

APPENDICES

1. Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement);
2. Protocol Relating to the Madrid Agreement (Madrid Protocol), (together known as the Madrid System); and
3. Paris Convention for the Protection of Industrial Property

Schedule of Submissions on the three Madrid System

Oral Submissions		
Date	Time	Submitters
Monday, 8 th June 2020	10.40am	Siwatibau & Sloan Barristers & Solicitors
Tuesday, 9 th June, 2020	9.33am	Munro Leys Lawyers
Monday, 15 th June, 2020	11.28am	Joint Submissions - Office of the Solicitor-General and the Fiji Intellectual Property Office
Monday, 22 nd June, 2020	10.48am	Sherani & Co.
	11.29am	Ministry of Foreign Affairs
	1.12pm	Fiji Performing Rights Association Limited
Tuesday 11 th August 2020	10.00am	Intellectual Property Office of New Zealand
Written Submissions		
16 th June, 2020		Ministry of Commerce, Trade, Tourism and Transport

Summary of Submissions

Summary of Submissions - Pros and Cons of Acceding to the Madrid System							
Main Subject	Jon Apted - Munro Leys	Aminiasi Vulaono - Siwatibau & Sloans	Fiji Intellectual Property Office	Fiji Performing Rights Association (FPRA)	Sherani & Co.	Ministry of Foreign Affairs	Ministry of Commerce, Trade, Tourism and Transport
Pros	<p>*Accession to the Madrid System will benefit international brand owners who wish to register trademarks in Fiji. With increased globalisation, multi-national businesses who export goods to many different countries in the world want IP protection in each country and the Madrid System gives them the benefit of doing so with ease.</p>	<p>*These treaties favour foreign Intellectual Property (IP) owners who wants to register their IP in Fiji as oppose to local IP owners who may wish to register abroad.</p> <p>*</p>	<p>•Madrid System provides a mechanism for a single and international registration of trademarks. nationals of any signatory may secure protection of their trademark, registered in the country of origin, in all other states that are parties to the Agreement.</p> <p>* Eliminates the need to file separate applications in multiple countries.</p> <p>* Provides protection for intellectual property relating to industrial property, such as patents, industrial designs, utility models, service marks, trade names, geographical indications</p> <p>*Operational budget for the Madrid System is minimal and will be sourced from within FIPO's national budgetary allocation</p> <p>*No loss of revenue for the Fijian Government</p> <p>* No loss of jobs for the Fijian</p>	<p>The Convention also provides for "Moral Rights2", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honour or reputation. *Being in the Public Domain leaves it open to use, and possible abuse, by anybody in the world with consequent loss of meaning, relevance, value and national pride to Fiji and its peoples. However, we have a choice...temporarily at least, by extending the Duration of Copyright retroactively to Life + 100 years. *Fiji has NOT incorporated these 2 Treaties (WCT & WPPT) into the Fiji Copyright Act 1999, resulting in widespread blatant abuse and piracy of Copyright Owners' musical works over the Internet and other digital domains. This must be curbed as a matter of priority as it has other profound implications globally => our Government may be accused of not honouring its bilateral Agreements including the Bernes Convention, WIPO Membership and the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), which may result in its uspension as a member nation of the World Trade Organization (WTO). *There is an urgent and critical need for the protection of IPR in Traditional Knowledge such as Art (e.g. Tapa design), Craft (e.g. Canoe building), Navigation (ocean voyages),Traditional Biological Knowledge (e.g. Herbal medicines), Dances (Meke), Chants (e.g. Vakalutuivoce, Vakavunigasau), Games (e.g. Veitika), Legends (e.g. Fire-walkers of Beqa), Story-telling (I Tukuni), amongst others.</p>	<p>* The Madrid Protocol is the more cost-effective avenue for gaining international trademark protection, as compared to the country-by-country under the Paris Convention.</p>	<p>*The Madrid System makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated contracting Parties (Parties to the Madrid Union). This creates an easy user friendly system, recognized and enforceable worldwide, without the necessity of instructing lawyers in every country.</p> <p>* For Fiji, we are now facilitating our ratification of both the Paris Convention for the Protection of Industrial Property, and the Madrid System and as such, this is a well-placed strategy for ensuring the full protection of intellectual property.</p> <p>* The Agreement is key to counter unfair trading practices such as in situations where foreign industries replicates and manufacture local patents without consent, thus limiting Fiji's trade potential, revenue thus denying employment to our nationals</p> <p>*The Agreement safeguards our infant industries and local designers in light of the substantial demand for trade under the IT platform or ecommerce. It provides the assurance to local practitioners that their patents are covered, and business protected. Fiji has the authority to liaise with other contracting Parties in case of any contravention.</p> <p>* In ratifying the Madrid System, Fiji will join more than 100 countries who represent more than 80% of world trade, with potential for expansion as membership grows. This is another opportunity that Fiji may wish to explore through its subscription to these Agreements.</p>	<p>*The Madrid System is a convenient and cost-effective solution for registering and managing trademarks worldwide. File a single application and pay one set of fees to apply for protection in up to 122 countries. Modify, renew or expand your global trademark portfolio through one centralised system.</p> <p>*The Madrid System for international registration of marks has advantages for the trademark owners, national economies and Governments, as well as for professionals, like agents and attorney in the field of trademarks.</p> <p>*The Madrid System allows companies and individuals to obtain and maintain protection for their marks in an ever-increasing number of countries by means of a simple and economical procedure.</p> <p>*International registration has several advantages for the owner of the trademark. After registering the basic trademark, or filing an application for registration, with the Office of origin, the owner has to only file one international application, in one language, and pay one fee, in one currency.</p> <p>*The Fijian Government has a strong focus on nurturing and growing the MSMEs. Therefore, Fiji being party to the Madrid System will provide impetus for MSMEs to actively protect their trademarks internationally.</p> <p>*The Madrid System can also benefit the national/regional economy and the Government's finances, in particular. The overall volume of work for local trademark agents is expected to increase by accession to the Madrid System.</p> <p>*The Madrid System will also support Fiji's exports to the extent that it simplifies protecting trademarks abroad. Furthermore, it allows individuals and companies established in other Contracting Parties of the Madrid System to have easier access to the protection of their marks in the country/regional territory, since they can seek protection of the mark in any of the applicable Contracting Parties by merely designating these in the international application, or in a subsequent designation.</p>

Summary of Submissions - Pros and Cons of Acceding to the Madrid System							
Main Subject	Jon Apted - Munro Leys	Aminiasi Vulaono - Siwatibau & Sloans	Fiji Intellectual Property Office	Fiji Performing Rights Association (FPRA)	Sherani & Co.	Ministry of Foreign Affairs	Ministry of Commerce, Trade, Tourism and Transport
Cons	<p>*Accession is unlikely to benefit Fijian brand owners as they (with a few exceptions) have little incentive to register in multiple jurisdictions. It may disadvantage local businesses as it gives international businesses an easy way to claim exclusive rights to common words and images in Fiji (and prevent local businesses from using them) even though the international businesses may have no plans to use those trademarks here.</p> <p>*Accession would result in a large drop in national trademark filings in Fiji, because international brand owners will usually choose the ease of the Madrid System. This will reduce demand for IP services in Fiji by a factor of anywhere between 50 and 70%. For example, Munro Leys currently has a Trade-Marks team comprising seven employees. We anticipate that if Fiji joins the Madrid System, this number would fall to two positions.</p>	<p>*The application and registration system in Fiji including its records are all done and kept manually. Our registry is greatly under resourced.</p> <p>*Costly to maintain a registration system that complies with the treaties.</p> <p>*Costly to train highly qualified human resources that will manage and operate the system of registrations compliant with the treaties.</p> <p>*The registry will be required to keep a watch and comply with strict timelines under the treaties when processing applications otherwise Fiji may lose its right to oppose any application.</p> <p>*The Madrid System may unintentionally and unknowingly promote cultural misappropriation of traditional knowledge because one of the aspects of the process of an international registration application is that WIPO can register a mark if Fiji does not issue a notice of refusal within the prescribed timeframe under the international</p>			<p>The Trademark registries in Fiji, are not computerized so searches are still conducted manually. At the moment it takes between 10 months – several years for a mark to be registered and this does not reflect well on our country, the registry and the systems currently in place, needs to improve before we consider ratifying international treaties where the mechanisms would be to the international standard.</p> <p>*One of the drawbacks of the Madrid Protocol however, is that by virtue of one international registration serving as the basis of the applicant's protection in the designated countries, if the application or registration in the home country that supports the international registration is cancelled or denied, then the international registration will also be cancelled or denied. This problem doesn't occur under the Paris Convention.</p>		<p>*The MSMEs sector of developing countries is not financially strong to afford the fees for the international registration of marks via Madrid Protocol.</p> <p>*The international trademark remains dependent of the base country trademark for five years since the international filing date. If during the first five years, the base country trademark is rejected, removed, cancelled or limited, the international trademark will be cancelled. This is known as "Central Attack".</p>
Recommendation		<p>Ø Costly to maintain a registration system that complies with the treaties.</p>	<p>*Fiji should ratify both the Paris Convention for the Protection of Industrial Property and the Madrid Agreement and Protocol.</p>	<p>*FPRA fully endorse the intention by Government to ratify the Madrid System on Trademarks.</p> <p>*Also fully endorse the intention by Government to ratify the Paris Convention for the Protection of Industrial Property.</p> <p>*FPRA fully endorse the intention by Government to ratify the Paris Convention for the Protection of Industrial Property.</p> <p>*FPRA respectfully submit to the Committee that the Duration of Copyright be amended retroactively in the Fiji Copyright Act 1999 to Life + 100 years.</p> <p>*FPRA respectfully submit to the Committee that both the WIPO Copyright Treaty (WCT) and the WIPO Phonograms & Performance Treaty (WPPT) be incorporated into the Fiji Copyright Act 1999.</p> <p>*FPRA respectfully submit to the Committee that the Traditional Knowledge & Expressions of Culture (TKEC) Bill be fully enacted expeditiously.</p> <p>*Declare ISA LEI as a National Heritage;</p> <p>Classify ISA LEI as a Geographical Indicator;</p> <p>Or, a totally new and encompassing legislation.</p>	<p>*The Trademarks act 1933 needs to be revised and the services, resources of the Trade mark Registry needs to be improved before the ratification of the two proposed Treaties can be considered.</p> <p>*The registration process for trademarks for international applications and registrations can be complicated and lengthy. Whether to utilize the Madrid Protocol for an international trademark application or to file an application directly with a foreign trademark office should be evaluated on a case by case basis. Any global business, however should prioritize protecting its trademarks in the most effective way possible</p>	<p>*Fiji should become Contracting Party to both the Paris Convention for the Protection of Industrial Property and the Madrid Agreement and Protocol to ease the process of doing business in Fiji, and to protect intellectual property in Fiji and internationally.</p>	<p>*Fiji's accession to the Madrid System and the Paris Convention will offer unique benefits to all domestic companies and entrepreneurs to protect their trademark and industrial property portfolios across the world.</p> <p>Similarly, the option of choosing Fiji as a designated country will ease the economics of filing trademark applications for many international parties and investors.</p> <p>*Since filing a single international application is equivalent to filing a bundle of national applications, the Madrid system will save both time and money for Fijian businesses. The system's centralised registration also offers a simple and efficient way to manage any businesses mark portfolio.</p> <p>*The accession to the Madrid Agreement and Madrid Protocol is welcomed, with the disclaimer that it may not be for everyone. Businesses should carefully weigh the pros and cons before deciding to rely on the Madrid System for trademark protection in other countries.</p> <p>*Moreover, the Paris Convention establishes a right of priority, which means that an applicant can use his or her first filing date as an effective filing date in other contracting countries. This is expected to provide tremendous boost to scientific research and innovative activity in the country.</p> <p>*Fiji will also be able to play a more significant role in determining matters related to industrial property in international fora, and articulate its concern on such</p>

Submission by the Siwatibau & Sloan Barristers & Solicitors



PIIPS

PACIFIC ISLANDS INTELLECTUAL PROPERTY SERVICES
IP DIVISION OF
SIWATIBAU & SLOAN | BARRISTERS & SOLICITORS

ON-LINE SUBMISSION

8 June 2020

THE STANDING COMMITTEE FOR FOREIGN AFFIARS AND DEFENCE,
Department of Legislature
Parliament of Republic of Fiji

Dear Honorable Chairman and Respectable Members of the Standing
Committee,

**RE SUBMISSION ON THE PROPOSAL TO ACCEDE TO THE MADRID SYSTEM AND THE
PARIS CONVENTION.**

1. We take this opportunity to thank the Standing Committee for inviting us to submit on the intended accession of Fiji to the Madrid System and the Paris Convention.

Introduction

2. Our firm provides Intellectual Property ("IP") law services throughout the Asia - Pacific region. For more than 10 years our firm has provided professional IP services through our IP department known as the Pacific Islands Intellectual Property Services (PIIPS). PIIPS has been specifically designed to meet the needs of clients who want cost effective and efficient services in the Asia Pacific region with a particular focus on the Pacific Islands. Chambers & Partners, a global ranking guide of lawyers and law firms in over 200 countries recognizes more than 10 years PIIPS's dedicated service as follows: "A leading IP offering firm that services international clients on registrations throughout the Pacific Islands."
3. Our IP department manages large trademark portfolios for clients and advises clients on how to secure commercial advantages and protection of their IP rights in Fiji and the South Pacific context.

Summary of our submission

4. Accessing to one or all of the treaties will have substantial effect on the landscape of IP laws in our country. In our opinion, the disadvantages of accessing to the treaties outweigh the advantages.



5. Our recommendation to the committee is for Fiji not to accede to the treaties but to simply to update its local IP legislations.
6. With the utmost respect, we do not agree with the Written Analysis of the treaties ("**the Written Analysis**") and state that Fiji does not need to accede to the treaties in order to demonstrate our commitment to the development of IP laws in Fiji. We also do not agree that by acceding to the treaties will reinforce Fiji's intention to uplift business and investment climates in our country. We humbly submit to the Honorable Committee that Fiji only needs to update its local legislations to show its commitment and uplift its business and investment climates.
7. Unfortunately, the Written Analysis in our view is too brief for such a big step of acceding to the treaties. We recommend that more time and review should be made regarding the possible effects of the treaties to local IP Owners and Fiji as a country.
8. As a developing country, it is our humble opinion that it is in the best interest of our country to update our local law only and maintain exclusive and national control of IP registrations in Fiji. Acceding to the treaties will not benefit local brand owners considering the makeup of local IP owners. Secondly, it will not benefit our nation in terms of capacity to comply with the requirements of the treaties. Lastly, acceding to the treaties will greatly affect our country's efforts for much needed foreign income.
9. We set out below the reasons for our submission.

