoral integrity.

I believe we would be well within our rights to question the authenticity, of this sudden interest in ratification. Is it simply intended to signal that we are progressive, without actually following through with codification with equal urgency?

There are clear derogations and limitations that are basically entrenched in the Constitution and the Decrees; that do not align with ICCPR. A good example of this is restrictions on trade unionists and union staff from becoming members of political parties. They have to resign their employment if they do so or wish to contest elections.

Another example is the provision and meaning of being "*ordinarily resident*", where a citizen must be ordinarily resident in Fiji for 18 months of the two years preceding nomination to qualify as an eligible candidate. Those on official government duties however can be absent from Fiji and

be residents elsewhere, while students or those on work permits are severely punished by this discriminatory rule. This was not so under the Electoral Act of 1998.

Honourable Chair and Committee Members, Government may argue that Fiji hasn't ratified the ICCPR for 32 years and they are "unprecedentedly" doing so now. The fact is that no previous government or Constitution since Independence had imposed such severe limitations as contained in the 2013 Constitution and Decrees which unbelievably are now called Acts despite not being legislated by parliament.

The conduct of some of our Independent Constitutional Officers is also questionable and we have grave doubts as to their genuineness in upholding civil and political rights of all our people – as well as human rights.

Fiji received the esteemed UN Human Rights Commissioner for a visit to Fiji in February this year. One of his concerns was and I quote: -

"Overly broad laws can be and have been used to prosecute journalists whose work is deemed to be against the "public interest or public order", with violations punishable by fines of up to FJ\$1,000 (US\$530) or imprisonment of up to two years under the Media Industry Development (Amendment) Act 2015. Media organisations can be fined up to FJ\$100,000.

This should be a very concerning statement for the State because it reportedly has the effect of inhibiting investigative journalism and coverage of issues that are deemed sensitive, as well as discouraging a plurality of views.

There have also been a lot of discussions recently about regulating hate speech and “fake news”. I have urged the Government to ensure that any attempts to legislate on issues relating to freedom of expression are in line with articles 19 and 20 of the ICCPR, and for them to consult the Rabat Plan of Action* for guidance on drawing the delicate lines between permissible speech and speech that may amount to incitement.

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Fiji stated in his June 2017 report, the following extract from paragraph 57:

57. The Special Rapporteur recalls that other laws also prohibit hate speech. Section 17 of the Public Order Act criminalizes the spreading or stating of words, whether spoken or intended, or by signs or visible representation, that are likely to: incite racial dislike or hatred of any race or community; promote feelings of enmity or ill will between different races or communities; or prejudice the public peace. It also criminalizes making intimidating or threatening statements “in relation to a race or community other than his own which is likely to arouse fear, alarm or a sense of insecurity amongst members of that race.” The Public Order Amendment Decree of 2012 prohibits grants of permits to any person or organization that on previous occasion has engaged in

racial or religious vilification. Furthermore, the Media Industry Development Decree of 2010 prohibits media content that: (a) is against the public interest or order; (b) is against national interest; or (c) creates communal discord. The Special Rapporteur also recalls that the lack of a proper definition of what constitutes racist or hate speech gives wide ranging discretionary powers to MIDA and the executive to prohibit contents by the media.

Hopefully the Online Safety Bill, currently being considered by another Parliamentary Committee, is also assessing their recommendations against the lens of these 2 key international human rights Treaties drawing on this report also.

While there are a number of independent institutions, including the Constitutional Offices Commission, the Human Rights and Anti-Discrimination Commission (HRADC) and the Fiji Elections Office, I am concerned about a basic structural flaw that brings into question whether these bodies are truly autonomous.

It was a matter of grave concern that the Supervisor of Elections chose to react to the UN Special Rapporteur on Racism in the manner that he did in a speech during a Media Workshop on 20th February 2018.

He said and I quote:

“here we have a classic case of a flyby where the maker of the statement fell victim to bias, probably politically influenced statements to be drawn by some as the ultimate conclusion on the matter. We have already seen how the unsubstantiated statement is being made a political football and being tossed around” - Unquote.

Honourable Chair and Honourable Committee members, when the Supervisor of Elections finds it appropriate to make political statements, that I am sure upon ratification of these Treaties, will rear its head again, this is gravely brow-raising to say the least.

Unfortunately Honourable Chair and Honourable Committee members, we also have a compliant Electoral Commission, which chooses to await instructions instead of advocating for legislative changes to Parliament, through the State. It would be very interesting to assess if the Electoral Commission proper has a view on these 2 Treaties because of their legislative mandate -- quite apart from the Elections Office who we understand has made a submission already.

An overwhelming majority of people of Fiji, whose political rights the Commission is supposed to safeguard by ensuring integrity in the electoral process and that they are not restricted by limitations, do not know the background or credentials of the Commissioners. This wasn't revealed to the public when they were appointed, unlike in January 2014 in the case of the former Commission.

But WE KNOW Honourable Chairman and Committee Members. We know and have evidence to prove that certain Commissioners have very close links to the ruling party. We know that some, rightly so, do not know anything about the electoral process. Nobody is expected to do so but those vested with the responsibility of ensuring the protection of electoral rights of all Fijians SHOULD.

They may be and are highly efficient and successful individuals, but their role as Commissioners can be rightly questioned. We therefore urge the Honourable Attorney General to inform the people of Fiji of the credentials of the Commissioners just as he did as an Attorney General in a military regime in January 2014.

In closing Hon Chair and Committee members, I raise the issue of the 2017 Census because the withholding of that data by the State is also a clear indication that we are miles behind of the expectations of ratification of these 2 Treaties.

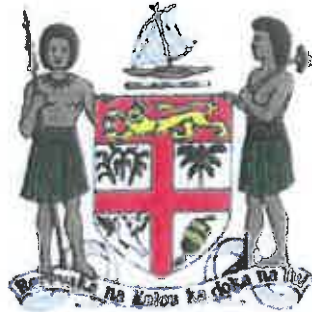
Again I draw on the **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance** and his 2017 report, where on this issue of disaggregated data -- he said this in paragraph 53, and I quote the following excerpt:

53. "...The Special Rapporteur is fully aware that in some instances laws prohibit the official collection of ethnically disaggregated data and statistics. Under such circumstances,

there are still innovative ways of ensuring that such data is available for policy making and change. He recalls that in such a case, the collection of disaggregated data was undertaken by independent research institutes and universities, with the support of the State.

Honourable Chairman and Committee Members, against this backdrop, the move to ratify these two treaties, while welcome, has come too late and until we are convinced otherwise, is a cosmetic exercise. Unless and until Government fully complies with the ICCPR and the ICESCR and its Articles by changing laws conforming to the Covenant, we treat this as farcical.

I thank you for your time and greatly look forward to your report and sharing more thoughts on it in Parliament.



Ministry of Defence and National Security

RESPONSES TO STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE QUERIES ON RATIFICATION OF ICCPR AND ICESCR

1.0 What is the impact of ratification on the International Covenant on Civil and Political Rights (ICCPR)?

- The most important benefit of ratification is the actual *improvement in the human rights of individuals and groups Fiji*. [It is very important to note however that ratification is only a first step towards improving human rights in Fiji. The more important aspect of the process is actually making a difference on the ground - implementing the treaty obligations. Ratification without implementation will mean nothing for Fiji moving forward.]
- It will complement and *further strengthen Fiji's constitutional provisions under the bill of rights* - Fiji's constitution and existing laws to some extent already provide protection for civil and political rights. There are however some aspect of our laws which may need to be changed to ensure compliance but we must always ensure that Fiji's political and security context is taken into consideration when amending Fiji's laws.

2.0 What are the positives and negatives of the above Treaty to Fiji and the Region?

POSITIVE

- Improvement of human rights for individuals and groups - the above treaty empowers the disadvantaged and marginalized, and contribute to a more just, Inclusive and fair society.
- A state with a strong commitment to human rights is highly likely to be a state that is well governed, secure and stable.

- It allows "enforceability" of rights, the enforcement regime of the international Human rights framework also complement and reinforce the implementation of national plans.
- Strengthen technical abilities to deal with requirements [empowerment] – technical assistance from UN agencies, multilateral and bilateral donors, and NGOs may be available
- Ratification might also indirectly support efforts to attract foreign capital, trade, aid and political support
- Article 1 (2) of the ICCPR works in Fiji favor due to the fact that it ensures sovereignty of the state. Policies such as that of the Pacific Island Forum's "Blue Pacific" concept whereby member states are to align its policies to that of the regional one to a certain extent may be deemed as a violation of this covenant, even though concerns may not necessarily be classified as "international economic cooperation" as specified in the covenant.

NEGATIVE

- National Sovereignty – Fiji and of course developing states are concerned by the perceived western bias of the international human right framework on National sovereignty. Pacific states may resist ratification as an expression of resentment against what we consider to be forced ratification by superpowers and their hegemonic approaches.
- While the Ministry agrees with most aspect of the Covenant, Article 4 is an area of concern. Article 4 talks about intervention by state parties in times of public emergencies which is quite similar to existing regional security agreement [Biketawa Declaration]. Who determines the "...extent strictly required by the exigencies of the situation..."? What role does the sovereign ruling government plays in this decision to intervene? Do they have a say or does State Parties intervene as they see fit?

3.0 What is the impact of the above treaty on the work of the Ministry of Defence and National Security in terms of the Civil and Political Rights of ordinary Fijians?

- The Ministry is responsible for safety and security of all Fijians. If Fiji is to ratify the ICCPR and implement all its requirements, it is the responsibility of the Ministry to ensure that the rule of law remains. Any changes to any of Fiji's laws must be upheld by the Ministry through its operational arms which are the FPF and the RFMF.

- The biggest impact the treaty may have is when civil and political rights are abused by failed politicians and opportunists which may result in destabilization. This was what led to the 2000 unrest and continues to be on the back of the minds of security planners, experts and academics.

4.0 There is a provision on protocols in the above treaty, please explain?

- First Option Protocol – Victims of human rights violation to be heard
- Second Option Protocol – Abolishment of death penalty

5.0 What is the impact of ratification on the work of the Ministry in terms of Human Right and Voter Rights training and the right to vote of all Fijians in the imminent 2018 Fiji General Elections?

- From a Ministry perspective, ratification will have very minimal impact on the work of the Ministry as we head to the 2018 General Elections. Most of the requirements are already enshrined in our existing laws which should make impact very minimal.

6.0 What is the impact ratification on the International Covenant on Economic, Social and Cultural Rights?

Positive

- The most important benefit of ratification is the actual improvement in the human rights of individuals and groups Fiji.
- It will complement and further strengthen Fiji's constitutional provisions under the bill of rights -
- It will promote cooperation and strengthen international relations.
- Strengthen technical abilities of Fiji to deal with requirements [empowerment] – technical assistance from UN agencies, multilateral and bilateral donors, and NGOs may be available
- Ratification might also indirectly support efforts to attract foreign capital, trade, aid and political support

7.0 What are the Positives and negatives of the above treaty of the Fijian younger population (Young workers & voters) and the various segments in Fiji especially in the poor and remote communities?

Negative

- Perceived tensions with culture – Human rights are seen by some in as unwanted form of globalization. This is a universal approach to rights that is understood as

undermining cultural differences. Our daily life is regulated by tradition so most international covenants are based on Western liberal beliefs and values, they are rooted in a particular cultural agenda where indigenous people together with their assumptions and values have been and continue to be ignored and marginalized.

8.0 What is the impact of the treaty in the Ministry raising the awareness and importance of free, fair and open election and good governance in Fiji and the Region?

- Ratification of the treaty will have minimal impact on the Ministry in terms of its obligations for the upcoming General Elections

9.0 What are the current challenges facing the Ministry, in ratification of treaties and process involved?

- It is very important to note however that ratification is only a first step towards improving human rights in Fiji. The more important aspect of the process is actually making a difference on the ground - implementing the treaty obligations. Ratification without implementation will mean nothing for Fiji moving forward.
- Overlapping/Harmonization of laws – takes time
- Disagreement between stakeholders on certain provisions of treaties/laws which may have positive impact on one while adversely affecting the other
- Contextualization to Fiji's Circumstances
- Cost implications

**Submission to the Standing Committee on Foreign Affairs and Defence on:
International Covenant on Civil and Political Rights; and International Covenant
on Economic, Social and Cultural Rights.**

**Submitted by:
Youth for FijiFirst**

Hello everyone, thank you for having us here and for giving us the opportunity to directly speak to you and present our views to you as Youth, you form part of our currently elected leaders of Fiji and we come before you to discuss the issue of human rights and the ratification of the International Covenant on Civil and Political Rights and also the International Covenant on Economic, Social and Cultural Rights. Honorable-(names - left to right), thank you for having us here. With that, we will get into what you have summoned us here for, for our input as youth and our concerns for the future of Fiji. You bear the enormous responsibility of guiding us to take Fiji forward, and for that we thank you. We hope to learn from this experience as Youth.

The Prime Minister for all Fijians, and FijiFirst leader Voreqe Bainimarama has stood for one thing since he saved our country from widespread abuse of rights in 2006: and through FijiFirst's many inclusive policies he has stood for equality for all Fijians irrespective of ethnicity, religion, gender, age, ability or opinion. These rights and more are laid out in the 2013 constitution and in these two conventions, which we will elucidate by answering the questions that were given to us without using up too much of your precious time.

What is the impact of ratification of the International Covenant on Civil and Political Rights?

Part 2 of the ICCPR, in articles 2 to 5, requires parties to legislate to give effect to the rights recognized in the covenant. Chapter 2 of our 2013 Constitution already provides extensive rights to all Fijians in the Bill of Rights; this also covers the domain of Civil and Political rights mentioned in the ICCPR. The FijiFirst Government takes a bottom up approach and has already included these rights in the highest law of the land-our constitution. This is a testament to the foresight of our leaders and FijiFirst's commitment to protecting Fijians from all threats to their rights.

In terms of the impact, this ratification will further strengthen our leader's initiative to give equality to all Fijians without distinction of any kind, such as race, sex, religion, political or other opinion, national or social origin, property, birth or other status as set out in this International Covenant. Ratification of documents like these gives encourages more overseas investment which brings the International community closer to Fiji, and Fijians closer to international diaspora. This is important to conceptualise new ideas for change and realise progress.

What are the positives and negatives of the above Treaty to Fiji and the Region?

For the positive aspect:

Fiji has evolved a lot from our backward past where we relied on bigger countries in the region such as Australia and New Zealand for assistance, to now being seen as a leader, not just in the region but globally. Our Prime Minister and Leader of FijiFirst, Voreqe Bainimarama paved the way for others to follow in his footsteps and set a great example in the world when he became the first ever leader of a small island country to hold presidency at COP23, and he also assumed co-presidency of the United Nations Oceans Conference. Fiji, for the first time, already enjoys a comprehensive bill of rights within our 2013 constitution which provides extensive protection for our people. What a great example this has set for our Pacific island neighbours. Ratification will help other countries in our region who already see us as leaders to follow our example and ensure that their people all enjoy these same human rights without distinction. This is about setting an example as leaders and having a positive effect not just regionally but globally, as we have been doing these past years.

As for the negative:

The ratification of this covenant simply shows our international commitment to this as reporting to the UN will ensure greater accountability.

But, as youth, we are ashamed to note that in Fiji we have a political party that directly goes against the Articles mentioned in this convention. In particular Article 18 (1) which says: "Everyone shall have the right to freedom of thought, conscience and religion".

How can we ratify this convention if we have a political party that actively pursues the abolition of our Secular state, and pushes that Fiji become a state directed by a single religion in Parliament, where important decisions regarding the future of Fiji are meant to be made? This is hugely negative to youth in terms of their push to actively remove the rights of a large community in our country. Such an outdated mode of thinking! We are all equal Fijians and have the right to choose religion as long as it does not interfere with the rights of other Fijians. We agree with SODELPA and NFP youth that this be ratified but we must take note of attempts to encourage the abuse of human rights like this in our reports to the UN. This will enable other countries to see how far we are progressing in terms of the acceptance of the rights of others and whether we can live well together regardless of ethnicity or religion. Indeed it is confusing to note that even though the Youth arms of SODELPA and NFP are supportive of these covenants, the party MPs themselves have many times in parliament suggested the contravention of Article 18 while these Youth remain silent. Is this complicity? Yes! Yes, it is.

I would be ashamed to report to the UN that people who are meant to lead us are trying to curtail the rights of thousands of Fijians by suggesting that we become a Christian

state. Fiji should be a neutral state and we should let everyone have the freedom of choice, as this covenant says in Article 18 (2) - No one shall be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice. To want to effect otherwise would constitute a breach of these rights for thousands of Fijians.

What is the impact of the above treaty on the work of the Fiji First Party Youth Wing in terms of the Civil and Political Rights of ordinary Fijians?

FijiFirst as a political party is comparatively new to the political arena but has really influenced more positive change in Fiji for all Fijians, inclusively, for everyone regardless of race, religion, sex, gender. Like our party, we prefer to be innovative and do things differently. In FijiFirst we are all looked upon as responsible adults with valuable input to give our leaders, not young people that need to be demarcated into a separate wing. We work as one and are united in our pursuit of a better future for all Fijians. This is true respect for Youth and I thank our Prime Minister who is also our party leader and our Attorney General who is our General Secretary for having faith in Youth. Our leaders ensure that our input as Youth is genuinely considered. We work closely with party leadership and fully support and endorse the ratification of these bills from our perspective as young thinkers of our country.

In terms of the impact, our united FijiFirst front has always ensured that the rights of all Fijians are protected from any attacks within, and without. The 2013 constitution guarantees these rights and the ratification of this covenant simply shows our international commitment to this.

There is a provision on protocols in the above treaty, please explain?

First Optional Protocol:

This protocol allows victims claiming to be victims of human rights violations to be heard. The Human Rights Committee (Committee), which is established by the Covenant, has the jurisdiction to receive, consider and hear communications from victims. The first Optional Protocol came into force with the Covenant. There are currently 35 signatories and 115 parties to this protocol.

Second Optional Protocol:

This protocol aims to abolish the death penalty. It was entered into force on July 11, 1991 and it currently has 37 signatories and 81 parties.

What is the impact of ratification on the work of Fiji First Party Youth Wing in terms of Human Rights training and the right to vote of all Fijians in the imminent 2018 Fiji General Elections?

Fiji has a vibrant and diverse political landscape and you can see this with different opinions coming from different parties, their youth wings and political commentators on all mediums (social media, newspapers, radio). Our constitution and our electoral act already provides Fijians with all the rights and freedoms necessary to cast an informed vote. The multinational observer group in the 2014 general elections which had representatives from around the world declared the elections free and fair, and reflecting the will of the people. Our constitution guarantees that our fundamental human rights are protected. The onus is now on Fijians to exercise these rights provided to them, and to not impinge upon the rights of other Fijians.

I was at the mock election results process yesterday at the Fijian Elections Office yesterday and am glad to note that Fiji's elections process will be even more transparent this time around. This gives us a better chance to scrutinize the process. The FEO already has a comprehensive awareness program in place to educate Fijians on their rights when it comes to voting.

What is the impact of ratification on the International Covenant on Economic, Social and Cultural Rights?