Current Intellectual Property Laws in Fiji

10. With the exception to our Copyright Act, our current Trade Marks Act, Patents Act and Designs Act came into effect before Fiji gained its independence in 1970. For this reason, we applaud and welcome the Government's effort to modernize the IP laws in Fiji and its recognition that the protection of IP rights is essential for any country to grow socially and economically.
11. We understand from the Written Analysis that the cabinet has approved the Trade Marks Bill 2020, the Patent Bill 2020 and the Design Bill 2020 ("**the Bills**").
12. While we fully support the efforts to update the current IP laws in Fiji, we are concerned that based on the Written Analysis, the approval of the Bills only came about because it was a requirement of a Policy Based Loan by the Asian Development Bank ("**ADB**") and may not as the result of our country's own initiative and effort to update its domestic laws. On this front, we strongly recommend that Fiji should not rush into acceding to the treaties but carry out

more consultations and review of the effects of the treaties on countries such as ours.

13. If it is the cabinet's priority to comply with the ADB requirements, it can do so by updating our local laws only. According to the Written Analysis, ADB only requires Fiji to update its local IP laws which we fully support. ADB does not require Fiji to accede to the treaties.

Impact on local IP Owners

14. The treaties, in particular the Madrid Systems are often described as a one stop solution for registering and managing IPs worldwide allowing trademark owners to file one application in one language and pay one set of fees for protection of up to 120 countries. The treaties greatly benefit IP owners that operate in many countries around the world.
15. These treaties favor foreign IP owners who wants to register their IP in Fiji as oppose to local IP owners who may wish to register abroad.
16. As a developing country, Fiji consists of only a handful of large businesses that operate in more than one country. Majority of IP owners in Fiji are small, medium startups or businesses who operate only in Fiji and whose main concern is the protection of their IP rights locally. Updating our local laws and their enforceability without acceding to the treaties will greatly benefit all local IP owners.
17. The challenges that our local IP owners will face if they intend to register through the treaties are:
 - Exponential costs of applying for registering.
 - Exponential costs to maintain their registrations under the treaties.
 - Applying under the treaties does not automatically guarantee local IP owners that their application will be registered in the nominated countries. If their applications are opposed in any of the nominated countries, our local IP owners will have to engage agents in those other countries to represent them in the opposition therefore incurring more costs.
18. We do not foresee a large number of local IP owners to apply for international registrations under the treaties.

Impact on local IP Registry

19. The application and registration system in Fiji including its records are all done and kept manually. Our registry is greatly under resourced.
20. Paragraph 5 of the Written Analysis outlines the main requirements that Fiji must have in order to accede to the treaties. At the time of making this submission, Fiji does not have any of those requirements in place.
21. The effects on our local registry if Fiji is to accede to the treaties are:
 - Cost of maintaining a registration system that complies with the treaties.
 - Cost of training a highly qualified human resources that will manage and operate the system of registrations compliant with the treaties.
 - Each treaty have their own requirements for registrations therefore the Fiji registry will have to comply and facilitate all the different requirements of all the three treaties and examine any applications in accordance with the domestic laws.
 - The registry will be required to keep a watch and comply with strict timelines under the treaties when processing applications otherwise Fiji may lose its right to oppose any application.
 - The registry will be required to conduct opposition proceedings in a timely manner. Under our current laws, we have opposition proceedings pending in the registry for more than 5 to 10 years.
22. In our humble opinion, we simply do not have the capacity to maintain and comply with the requirements of the treaties which ultimately will benefit foreign IP owners more than our local IP owners.

Impact on National Income

23. From our experience, we estimate 80 to 90 percent of IP pending applications and registrations in Fiji belong to foreign companies. These foreign companies are required to apply directly to our registry if they wish to have their IP protected in Fiji.

24. If Fiji accedes to the treaties, those 80 to 90 percent IP owners do not need to file their IP registrations in Fiji. This will have the effect of Fiji losing out on possible income that it would have enjoyed if it maintains that all applicants that wish to file in Fiji are to file directly in Fiji instead of through the treaties.
25. IP is a service that is exported by Fiji, it generates income, brings in foreign reserve into the country, provides employment and trains locals with skills in a technical area and for the Fiji Government, tax revenue.
26. Needless to say, if Fiji accedes to the Madrid System this export of services is removed which as stated above has follow on consequences, which at present times should be avoided as Fiji as a nation needs export, needs foreign reserve, and its people need job security so they earn and spend to ensure that the economy is moving.

National Sovereignty and Traditional Knowledge

27. The effects of all treaties is that it affects national sovereignty in one way or another. This is the same for the treaties that are the subject of this submission.
28. Fiji has a diversity of cultures, customs, traditions, traditional knowledge that are unique and belongs to the people of Fiji.
29. It is of great importance to absolutely ensure and entrench that any IP related to Fiji's culture, customs, and traditions, traditional knowledge is and will be protected for the benefit of the people of Fiji.
30. From WIPO's own Magazine an article by Dr. Marisella Ouma, Traditional Knowledge: the challenge facing international lawmakers published in February 2017, it is acknowledged that while WIPO administers many international IP-related treaties, none of them specifically address the issue of traditional knowledge. This is a grave concern for Fiji if Madrid System or the Convention does not address these things which are important to Fiji.
31. We have already seen examples where certain words used every day in Fiji has been registered overseas and authorities responsible to police such applications only found out after the registration. An example is the word "Bula" registered in USA which is a member of the Madrid System and the Convention. Kava properties for health benefits have been subject to patent registration by Pharmaceuticals.

32. Does these international registration systems truly protect culture, customs, and traditions, traditional knowledge such as medicines, plants, art and cultural expressions and performances and language?
33. Further cultural designs and expressions are open to be registered by international owners which can proceed to registration due to reasons of lack of resources to police such applications by FIPO or their lack of capacity to comply with the strict timeframes under the international registration systems.
34. We respectfully submit that the Madrid System may unintentionally and unknowingly promote cultural misappropriation of traditional knowledge because one of the aspects of the process of an international registration application is that WIPO can register a mark if Fiji does not issue a notice of refusal within the prescribed timeframe under the international treaties.
35. Our present Trade Marks Act does not protect traditional knowledge and we were not privy to the Bills passed by cabinet and hope it includes protection but merely having a section stating that traditional knowledge is protected is not sufficient. Developing laws to protect traditional knowledge at best is challenging and requires wide consultation with stake holders and as such we humbly submit that any accession to international treaties such as the Madrid System and the Convention should be postponed to allow for a more thorough review, study and consideration.

Effects on Local IP Agents

36. As stated, 80 to 90 percent of registrations in Fiji are by foreign IP owners.
37. In order to register their registrations in Fiji, the foreign IP owners usually employ the services of local agents like our firm in Fiji to file and maintain their applications and registrations. This has created a service sector in Fiji that is creating employment and livelihood for many Fijians. This practice of engaging local agents has been adopted in many countries and our neighbours such as Australia, New Zealand, Samoa and Tonga amongst others as it benefits one's country.
38. If Fiji accedes to the treaties, the number of direct registrations by foreign owners will decrease dramatically which then affects the services of local agents who may become obsolete or redundant.

Potential to Grow the Industry Domestically without Accession to the Madrid System and the Convention

39. As stated above we commend the Fiji Government's attempt to modernize the IP laws of Fiji as it is much needed.
40. We respectfully submit that Fiji ought to update its local laws without the need to accede to the treaties.
41. There is a need to establish the systems and procedures and build the capacity domestically before acceding to international treaties.
42. Fiji has the lowest official fees for filing and maintaining IP registration. For comparison, while Fiji charges \$10.80 as application fee, Tuvalu charges US\$400.00, Tonga charges US\$100.00, and Kiribati charges AUS \$100.00.
43. If Fiji is to update its local laws only and increase its application and registration fee domestically, we are confident that not only will Fiji be able to meet its obligation of providing protection for IP owners both local and foreigners, it will be self-sufficient to maintain a sound and competent IP registration system and retain its independence to decide what is registrable in Fiji.

Conclusion.

44. It is our humble submission that considering Fiji's current social and economic standing, Fiji should consider to update its local IP Laws only and do not accede to the treaties.
45. Considering the number of foreign IPs that are registered in Fiji, there is great potential for Fiji as the hub of the Pacific to simply update its local laws and attract more foreign IP owners to register in Fiji. The interest to file IP registrations in Fiji is immense however Fiji will not be able to capture the full potential of such interest if it is to accede to the treaties.
46. Our firm with other stakeholders was initially involved in the review of the Trade Mark Act with the office of the Solicitor General at no cost. Unfortunately, the committee has not been requested to meet for years but our firm still remains available to assist our law makers if required in the development of domestic IP laws in our country.
47. If the committee feels that this submission has not persuaded the committee to recommend that Fiji do not accede to the treaties,

~~then we request the committee to at least conduct a thorough review~~
of the treaties and what it means for Fiji.

- 48.** We hope that the above submission will be considered and we will be more than happy to answer any questions and queries that the Committee may have.

Kind regards

A handwritten signature in black ink, appearing to read 'Aminiasi Vulaono', with a large, stylized initial 'A'.

Aminiasi Vulaono

9 June 2020
Your ref

Our ref M999-265 JLA:vs

SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE ON MATTERS IN CONNECTION WITH:

49. The Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement) and Protocol Relating to the Madrid Agreement (Madrid Protocol), together known as the Madrid System

50. The Paris Convention for the Protection of Industrial Property

Introduction

- Munro Leys is pleased to respond to the Committee's invitation to make submissions on the implications for Fiji of becoming party to the above international instruments (**Agreements**). We regret that, in view of the relatively short time since the invitation was received, these submissions are relatively short. In summary however:
 - the current process is premature because the relevant Bills have not been circulated for comment or study. Joining the Madrid System or the Paris Convention does not make Fiji compliant with them. Fiji still has to ensure that its (new) IP laws meet the requirements of the Madrid System and the Convention
 - underscoring the point in (a) above there appears to be some fundamental misunderstanding in Government about what Fiji's international obligations are and the most efficient way for Fiji to proceed
 - FIPO is not equipped to deal with the rigours of the Madrid System in terms of dealing with the deadlines it imposes (which could create "default" trade-mark registrations in Fiji which are undesirable) or the IP disputes that will be generated (and in which there is an international expectation of quick, efficient resolution according to international IP law standards)
 - disruption of local IP practices will result in some loss of foreign exchange, jobs and tax revenue. The Government can increase its own revenue in the IP area

by increasing its trade-mark registration fees without joining the Madrid System.
This is a matter for Fiji as a sovereign government

- accordingly the ideal outcome at present is to have an orderly programme to consider joining the Madrid System. This would include properly understanding the demands of the Madrid System, what work is required in terms of the laws to be prepared and the administrative systems to be set up and the skills to be acquired. All of this can be done while preserving (and indeed improving) foreign exchange, jobs and Government revenue. In the short term, therefore, this is the “win/win solution” – although the Madrid System is probably the desired end point when Fiji is ready.
- we have no principled objection to acceding to the Paris Convention but are unable to comment on acceding to that Convention in the absence of the proposed legislation.

About Munro Leys and Fiji IP law generally

- Munro Leys is Fiji’s largest law firm with a practice primarily directed to commercial law and foreign investment. It has a significant international linkages, including with the major international law firms who deal in intellectual property (**IP**). Munro Leys is a member of the International Trade Mark Association (**INTA**) the leading international body of practitioners in the trade-mark area (which is the bulk of IP work with which Fiji is concerned). The firm’s partners travel to the main INTA annual conference each year (and also to regional events) to promote trade mark filings in Fiji and the Pacific Islands. In the process , we meet and hear the views of a wide range of international lawyers on trade-mark issues and Fiji’s general performance in the IP area.
- Approximately five Fiji law firms specialise in IP work, particularly for international clients. Other firms perform trade-mark work from time to time.

The Madrid System

- The Madrid System describes membership of:
 - either the Madrid Agreement or the Madrid Protocol or
 - both the Madrid Agreement and Madrid Protocol.

The system, administered by the World Intellectual Property Organisation (**WIPO**) provides a simplified system for the international registration of trade marks.

The main result of accession to the Madrid System

- Currently international brand owners seeking to register their trade marks in Fiji must apply in Fiji (usually through a Fijian law firm) to register them. If Fiji joins the Madrid System, a brand owner who wishes to register its trade mark in Fiji can simply file an application in its home country and extend the application to other members of the Madrid System (which would include Fiji by basically “ticking a box” on an approved form. The brand owner will no longer need to engage Fijian agents.
- International organisations such as WIPO of course promote adoption by countries such as Fiji of the Madrid System. Undoubtedly there are benefits to global business of wide Madrid System membership and Fiji (arguably) gains credibility in the IP sphere as being a Madrid System member willing to facilitate trade-mark registration in Fiji through use of a global system.

Who will benefit directly from adoption by Fiji of the Madrid System?

- Accession to the Madrid System will benefit international brand owners who wish to register trade-marks in Fiji. With increased globalisation, multi-national businesses who export goods to many different countries in the world want IP protection in each country and the Madrid System gives them the benefit of doing so with ease.
- Accession is unlikely to benefit Fijian brand owners as they (with a few exceptions) have little incentive to register in multiple jurisdictions. It may disadvantage local businesses as it gives international businesses an easy way to claim exclusive rights to common words and images in Fiji (and prevent local businesses from using them) even though the international businesses may have no plans to use those trademarks here.

Is Fiji ready?

- Unfortunately, Fiji is not ready to accede to the Madrid system. It does not meet any of the criteria in paragraph 5.1 of the analysis paper namely –
 - a Madrid-compatible trademarks legislation in place;
 - institutional organisation;
 - staff trained in the Madrid international registration system;
 - operational procedures in place for handling international applications;
 - an agreement with WIPO on sending and receiving information in the Madrid international registration system; and

- ensure that the national office has an online system of registration that can communicate with WIPO. (For this digital platform, WIPO is bale to provide technical assistance to implement the WIPO Industrial Property Automation System, upon receiving Fiji’ request)
- It is important to note that the paper does not evaluate Fiji’s compliance with any of the criteria. It proceeds as if we can accede to the Madrid System without first meeting the requirements. . We comment further below on the readiness of the Fiji Intellectual Property Office (**FIPO**) to meet the administrative demands of the Madrid System.

The current process is premature

- Fiji does not yet meet the essential criterion of having Madrid compliant legislation. It appears that Cabinet has approved new Trade Marks, Patents and Designs Bills but without being able to review these Bills it is difficult for us to make comprehensive submissions on accession to any of the Madrid Agreement, the Madrid Protocol and the Paris Convention.
- The Committee itself is not in a position to sensibly assess the desirability of Fiji’s accession to any of these treaties (or Fiji’s ability to accede and comply) without having the Bills before it.

Review of supporting written analysis paper

No local context

- The supporting written analysis paper summarises the effect of each provision of each treaty but offers no analysis in terms of:
 - Fijian law
 - the practical effects of each treaty in the Fijian context and/or
 - the benefits and disadvantages to Fiji and Fijians of acceding to any of these Conventions. It appears that there has been no real thought about these important issues.

Errors or incorrect assumptions in the analysis paper

- The analysis paper is incorrect and misleading in stating (in paragraph 6.3) that accession to the Conventions will ensure that Fiji is “compliant with its international obligations for the protection of intellectual property”. Fiji has no such international obligations. Fiji has no obligation to join any of the Agreements. It may be desirable for Fiji to accede to the Agreements referred to above but because Fiji is not a member of any, it

does not have “obligations”. The first question is whether Fiji should assume those obligations.

- The paper assumes that Fiji must accede to both the Madrid Agreement and the Madrid Protocol. However in recent times contracting states have been joining the Protocol without joining the Agreement as the latter is outdated and does not meet international needs (and this is what in fact led to the Protocol). **Attachment A** has the current list of members of the two treaties.

Emerging economies and the Madrid System – who else has joined?

- Many developing countries/emerging economies have not joined the Madrid System. In the Pacific region, only Samoa has joined. Other neighbours like PNG, Vanuatu and Tonga have modernised their IP laws without joining the Madrid Agreement (suggesting that they see some benefit in staying out of the Madrid System). Internationally, Mauritius is not a member, nor are other Caribbean and Indian Ocean states.

Is the Fiji Intellectual Property Office ready?

- Apart from the absence of legislation, the biggest impediment to joining the Madrid System is that the Fiji Intellectual Property Office (FIPO) does not meet the necessary international standards. This situation is common to most small developing countries. The amount of IP work these countries do is generally small. It does not justify the cost of developing and retaining qualified personnel. Many personnel have been trained by WIPO over the years but they move on to more important and pressing work within the Government.
- We have a number of trade mark filings that have been held up at FIPO for many years. We have trade mark oppositions that have been awaiting hearings **for decades**. **Attachment B** contains some statistics.
- Efficiencies within FIPO have a practical importance. Under the Madrid System, a member’s trade mark office must give its decision on the acceptability of a trade mark within 12 months (or 18 months if the country chooses that period when it accedes to the System). If the office does not respond within that time, the trade mark is **automatically deemed to be accepted**.
- Our FIPO has never been able to consistently process trade mark applications within 12 months or 18 months. This means that there is a serious risk of trade marks which should not be registered in Fiji, being deemed to be accepted “by default”. There is some sensitivity about international registration of culturally iconic words and symbols (eg *bula*) by non-Fijians. While some of the resulting controversy flows from misunderstanding, here is clearly risk of cultural appropriation if FIPO is not efficient and alert.

The direct impact on Fiji IP practices

- It is fair to say that the five or so Fiji law firms (including Munro Leys) which have IP practices (and other smaller IP practitioners who work as trade-mark agents (not necessarily law firms) clearly have a vested interest in the *status quo*. Their systems and employment structures are set up to the current IP system and acceding to the Madrid System will disrupt these.
- Accession would result in a large drop in national trade mark filings in Fiji, because international brand owners will usually choose the ease of the Madrid System. This will reduce demand for IP services in Fiji by a factor of anywhere between 50 and 70%. For example, Munro Leys currently has a Trade-Marks team comprising seven employees. We anticipate that if Fiji joins the Madrid System, this number would fall to two positions.
- Under the current system, local law firms bring in foreign exchange (estimated at around FJD3-4 million) from work for foreign brand owners. VAT and income tax are paid on these fees. Additionally some stamp duty is payable on assignments. This income (and resulting tax revenue is likely to fall dramatically.
- The response from FIPO may be that Government direct revenue is likely to rise as Government will receive its share of filing fees from WIPO. This is because currently the prescribed filing fees are very low (for example F\$10.90 (VIP) for a trade-mark application in one class). So Fiji's share of the Madrid fees which are at an international level will increase the return to Government.
- If this was the only consideration, then it would be difficult to disagree with accession to the Madrid System. However (see above) the implications are more complex than this.

Is there a middle ground?

- Acceding to the Madrid System in the future may be a worthy objective. However this has to be done in small steps because Fiji lacks the resources and experience to "jump in". FIPO in particular needs to improve its efficiency and effectiveness – and its reputation around the world as an efficient registry – before this can happen.
- Clearly revenue for Government in these challenging economic times is important. Government can achieve the same kind of increase in economic return without joining Madrid by simply increasing local filing fees to the international level – without having to bear the costs of complying with the Madrid system (in terms of computer systems and retaining skilled and experienced personnel). If it was to take this transitional step, it would be able to create a fund to enable skills to be built up and to enhance efficiency in its Registry. That would itself give the Government the flexibility to shift to the

Madrid System if it wished to do so. **Attachment C** is a comparison of Fiji's fees with those of our Pacific Island neighbours which should give an indication of the scope for a fee increase without joining the Madrid system.

The best outcome now?

- So the best outcome for Fiji would be as follows:
 - proceed with modernising our laws in consultation with stakeholders. This will enable Fiji to move forward in an orderly way, including in a way which ensures that the ease of doing business here is enhanced
 - defer a decision to accede to the Madrid System until there is better competence, experience and efficiency in the FIPO
 - meanwhile increase local registry fees to Madrid levels (or just below Madrid levels). This will ensure that Government obtains the kind of direct return it would have received if it had joined the Madrid System while Fii preserves the jobs, foreign exchange and tax income that it currently enjoys.

RESPECTFULLY SUBMITTED

MUNRO LEYS



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Attachment A

- 16 -

(1) Madrid Agreement Concerning the International Registration of Marks

~~Madrid Agreement (Marks) (1891), revised at Brussels (1900), at Washington (1911),
at The Hague (1925), at London (1934), Nice (1957) and at Stockholm (1967), and amended in 1979 and~~

(2) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

Madrid Protocol (1989), amended in 2006 and in 2007

(Madrid Union) ¹

Status on January 15, 2020

State/IGO became party to the Madrid Agreement ²	Date on which State	Date on which State/IGO became party to the Madrid Protocol (1989)
Afghanistan		June 26, 2018
African Intellectual Property Organization (OAPI)		March 5, 2015 ^{5,6}
Albania	October 4, 1995	July 30, 2003
Algeria	July 5, 1972	October 31, 2015
Antigua and Barbuda		March 17, 2000 ^{5,6}
Armenia	December 25, 1991	October 19, 2000 ^{6,10}
Australia		July 11, 2001 ^{5,6}
Austria	January 1, 1909	April 13, 1999
Azerbaijan	December 25, 1995	April 15, 2007
Bahrain		December 15, 2005 ¹⁰
Belarus	December 25, 1991	January 18, 2002 ^{6,10}
Belgium	July 15, 1892 ³	April 1, 1998 ^{3,6}
Bhutan	August 4, 2000	August 4, 2000
Bosnia and Herzegovina	March 1, 1992	January 27, 2009
Botswana		December 5, 2006
Brazil		October 2, 2019 ^{5,6,8}
Brunei Darussalam		January 6, 2017 ^{5,6}
Bulgaria	August 1, 1985	October 2, 2001 ⁶
Cambodia		June 5, 2015 ^{5,6}
Canada		June 17, 2019 ^{5,6}
China	October 4, 1989 ⁴	December 1, 1995 ^{4,5}
Colombia		August 29, 2012 ^{5,6}
Croatia	October 8, 1991	January 23, 2004
Cuba	December 6, 1989	December 26, 1995
Cyprus	November 4, 2003	November 4, 2003 ⁵
Czech Republic	January 1, 1993	September 25, 1996
Democratic People's Republic of Korea	June 10, 1980	October 3, 1996
Denmark		February 13, 1996 ^{5,6,7}
Egypt	July 1, 1952	September 3, 2009
Estonia		November 18, 1998 ^{5,6,8}
Eswatini	December 14, 1998	December 14, 1998
European Union		October 1, 2004 ^{6,10}
Finland		April 1, 1996 ^{5,6}
France	July 15, 1892 ⁹	November 7, 1997 ⁹
Gambia		December 18, 2015 ^{5,6}
Georgia		August 20, 1998 ^{6,10}
Germany	December 1, 1922	March 20, 1996
Ghana		September 16, 2008 ^{5,6}
Greece		August 10, 2000 ^{5,6}
Hungary	January 1, 1909	October 3, 1997
Iceland		April 15, 1997 ^{6,10}
India		July 8, 2013 ^{5,6,8}
Indonesia		January 2, 2018 ^{6,10}
Iran (Islamic Republic of)	December 25, 2003	December 25, 2003 ⁵
Ireland		October 19, 2001 ^{5,6}
Israel		September 1, 2010 ^{5,6}
Italy	October 15, 1894	April 17, 2000 ^{5,6}
Japan		March 14, 2000 ^{6,10}
Kazakhstan	December 25, 1991	December 8, 2010
Kenya	June 26, 1998	December 8, 2010
Kyrgyzstan	December 25, 1991	June 26, 1998 ^{5,6}
		June 17, 2004 ⁶

Madrid Agreement Concerning the International Registration of Marks

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Madrid Agreement (Marks) (1891), revised at Brussels (1900), at Washington (1911),
at The Hague (1925), at London (1934), Nice (1957) and at Stockholm (1967), and amended in 1979 and

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

Madrid Protocol (1989), amended in 2006 and in 2007

(Madrid Union) (continuation)

State/IGO became party to the Madrid Agreement ²	Date on which State	Date on which State/IGO became party to the Madrid Protocol (1989)
Lao People's Democratic Republic		March 7, 2016 ^{6,10}
Latvia	January 1, 1995	January 5, 2000
Lesotho	February 12, 1999	February 12, 1999
Liberia	December 25, 1995	December 11, 2009
Liechtenstein	July 14, 1933	March 17, 1998
Lithuania		November 15, 1997 ⁵
Luxembourg	September 1, 1924 ³	April 1, 1998 ^{3,6}
Madagascar		April 28, 2008 ¹⁰
Malawi		December 25, 2018 ⁵
Malaysia		December 27, 2019 ^{5,6}
Mexico		February 19, 2013 ^{6,10}
Monaco	April 29, 1956	September 27, 1996
Mongolia	April 21, 1985	June 16, 2001
Montenegro	June 3, 2006	June 3, 2006
Morocco	July 30, 1917	October 8, 1999 ⁶
Mozambique	October 7, 1998	October 7, 1998
Namibia	June 30, 2004	June 30, 2004 ⁸
Netherlands	March 1, 1893 ^{3,11}	April 1, 1998 ^{3,6,11}
New Zealand		December 10, 2012 ^{5,6,12}
North Macedonia	September 8, 1991	August 30, 2002
Norway		March 29, 1996 ^{5,6}
Oman		October 16, 2007 ¹⁰
Philippines		July 25, 2012 ^{5,6,8}
Poland	March 18, 1991	March 4, 1997 ¹⁰
Portugal	October 31, 1893	March 20, 1997
Republic of Korea		April 10, 2003 ^{5,6}
Republic of Moldova	December 25, 1991	December 1, 1997 ⁶
Romania	October 6, 1920	July 28, 1998
Russian Federation	July 1, 1976 ¹³	June 10, 1997
Rwanda		August 17, 2013
Samoa		March 4, 2019 ^{5,6}
San Marino	September 25, 1960	September 12, 2007 ^{6,10}
Sao Tome and Principe		December 8, 2008
Serbia ¹⁴	April 27, 1992	February 17, 1998
Sierra Leone	June 17, 1997	December 28, 1999
Singapore		October 31, 2000 ^{5,6}
Slovakia	January 1, 1993	September 13, 1997 ¹⁰
Slovenia	June 25, 1991	March 12, 1998
Spain	July 15, 1892	December 1, 1995
Sudan	May 16, 1984	February 16, 2010
Sweden		December 1, 1995 ^{5,6}
Switzerland	July 15, 1892	May 1, 1997 ^{6,10}
Syrian Arab Republic		August 5, 2004 ⁵
Tajikistan	December 25, 1991	June 30, 2011 ^{6,10}
Thailand		November 7, 2017 ^{5,6}
Tunisia		October 16, 2013 ^{5,6}
Turkey		January 1, 1999 ^{5,6}
Turkmenistan		September 28, 1999 ^{6,10}
Ukraine	December 25, 1991	December 29, 2000 ^{5,6}
United Kingdom		December 1, 1995 ^{5,6,15}

Madrid Agreement Concerning the International Registration of Marks
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Madrid Agreement (Marks) (1891), revised at Brussels (1900), at Washington (1911),
at The Hague (1925), at London (1934), Nice (1957) and at Stockholm (1967), and amended in 1979 and

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

Madrid Protocol (1989), amended in 2006 and in 2007

(Madrid Union) (continuation)

State/IGO became party to the Madrid Agreement ²	Date on which State	Date on which State /IGO became party to the Madrid Protocol (1989)
United States of America.....	March 8, 1949	November 2, 2003. ^{5 6}
Uzbekistan		December 27, 2006, ^{6 10}
Viet Nam		July 11, 2006 ⁶
Zambia		November 15, 2001 ⁶
Zimbabwe		March 11, 2015 ^{5,6}
Total: (106)	(55)	(106)

¹ The Madrid Union is composed of the States party to the Madrid Agreement and the Contracting Parties to the Madrid Protocol.

All the States party to the Madrid Agreement have declared, under Article 3bis of the Nice or Stockholm Act, that the protection arising from international registration shall not extend to them unless the proprietor of the mark so requests.

³ The territories of Belgium, Luxembourg and the Kingdom of the Netherlands in Europe are to be deemed a single country, for the application of the Madrid Agreement as from January 1, 1971, and for the application of the Protocol as from April 1, 1998.

⁴ Not applicable to either Hong Kong, China or Macao, China.