Fiji is a country where many different people from different cultures, religions and backgrounds live. The greatest achievement of our party is its ability to unite all of our people under one banner for the betterment of our nation. Many of the rights such as the economic, social and cultural rights of individuals, the right to work, family, education and cultural life are already extensively provided in our 2013 constitution. Education for example is now provided to all Fijians without discrimination and free. Under previous governments when a family could not afford to send all their children to school, sons were prioritized over daughters. That is sad. We are all equal. In the preamble of the constitution, the very beginning, we recognise the cultures of all the communities in Fiji. This sets the tone for equality for all Fijians.

What are the positives and negatives of the above Treaty to the younger population (young workers and young voters) and the various segments in Fiji especially in the poor and remote communities?

Never before in the history of our country have young Fijians enjoyed all the rights provided by the 2013 constitution even before the ratification of the ICESCR. Poor and

remote communities now get access to electricity under the rural electrification program, helping them to access their rights to education which they also get free. This is a beacon of hope to these people, and assures them that regardless of who they are, we strive to provide them the same access as all Fijians. Young workers now know that they have a right to fair conditions, and with the introduction for the first time of a minimum wage in Fiji by FijiFirst, a major milestone was set for the future. Realizing this progressively, as FijiFirst is doing, makes this achievable.

What is the impact of the treaty in the Fiji First Party Youth Wing raising the awareness and importance of free, fair and open elections and good governance in Fiji and the current Region?

The basis of free, fair and open elections is that citizens have access to the global rights that are laid out in these conventions. This is the foundation to realize greater access to human rights and the free participation of citizens in economic, social and cultural activities including the right to work, to have a family, to have access to education and uninhibited cultural identity. Fiji's free and fair democratic election process which is based upon our 2013 Fijian constitution is an example of uninhibited citizen activity in the aforementioned areas, to reiterate; economic, social and cultural. For the first time and directly in support of these international conventions we now have a truly democratic election process where everyone is now allowed to vote without restriction and not along ethnic lines as in the past. As such and because this is already based upon our constitution, the measures are already in place for free, fair and open elections and good governance in Fiji. I was at the mock elections count process yesterday and learnt a lot about how results are tallied. It is great to note that the Fijian Elections Office has an app on the app store and play store on Apple and Android respectively and on which we can view the results live during the 2018 elections. This is good. FEO is proactive in its approach to awareness which is their mandate.

What are the current challenges facing Fiji First Party Youth Wing, in ratification of treaties and the process involved?

None. The process is simple and available for all those that want to participate. It's great talking directly to all of you leaders.

Lessons learnt and Food for Thought:

There is not enough information provided to youth on the importance of these treaties and the critical thinking processes involved in deciding to adopt or ratify. Youth should

be engaged on their own mediums namely, Facebook, Twitter, Instagram, Youtube and websites. Instead we have politicians encouraging the use and spread of misinformation on these very same mediums. A recent example is case where a prominent former politician Mosese Bulitavu purposely spread a fake video of our Prime Minister Voreqe Bainimarama and even asserted that it was real in a media interview. This is the level of discourse that adults that are meant to lead us are putting forth to Youth. Surely those that are meant to lead us can use their influence and faculties for more meaningful communication with Youth. This act was directly in contravention of these two covenants, particularly Article 17(1) of the ICCPR which states: No one will be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. If the prime minister is not safe from these attacks, what will stop these very same individuals from attacking ordinary Fijians? I am glad to say that the Online Safety Bill also provides a means by which we can protect our vulnerable Fijians from exposure to these useless forms of information.

Way forward:

Parliament and Government should remain secular and our state should be without influence of religion.

Organised marriages should not be forced upon Youth. Right to self-determination.



FIJI LAW SOCIETY

Submission of the Fiji Law Society:

10 May 2018

Standing Committee on Foreign Affairs and Defence

Ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the Fijian Government.

Introduction

1. The Fiji Law Society presents itself to the Standing Committee on Foreign Affairs and Defence in response to this Committee's invitation for the Law Society to present on a series of questions pertaining to the two major human rights covenants. The Committee's role as required under Section 109 (2) of the Standing Orders of the Parliament of Fiji is an important one as it informs the Honourable House on matters pertaining to its mandate.
2. The Fiji Law Society is invited to address the Committee on 11 Questions and we do so with respect.

Question 1: What is the impact of ratification on the ICCPR

3. Civil and Political Rights are one of the most important classes of human rights as they go to the heart of any democracy. The right to life (Article 6), the right to equality between men and women (Article 3) on the enjoyment of civil and political rights, freedom from torture (Article 7); freedom from slavery (Article 8); right to liberty and security of person (Article 9), right to privacy (Article 17), freedom of thought, conscience and religion (Article 18), the freedom of opinion and expression (Article 19), the right to culture (under Article 27) etc are some of the important bedrock of any democracy. The ratification of the ICCPR will reinforce the recognition of these important articles within the 2013 Constitution.
4. The ICCPR was drafted and endorsed by the United Nations following the 2nd World War which exposed the atrocities of a world devoid of the respect of basic civil and political rights. The document bore testament to our humanity of the need to adopt universal standards of human rights. The ICCPR was and remains today one of the most important human rights instruments that speaks to humanity and dignity of the human person.

option for sentencing. This would augur well with Fiji given that it has abolished the death penalty from its criminal books.

Question 5: What is the impact of ratification on the work of FLS in terms of Human Rights training amongst its members, NGO's in Fiji and the Pacific region?

13. Apart from understanding the basic provisions of ICCPR, the basic impact of ratification would be that members would continue to use the provisions of ICCPR as a sword and shield.
14. The institution of legal action over acts of omission like the commission of torture by the State on its citizens, or the unjustifiable limitations of basic rights to freedom of expression and opinions, or the right to religion or any other civil and political rights covered under this treaty.
15. As a shield, lawyers and citizens can use the treaty to limit the overreach of the State in the enjoyment of basic civil and political rights.

Question 6: What is the impact of ratification on the ICESCR?

16. The enjoyment of Economic, Social and Cultural Rights forms the bedrock of a growing economy. The ratification of ESC rights will complement and give credence to Articles 26-40 of the Bill of Rights as well as ensure the State continues to progressively realise basic economic, social, and cultural rights.
17. While impacts and benefits of the ratification of this core covenant will be similar to the ones proposed in paragraph 8 of this submission, we are of the view that added impacts of the ratification of this treaty are;
 - i. Strengthening of our human rights frameworks that deal with the realisation of basic ESC rights. As the State commits to improving education, health and other ESC rights, it would subscribe to universal benchmarks that measures the States progress in meeting its commitment to better realising ESC rights.

Question 7: What are the positives and negatives of the above Treaty to the younger population and the various segments in Fiji especially in the poor and remote communities?

18. ICESCR rights are often considered onerous and burdensome on the State as these rights often require the use of State resources in order to realise them. These include the right to adequate standard of living (Article 11) where the State must ensure that affordable and decent housing is available to the population through various schemes. The right to work including decent and fair wages and equal remunerations for work of equal value (Article 6), right to join and form trade unions (Article 8), right to attainment of the highest attainable standard of physical and mental health (Article 12), the right to education including free primary education (Article 13), right to cultural life (Article 15 etc.

19. However, the impact of the realisation of these rights on the community are profound. Economic, Social and Cultural rights are not luxury rights, they are rights that are essential in any democracy and Fiji is no exception. The realisation of these rights will mean improvements to the basic standards and quality of life. For example, if the State invests in Article 12 of ICESCR, it means that the State will work towards improving the quality of medical care and standards to ensure that citizens accesses some of the best medical care in country. In practice, this can look like better hospital infrastructure and accessibility of the same, retention of qualified medical personnel; availability of crucial lifesaving medicine and treatment; low cost medical care etc.

20. Based on the 2013 Constitution, ESC rights are not foreign rights that the State can afford to overlook. However, because of its prominence within the Constitution, the State remains duty bound to ensure the continued realisation of the crucial ESC rights and the more these rights are realised, the better it will be for the quality of life for many of our people.

Question 8: What is the impact of the treaty in FLS raising the awareness and important of good governance in Fiji and the region.

21. The cornerstone of good governance and the rule of law broadly is the respect of basic and fundamental human rights. The State is duty bound to protect, promote, and defend the human rights of all people within the boundaries of the State and it can only do so effectively and efficiently within a culture of accountability and transparency of State actions.

22. By reporting of its progress according to the reporting obligations in Article 18 of the ICESCR, the Law Society will be able to measure the States adherence to the spirit of the treaty. Further this information is crucial to inform members and their clients of State practices around improving or the lack thereof of basic ESC rights and basically to hold the State to account for the realisation of these rights, be it housing, affordable clean water, right to join trade unions, equal pay for equal work, etc.

Question 9: What are the current challenges facing FLS, in ratification of treaties and the processes involved?

23. The key challenge for the Fiji Law Society has often been the lack of information and engagement of the State with key stakeholders like us on the implementation of key treaties that the State is a party to. Ratification is not a means to an end, rather, it provides an opportunity for the State to engage with its citizens and key bodies like ours on how to better improve the quality of life of citizens through implementing the various articles of the treaty. The right to the highest attainable standards of health; the right to housing; the right to education; the freedom to hold an opinion and freedom of expression, the freedom of religion are human rights crucial to our very identity as individuals and

collective as the State. To realise these rights is to afford our citizens the opportunity to be empowered to lay claim to their rights and to excel.

24. Further, the Law Society notes that often as in previous ratified treaties there are challenges to enforcement of human rights treaties. This stems from the fact that treaties once ratified are often not domesticated. However, as Fiji progresses on numerous legislative frameworks and policies such as pre-trial detainment procedures, the absolute prohibition of torture and other realisation of civil and political rights and ESC rights, the challenge to enforcement may be less challenging.