⁵ In accordance with Article 5(2)(b) and (c) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months and that, where a refusal of protection results from an opposition to the granting of protection, such refusal may be notified after the expiry of the 18-month time limit.

⁶ In accordance with Article 8(7)(a) of the Protocol, this Contracting Party has declared that, in connection with each request for territorial extension to it of the protection of an international registration and the renewal of any such international registration, it wants to receive an individual fee, instead of a share in the revenue produced by the supplementary and complementary fees.

⁷ Applicable to Greenland as of January 11, 2011 and the Faroe Islands as of April 13, 2016.

⁸ In accordance with Article 14(5) of the Protocol, this Contracting Party has declared that the protection resulting from any international registration effected under this Protocol before the date of entry into force of this Protocol with respect to it cannot be extended to it.

⁹ Including all Overseas Departments and Territories.

¹⁰ In accordance with Article 5(2)(b) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months.

¹¹ The instrument of ratification of the Stockholm Act and the instrument of acceptance of the Protocol were deposited for the Kingdom in Europe. The Netherlands extended the application of the Madrid Protocol to the Netherlands Antilles with effect from April 28, 2003. The Netherlands Antilles ceased to exist on October 10, 2010. As from that date, the Protocol continues to apply to Curaçao and Sint Maarten. The Protocol also continues to apply to the islands of Bonaire, Sint Eustatius and Saba which, with effect from October 10, 2010, have become part of the territory of the Kingdom of the Netherlands in Europe.

¹² With a declaration that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the depositary on the basis of appropriate consultation with that territory.

¹³ Date of accession by the Soviet Union, continued by the Russian Federation as from December 25, 1991.

¹⁴ Serbia is the continuing State from Serbia and Montenegro as from June 3, 2006.

¹⁵ Ratification in respect of the United Kingdom and the Isle of Man.

Attachment B

Registrations/ Renewals & Recordals (2017 – 2019)

Application	2017			2018			2019		
	Total	ML	ML – Pending	Total	ML	ML – Pending	Total	ML	ML – Pending
Registrations	833	474	72	920	424	105	748	423	346
Renewals	-	336	15	-	384	50	-	343	149
Recordals	-	220	3	-	433	27	-	262	138

Pending Oppositions Involving ML

Number of oppositions filed [2009-2019]: 23 Number
of counter statements filed [2009-2019] : 7 Total
awaiting hearing since 2009 - 30

Attachment C

To register one mark in one class:

Country	Local currency	USD currency
Fiji	FJD10.90	USD5.50
Kiribati	AUD100	USD80
Samoa	WST300	USD150
Solomon Is.	SBD1500	USD260
Tonga	TOP230	USD120
Tuvalu	AUD400	USD315
Vanuatu	USD150	USD150

**Joint Submission with the Office of the Solicitor General and Fiji
Intellectual Property Office**

Virtual Submissions – Standing Committee on
Foreign Affairs and Defence

INTELLECTUAL PROPERTY CONVENTIONS

FIPO AND OFFICE OF THE SOLICITOR-GENERAL
15 JUNE 2020

CONTENTS

-The Madrid System

- ✓ How the Madrid System Works (video)
- ✓ Madrid Agreement Concerning the International Registration of Marks
- ✓ Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

-The Paris Convention for the Protection of Industrial Property

- Requirements for Accession and Fiji's Readiness
- Case Study – New Zealand
- Financial Implications
- Benefits of Accession
- Q & A

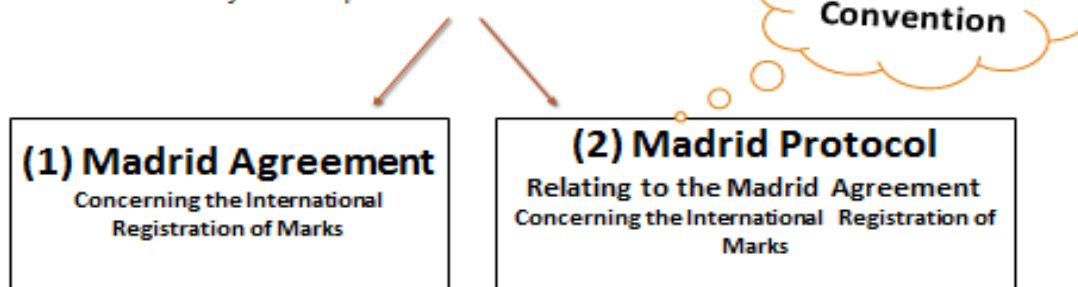
HOW THE MADRID SYSTEM WORKS

https://www.wipo.int/madrid/en/how_to/use/procedures.html

(2 minutes 45 seconds)

Madrid System

- A system for the international registration of marks.
- Provides protection for a trademark simultaneously in a large number of jurisdictions.
- Governed by two separate international treaties:



(1) THE MADRID AGREEMENT

- Established in 1891
- Provides a mechanism for a single and international registration of trademarks. nationals of any signatory may secure protection of their trademark, registered in the country of origin, in all other states that are parties to the Agreement.
- Eliminates the need to file separate applications in multiple countries
- Under the Agreement, there are 171 members to the Agreement to date.

(2) THE MADRID PROTOCOL RELATING TO THE MADRID AGREEMENT

Established in 1989 to support the Madrid Agreement and to make the international system of registration of marks more flexible and compatible with the domestic legislation of the States.

Provides for the administrative provisions on the registration processes.

There are 106 members to the Protocol to date.

The Madrid System is centrally administered by the World Intellectual Property Organization ('WIPO') in Geneva.

IS FIJI READY???

YES

(3) THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

- Established in 1883
- Provides protection for intellectual property relating to industrial property, such as patents, industrial designs, utility models, service marks, trade names, geographical indications
- controls unfair competition.
- 177 members to this Convention.

WHY PARIS CONVENTION?

To become a State party to the Madrid System, States are required to be a party to the Paris Convention. Given this, Fiji will accede to the Madrid System and to the Paris Convention simultaneously.

REQUIREMENTS

- Update the current national legislation on trademarks, patents and industrial property
- Accession to the Paris Convention

Implementation phase:

- ✓ Online system. E.g. New Zealand, Mongolia, Singapore
- ✓ Resources (hardware and software)
- ✓ Training of staff

NEW ZEALAND CASE STUDY:

Date	Activity
May 2012	Regulations consultation - subject to Cabinet approval
June, July, August, September 2012	System testing (including from users) Regulations consultation Regulations drafting
September 2012	Deposit instrument of accession
October-November 2012	User training including presentations from WIPO
December 2012	IPONZ ready to process under the Madrid Protocol

FINANCIAL IMPLICATIONS

- No loss of revenue for the Fijian Government
- No loss of jobs for the Fijian people
- Software will be provided by WIPO for the implementation of the digital system
- Operational budget for the Madrid System is minimal and will be sourced from within FIPO's national budgetary allocation
- No other associated direct costs.



BENEFITS

BETTER SERVICE FOR ALL FIJIANS

Vinaka

QUESTIONS????



Written Analysis – Office of the Solicitor General

**THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL
REGISTRATION OF MARKS 1981 AND PROTOCOL RELATING TO
THE MADRID AGREEMENT (TOGETHER KNOWN AS THE
MADRID SYSTEM) AND THE PARIS CONVENTION FOR THE
PROTECTION OF INDUSTRIAL PROPERTY**

WRITTEN ANALYSIS

1.0 INTRODUCTION

1.1 As part of the Policy Based Loan with the Fijian Government, the Asian Development Bank (**'ADB'**) required Fiji to seek Cabinet approval to update Fiji's Trademarks, Patents and Designs legislation.

1.2 Accordingly, on 31 March 2020, Cabinet approved the following:

- (a) Trademarks Bill 2020;
- (b) Patents Bill 2020; and
- (c) Designs Bill 2020,

(**'Bills'**).

1.3 While accession to the Madrid Agreement Concerning the International Registration of Marks 1981 (**'Madrid Agreement'**) and the Protocol Relating to the Madrid Agreement (**'Madrid Protocol'**) (together known as the **'Madrid System'**) and accession to the Paris Convention for the Protection of Industrial Property (**'Paris Convention'**) (**'Conventions'**) are not conditions of the ADB loan, it would be timely and appropriate to accede to the Conventions as they complement the Bills.

1.4 This is because the Trademarks Bill 2020 incorporates the administrative aspects of implementing the Madrid System while the Paris Convention relates to industrial property which relates to the Designs Bill 2020.

1.5 Acceding to the Conventions will demonstrate Fiji's commitment to the development of its legal framework with respect to intellectual property. In

addition, acceding to the Conventions also reinforces Fiji's intent to uplift its business and investment climate by enhancing the Ease of Doing Business and the digitalFIJI initiatives.

SUMMARY OF THE CONVENTIONS

2.0 THE MADRID AGREEMENT

2.1 The Madrid Agreement was established in 1891 to provide a mechanism that would allow for a single and inexpensive international trademark registration and to eliminate the need for filing, prosecuting or maintaining separate registrations in multiple countries. It came into force in 1892.

2.2 Article 1 of the Madrid Agreement provides for the establishment of a Special Union for the International registration of marks which allows nationals of any of the contracting parties to secure protection for their marks, registered in the country of origin, in all other countries party to the Madrid Agreement by filing the said marks at the International Bureau of Intellectual Property.

2.3 Article 2 of the Madrid Agreement provides that nationals of countries who have not acceded to the Madrid Agreement but have satisfied the conditions outlined under Article 3 of the Paris Convention must be treated in the same manner as nationals of the contracting countries.

2.4 Article 3 outlines the requirements and the contents for the application for international registration. Article 3bis provides for territorial limitation allowing contracting parties to limit protection resulting from the international registration only to certain countries. Article 3ter further states that any request for extension of protection to countries pursuant to Article 3bis must be specifically mentioned in the application.

2.5 Article 4 provides for the effects of international registration which states that from the date of registration at the International Bureau, the protection of the mark in each of the contracting countries concerned shall be the same as if the mark has been filed therein direct. Article 4bis further states that when a mark already filed in one or more of the contracting countries is later registered by the International Bureau in the name of the same proprietor or his successor in title,

the international registration will be deemed to have replaced the earlier registration without prejudice to any rights acquired by reason of such earlier registration.

2.6 Article 5 allows national offices of contracting countries, where its legislations so authorises, to deny the extension of protection of an international registered mark in its territory.

2.7 Article 5ter allows any person to apply to the International Bureau for a copy of the entries in the international register relating to a specific mark and to undertake searches for anticipation among international marks.

2.8 Article 6 provides for the period of validity of international registration which is 20 years and states that after a period of 5 years from the date of international registration, the registration becomes independent of the national mark. Article 7 allows for a renewal of the international registration for another 20 years upon the payment of the applicable fees.

2.9 Article 8 allows the national office of the country of origin to fix, at its own discretion, and collect for its own benefit a national fee which it may require from the proprietor of the mark. This article further outlines the international fee, the division of excess receipts, supplementary fees and complementary fees for international registration.

2.10 Article 9 allows a person, in whose name the international registration stands, to renounce protection in one or more of the contracting countries at any time by a declaration filed at the national office of his own country for communication to the International Bureau.

2.11 Articles 9 and 9bis requires for all changes in the entry of the mark in the national register or any transfer of international mark entailing change in country of a proprietor to be notified to the International Bureau if it also affects international registration.

2.12 Article 9bis provides for the transfer of international mark entailing change in country of proprietor.

2.13 Article 9quater allows several contracting countries, if they agree to unify their domestic legislations on marks, to establish a common office to substitute their

national offices to be treated as a single country for the purposes of the Madrid Agreement.

2.14 Article 10 establishes the Assembly of the Special Union.

2.15 Article 11 outlines the administrative aspects of the International Bureau while Article 12 provides for the finances and budget of the Special Union.

2.16 Article 13 provides for the procedures that the contracting parties may follow to amend Articles 10 to 13 of the Madrid Agreement.

2.17 Article 14 provides for the ratification, accession entry into force.

2.18 Article 15 outlines the rights of denunciation of the Madrid Agreement by contracting parties after five years from the date upon which it becomes a member of the Special Union.

2.19 Articles 16 to 18 provides for the application of earlier Acts, signature, languages, depository functions and transitional provisions.

3.0 THE MADRID PROTOCOL

3.1 The Madrid Protocol was established in 1989. It was created to address perceived defects in the Madrid Agreement and to make the international system of registration of marks more flexible and compatible with the domestic legislation of individual States.

3.2 Article 1 provides that states party to the Madrid Protocol shall be members of the same Union that contracting countries to the Madrid Agreement are members, even when states party to the Madrid Protocol are not a party to the Madrid Agreement.

3.3 Article 2 provides that a proprietor of a registered mark filed with the office of a contracting party may make an application to the International Bureau of the World Intellectual Property Organization for international registration. Article 3 outlines procedures and the manner in which an international application may be made.

3.4 Article 3bis states that protection resulting from the international registration shall extend to any contracting party only at the request of the person who files the international application or who is the holder of the international registration, while Article 3ter requires for any extension of the protection mentioned in Article 3bis to be specially mentioned in the international application.

3.5 Article 4 provides for the effects of international registration which states that from the date of registration, the protection of the mark in each of the contracting parties concerned shall be the same as if the mark has been deposited directly with the office of that contracting party. This Article further states that every international registration shall enjoy the right of priority provided for by Article 4 of the Paris Convention, without it being necessary to comply with the formalities prescribed in section D of that Article.

3.6 Article 4bis further states that a mark that is subject to the national or regional registration is also the subject of an international registration, with the same name and same person, the international registration will replace the national or regional registration subject to the conditions outlined therein, without prejudice to any rights acquired by reason of such earlier registration.

3.7 Article 5 allows an office of a contracting party to refuse the extension of protection of an international registered mark in its territory. Article 5bis provides for the exemption of documentary evidence of the legitimacy of use of certain elements of a mark.

3.8 Article 5ter allows any person to apply to the International Bureau for a copy of the entries in the international register relating to a specific mark and to undertake searches for anticipation among international marks.

3.9 Article 6 provides for the period of validity of international registration which is 10 years. Article 7 allows for the renewal of international registration for another 10 years.

3.10 Article 8 provides for the payment of fees for international application and registration.

3.11 Article 9 requires for all changes in the entry of the mark in the national register or any transfer of international mark entailing change in country of a proprietor to be notified to the International Bureau if it also affects international

registration. Article 9bis provides for the recordal of other types of changes of an international registration such as the change in the name and address, the appointment of a representative, and limitation of the goods and services, renunciation, cancellation etc.

3.12 Article 9ter provides that any recordal under Article 9 may require a fee. Article 9quater provides for the common office of unified Contracting States.

3.13 Article 9quinquies provides for the transformation of an international registration into national or regional applications while Article 9sexies provides for the safeguard of the Madrid Agreement.

3.14 Article 10 provides that the Contracting Parties of the Madrid Protocol shall be members of the same Assembly as the Madrid Agreement.

3.15 Article 11 provides for the establishment of the International Bureau for the performance of international registration.

3.16 Article 12 provides for the finances of the Union and Article 13 provides the procedures for the amendment of the Articles of the Protocol.

3.17 Article 14 provides the procedures on becoming a party to the Protocol and its entry into force.

3.18 Article 15 provides the procedures on how Contracting Parties may denounce the Protocol, should the need arise.

3.19 Article 16 provides for how the Protocol may be signed, the languages for the official text and depository functions.

4.0 THE PARIS CONVENTION

4.1 The Paris Convention was established in 1883. It was created to provide protection for industrial property, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications (indications of source and appellation of origin) and to repress unfair competition.

4.2 Article 1 of the Paris Convention provides that the countries to which the Paris Convention applies constitute a Union for the protection of industrial property. Furthermore, Article 1 also prescribes that the protection of industrial property relates to patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellation of origin, as well as the repression of unfair competition. Article 1 states that industrial property must be understood in the broadest sense, and should include agricultural and extractive industries as well as manufactured and natural products, for example, wines and beers. Additionally, patents should also include the various kinds of industrial patents recognised by the laws of other countries, for example, the patents of importation.

4.3 Article 2 provides that the nationals of any country of the Union shall be given the same advantages in all other countries of the Union that their respective laws grant to their own nationals, in terms of the protections and legal remedy against any infringement. Article 2 also provides that there shall be no requirement as to their domicile or establishment in the country where protection is claimed.

4.4 Article 3 provides that the nationals of countries outside of the Union who are domiciled or have industrial or commercial establishments in the territory of one of the countries of the Union shall be given the same treatment as the nationals of the countries of the Union.

4.5 Article 4(A) – (I) provide that any person who has filed an application for a patent or for the registration of a utility model, industrial design or of a trademark, shall enjoy a right of priority. Article 4 also provides for the duration of the rights of priority and further prescribes the process that is required to claim rights of priority. Additionally, Article 4 provides for the division of patent applications where there are several inventions under one application. Article 4bis provides for the independence of patents obtained for the same invention in different countries, whether or not those countries are members of the Union. Article 4ter prescribes that the inventor has the right to be mentioned in the patent. Article 4quater prescribes that the grant of a patent shall not be refused or invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to domestic law restrictions or limitations.

4.6 Article 5(A) provides that the importation of articles into any of the countries of the Union does not entail forfeiture of the patent and also provides for the

countries of the Union to implement legislative measures for the grant of compulsory licenses to prevent abuses from the exercise of exclusive rights of the patent holder. Article 5(B) provides that the protection of industrial designs shall not be subject to forfeiture, either by reason of failure to work or importation of the articles corresponding to those that are protected. Article 5(C) provides that in the case of compulsory use of a registered mark, the registration may be cancelled after a reasonable period if the rights holder does not justify his lack of use. Article 5(D) provides that there shall be no requirement for the indication or mention of the patent or utility model upon the goods.

4.7 Article 6 provides for the conditions of registration of trademarks and the independence of the same trademark if registration is sought in different countries. Article 6bis provides for the limitations countries can place on registering a reproduction, imitation or translation of a trademark that may create confusion. Article 6ter provides for the limitations countries can place on registering State emblems, official hallmarks and emblems of intergovernmental organizations. Article 6quater provides the procedures in relation to the assignment of marks. Article 6quinquies provides for the protection of marks registered in one country of the Union in other countries of the union. Article 6sexies prescribes that Countries of the Union shall protect services marks, but that registration of services marks is not required. Article 6septies provides for the registration of the name of the agent or representative of the proprietor without the proprietor's authorization.

4.8 Article 7 prescribes that the nature of goods to which the mark applies, shall not be an obstacle to registration. Article 7bis provides for the registration of collective marks.

4.9 Article 8 provides for the protection of trade names without being required to file for registration, whether or not the trade name forms part of a trademark.

4.10 Article 9 provides that all goods that bear a trademark or trade name unlawfully, shall be seized on importation into those countries of the Union where the trademark and trade name are entitled to legal protection.

4.11 Article 10 prescribes that the provisions of Article 9 shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or merchant and further provides that such producer, manufacturer or merchant, where a natural person or legal entity, shall

be deemed to be an interested party in legal proceedings. Article 10bis prescribes that nationals of countries of the Union shall assure effective protection against unfair competition. Article 10ter prescribes that countries of the Union shall provide in their law remedies and the right to take legal action arising from false indications and unfair competition relating to marks and trade names.

4.12 Article 11 provides that countries shall take measures to assure the nationals of other countries of the Union of appropriate legal remedies to repress the acts mentioned in Articles 9, 10 and 10bis.

4.13 Article 12 provides that each country must establish a special industrial property service and a central office for communication to the public of patents, utility models, industrial designs and trademarks. Additionally, Article 12 prescribes that this service shall publish an official periodical journal.

4.14 Article 13 provides that the Union shall have an Assembly consisting of the countries which are bound by Articles 13 - 17 of the Convention. Furthermore, Article 13 prescribes that each country shall be represented by one Government delegate and that the expenses of each delegate shall be borne by its Government. Article 13 sets out how the Assembly shall function.

4.15 Article 14 provides that Assembly shall have an Executive Committee and sets out how the Executive Committee shall function.

4.16 Article 15 provides that the administrative tasks of the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union established previously by the International Convention for the Protection of Literary and Artistic Works.

4.17 Article 16 provides for finances and states that the Union shall have a budget and prescribes how it shall be financed. Article 16 also prescribes that each country of the Union shall belong to a class and shall pay its annual contributions on the basis of a number of units within its class. Each country shall indicate at the time of depositing its instrument of ratification or accession the class to which it wishes to belong. Countries may later change their class in accordance with the procedures set out under Article 16.

4.18 Article 17 provides for the procedures to amend Articles 13 to 17.

4.19 Article 18 provides that the Paris Convention shall be submitted for revisions relating to amendments to Articles 1 – 12 and to Articles 18 – 30 designed to improve the system of the Union.

4.20 Article 19 allow for countries of the Union to make special agreements between them for the protection of industrial property so long as they do not contravene the Convention.

4.21 Article 20 provides the process of ratification or accession of the Paris Convention and prescribes how and when specific Articles enter into force for the countries of the Union.

4.22 Article 21 sets out the procedures for accession to the Paris Convention by countries outside of the Union and thereby become a member of the Union.

4.23 Article 22 provides for the obligations and admissions arising from ratification or accession.

4.24 Article 23 prescribes that once the Paris Convention has entered into force for a country, the country may no longer accede to earlier Acts of this Convention.

4.25 Article 24 prescribes that countries of the Union may declare that this Convention applies to all or part of its territories.

4.26 Article 25 provides for the implementation of the Convention at the domestic level.

4.27 Article 26 provides that the Paris Convention remains in force without any limitation of time. Additionally, Article 26 also for the process by which countries may denounce the Convention, if needed.

4.28 Article 27 states that this Convention replaces its earlier Acts, being the Convention of Paris of 20 March 1883 and subjects Acts of its revision.

4.29 Article 28 prescribes that any disputes between the countries that cannot be resolved by negotiation shall be referred to the International Court of Justice unless the countries agree on some other method of settlement. The country bringing the dispute shall inform the International Bureau.

4.30 Article 29 provides for how the Convention shall be signed, the language of the text and the depositary functions.

4.31 Article 30 provides for the transitional provisions of the Bureau of the Union to the International Bureau.

5.0 REQUIREMENTS FOR IMPLEMENTATION

5.1 To accede to the Conventions, Fiji must have the following:

- (i) a Madrid-compatible trademarks legislation in place;
- (ii) institutional organisation;
- (iii) staff trained in the Madrid international registration system;
- (iv) operational procedures in place for handling international applications;
- (v) an agreement with WIPO on sending and receiving information in the Madrid international registration system; and
- (vi) ensure that the national office has an online system of registration that can communicate with WIPO. (For this digital platform, WIPO is able to provide technical assistance to implement the WIPO Industrial Property Automation System, upon receiving Fiji's request); and

5.2 Furthermore, since Fiji was not a signing party to the Conventions, Fiji may accede to the Conventions by depositing the instruments of accession with the International Bureau of WIPO.

6.0 IMPACT OF THE CONVENTIONS

6.1 The intent of the Conventions are to provide a streamlined system of international registration of marks where applicants can protect their marks in several jurisdictions by filing one application, paying one set of fees and in one language.

6.2 Additionally, the Paris Convention intends to provide for the protection of industrial designs, trade names, indications of source and to protect against unfair competition.

6.3 Accession to the Conventions will ensure that Fiji is compliant with its international obligations for the protection of intellectual property.

7.0 RECOMMENDATION

7.1 It is recommended that Fiji accede to the Conventions without reservation.

Submission by Sherani & Co.

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE IN THE PARLIAMENT OF FIJI

On the examination of: 1) Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement); Protocol Relating to the Madrid Agreement (Madrid Protocol), together known as the Madrid System; 2) Paris Convention for the Protection of Industrial Property.

SUBMISSIONS

Honourable Chairman and honorable members of the Committee,

51. INTRODUCTION

- These are submissions made on behalf of Sherani & Co a law firm based in Suva which was founded in 1962. The Firm has been in existence for about 68 years now. The Firm has 3 Partners, namely seasoned Practitioner, Mr Hemendra Nagin with over 42 years of experience and his 2 recent partners, Mr Ritesh Singh and Ms Mele Rakai. The Firm has 2 Associate lawyers and 24 support staff.
- The Firm provides legal services to clients in Fiji, the region and the world. It has a Litigation Team which all the lawyers are part and a large conveyance team. Part of its services is the provision of trademark or intellectual property to clients in Fiji and the world which are handled by 2 staff and Mr Nagin.

- For the registration of trade-marks in Fiji its processes are currently legislated by the **Trade Marks Act 1933** and its subsequent amendments. It is largely paper based and not electronic so everything including searches are done manually.
- Now, the Firm received an invitation by letter dated 2nd June 2020 to make submissions on these two Treaties to the Standing Committee on Foreign Affairs and Defence and we are very honored to be able to make brief submissions on the relevance of these treaties to our work.
- Now, the two Treaties are important because they are two main legal frameworks that govern **foreign trademark registration**. The Paris Convention for the Protection of Industrial Property in 1883 and its many revisions create international reciprocity and other benefits for trademark registrations. The Madrid Agreement Concerning the International Registration of Marks of 1891 and the Protocol Relating to the Madrid Agreement adopted in 1989 facilitate a type of international registration for a mark. The International Bureau of the World Intellectual Property Organization (WIPO) administers the Madrid Protocol.
- The submissions will begin by briefly touching on the Firm's experience with the Trade Mark Act 1933 and whether or not there is a need to ratify these Treaties. These submissions are based on our experience may not necessarily be reflective of other Firms or organizations views on the matter.
- **OUR EXPERIENCE WITH FIJI'S TRADE MARK ACT 1933**
- The Fiji Trade Mark Act 1933 provides for independent registration of goods marks (but not service marks) in Fiji or registration (generally speaking) as of right based on United Kingdom registrations. Goods are classified according to the

old British classes rather than the generally recognized international classes. Furthermore, priority is not available on the filing of applications but the existence of a prior application will at least put the Registrar on notice of a possible conflict in respect of any subsequent rival application.¹

- As with most registries in Fiji, the Trade Marks Registry is not computerized so searches are still conducted manually. There is often a lack of resources relative to the volume of filings means the registration process can take any time **between 10 months to several years. In one of our matters it has been pending at the Registry since 2010 which almost 10 years and we still have not received an update on our Trade mark (despite follow-ups).**
- Now we have been informed that Cabinet has approved the following Trademarks Bill 2020, the Patents Bill 2020 and the Designs Bill 2020. We were not provided copies of these Bills so cannot actually comment on whether they relate to the two Treaties.
- We can only make submissions on the Firm's experience with the Trademarks Registry and also the Registrar of Titles office which is also a form of registry that these offices could be better empowered in terms of resources.
- For example, the manual searches take between 30 minutes – 1 hour when you visit the Registry although sometimes it takes longer. There are usually 3-4 staff serving at the Registry at Level 3, Suvavou House, Suva. Payment is made at the Attorney-General's office at Level 5, Suvavou House. Filing of opposition or counter-statements lodgment is made at Level 4, Suvavou House. Often when there is no running water or there

¹ <https://www.munroleyslaw.com/intellectual-property/trade-marks/> (Accessed on 19/6/2020 at 1:07pm)

is power black out the offices will close for the day and this affects business.

- Further, from 2000 onwards there has been no Tribunal convening to deal with contested matters. For example, in one of the matters the Firm is dealing with there was an opposition to the registration of our client's trademark which was filed in 2018 and we are still waiting for a determination of the matter.
- Also the legislations commenced in 1933 and its more than 80 years since that time and Fiji is still using the same legislation which is out dated. This piece of legislation needs to be revised and improved to better take care of the stakeholders that use the services of the trademark's registry. Also, law firms represent clients who are not necessarily in Fiji so having better services mean that these clients would want to use our services.
- At the moment it takes between **10 months – several years** for a mark to be registered and this does not reflect well on our country, the registry and the systems we have currently so we need to improve this first before we consider ratifying international treaties where the mechanisms would be to the international standard.

- **OUR STAND ON THE TREATIES**

- Very briefly the Committee is asking the Firm to make submissions on whether Fiji is in a position to ratify either the Madrid Agreement, Protocol or the Paris Convention.
- Although the Firm has been in existence for almost 68 years these are Treaties we've only read about. We have not actually utilized them in our work.