Question 10: Lessons learnt and Food for thought

25. This year the Covenants are 42 years old and that should be sufficient time for the world to behold their value and importance in addressing basic principles of human rights. Civil and Political Rights and Economic, Social and Cultural Rights are universal in nature in that they apply to all people all over the world regardless of frontiers and they set the standards to how we must treat one another, with humanity and with dignity. There can be no substitute to that.
26. Any ratification of core human rights treaties signals the State's deep commitment to human rights and reflects the political maturity of any State. However, ratification of treaties is often the base in which the foundations of the rule of law can be laid upon. For any treaty to have an impact on the ground, the State must have the necessary political will and resolve to ensure the full implementation and adherence to the principles and spirit of the treaty. Otherwise ratification of human rights treaties are exercises in futility. One of the growing concerns of the State would be the cost implication of the act of ratification. Apart from the cost factor of ratification that is associated with reporting, the cost of implementation would be at best minimal given that the State has already committed to realising basic civil and political rights and economic, social, and cultural rights in the 2013 Constitution.
27. Secondly as lessons learnt, our history of political instability provides sufficient justification for the creation of accountability mechanisms and processes to hold the State accountable to the protection of basic human rights despite the political power of the day. Subscribing to human rights treaties means the State is duty bound to provide a periodic update on the status of implementation of the treaty. Both the covenants provide the opportunity for Fiji to submit itself to a review every 4 year or so to a Committee of experts to assess its progress in realisation civil, political, economic, social, and cultural rights. By this measure we can truly assess for ourselves the journey we have taken as a State and as a people to realise these basic and fundamental human rights.
28. While human rights are universal and are enshrined in documents such as these two important international covenants, they will have very little meaning when ratified and domesticated, unless we as citizens demand for the respect and protection of these rights

and the Parliament as the house of people acts to ensure the greater protection of human rights, whether it is through the act of ratification or in domesticating these important human rights treaties. Eleanor Roosevelt, the former first lady of the United States of America tasked with chairing the drafting committee of the Universal Declaration of Human Rights said,

"where after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world....Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

Question 11: Way Forward

29. Fiji should consider ratifying the two covenants and if foreseeable challenges to ratification remains, then a reservation to the challenging articles can be made.
30. It is crucial to note that adopting any new international obligation may be a drain on limited resources. If ratification is to be meaningful, and something more than a signature on a piece of paper, then it requires financial and human resources. The resource implications are two-fold – upfront implementation costs and ongoing compliance costs. Faced with such limitations, competing regional and international obligations often appear more pressing. These include terrorism, organised crime, money laundering, fisheries, shipping and climate change, however each of these pressing issues can be addressed effectively in a culture of human rights.
31. The Fiji Law Society is of the view that ratification is a clear indication of the State's commitment to its own Constitution particularly the enlarged Bill of Rights in the 2013 Constitution.

Submitted for consideration

The Fiji Law Society



FIJI LAW SOCIETY

APPENDIX 5

**RESEARCH BRIEFS BY THE
MANAGER RESEARCH AND
LIBRARY**



TREATIES: International Covenant on Economic, Social and Cultural Rights

For Standing Committee on Foreign Affairs & Defence

The notes below and attached documents contain information relating to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Information on the treaty is provided and made available publicly by the Office of the United Nations High Commissioner for Human Rights (OHCHR).¹ Summary information is also provided by the Solicitor-General's Office as part of the documents tabled during the Parliament sitting on 16 April 2018 [See Appendix 1]. This information brief was prepared to assist the Standing Committee on Foreign Affairs and Defence (SC-FAD) in its review of this international treaty that was referred to it by the Honourable Speaker, Dr. Jiko Luveni during that parliamentary sitting.

1.0 Background

- The ICESCR, *International Covenant on Civil and Political Rights* (ICCPR) and the *Universal Declaration of Human Rights* are collectively known as the **International Bill of Rights**. The ICESCR is a multilateral treaty adopted by the UN General Assembly.
- It covers the protection of **economic, social, and cultural rights** to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.
- **Adopted** by the UN General Assembly on **16 December 1966** and came **into force** on **3 January 1976**. [Drafted alongside the ICCPR]
- The Covenant has legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.
- It is monitored by the UN Human Rights Committee which reviews and regularly reports on how rights under the ICESCR are being implemented. The Committee meets three times a year in Geneva.
- State parties report initially one year after acceding and then every four years or if requested by the Committee for additional reports.
- There are currently 167 state parties and 4 signatories to the ICESCR.² [See list in *Appendix 2: ICESCR Status*, 5 April 2018]
- **Fiji** has not ratified the Covenant; however, its principles have been incorporated into the Fijian Constitution under chapter 2 of the Bill Rights. [See Appendix 3: Bill of Rights, Fiji Constitution].

¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [Accessed 18/04/18]

² UN OHCHR, Status of Ratification – ICESCR. Online. Available: <http://indicators.ohchr.org/> [Accessed 18/04/18]



2.0 Articles/Content Summary [See *Appendix 1: ICESCR write up under 130(2) of Standing Orders*, for more details]

- The ICESCR has a total of 31 Articles which are divided into 5 parts.
- The core principles are in Parts 1 – 3 (Articles 1 to 15); Part 4 – (Articles 16 to 25) covers the administrative and operational matters such as the establishment of the Human Rights Committee; Part 5 (Articles 26 to 31) governs ratification, entry into force, and amendment of the Covenant.

Core principles of the Covenant.

- Article 1 – The right of self-determination and to freely pursue their economic, social and cultural development, to freely dispose of their natural wealth and to be free from the deprivation of its own means of subsistence.
- Article 2 – Countries shall implement these rights “to the maximum of its available resources” and ensure equality in the enjoyment of the rights of the treaty.
- Article 3 – Equality between men and women in the enjoyment of these rights.
- Article 4 – Governments may only limit these rights in a way determined by law and in a way that is consistent with the Covenant.
- Article 5 - No person, group or government is lawfully empowered to destroy these rights.
- Article 6 – The right to work
- Article 7 – Right to just and safe working conditions, fair wages, equal opportunities for promotion, paid holidays and reasonable limitation of working hours.
- Article 8 – The right of everyone to form or join trade unions and the right to strike in conformity with laws of particular country.
- Article 9 –The right to social security.
- Article 10 – The right to family protections, i.e., marriage only by consent, leave for new mothers and protection of children from exploitation.
- Article 11 – Adequate standard of living, including adequate food, clothing and housing.
- Article 12 – The right to the highest attainable standard of health.
- Article 13 – The right to education



- Article 14 – States shall make primary education compulsory and free of charge,
- Article 15 – The right of everyone to take part in cultural life and to enjoy the benefits of scientific progress.

3.0 Limitations

Article 4 of ICESCR states that the State may limit the enjoyment of economic, social and cultural rights (ESCR) “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

4.0 Optional Protocols

The ICESCR has one optional protocol which allows the parties to recognise the Committee on Economic, Social and Cultural Rights (CESCR) to consider complaints from individuals. The protocol was adopted by the UN GA on 10 December 2008 and entered into force on 5 May 2013. CESCR was established in 29 May 1985 to carry out functions of the UN Economic and Social Council (ECOSOC) as provided for in Part IV of the ICESCR.³

5.0 Impact of Ratification

In its submission and motion for Parliament to ratify the ICESCR, the Government noted:

It is prudent to note that in 2010, the Fijian Government in its Universal Periodic Review Report made a commitment towards ratifying all core human rights instruments within 10 years. At the last reporting cycle of 2014 in Geneva, before the Human Rights Council, the Fijian Government reaffirmed its commitment to ratifying all core human rights instruments which the ICESCR is a part of. (Part 3.1, ICESCR write up under 130(2) of Standing Orders).

The Government also noted the benefits of ratification.

Ratification will also provide the following benefits to Fiji –

- (a) it will complement and further strengthen Fiji’s constitutional provisions under the Bill of Rights;*
- (b) with over States having become a party to ICESCR, the ratification of ICESCR will raise Fiji’s international standing in the Human Rights Council and community; and*
- (c) it will promote cooperation and strengthen international relations with other State Parties who have acceded to or ratified the Convention. (Part 3.1, ICESCR write up under 130(2) of Standing Orders).*

³ UN OHCHR, Committee on Economic, Social and Cultural Rights. Online. Available at: <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> [Accessed 20/04/18]



6.0 Committee Review

- Parliament has authority over international treaties and conventions as provided for under Section 51 of the Constitution: *An international treaty or convention binds the State only after it has been approved by Parliament.*
- The Standing Committee on Foreign Affairs and Defence is mandated under Standing Orders 130 to review international treaties and conventions.
- The motion for the Committee to review the ICESCR was tabled by the Attorney-General, Honourable Aiyaz Sayed-Khaiyum on 16 April 2018. It was consequently referred to the SC-FAD by the Honourable Speaker, Dr Jiko Luveni for the Committee to review the treaty and table a report to Parliament no later than 30 days from the day it was tabled.

- Ends -

3 Appendices:

1. ICESCR write up under 130(2) of Standing Orders
2. ICESCR Status, 5 April 2018
3. Extract Chapter 2 – Bill of Rights, Fiji Constitution

Disclaimer

This information brief and annexed information were provided for the Standing Committee on Foreign Affairs & Defence to inform its review of the *International Covenant on Economic, Social and Cultural Rights*. Any views expressed in this paper do not reflect an official position of Research & Library Services or Parliament Secretariat. Research and Library Services shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice. Research and Library Services accepts no responsibility for any references or links to, or the content of, information maintained by third parties. Other sources of information should be consulted.