- So if this is the position for the Firm then we cannot realistically make recommendations for the ratification of the two treaties if we are not familiar with them nor have used them at all.
- **PARIS CONVENTION**
- The Paris Convention between the 2 Treaties covers many forms of “industrial property,” not just trademarks.
- The Paris Convention provides that each country who is a party to the treaty will grant the same protection to trademark registrations from another country that is also a party to the treaty. For instance, if an American business files for a trademark in France, then that American business should be able to receive the same trademark protection as a French corporation, subject to some clear restrictions for example, that the mark is not distinctive or is against morality or public order. Furthermore, a trademark application filed by a foreign applicant directly with another country that is party to the Paris Convention exists completely independent of any trademark application that may be filed in the foreign applicant’s home country.
- The Paris Convention includes priority rights which permit an applicant to file their regular application in their home country and then, if they apply for trademark protection in one of the member countries **within six months**, the application in the member country receives the same filing date as the initial filing date in the applicant’s home country.²

² <https://www.wipo.int/treaties/en/ip/paris/> (Accessed on 19/06/2020 at 1:06pm)

- **MADRID PROTOCOL**

- The Madrid Protocol is different from the Paris Convention in that the process used to file a single international trademark application that could potentially be extended to many foreign countries.³
- The Madrid Protocol streamlines the international application process so that the Applicant may file for an international registration through their “office of origin,” basically the Trademark Office in their residing country. The international registration is based on the home country application or registration. If approved, that international registration is then the basis of the applicant’s application for trademark protection in each of the foreign countries that is designated in the initial application.
- To apply for an international application through the United States Patent and Trademark Office (USPTO) using the Madrid Protocol, American businesses seeking international trademark protection must rely on either their basic, already-filed application or on a registration granted previously by the USPTO. Upon meeting certain requirements and paying a fee, the USPTO forwards the application to WIPO’s International Bureau where the application again undergoes formal examination. If WIPO approves the mark, then it will be recorded on the International Register and published in the “WIPO Gazette of International Marks.”

3

https://www.wipo.int/treaties/en/registration/madrid/summary_madrid_marks.html#:~:text=The%20Madrid%20system%20offers%20several%20advantages%20for%20trademark%20owners.&text=The%20Madrid%20Agreement%20and%20Protocol,either%20or%20both%20of%20them. (Accessed 19/6/2020 at 1:09pm)

- WIPO then notifies the Intellectual Property offices in all the countries designated by the applicant. Those specific countries conduct substantive examinations to determine the scope of the protection for the mark in their respective countries. This final substantive examination is governed by the specific laws of the designated countries and is typically completed within twelve (12) to eighteen (18) months.

- The Madrid Protocol is the more cost-effective avenue for gaining international trademark protection, as compared to the country-by-country under the Paris Convention.
- One of the drawbacks of the Madrid Protocol however, is that by virtue of one international registration serving as the basis of the applicant's protection in the designated countries, if the application or registration in the home country that supports the international registration is cancelled or denied, then the international registration will also be cancelled or denied. This problem doesn't occur under the Paris Convention.
- The registration process for trademarks for international applications and registrations can be complicated and lengthy. Whether to utilize the Madrid Protocol for an international trademark application or to file an application directly with a foreign trademark office should be evaluated on a case by case basis. Any global business, however should prioritize protecting its trademarks in the most effective way possible.⁴

⁴ <https://www.gw-law.com/blog/obtaining-trademark-protection-foreign-countries> (Accessed 19/06/2020 at 12:58pm)

- **CONCLUSION**

- Based on the aforesaid, we respectively submit that the two Treaties not be ratified because we are not ready to do so.
- We already have the Trademarks act 1933 that could be revised and until we see the Trademark Bill 2020, we make recommendations on whether the law supports the two Treaties or not.
- From our experience, the Trademarks act 1933 needs to be revised and the services, resources of the Trade mark Registry needs to be improved before we can realistically consider the ratification of the two proposed Treaties.

Thank you.

**STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE IN THE
PARLIAMENT OF FIJI**

On the examination of: 1) Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement); Protocol Relating to the Madrid Agreement (Madrid Protocol), together known as the Madrid System; 2) Paris Convention for the Protection of Industrial Property.

SUBMISSIONS



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Ministry of Foreign Affairs written submission for the Parliamentary Standing Committee on Foreign Affairs and Defence

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

22 June 2020

1.0 **BACKGROUND**

- 1.1 Fiji signed the Convention on the Rights of the Child ('**CRC**') on 2 July 1993 and ratified the CRC on 13 August 1993. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict ('**Optional Protocol**') is an international instrument that States Parties to the CRC may ratify.
- 1.2 The Optional Protocol aims to protect children from recruitment and use in hostilities. It was adopted by the General Assembly on 25 May 2000 and entered into force on 12 February 2002.

2.0 **SCOPE OF THE CONVENTION**

- 2.1 The Optional Protocol is a commitment to increase the protection of children from involvement in armed conflict and requires that:
 - a) States will not recruit children under the age of 18 years to send them to the battlefield.
 - b) States will not conscript soldiers under the age of 18 years.
 - c) States will take all possible measures to prevent such recruitment – including legislation to prohibit and criminalise the recruitment of children under the age of 18 and involve them in hostilities.
 - d) States will demobilize anyone under the age of 18 years conscripted or used in hostilities and will provide physical, psychological recovery services and help their social reintegration.
 - e) Armed groups distinct from the armed forces of a country should not, under any circumstances, recruit or use in hostilities anyone under the age of 18 years.
- 2.2 As at 26 May 2020, 170 countries have ratified the Optional Protocol. There are 17 countries that have neither signed nor ratified the Optional Protocol and 10 countries that have signed but are yet to ratify. Fiji signed the Optional Protocol on 16 September 2005 and has yet to ratify the Optional Protocol.

- 3.1 Given that Fiji is party to the CRC and signed the Optional Protocol on 16 September 2005, ratification of the Optional Protocol will further strengthen Fiji's commitments and obligations under the CRC and complement relevant existing national laws and policies.
- 3.2 The Employment Relations Act 2007 prohibits forced labour of children. The Act defines a child as '*a person who is under the age of 18 years*' and defines forced labour as including '*any work or service exacted in accordance with compulsory military service laws for work of a purely military character*'. Therefore, consistent with the Optional Protocol, the laws of Fiji prohibit compulsory military service of children under the age of 18 years.
- 3.3 With respect to the age of eligibility for military service, section 7 (3) of the Republic of Fiji Military Act 1949 ('**RFMF Act**') provides that no person who is under the age of 18 years must be enlisted in the military forces, provided that the Commander of the Republic of the Fiji Military Forces may permit the enlistment of such number of persons of or above the age of 16 years. Fiji's established age of eligibility is consistent with the Optional Protocol's call for a set minimum age of voluntary recruitment. **IF** children below the age of 18 are enlisted, the Optional Protocol further requires that safeguards are implemented to endure that they do not take part in direct hostilities. To the best of our knowledge, Fiji meets this criteria as it does not engage officers under the age of 18 years in direct hostilities.
- 3.4 Therefore, consistent with the Optional Protocol, the laws of Fiji prohibit compulsory military service of children under the age of 18 years and provide an effective legal framework for ensuring compliance with the minimum requirements of the Optional Protocol.

4.0 RECOMMENDATION

- 4.1 Fiji should ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. It is not only consistent with the laws of Fiji, but it also reflects the truly Fijian value system of protection for our children and our commitment to it.
-



With International Affiliations

FIJI PERFORMING RIGHT ASSOCIATION LIMITED
(THE ASSOCIATION OF COMPOSERS, AUTHORS AND PUBLISHERS OF MUSIC)

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SUBMISSION TO PARLIAMENT STANDING COMMITTEE ON FOREIGN AFFAIRS & DEFENCE

Monday 22nd June, 2020

by

Eremasi Cama Tamanisau	:	Chairman
Saimone Vuatalevu	:	Director
Seru Serevi	:	Director
Inoke 'Knox' Kalounisiga	:	Director
Laisa Vulakoro	:	Director



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- **BRIEF ON THE FIJI PERFORMING RIGHTS ASSOCIATION**

- Collective Management Organisation (CMO)/Collecting Society
- Registered 08th June, 1992 as “Company Limited by Guarantee”; sole CMO of Copyright Music in Fiji.
 - FPRA is assigned the **Performing Rights** and **Mechanical Rights** (of Copyright) from local Composers, Authors and Publishers via their membership.
- FPRA granted right over international repertoire by virtue of licence granted by APRA, and APRA’s Reciprocal Agreements with over 70 foreign societies.
- Third CMO in South Pacific: other 2 being APRA (Australia) and SACENC (New Caledonia).
- Relationship with other CMOs globally governed by Bernes Convention 1886.
- Of the approximately 192 countries in the world, 174 covered by Bernes Convention
- Must be a Composer, Author or Publisher of Music to be a Member of FPRA.
- Ensures Global protection of works (songs) (re: Berne Convention)
- FPRA negotiates with users on licence fees, which is then distributed as Royalty annually
- No subscription fee is paid by members.
- 913 Members (as at 19th June, 2020).

- **LEGISLATIONS THAT MANDATE THE EXISTENCE, FUNCTIONS & OPERATIONS OF FPRA**

-  Copyright Act 1999
-  Copyright (Amendment) Act 2009

• IMPORTANT INTERNATIONAL CONVENTIONS

(3) Berne Convention for the Protection of Literary and Artistic Works (1886).

Introduction to the Berne Convention

The Berne Convention was first adopted on September 9, 1886, in Berne, Switzerland, and later revised at several conferences: Paris, 1896; Berlin, 1908; Berne, 1914; Rome, 1928; Brussels, 1948; Stockholm, 1967; and Paris, 1971. The agreement grew out of a perceived need in the late nineteenth century to protect authored works from international **PIRACY**, or unauthorized copying.

A growing demand for new printed materials during this era was motivating many publishers to reprint unauthorized versions of foreign works. Authors whose works were pirated had little recourse against those publishers because copyright laws were typically enacted on a national basis. Such laws gave copyright protection only to authors who were nationals of the country in which the laws were enacted.

A few countries negotiated bilateral treaties—two-party contracts termed reciprocal agreements—that protected the nationals of both countries, but such arrangements were rare. In the mid nineteenth century, a nongovernment organization, the Association Littéraire et Artistique Internationale, was formed in Paris and led the movement for international copyright protection. This organization created the draft of what eventually became the Berne Convention. Among the first countries adhering to the Berne Convention were France, Germany, and the United Kingdom.

Fiji signed the Berne Convention in 1971

(4) Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)

The Berne Convention deals with the protection of works and the Rights of their Authors. It is based on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted, as well as special provisions available to **developing countries** that want to make use of them.

- The **Three Basic Principles** are the following:
 - Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the **same protection** in each of the other Contracting States as the latter grants to the works of its **own nationals** (principle of "**National Treatment**")¹.
 - Protection must not be conditional upon compliance with any formality (principle of "**Automatic**" **Protection**).
 - Protection is independent of the existence of protection in the country of origin of the work (principle of "**Independence**" of **Protection**). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.
- The **Minimum Standards** of protection relate to the works and rights to be protected, and to the duration of protection:
 - As to works, protection must include "**every production in the literary, scientific and artistic domain, whatever the mode or form of its expression**" (Article 2(1) of the Convention).
 - Subject to certain allowed reservations, limitations or exceptions, the following are among the **rights** that must be recognized as **exclusive rights of authorization**:
 - **the right to translate,**
 - **the right to make adaptations and arrangements** of the work,
 - **the right to perform in public** dramatic, dramatico-musical and musical works,
 - **the right to recite** literary works in **public,**
 - **the right to communicate to the public** the performance of such works,
 - **the right to broadcast** (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
 - **the right to make reproductions** in any manner or form (with the possibility that a Contracting State may permit, in

¹ A Fijian work played in Australia receives the same protection as an Australian work, and a Australian work used in Fiji receives the same protection as a Fijian work.

certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),

- **the right to use the work as a basis for an audiovisual work**, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.

The Convention also provides for "**Moral Rights**"², that is, the right to claim authorship of the work and the **right to object** to any **mutilation, deformation or other modification of, or other derogatory action** in relation to, the work that would be **prejudicial to the author's honour or reputation**.

- As to the **Duration** of protection, the general rule is that protection must be granted until the expiration of the **50th year**³ after the author's death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work.
- The Berne Convention **allows certain limitations and exceptions on economic rights**, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation.⁴ These limitations are commonly referred to as "**free uses**" of protected works, and are set forth in **Articles 9(2) (reproduction in certain special cases)**, 10 (quotations and use of works by way of illustration for teaching purposes), 10*bis* (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11*bis*(3) (ephemeral recordings for broadcasting purposes).

² Moral Rights is also protected in the Fiji Copyright Act 1999, Part V.

³ Copyright Duration in Fiji is life of Author/Composer plus 50 years after death.

⁴ Fiji Copyright Act 1999, Section 44: Partial exemption from copyright infringement ... applies to Education.

- The **Appendix to the Paris Act of the Convention** also permits **developing countries** to implement **non-voluntary licenses** for translation and reproduction of works in certain cases, in connection with **educational activities**. In these cases, the described use is **allowed without the authorization** of the right holder, subject to the **payment of remuneration** to be **fixed by the law**.

The Berne Union has an Assembly and an Executive Committee. Every country that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member *ex officio*.

The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Berne Union is concerned – is the task of its Assembly.

The **Berne Convention**, concluded in **1886**, was revised at **Paris** in **1896** and at **Berlin** in **1908**, completed at **Berne** in **1914**, revised at **Rome** in **1928**, at **Brussels** in **1948**, at **Stockholm** in **1967** and at **Paris** in **1971**, and was **amended** in **1979**.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO

(2) **Rome Convention (1961)**

The Rome Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations.

These rights are generally referred to as **Neighbouring Rights, Related Rights** or **Secondary Rights**.

(1) **Performers (actors, singers, musicians, dancers and those who perform literary or artistic works)** are protected against certain acts to which they have **not consented**, such as the **broadcasting and communication to the public of a live performance**; the **fixation** of the live performance; the **reproduction** of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.

2. **Producers of Phonograms** have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, “phonograms” means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application.

3. **Broadcasting organizations** have the right to authorize or prohibit certain acts, namely the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows for **limitations and exceptions** to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases where national law provides exceptions to copyright in literary and artistic works. Furthermore, once a performer has consented to the incorporation of a performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

As to **duration**, protection must last at least until the end of a 20-year period computed from the end of the year in which **(a)** the fixation was made, for phonograms and for performances incorporated therein; **(b)** the performance took place, for performances not incorporated in phonograms; **(c)** the broadcast took place. However, national laws increasingly provide for a 50-year term of protection, at least for phonograms and performances.

Since phonograms (vinyl disk, e.g. LP 33 rpm, SP 45 rpm) belong to yesterday's technology, their equivalent today as content carriers are Video Clip, CD, DVD, Flash Drives (via USB port), plus other Electronic recording devices.