International Covenant on Economic, Social and Cultural Rights [Last Updated: 05/04/2018 08:43:51]					
Country	Date of Signature (dd/mm/yyyy)	Date of Ratification/Accession	Date of acceptance of individual communications procedure	Date of acceptance of inquiry procedure	
1 Afghanistan		1/24/1983			
2 Albania		10/4/1991			
3 Algeria	12/10/1968	9/12/1989			
4 Andorra					
5 Angola		1/10/1992			
6 Antigua and Barbuda					
7 Argentina	2/19/1968	8/8/1986	10/24/2011		
8 Armenia		9/13/1993			
9 Australia	12/18/1972	12/10/1975			
10 Austria	12/10/1973	9/10/1978			
11 Azerbaijan		8/13/1992			
12 Bahamas	12/4/2008	12/23/2008			
13 Bahrain		9/27/2007			
14 Bangladesh		10/5/1998			
15 Barbados		1/5/1973			
16 Belarus	3/19/1968	11/12/1973			
17 Belgium	12/10/1968	4/21/1983	5/20/2014	5/20/2014	
18 Belize	9/6/2000	3/9/2015			
19 Benin		3/12/1992			
20 Bhutan					
21 Bolivia (Plurinational State of)		8/12/1982	1/13/2012		
22 Bosnia and Herzegovina		9/1/1993	1/18/2012		
23 Botswana					
24 Brazil		1/24/1992			
25 Brunei Darussalam					
26 Bulgaria	10/8/1968	9/21/1970			
27 Burkina Faso		1/4/1999			
28 Burundi		5/9/1990			
29 Cabo Verde		8/6/1993			
30 Cambodia	10/17/1980	5/26/1992			

APPENDIX 2: ICESCR Status, 5 April 2018

31	Cameroon			6/27/1984		
32	Canada			5/19/1976		
33	Central African Republic			5/8/1981	10/11/2016	
34	Chad			6/9/1995		
35	Chile		9/16/1969	2/10/1972		
36	China		10/27/1997	3/27/2001		
37	Colombia		12/21/1966	10/29/1969		
38	Comoros		9/25/2008			
39	Congo			10/5/1983		
40	Cook Islands					
41	Costa Rica		12/19/1966	11/29/1968		
42	Côte d'Ivoire			3/26/1992		
43	Croatia			10/12/1992		
44	Cuba		2/28/2008			
45	Cyprus		1/9/1967	4/2/1969		
46	Czech Republic			2/22/1993		
47	Democratic People's Republic of Korea			9/14/1981		
48	Democratic Republic of the Congo			11/1/1976		
49	Denmark		3/20/1968	1/6/1972		
50	Djibouti			11/5/2002		
51	Dominica			6/17/1993		
52	Dominican Republic			1/4/1978		
53	Ecuador		9/29/1967	3/6/1969	6/11/2010	
54	Egypt		8/4/1967	1/14/1982		
55	El Salvador		9/21/1967	11/30/1979	9/20/2011	9/20/2011
56	Equatorial Guinea			9/25/1987		
57	Eritrea			4/17/2001		
58	Estonia			10/21/1991		
59	Ethiopia			6/11/1993		
60	European Union					
61	Fiji					
62	Finland		10/11/1967	8/19/1975	1/31/2014	1/31/2014
63	France			11/4/1980	3/18/2015	

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64	Gabon			1/21/1983		
65	Gambia			12/29/1978		
66	Georgia			5/3/1994		
67	Germany		10/9/1968	12/17/1973		
68	Ghana		9/7/2000	9/7/2000		
69	Greece			5/16/1985		
70	Grenada			9/6/1991		
71	Guatemala			5/19/1988		
72	Guinea		2/28/1967	1/24/1978		
73	Guinea-Bissau			7/2/1992		
74	Guyana		8/22/1968	2/15/1977		
75	Haiti			10/8/2013		
76	Holy See					
77	Honduras		12/19/1966	2/17/1981	1/16/2018	
78	Hungary		3/25/1969	1/17/1974		
79	Iceland		12/30/1968	8/22/1979		
80	India			4/10/1979		
81	Indonesia			2/23/2006		
82	Iran (Islamic Republic of)		4/4/1968	6/24/1975		
83	Iraq		2/18/1969	1/25/1971		
84	Ireland		10/1/1973	12/8/1989		
85	Israel		12/19/1966	10/3/1991		
86	Italy		1/18/1967	9/15/1978		
87	Jamaica		12/19/1966	10/3/1975		
88	Japan		5/30/1978	6/21/1979		
89	Jordan		6/30/1972	5/28/1975		
90	Kazakhstan		12/2/2003	1/24/2006		
91	Kenya			5/1/1972		
92	Kiribati					
93	Kuwait			5/21/1996		
94	Kyrgyzstan			10/7/1994		
95	Lao People's Democratic Republic		12/7/2000	2/13/2007		
96	Latvia			4/14/1992		

APPENDIX 2: ICESCR Status, 5 April 2018

97	Lebanon			11/3/1972		
98	Lesotho			9/9/1992		
99	Liberia		4/18/1967	9/22/2004		
100	Libya			5/15/1970		
101	Liechtenstein			12/10/1998		
102	Lithuania			11/20/1991		
103	Luxembourg		11/26/1974	8/18/1983		
104	Madagascar		4/14/1970	9/22/1971		
105	Malawi			12/22/1993		
106	Malaysia					
107	Maldives			9/19/2006		
108	Mali			7/16/1974		
109	Malta		10/22/1968	9/13/1990		
110	Marshall Islands			3/12/2018		
111	Mauritania			11/17/2004		
112	Mauritius			12/12/1973		
113	Mexico			3/23/1981		
114	Micronesia (Federated States of)					
115	Monaco		6/26/1997	8/28/1997		
116	Mongolia		6/5/1968	1/18/1974	7/1/2010	
117	Montenegro			10/23/2006	9/24/2013	
118	Morocco		1/19/1977	5/3/1979		
119	Mozambique					
120	Myanmar		7/16/2015	10/6/2017		
121	Namibia			11/28/1994		
122	Nauru					
123	Nepal			5/14/1991		
124	Netherlands		6/25/1969	12/11/1978		
125	New Zealand		11/12/1968	12/28/1978		
126	Nicaragua			3/12/1980		
127	Niger			3/7/1986		
128	Nigeria			7/29/1993		
129	Niue					

APPENDIX 2: ICESCR Status, 5 April 2018

130	Norway	3/20/1968	9/13/1972		
131	Oman				
132	Pakistan	11/3/2004	4/17/2008		
133	Palau	9/20/2011			
134	Panama	7/27/1976	3/8/1977		
135	Papua New Guinea		7/21/2008		
136	Paraguay		6/10/1992		
137	Peru	8/11/1977	4/28/1978		
138	Philippines	12/19/1966	6/7/1974		
139	Poland	3/2/1967	3/18/1977		
140	Portugal	10/7/1976	7/31/1978	1/28/2013	1/28/2014
141	Qatar				
142	Republic of Korea		4/10/1990		
143	Republic of Moldova		1/26/1993		
144	Romania	6/27/1968	12/9/1974		
145	Russian Federation	3/18/1968	10/16/1973		
146	Rwanda		4/16/1975		
147	Saint Kitts and Nevis				
148	Saint Lucia				
149	Saint Vincent and the Grenadines		1/19/1981		
150	Samoa				
151	San Marino		10/18/1985	8/4/2015	8/4/2015
152	Sao Tome and Principe	10/31/1995	1/10/2017		
153	Saudi Arabia				
154	Senegal	7/6/1970	2/13/1978		
155	Serbia		3/12/2001		
156	Seychelles		5/5/1992		
157	Sierra Leone		8/23/1996		
158	Singapore				
159	Slovakia		5/28/1993	3/7/2012	
160	Slovenia		7/6/1992		
161	Solomon Islands		3/17/1982		
162	Somalia		1/24/1990		

APPENDIX 2: ICESCR Status, 5 April 2018

163	South Africa		10/3/1994	1/12/2015		
164	South Sudan					
165	Spain		9/28/1976	4/27/1977	9/23/2010	
166	Sri Lanka			6/11/1980		
167	State of Palestine			4/2/2014		
168	Sudan			3/18/1986		
169	Suriname			12/28/1976		
170	Swaziland			3/26/2004		
171	Sweden		9/29/1967	12/6/1971		
172	Switzerland			6/18/1992		
173	Syrian Arab Republic			4/21/1969		
174	Tajikistan			1/4/1999		
175	Thailand			9/5/1999		
176	The former Yugoslav Republic of Macedonia			1/18/1994		
177	Timor-Leste			4/16/2003		
178	Togo			5/24/1984		
179	Tonga					
180	Trinidad and Tobago			12/8/1978		
181	Tunisia		4/30/1968	3/18/1969		
182	Turkey		8/15/2000	9/23/2003		
183	Turkmenistan			5/1/1997		
184	Tuvalu					
185	Uganda			1/21/1987		
186	Ukraine		3/20/1968	11/12/1973		
187	United Arab Emirates					
188	United Kingdom of Great Britain and Northern Ireland		9/16/1968	5/20/1976		
189	United Republic of Tanzania			6/11/1976		
190	United States of America		10/5/1977			
191	Uruguay		2/21/1967	4/1/1970	2/5/2013	
192	Uzbekistan			9/28/1995		
193	Vanuatu					
194	Venezuela (Bolivarian Republic of)		6/24/1969	5/10/1978		
195	Viet Nam			9/24/1982		

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196	Yemen		2/9/1987		
197	Zambia		4/10/1984		
198	Zimbabwe		5/13/1991		
	Definitions and metadata: http://www.ohchr.org/Documents/Issues/HRIndicators/MetadataRatificationStatus.pdf				
	Source: Database of the United Nations Office of Legal Affairs (OLA) http://untreaty.un.org/ola				

ICESCR Status of Ratification. OHCHR Online. Available at: <http://indicators.ohchr.org/> [Accessed 25/04/18]

CHAPTER 2—BILL OF RIGHTS

Application

6.—(1) This Chapter binds the legislative, executive and judicial branches of government at all levels, and every person performing the functions of any public office.