(3) WIPO Copyright Treaty (WCT) (1996) and the WIPO Performances and Phonogram Treaty (WPPT)

Also known together as the "**Internet Treaties**", which set down international norms aimed at preventing unauthorized access to and use of creative works on the **Internet** or other **digital** networks.

The ways in which consumers enjoy content such as music, films, books and video games have changed drastically over the past 15 years. Copyright-protected content used to be acquired mostly in the form of physical carriers (e.g., CDs, DVDs, books), whereas nowadays the **Internet** is becoming the main mean of content distribution. Piracy followed the same pattern and shifted from physical to **online piracy**.

Fiji has yet to incorporate these 2 Treaties into the Fiji Copyright Act 1999...**Implications** => Fijian Copyright works (including Music), are **NOT** effectively protected in the Internet and the rampant infringements by Pirate operators is therefore uncontrolled and unchecked!

(4) TRADITIONAL KNOWLEDGE & EXPRESSIONS OF CULTURE

In response to calls from the Pacific Island Countries (region) due to increasing **exploitation** and **inappropriate commercialization** of their **traditional knowledge** and **traditional expressions of culture**; and in the absence of a multilateral treaty, two **Frameworks/Model Laws** were developed in **2002**:

–**Model Law on Traditional Knowledge (TK) & Traditional Expressions of Culture (TEC)** – developed in consultation with SPC, UNESCO, Pacific Forum Island Countries & territories and Council of Pacific Arts;

–**Model Law on Traditional Biological Knowledge, Innovation and Practices (TBKIP)** - developed in consultation with **SPREP (Secretariat of the Pacific Regional Environment Programme)**.

- Both Model Laws took account of developments at the international level (WIPO IGC, WTO);
- Both Model Laws establish new range of statutory rights for traditional owners of traditional knowledge, expressions of culture, innovations and practices related to traditional biological knowledge; provide basis for protection through appropriate policy and legislation developments.

The full report on the ‘Regional Traditional Knowledge Action Plan’ by the Pacific Islands Forum on 08th December, 2015 can be found at https://www.wipo.int/edocs/mdocs/tk/en/wipo_ip tk_apa_15/wipo_ip tk_apa_15_presentation_qalo.pdf

(5) PIRACY & EFFECTS ON THE ECONOMY

The first Head of the **Fiji Intellectual Property Office (FIPO)**⁵ made a survey on Piracy of IP and the illegal earnings of Pirate Operators in 2017...it was at least **\$30 million!**

Uncovered also was the fact that their illegal sales were **not deposited** into a commercial bank – confirmed by **Reserve Bank**.

⁵ Mr. Terence O’Neal-Joyce

- **UNIVERSAL DECLARATION ON HUMAN RIGHTS (UDHR)**

- (1) 10th December, 1948, General Assembly of the United Nations adopted and proclaimed the **Universal Declaration of Human Rights**.
- (2) **Article 27** of the **UDHR** effectively states that '**Copyright is a Human Right**'.

- **WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)**

1. Established in 1967. WIPO became a Specialized UN Agency in 1974
2. Objective: **"To encourage creative activity, to promote the protection of intellectual property throughout the world"**.
3. 191 member states
4. Administer 26 treaties
5. **Fiji** became a member in **1971**

- **COMMENTS & RECOMMENDATIONS**

- (a) **Madrid System on Trademarks**

Counterfeit Trademarks have given rise to Piracy and the blatant abuse of IPR owners. In Fiji, we have counterfeit CD, DVD, pharmaceutical products, brand names like Nike, Puma, famous Perfumes like Dior, sunglasses such as Oakley and Rayban, etc.

Counterfeit occurs in many areas including sport, automotive, luxury, fashion, footwear, electronics and cosmetics. Counterfeit of CD & DVD is normally termed PIRACY. Composers & Musicians have lost millions of dollars in Fiji since local production of Cassette Tape recordings began in Fiji around 1978 (42 years ago) when Bula Cassettes was established by Mr. Trevor Agar.

The ways in which consumers enjoy content such as music, films, books and video games have changed drastically over the past 15 years. Copyright-

protected content used to be acquired mostly in the form of physical carriers (e.g., CDs, DVDs, books), whereas nowadays the Internet is becoming the main mean of content distribution⁶.

A survey done by FPRA in 2009⁷ showed that the contribution of Copyright-based Industries to the GDP was \$111.9 million.

A recent study undertaken by the Organisation for European Cooperation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) shows that international trade in counterfeit and pirated goods represents up to 2.5% of world trade, or as much as EUR 338 billion. In the EU, counterfeit and pirated goods amount to up to 5% of imports or as much as EUR 85 billion⁸.

It has been proven globally that the illegal earnings from Counterfeit have helped to finance Organised Crime...Drugs, Human Trafficking, Prostitution, Extortion, Money Laundering, etc.

FPRA fully endorse the intention by Government to ratify the Madrid System on Trademarks.

(b) Paris Convention for the Protection of Industrial Property

With the establishment of the Fiji National University in 2009, came the strengthening of its technological streams in Engineering, Science and Medicine. The University of the South Pacific also has vibrant Science and Engineering faculties, while the University of Fiji has a Medicine faculty. Growth in their Research & Development will surely nurture creations via inventions and innovations, and these require protection, not only under the **Fiji Patents Act**, but also internationally via the **Paris Convention for the Protection of Industrial Property**. The **licencing** of these Patents to Industrial Users will be a **substantial source of revenue** to Fiji.

⁶Counterfeit and Piracy Watch List 2018 :
https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157564.pdf

⁷ SUBMISSION ON PROTECTION OF INTELLECTUAL PROPERTY IN THE FIJI ISLANDS

⁸Counterfeit and Piracy Watch List 2018 :
https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157564.pdf

FPRA fully endorse the intention by Government to ratify the Paris Convention for the Protection of Industrial Property.

(c) **Berne Convention for the Protection of Literary and Artistic Works (1886).**

- **Duration of Copyright**

This comes under Part 2 of the ‘Three Basic Principles’ of the Convention. **Table 1** is a brief summary whilst the substantive list can be found at https://en.wikipedia.org/wiki/List_of_countries%27_copyright_lengths

No	State	Copyright Terms Based On Author's Death
1	Fiji	Life + 50 years
2	Samoa	Life + 75 years
3	EU Countries	Life + 70 years
4	Jamaica	Life + 95 years
5	Mexico	Life + 100 years

Table 1

Currently in Fiji, the Copyright in Music lasts for the life of the Composer/ Author/Creator plus 50 years after death. To date, **64 countries** around the world protect sound recordings for **70 years or longer**.

It is revealing to note that our neighbour, Samoa, has placed a high priority on this principle, hence the Life + 75 years term.

The rationale for *Part 2 of the ‘Three Basic Principles’ of the Convention* was that Law makers became convinced that allowing robust protection s for creators encouraged production of valuable works (by rewarding authors for their efforts and requiring others to create their own works) so the copyright duration gradually lengthened from a short period to several decades to the author's life and a little.

The **Covid-19 pandemic** has also proved beyond any shadow of doubt that under **challenging situations** like the **shutdown**, **MUSIC**, arguably, becomes the **most important** form of **relaxation** and **comfort** by **reducing mental stress and tensions**. Social Media bears witness to this fact!

On a parallel tangent, one of Fiji's most famous songs will in the near future **lose** its Copyright and be relegated to the Public Domain: **ISA LEI**. This is because its Copyright will expire soon. This **beautiful song**, and its **haunting melody and lyrics** that is appreciated worldwide, is **synonymous with Fiji**...simply, **ISA LEI** is a **vital part** of our **Fijian identity and heritage**.

Being in the **Public Domain** leaves it open to use, and possible **abuse**, by anybody in the world with consequent **loss of meaning, relevance, value** and **national pride to Fiji and its peoples**. However, we have a choice...temporarily at least, by **extending** the Duration of Copyright retroactively to **Life + 100 years**.

Therefore,

FPRA respectfully submit to the Committee that the Duration of Copyright be amended retroactively in the Fiji Copyright Act 1999 to Life + 100 years

- (d) WIPO Copyright Treaty (WCT) (1996) and the WIPO Performances and Phonogram Treaty (WPPT)

These "**Internet Treaties**", set down international norms aimed at **preventing unauthorized access** to and use of **creative works (music)** on the **Internet** or other **digital networks**.

Over the past 15 years, the ways in which consumers enjoy content such as music, films, books and video games have changed drastically. Copyright-protected content used to be acquired mostly in the form of physical carriers (e.g., CDs, DVDs, books), whereas nowadays the **Internet** is becoming the main mean of content distribution. Piracy followed the same pattern and shifted from physical to **online piracy via the Internet**.

Fiji has **NOT** incorporated these 2 Treaties (WCT & WPPT) into the Fiji Copyright Act 1999, resulting in widespread **blatant abuse** and **piracy** of Copyright Owners' musical works over the **Internet and other digital domains**. This must be **curbed** as a matter of **priority** as it has other profound implications globally => our Government may be accused of **not honouring** its bilateral Agreements including the **Bernes Convention, WIPO Membership** and the **TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)**, which may result in its

suspension as a member nation of the **World Trade Organization (WTO)**.

FPRA respectfully submit to the Committee that both the WIPO Copyright Treaty (WCT) and the WIPO Phonograms & Performance Treaty (WPPT) be incorporated into the Fiji Copyright Act 1999.

(e) **Traditional Knowledge & Expressions of Culture (TKEC) Model Law**

There is an urgent and critical need for the protection of IPR in Traditional Knowledge such as Art (e.g. Tapa design), Craft (e.g. Canoe building), Navigation (ocean voyages), Traditional Biological Knowledge (e.g. Herbal medicines), Dances (Meke), Chants (e.g. Vakalutivovo, Vakavunigasau), Games (e.g. Veitiqa), Legends (e.g. Fire-walkers of Beqa), Story-telling (I Tukuni), amongst others.

These TKEC have long being been exploited for their economic returns by foreign academia and business interests over a wide, unbounded domain to the detriment of the owners of these IPR. Big Pharma have also been huge financial beneficiaries, for example, in exploiting the health benefits of Yaqona via the **Kava Lactones**: they registered the Patents for the Lactones and are reaping millions of dollars from the licenced users.

Traditional dances (Meke) are routinely filmed and exploited by business interests for marketing and publicity purposes, with no economical returns to the traditional owners of the IPR.

Canoe **design & construction** (Drua – double hulled) and **sailing**, were recently exploited by **Walt Disney** for their film, ‘**Moana**’, which earned a **record worldwide box office** of over **\$600 million**. The film featured the **Fijian canoe**, specially **constructed, sailed** and filmed for the purpose, amongst other IPR, by the people of Fulaga, Lau. Did the canoe builders, or the sailors from Fiji benefit from a share of this record box office, never mind the meagre payment received for their services??? ...NO!!!

We are aware that the TKEC Bill has been under consideration by Cabinet since **April 2014** and humbly request the expediting of the process.

Accordingly,

FPRA respectfully submit to the Committee that the Traditional Knowledge & Expressions of Culture (TKEC) Bill be fully enacted expeditiously.

(f) **Eternal Protection of the Song, 'ISA LEI', by an Appropriate Legislation**

Given the love Fiji's peoples share for the song, *ISA LEI*, its intrinsic values, emotional values, identity factor, and heritage awareness; this **beautiful song**, and its **haunting melody and lyrics** that is appreciated worldwide, and being **synonymous with Fiji**, we as Fijians, simply have a profound **DUTY** to provide **full, eternal protection** for **ISA LEI** for posterity and to bless our descendants..... a timeless pulsating beat within our Fijian hearts!!!

It is therefore incumbent on us to provide eternal protection through an appropriate, meaningful and encompassing legislation:-

Accordingly,

**Declare ISA LEI as a National Heritage;
 + Classify ISA LEI as a Geographical Indicator; + Or, a totally new
 and encompassing legislation.**

- **CONCLUSION**

May I take this opportunity to express our respect and appreciation to the **Chairman** and the **Honourable Members** of this **august Committee** for inviting the Fiji Performing Rights Association to present this submission.

We also acknowledge the effective work done the Secretariat and Technical Staff of Parliament.

We trust and it is our hope that our submissions will be taken into careful consideration in good faith, a clean heart, and love for our beloved FIJI.

MALEKA VAKALEVU, BAHUT DHANYAVAAD, THANK YOU VERY MUCH!!!



Fiji Performing Rights Association

Submission by the Intellectual Property Office New Zealand



Effective Strategies to Generate Public Policy Initiatives, such as joining the Madrid System, from Policymakers, Legal Community and Other Stakeholders

The Fiji Parliament Standing Committee on Foreign Affairs and Defence (FAD),
11 August 2020



[New Zealand Government](#)



New Zealand's Madrid Protocol Declarations

- Extension of the refusal period to 18 months (Article 5(2)(b))
- Possible notification of refusal, based on opposition, after the 18 month time limit (Article 5(2)(c))
- Declaration of intention to use the mark (Rule 7(2))
- Recording of licenses not provided (Rule 20bis(6)(a))

New Zealand opted for an individual fee. There is currently no handling fee or a fee for replacement or transformation.



[New Zealand Government](#)

Madrid Protocol = ease of doing business

- Population: 5 million
- GDP NZ\$314 billion (March 2020 year, Two-way trade \$169.34 billion)
- Economy
 - Dairy products, tourism, meat, tech, forestry, horticulture, wine
- Main trading partners
 - Australia, China, Japan, European Union, United States
- NZ World Bank Ease of Doing Business Index for 2016 = 1



New Zealand's path to Madrid

- In 2006 the New Zealand Government made the decision to accede to the Madrid Protocol and Nice Agreement and to ratify the Singapore Treaty
- The Trade Mark Amendment Act passed in 2011
- On 10 September 2012 New Zealand deposited the "instrument of accession" to the Madrid Protocol with WIPO
- In October 2012 the drafting of Trade Marks (International Registration) Regulations 2012 was completed
- One 10 December 2012 Madrid Protocol entered into force in New Zealand





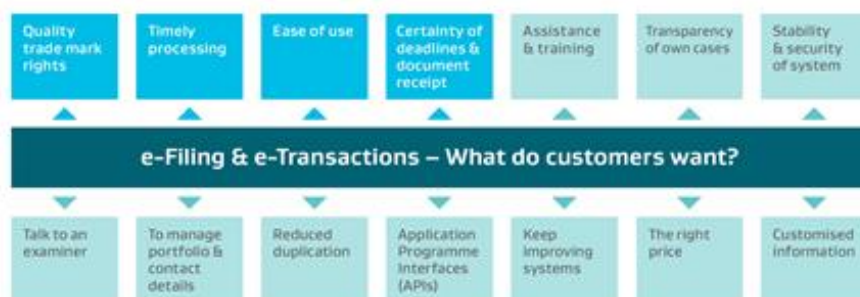
Public policy objectives

The public policy objectives of joining the Madrid Protocol were:

- To reduce compliance costs associated with seeking and maintaining trade mark protection both in New Zealand and overseas
- To encourage and facilitate New Zealand businesses to expand into overseas markets
- To more closely align New Zealand's trade mark system with leading trading partners



New Zealand Government



95% of trade mark filings were already done online when IPONZ mandated electronic filing in December 2012.