(2) The State and every person holding public office must respect, protect, promote and fulfil the rights and freedoms recognised in this Chapter.

(3) A provision of this Chapter binds a natural or legal person, taking into account—

- (a) the nature of the right or freedom recognised in that provision; and
- (b) the nature of any restraint or duty imposed by that provision.

(4) A legal person has the rights and freedoms recognised in this Chapter, to the extent required by the nature of the right or freedom, and the nature of the particular legal person.

(5) The rights and freedoms set out in this Chapter apply according to their tenor and may be limited by—

- (a) limitations expressly prescribed, authorised or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;
- (b) limitations prescribed or set out in, or authorised or permitted by, other provisions of this Constitution; or
- (c) limitations which are not expressly set out or authorised (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorised or permitted by a law or by actions taken under the authority of a law.

(6) Subject to the provisions of this Constitution, this Chapter applies to all laws in force at the commencement of this Constitution.

(7) Subject to the provisions of this Constitution, laws made, and administrative and judicial actions taken, after the commencement of this Constitution, are subject to the provisions of this Chapter.

(8) To the extent that it is capable of doing so, this Chapter extends to things done or actions taken outside Fiji.

Interpretation of this Chapter

7.—(1) In addition to complying with section 3, when interpreting and applying this Chapter, a court, tribunal or other authority—

- (a) must promote the values that underlie a democratic society based on human dignity, equality and freedom; and

- (b) may, if relevant, consider international law, applicable to the protection of the rights and freedoms in this Chapter.

(2) This Chapter does not deny, or prevent the recognition of, any other right or freedom recognised or conferred by common law or written law, except to the extent that it is inconsistent with this Chapter.

(3) A law that limits a right or freedom set out in this Chapter is not invalid solely because the law exceeds the limits imposed by this Chapter if the law is reasonably capable of a more restricted interpretation that does not exceed those limits, and in that case, the law must be construed in accordance with the more restricted interpretation.

(4) When deciding any matter according to common law, a court must apply and, where necessary, develop common law in a manner that respects the rights and freedoms recognised in this Chapter.

(5) In considering the application of this Chapter to any particular law, a court must interpret this Chapter contextually, having regard to the content and consequences of the law, including its impact upon individuals or groups of individuals.

Right to life

8. Every person has the right to life, and a person must not be arbitrarily deprived of life.

Right to personal liberty

9.---(1) A person must not be deprived of personal liberty except—

- (a) for the purpose of executing the sentence or order of a court, whether handed down or made in Fiji or elsewhere, in respect of an offence of which the person had been convicted;
- (b) for the purpose of executing an order of a court punishing the person for contempt of the court or of another court or tribunal;
- (c) for the purpose of executing an order of a court made to secure the fulfilment of an obligation imposed on the person by law;
- (d) for the purpose of bringing the person before a court in execution of an order of a court;
- (e) if the person is reasonably suspected of having committed an offence;
- (f) with the consent of the person's parent or lawful guardian or upon an order made by a court, for the purpose of the person's education or welfare during any period ending not later than the date of his or her 18th birthday;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;

- (h) for the purpose of the person's care or treatment or for the protection of the community if he or she is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant; or
- (i) for the purpose of preventing the unlawful entry of the person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji.

(2) Subsection (1)(c) does not permit a court to make an order depriving a person of personal liberty on the ground of failure to pay maintenance or a debt, fine or tax, unless the court considers that the person has wilfully refused to pay despite having the means to do so.

(3) If a person is detained pursuant to a measure authorised under a state of emergency—

- (a) the person must, as soon as is reasonably practicable and in any event within 7 days after the start of the detention, be given a statement in writing, in a language that the person understands, specifying the grounds of the detention;
- (b) the person must be given the opportunity to communicate with, and to be visited by—
 - (i) his or her spouse, partner or next-of-kin;
 - (ii) a legal practitioner;
 - (iii) a religious counsellor or a social worker; and
 - (iv) a medical practitioner;
- (c) the person must be given reasonable facilities to consult with a legal practitioner of his or her choice;
- (d) the detention must, within one month and thereafter at intervals of not more than one month, be reviewed by a court; and
- (e) at any review by a court, the person may appear in person or be represented by a legal practitioner.

(4) At any review of the detention under subsection (3), the court may make such orders as to the continued detention of the person.

Freedom from slavery, servitude, forced labour and human trafficking

10.—(1) A person must not be held in slavery or servitude, or subjected to forced labour or human trafficking.

(2) In this section, “*forced labour*” does not include—

- (a) labour required in consequence of a sentence or order of a court;
- (b) labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison; or
- (c) labour required of a member of a disciplined force as part of his or her duties.

Freedom from cruel and degrading treatment

11.—(1) Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

(2) Every person has the right to security of the person, which includes the right to be free from any form of violence from any source, at home, school, work or in any other place.

(3) Every person has the right to freedom from scientific or medical treatment or procedures without an order of the court or without his or her informed consent, or if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian.

Freedom from unreasonable search and seizure

12.—(1) Every person has the right to be secure against unreasonable search of his or her person or property and against unreasonable seizure of his or her property.

(2) Search or seizure is not permissible otherwise than under the authority of the law.

Rights of arrested and detained persons

13.—(1) Every person who is arrested or detained has the right—

- (a) to be informed promptly, in a language that he or she understands, of—
 - (i) the reason for the arrest or detention and the nature of any charge that may be brought against that person;
 - (ii) the right to remain silent; and
 - (iii) the consequences of not remaining silent;
- (b) to remain silent;
- (c) to communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;

- (d) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (e) to be held separately from persons who are serving a sentence, and in the case of a child, to be kept separate from adults unless that is not in the best interests of the child;
- (f) to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter;
- (g) at the first court appearance, to be charged or informed of the reasons for the detention to continue, or to be released;
- (h) to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;
- (i) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (j) to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at State expense, of adequate accommodation, nutrition, and medical treatment; and
- (k) to communicate with, and be visited by,—
 - (i) his or her spouse, partner or next-of-kin; and
 - (ii) a religious counsellor or a social worker.

(2) Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.

(3) A person who is deprived of liberty by being detained, held in custody or imprisoned under any law retains all the rights and freedoms set out in this Chapter, except to the extent that any particular right or freedom is incompatible with the fact of being so deprived of liberty.

Rights of accused persons

14.—(1) A person shall not be tried for—

- (a) any act or omission that was not an offence under either domestic or international law at the time it was committed or omitted; or
- (b) an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

(2) Every person charged with an offence has the right—

- (a) to be presumed innocent until proven guilty according to law;

- (b) to be informed in legible writing, in a language that he or she understands, of the nature of and reasons for the charge;
- (c) to be given adequate time and facilities to prepare a defence, including if he or she so requests, a right of access to witness statements;
- (d) to defend himself or herself in person or to be represented at his or her own expense by a legal practitioner of his or her own choice, and to be informed promptly of this right or, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission, and to be informed promptly of this right;
- (e) to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence;
- (f) to a public trial before a court of law, unless the interests of justice otherwise require;
- (g) to have the trial begin and conclude without unreasonable delay;
- (h) to be present when being tried, unless —
 - (i) the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend; or
 - (ii) the conduct of the person is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence;
- (i) to be tried in a language that the person understands or, if that is not practicable, to have the proceedings interpreted in such a language at State expense;
- (j) to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and not to have adverse inference drawn from the exercise of any of these rights;
- (k) not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;
- (l) to call witnesses and present evidence, and to challenge evidence presented against him or her;
- (m) to a copy of the record of proceedings within a reasonable period of time and on payment of a reasonably prescribed fee;

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing; and

(o) of appeal to, or review by, a higher court.

(3) Whenever this section requires information to be given to a person, that information must be given as simply and clearly as practicable, in a language that the person understands.

(4) A law is not inconsistent with subsection (1)(b) to the extent that it—

(a) authorises a court to try a member of a disciplined force for a criminal offence despite his or her trial and conviction or acquittal under a disciplinary law; and

(b) requires the court, in passing sentence, to take into account any punishment awarded against the member under the disciplinary law.

Access to courts or tribunals

15.—(1) Every person charged with an offence has the right to a fair trial before a court of law.

(2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.

(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.

(4) The hearings of courts (other than military courts) and tribunals established by law must be open to the public unless the interests of justice require otherwise.

(5) Subsection (4) does not prevent—

(a) the making of laws relating to the trials of children, or to the determination of family or domestic disputes, in a closed court; or

(b) the exclusion by a court or tribunal from particular proceedings (except the announcement of the decision of the court or tribunal) of a person other than parties and their legal representatives if a law empowers it to do so in the interests of justice, public morality, the welfare of children, personal privacy, national security, public safety or public order.

(6) Every person charged with an offence, every party to civil proceedings, and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands.

(7) Every person charged with an offence and every party to civil proceedings has the right to follow the proceedings in a language that he or she understands.

(8) To give effect to the rights referred to in subsections (6) and (7), the court or tribunal concerned must, when the interests of justice so require, provide, without cost to the person concerned, the services of an interpreter or of a person competent in sign language.

(9) If a child is called as a witness in criminal proceedings, arrangements for the taking of the child's evidence must have due regard to the child's age.

(10) The State, through law and other measures, must provide legal aid through the Legal Aid Commission to those who cannot afford to pursue justice on the strength of their own resources, if injustice would otherwise result.

(11) If any fee is required to access a court or tribunal, it must be reasonable and must not impede access to justice.

(12) In any proceedings, evidence obtained in a manner that infringes any right in this Chapter, or any other law, must be excluded unless the interests of justice require it to be admitted.

Executive and administrative justice

16.—(1) Subject to the provisions of this Constitution and such other limitations as may be prescribed by law —

- (a) every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt;
- (b) every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and
- (c) any executive or administrative action may be reviewed by a court, or if appropriate, another independent and impartial tribunal, in accordance with law.

(2) The rights mentioned in subsection (1) shall not be exercised against any company registered under a law governing companies.

(3) This section shall not have retrospective effect, and shall only apply to executive and administrative actions taken after the first sitting of the first Parliament elected under this Constitution.

Freedom of speech, expression and publication

17.—(1) Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes —

- (a) freedom to seek, receive and impart information, knowledge and ideas;
- (b) freedom of the press, including print, electronic and other media;

- (c) freedom of imagination and creativity; and
- (d) academic freedom and freedom of scientific research.

(2) Freedom of speech, expression, thought, opinion and publication does not protect—

- (a) propaganda for war;
- (b) incitement to violence or insurrection against this Constitution; or
- (c) advocacy of hatred that—
 - (i) is based on any prohibited ground of discrimination listed or prescribed under section 26; and
 - (ii) constitutes incitement to cause harm.

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of—

- (a) national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including—
 - (i) the right to be free from hate speech, whether directed against individuals or groups; and
 - (ii) the rights of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law;
- (c) preventing the disclosure, as appropriate, of information received in confidence;
- (d) preventing attacks on the dignity of individuals, groups of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons;
- (e) maintaining the authority and independence of the courts;
- (f) imposing restrictions on the holders of public offices;
- (g) regulating the technical administration of telecommunications; or
- (h) making provisions for the enforcement of media standards and providing for the regulation, registration and conduct of media organisations.

(4) In this section, “*hate speech*” means an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed or prescribed under section 26.

Freedom of assembly

18.—(1) Every person has the right, peaceably and unarmed, to assemble, demonstrate, picket and to present petitions.

(2) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purpose of protecting the rights and freedoms of others; or
- (c) for the purpose of imposing restrictions on the holders of public offices.

Freedom of association

19.—(1) Every person has the right to freedom of association.

(2) A law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purpose of protecting the rights and freedoms of others;
- (c) for the purpose of imposing restrictions on the holders of public offices;
- (d) for the purpose of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
- (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or
- (f) for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

Employment relations

20.—(1) Every person has the right to fair employment practices, including humane treatment and proper working conditions.

(2) Every worker has the right to form or join a trade union, and participate in its activities and programmes.

(3) Every employer has the right to form or join an employers' organisation, and to participate in its activities and programmes.

(4) Trade unions and employers have the right to bargain collectively.

(5) A law may limit, or may authorise the limitation of, the rights mentioned in this section—

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purposes of protecting the rights and freedoms of others;
- (c) for the purposes of imposing restrictions on the holders of public offices;
- (d) for the purposes of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
- (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or
- (f) for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

Freedom of movement and residence

21.—(1) Every person has the right to freedom of movement.

(2) Every citizen has the right to apply for and be issued a passport or similar travel document, in accordance with any condition prescribed by written law.

(3) Every citizen, and every other person lawfully in Fiji, has the right to move freely throughout Fiji and the right to leave Fiji.

(4) Every citizen, and every other person who has a right to reside in Fiji, has the right to reside in any part of Fiji.

(5) Every person who is not a citizen but is lawfully in Fiji has the right not to be expelled from Fiji except pursuant to an order of a court or a decision of the Minister responsible for immigration on a ground prescribed by law.

(6) A law, or anything done under the authority of a law, is not inconsistent with the rights granted by this section to the extent that the law—

- (a) provides for the detention of the person or enables a restraint to be placed on the person's movements, whether—
 - (i) for the purpose of ensuring his or her appearance before a court for trial or other proceedings;

- (ii) in consequence of his or her conviction for an offence; or
 - (iii) for the purpose of protecting another person from apprehended violence;
- (b) provides for a person who is a non-citizen to be detained or restrained as a consequence of his or her arrival in Fiji without the prescribed entry documentation;
 - (c) provides for the extradition, on the order of the High Court, of a person from Fiji;
 - (d) provides for the removal from Fiji, on the order of the High Court, of any child who had previously been unlawfully removed from another country, for the purpose of restoring the child to the lawful custody of his or her parent or lawful guardian;
 - (e) provides for the removal from Fiji of a person who is not a citizen for the purpose of enabling the person to serve a sentence of imprisonment in the country of the person's citizenship in relation to a criminal offence of which he or she has been convicted in Fiji; or
 - (f) regulates, controls or prohibits the entry of persons on to land or property owned or occupied by others.
- (7) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights mentioned in this section—
- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
 - (b) for the purpose of protecting the rights and freedoms of others;
 - (c) for the purpose of protecting the ecology of any area;
 - (d) for the purpose of imposing a restriction on the person that is reasonably required to secure the fulfilment of an obligation imposed on the person by law; or
 - (e) for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment.
- (8) Section 9(3) and (4) apply to a person whose right to freedom of movement is restricted pursuant to a measure authorised under a state of emergency in the same way as they apply to a person detained pursuant to such a measure.

Freedom of religion, conscience and belief

22.—(1) Every person has the right to freedom of religion, conscience and belief.

(2) Every person has the right, either individually or in community with others, in private or in public, to manifest and practise their religion or belief in worship, observance, practice or teaching.

(3) Every person has the right not to be compelled to—

(a) act in any manner that is contrary to the person's religion or belief; or

(b) take an oath, or take an oath in a manner, that—

(i) is contrary to the person's religion or belief; or

(ii) requires the person to express a belief that the person does not hold.

(4) Every religious community or denomination, and every cultural or social community, has the right to establish, maintain and manage places of education whether or not it receives financial assistance from the State, provided that the educational institution maintains any standard prescribed by law.

(5) In exercising its rights under subsection (4), a religious community or denomination has the right to provide religious instruction as part of any education that it provides, whether or not it receives financial assistance from the State for the provision of that education.

(6) Except with his or her consent or, in the case of a child, the consent of a parent or lawful guardian, a person attending a place of education is not required to receive religious instruction or to take part in or attend a religious ceremony or observance if the instruction, ceremony or observance relates to a religion that is not his or her own or if he or she does not hold any religious belief.

(7) To the extent that it is necessary, the rights and freedoms set out in this section may be made subject to such limitations prescribed by law—

(a) to protect—

(i) the rights and freedoms of other persons; or

(ii) public safety, public order, public morality or public health; or

(b) to prevent public nuisance.

Political rights

23.—(1) Every citizen has the freedom to make political choices, and the right to—

(a) form or join a political party;

(b) participate in the activities of, or recruit members for, a political party; and

(c) campaign for a political party, candidate or cause.

(2) Every citizen has the right to free, fair and regular elections for any elective institution or office established under this Constitution.

(3) Every citizen who has reached the age of 18 years has the right—

- (a) to be registered as a voter;
- (b) to vote by secret ballot in any election or referendum under this Constitution;
- (c) to be a candidate for public office, or office within a political party of which the citizen is a member, subject to satisfying any qualifications for such an office; and
- (d) if elected, to hold office.

(4) A law may limit, or may authorise the limitation of, the rights mentioned in this section—

- (a) for the purpose of regulating the registration of voters, and prescribing persons who do not have or have ceased to have the right to be registered as a voter;
- (b) for the purpose of regulating the registration of political parties and prescribing persons who do not have the rights prescribed under subsection (1) and subsection (3)(c) and (d);
- (c) for the purpose of regulating persons who are not eligible to contest for a place in Parliament or in a public office, or an office within a political party; or
- (d) for the purpose of imposing restrictions on the holders of public offices (as defined in any such law) from the rights set out in this section.

Right to privacy

24.—(1) Every person has the right to personal privacy, which includes the right to—

- (a) confidentiality of their personal information;
- (b) confidentiality of their communications; and
- (c) respect for their private and family life.

(2) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).

Access to information

25.—(1) Every person has the right of access to—

- (a) information held by any public office; and

- (b) information held by another person and required for the exercise or protection of any legal right.

(2) Every person has the right to the correction or deletion of false or misleading information that affects that person.

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.

Right to equality and freedom from discrimination

26.—(1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law.

(3) 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; or
- (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others,

or on any other ground prohibited by this Constitution.

(4) A law or an administrative action taken under a law may not directly or indirectly impose a limitation or restriction on any person on a prohibited ground.

(5) Every person has the right of access, membership or admission, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, clubs, education institutions, public transportation services, taxis and public places.

(6) 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.

(7) Treating one person differently from another on any of the grounds prescribed under subsection (3) is discrimination, unless it can be established that the difference in treatment is not unfair in the circumstances.

(8) A law, or an administrative action taken under a law, is not inconsistent with the rights mentioned in this section on the ground that it—

- (a) appropriates revenues or other moneys for particular purposes;
- (b) imposes a retirement age on a person;
- (c) imposes a restriction on persons employed or engaged in a State service, or confers on them a privilege or advantage not imposed or conferred on other persons;
- (d) imposes restrictions on persons who are not citizens, or confers on them a privilege or advantage, not imposed or conferred on citizens;
- (e) makes provision with respect to adoption, marriage, devolution of property on death, and pension;
- (f) excludes persons from holding certain public offices; or
- (g) to the extent necessary and without infringing the rights or freedoms set out in any other section of this Chapter, gives effect to the communal ownership of *iTaukei*, Rotuman and Banaban lands and access to marine resources, or the bestowing of *iTaukei*, Rotuman and Banaban chiefly title or rank.

Freedom from compulsory or arbitrary acquisition of property

27.—(1) Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property.

(2) A written law may authorise compulsory acquisition of property—

- (a) when necessary for a public purpose; and
- (b) on the basis that the owner will be promptly paid the agreed compensation for the property, or failing agreement, just and equitable compensation as determined by a court or tribunal, after considering all relevant factors, including—
 - (i) the public purpose for which the property is being acquired;
 - (ii) the history of its acquisition by the owner;
 - (iii) the market value of the property;
 - (iv) the interests of any person affected by the acquisition; and
 - (v) any hardship to the owner.

(3) Nothing contained in, or done under the authority of, a law is inconsistent with this section to the extent that the law makes provision for the acquisition of property by way of—

- (a) taxation;
- (b) sequestration of bankrupt estates;
- (c) confiscation of the proceeds of crime;
- (d) penalty for breach of the law;
- (e) satisfaction of a mortgage, charge or lien; or
- (f) execution of a judgment of a court or tribunal.

Rights of ownership and protection of iTaukei, Rotuman and Banaban lands

28.—(1) The ownership of all *iTaukei* land shall remain with the customary owners of that land and *iTaukei* land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.

(2) Any *iTaukei* land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

(3) The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.

(4) Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

(5) The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.

(6) Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

Protection of ownership and interests in land

29.—(1) All ownership of land, and all rights and interests in land leases and land tenancies that existed immediately before the commencement of this Constitution shall continue to exist under this Constitution.

(2) No law shall be made to diminish or adversely affect the rights and interests in land leases and land tenancies, whether existing immediately before the commencement of this Constitution or made or issued after the commencement of this Constitution.

(3) All land lessees and land tenants have the right not to have their land leases or land tenancies terminated other than in accordance with their land leases or land tenancies.

(4) Parliament and Cabinet, through legislative and other measures, must ensure that all land leases and land tenancies provide a fair and equitable return to the landowners whilst protecting the rights of land lessees and land tenants, including security and protection of tenure of land leases and land tenancies and terms and conditions of land leases and land tenancies which must be just, fair and reasonable.

(5) All land that existed as freehold land immediately before the commencement of this Constitution shall remain as freehold land even if it is sold or purchased, unless it is sold to the State or is acquired by the State for a public purpose under section 27.

(6) For the purposes of this section—

“*land leases*” or “*land tenancies*” includes sub-leases, sub-tenancies and tenancies-at-will, but shall not include leases, agreements or tenancies for any building, structure or dwelling, whether used for residential, commercial, industrial or for tourism purposes, and shall not include any leases, agreements or tenancies for any fixture, equipment, plant or fittings on any land; and

“*land lessees*” or “*land tenants*” includes sub-lessees, sub-tenants or tenants-at-will of land leases or land tenancies.

Right of landowners to fair share of royalties for extraction of minerals

30.—(1) All minerals in or under any land or water, are owned by the State, provided however, that the owners of any particular land (whether customary or freehold), or of any particular registered customary fishing rights shall be entitled to receive a fair share of royalties or other money paid to the State in respect of the grant by the State of rights to extract minerals from that land or the seabed in the area of those fishing rights.

(2) A written law may determine the framework for calculating fair shares under subsection (1), taking into account all relevant factors, including the following—

- (a) any benefit that the owners received or may receive as a result of mineral exploration or exploitation;
- (b) the risk of environmental damage;
- (c) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;
- (d) the cost to the State of administering exploration or exploitation rights; and
- (e) the appropriate contribution to the general revenue of the State to be made by any person granted exploration or exploitation rights.

Right to education

31.—(1) Every person has the right to—

- (a) early childhood education;
- (b) primary and secondary education; and
- (c) further education.

(2) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right—

- (a) to free early childhood, 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 *iTaukei* 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 directions 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 the resources are not available.

Right to economic participation

32.—(1) Every person has the right to full and free participation in the economic life of the State, which includes the right to choose their own work, trade, occupation, profession or other means of livelihood.

(2) The State must take reasonable measures within its available resources to achieve the progressive realisation of the rights recognised in subsection (1).

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).

Right to work and a just minimum wage

33.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to work and to a just minimum wage.

(2) 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 the resources are not available.

Right to reasonable access to transportation

34.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to have reasonable access to transportation.

(2) 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 the resources are not available.

Right to housing and sanitation

35.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.

(2) 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 the resources are not available.

Right to adequate food and water

36.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.

(2) 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 the resources are not available.

Right to social security schemes

37.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to social security schemes, whether private or public, for their support in times of need, including the right to such support from public resources if they are unable to support themselves and their dependents.

(2) 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 the resources are not available.

Right to health

38.—(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care.

(2) A person must not be denied emergency medical treatment.

(3) 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 the resources are not available.

Freedom from arbitrary evictions

39.—(1) Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances.

(2) No law may permit arbitrary evictions.

Environmental rights

40.—(1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

(2) 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.

Rights of children

41.—(1) Every child has the right—

- (a) to be registered at or soon after birth, and to have a name and nationality;
- (b) to basic nutrition, clothing, shelter, sanitation and health care;
- (c) to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child—
 - (i) whether or not the parents are, or have ever been, married to each other; and
 - (ii) whether or not the parents are living together, have lived together, or are separated;
- (d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and
- (e) not to be detained, except as a measure of last resort, and when detained, to be held—
 - (i) only for such period of time as is necessary; and
 - (ii) separate from adults, and in conditions that take account of the child's sex and age.

(2) The best interests of a child are the primary consideration in every matter concerning the child.

Rights of persons with disabilities

42.—(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 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.

Limitation of rights under states of emergency

43.—(1) Any law enacted or promulgated in consequence of a declaration of a state of emergency under this Constitution—

- (a) may limit a right or freedom set out in this Chapter (with the exception of the rights and freedoms set out in sections 8, 10, 11, 13, 14, 15, 16, 22 and 26) only to the extent that—
 - (i) the limitation is strictly necessary and required by the emergency; and
 - (ii) the law is consistent with Fiji's obligations under international law applicable to a state of emergency; and
- (b) takes effect only when it has been published in the *Gazette*.

(2) A person detained under a law contemplated in subsection (1) retains all the rights recognised in this Chapter, subject only to the limitations referred to in subsection (1).

Enforcement

44.—(1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.

(2) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.

(3) The High Court has original jurisdiction—

(a) to hear and determine applications under subsection (1); and

(b) to determine questions that are referred to it under subsection (5),

and may make such orders and give such directions as it considers appropriate.

(4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available to the person concerned.

(5) If in any proceedings in a subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the member presiding in the proceedings may, and must if a party to the proceedings so requests, refer the question to the High Court unless, in the member's opinion (which is final and not subject to appeal), the raising of the question is frivolous or vexatious.

(6) When the High Court gives its decision on a question referred to it under this section, the court in which the question arose must dispose of the case in accordance with—

(a) the decision; or

(b) if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court — the decision of the Court of Appeal or the Supreme Court, as the case may be.

(7) The Attorney-General may, on behalf of the State, intervene in proceedings before the High Court that relate to a matter concerning a provision in this Chapter.

(8) If the proceedings before the High Court relate to a matter concerning a provision of this Chapter, the High Court must not proceed to hear and determine the matter until it is satisfied that notice of the matter has been given to the Attorney-General and a reasonable time has elapsed since the giving of the notice for consideration by the Attorney-General of the question of intervention in the proceedings.

(9) A notice under subsection (8) is not required to be given to the Attorney-General if the Attorney-General or the State is a party to the proceedings.

(10) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications are to be made to the High Court).

Human Rights and Anti-Discrimination Commission

45.—(1) The Human Rights Commission established under the Human Rights Commission Decree 2009 continues in existence as the Human Rights and Anti-Discrimination Commission.

(2) The Commission consists of—

- (a) a chairperson, who must be a person who is or is qualified to be appointed as a judge; and
- (b) 4 other members,

appointed by the President on the advice of the Constitutional Offices Commission.

(3) In advising the President as to the person to be appointed as chairperson or other members of the Commission, the Constitutional Offices Commission must have regard not only to their personal attributes but also to their knowledge or experience of the various aspects of matters likely to come before the Commission.

(4) Subject to this Constitution, the Commission is responsible for—

- (a) promoting the protection and observance of, and respect for, human rights in public and private institutions, and to develop a culture of human rights in Fiji;
- (b) education about the rights and freedoms recognised in this Chapter, as well as other internationally recognised rights and freedoms;
- (c) monitoring, investigating and reporting on the observance of human rights in all spheres of life;
- (d) making recommendations to Government concerning matters affecting the rights and freedoms recognised in this Chapter, including recommendations concerning existing or proposed laws;
- (e) receiving and investigating complaints about alleged abuses of human rights and take steps to secure appropriate redress if human rights have been violated, including making applications to court for redress or for other forms of relief or remedies;
- (f) investigating or researching, on its own initiative or on the basis of a complaint, any matter in respect of human rights, and make recommendations to improve the functioning of public or private entities;
- (g) monitoring compliance by the State with obligations under treaties and conventions relating to human rights; and
- (h) performing any other functions or exercising any powers as are conferred on the Commission by a written law.

(5) Subject to this Constitution, any person has the right to lodge a complaint with the Commission, alleging that a right or freedom in this Chapter has been denied, violated or infringed, or is threatened.

(6) Subject to this Constitution, the Commission has other powers, duties and functions, as set out in the Human Rights Commission Decree 2009 or in any other written law.

(7) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

(8) The Commission shall have the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission.

(9) The Commission has the authority to determine all matters pertaining to the employment of all staff in the Commission, including—

- (a) the terms and conditions of employment;
- (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and
- (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(10) The salaries, benefits and allowances payable to any person employed by the Commission are a charge on the Consolidated Fund.

(11) Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.

(12) The Commission shall have control of its own budget and finances, as approved by Parliament.