New Zealand Government



Stakeholder awareness

- Kept informed
 - Assessed likely volumes
 - Provided as much information as possible
 - seminars
 - onsite visits
 - meetings
 - website material
 - Training sessions
- Were largely on board with change

Membership

Treaty	Entry into force
Madrid Protocol	XXXXXX, 2010

Declarations

Extension of the refusal period to 12 months	Article 3(2)(a) of the Protocol	Not applicable
Possible notification of refusal based on application, after the 10-month time limit	Article 3(2)(a) of the Protocol	Not applicable
Change of trademark (see table 1) and (2)(c) (see table 1)	Article 3(2)(a) of the Protocol	Not applicable
Recording of names not provided by the trademark law, as that the recording of names in the international register has no effect	Rule 20bis(1)(a)	Not applicable

National Legislation

Trade Marks Act 2002
Trade Marks Regulations 2003

As Office of Origin

Filing method	Electronic filing	Not applicable
Filing language	English	Not applicable
Fee and handling charge	(i) Handling charge NZ\$100.00 (ii) The Office does accept to transmit application fees to WIPO	Not applicable



New Zealand Government



Trade mark law reform

- Trade Mark Regulations 2003 updated
- 100% electronic filing
- Singapore Treaty and Nice Agreement
- Hearings updates



Trade Marks Amendment Regulations 2012

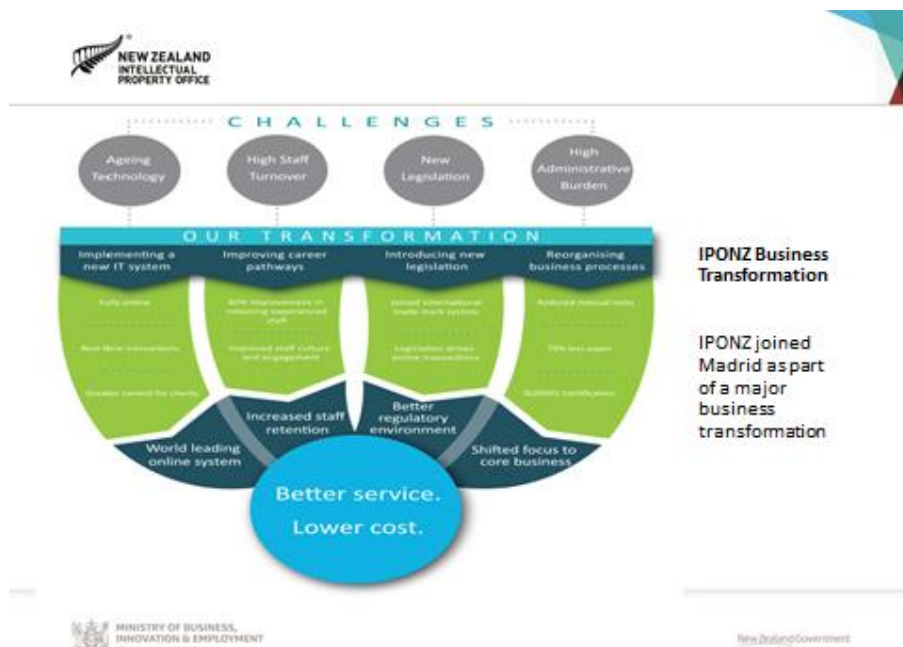
Jerry Mateparae, Governor-General

Order in Council

At Wellington this 5th day of November 2012



New Zealand Government



NEW ZEALAND INTELLECTUAL PROPERTY OFFICE

Madrid preparation

- Learnt from other IP offices (Singapore, Australia)
- WIPO advice
- New trade mark examination search tool
- New IT system (map, build, test)
- Streamline processes (especially around formalities)
- Stakeholders given an early indication of IPONZ thinking

REGULATIONS
Draft EGI paper seeking approval to amend regulations and RIS
In parallel prepare drafting instructions
Internal MBIE consultation/ sign off from Ross
Consultation with departments on EGI paper
EGI paper to Minister's Office
EGI paper submitted to cabinet office
In parallel PCO drafting regulations
EGI Committee meeting
Consultation with depts on draft regs and LEG paper seeking cabinet approval to regulations
LEG paper to Minister
LEG paper to Cabinet Office
Regulations considered by LEG committee
Regulations notified in Gazette
Regs in force
WIDER REGS REVIEW
main changes doc prepared
change controls, inc fees, Singapore, Nice, other changes
publicity prepared

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
Kaitiaki Take Kōwhiri

New Zealand Government



Did not reinvent the wheel

- Tailor information you think most important to your users
- Link and make use of helpful information from WIPO and jurisdictions that are likely to be of most relevance to your local business
- Integrate into day to day examination

The Madrid Protocol

The Madrid Protocol is a treaty administered by the International Bureau of the World Intellectual Property Organization (WIPO) (2). It's a way of facilitating the filing of applications overseas in one easy step.

The protocol allows trade mark owners to apply for their trade mark in over 100 participating countries by simply filing one application directly with their local trade mark office:

- one filing in English,
- one set of fees,
- one place to update your details and maintain your application,
- one global renewal date.

New Zealand businesses constantly protect their trade marks around the world through the 'Madrid' system. You can see more details on these applications in our infographic:



New Zealand Government



Outcomes of joining the Madrid Protocol

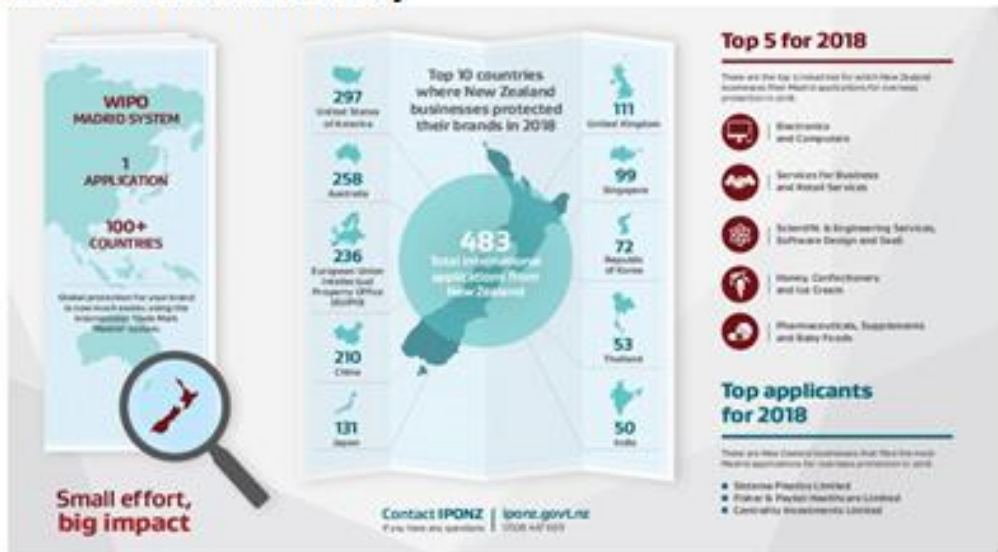
- Strong uptake of New Zealand businesses using the Madrid Protocol to protect their trade marks overseas (in the upper range of predictions)
- 40% of New Zealand's total trade mark filings are via the Madrid Protocol
- New Zealand's trade mark legislation is aligned with major trading partners



New Zealand Government



Madrid Protocol has contributed to customers and IPONZ efficiency



New Zealand Government



Thank You!



New Zealand Government

QUESTIONS FOR NEW ZEALAND INTELLECTUAL PROPERTY OFFICE (IPONZ), WELLINGTON.

Date: 17th August, 2020

1. Please discuss the process of registering a 'mark' in the NZ (Country of Origin)

An application for a National trade mark in New Zealand, must be filed online, and assessed by the Office in accordance with the Trade Marks Act 2002, and Trade Mark Regulations 2003. If no objections are raised, or the applicant successfully overcomes the objections raised, the mark is accepted and published for opposition. If no opposition proceeding is lodged, or if any opposition proceeding is unsuccessful, the trade mark will become registered 3 months after the publication of acceptance or 6 months after filing (whichever date is later in time).

2. Please also discuss the process to be followed in the application to the International Bureau for the registration of an international mark.

To make a New Zealand Office of Origin application (NZOO), the applicant needs to have a National mark filed with our Office (status can be under examination, accepted or registered) and an entitlement address in New Zealand.

If the mark is still under examination it is nice if the objections can be overcome before certifying the NZOO, as long as they have provided the mandatory filing details (basic mark, entitlement address, the specification of goods or services is the same as or within the scope of the basic mark, and a MM18 form is provided if designating the US) we will certify and send it to WIPO.

If WIPO has any concerns regarding the NZOO they will send a response to the applicant via the Office of Origin. The applicant will have 2 months to respond to WIPO's concerns. If they respond and the issue is addressed, the application will be translated, and inscribed as an International Registration and sent to the designated contracting parties for examination.

3. What are the reporting requirements by a proprietor of a 'mark' under NZ laws?

There are no formal reporting requirements of use of the mark for acceptance or registration in New Zealand. There is a three year non-use period which is grounds for third-party revocation proceedings.

4. In what way does your office compliment the International Bureau in the registration of international mark and the compliance of its regulation?

The Office fulfils its obligations as a member state by understanding its role, and updating our legislation to give effect to the Madrid Protocol and regulations. We've also implemented electronic filing and communications to ensure timely communication of office actions.

IPONZ took a leading role in educating NZ attorneys about how they may use the Madrid System and providing information about how to file various requests with IPONZ and WIPO. We continue to train our staff and provide updates to the attorney profession on changes and lessons on using the Madrid System and classification practices.

We participate and contribute at the Madrid Working Group and Nice Committee of Experts meetings, to understand any issues users and offices are all experiencing within the Madrid System. We have been looking at harmonising our examination where Offices can regarding the examination of trade marks.

5. Have you had occasions where the NZ government declare refusal under Article 5 of the Protocol to the Madrid Agreement Concerning the International Registration of Marks.

Yes, frequently. Approximately 30% of International registrations designating New Zealand receive a partial or total refusal of protection.

6. What is the business experience of IPONZ before New Zealand acceding to the Madrid Systems and Paris Convention?

Paris Convention

New Zealand, as an independent state, acceded to the Hague Act of the Paris Convention (1925) in 1931, around 90 years ago. Prior to this accession, New Zealand had been a party to the Brussels Act of the Paris Convention (1900) by virtue of being a dependent state of the United Kingdom (the UK). The UK acceded to the Brussels Act in 1905.

Given the significant passage of time since New Zealand was first required to comply with the Paris Convention (1905), it is no longer possible to describe New Zealand's experience or effect on IPONZ arising from acceding to the Paris Convention.

Madrid Protocol

The examination process for International Registrations (IRs) designating New Zealand is largely the same as the one for trade marks filed using the national route, so IPONZ examiners examine IRs and nationally filed applications. They do have to complete a provisional refusal report template, identifying the goods and services to which the objections relate, and indicating whether protection is partial or totally refused.

IPONZ trade mark filing moved to 100% online which afforded us some efficiency benefits, however this is not necessary. We understand that in recent years, newer members acceding to the Madrid Protocol have been utilising the free online services provided by WIPO such as IPAS and/or Madrid e-filing.

7. What the Bills introduced into the House of Representatives in Wellington that accompanied New Zealand ratifying the above Treaty?

The Trade Marks Amendment Act 2011 (the **2011 Amendment Act**) amended the Trade Marks Act 2002 to facilitate accession to the Madrid Protocol, the Nice Agreement and the Singapore Treaty. A copy of that Act is available [here](#). However, it is worth noting that some amendments necessary to join the Madrid Protocol were adopted into the Trade Marks Act 2002 prior to the decision being taken to join the Madrid Protocol. This included for example providing for the registration period for a trade mark to be 10 years along with the registration renewal period being also 10 years.

Another feature of the Madrid Protocol is use of the Nice Classification system, something that IPONZ has had a long history of using despite NZ not being a member of the Nice Agreement (there is no requirement to join the Nice Agreement to be able to use the Nice Classification system and many national and regional IP offices use the Nice Classification without having joined the Nice agreement).

The Madrid Protocol has been implemented through regulations made under the Trade Marks Act 2002. This is the approach other countries, including Australia, Singapore and the UK, have taken in order to facilitate joining the Madrid Protocol.

The key amendments contained in the 2011 Amendment Act to facilitate accession to the Madrid Protocol were:

- Section 4, which introduced definitions for:
 - Internal Bureau
 - Madrid Protocol and

-
- protected international trade mark (New Zealand) and
 - Section 27, which introduced a new regulation making power (section 199A) for the purpose of giving effect to the Madrid Protocol in New Zealand. These regulation making powers were for:
 - making applications for international registration by way of IPONZ as office of origin
 - procedures to be followed where the basic New Zealand application for registration ceases to be in force
 - procedures to be followed where IPONZ receives from the International Bureau a request for extension of protection of an international registration to New Zealand
 - the effects of a successful request for extension of protection to New Zealand
 - transforming an application for an international registration, or an international registration, into a national application for registration
 - communicating information to the International Bureau:
 - requiring fees to be paid in respect of applications for international registrations, extensions of protection, and renewals, and prescribing the amounts of those fees and
 - the application of the following provisions to a protected international trade mark (New Zealand):
 - section 105 (unjustified proceedings)
 - subpart 2 of Part 4 (criminal proceedings) and
 - subpart 3 of Part 4 (border protection measures).

These regulations are contained in the Trade Marks (International Registration) Regulations 2012, a copy of which is available [here](#).

8. What model or roll out plan did IPONZ follow when aligning to the World Intellectual Property Office (WIPO), Geneva?

Please refer to the slide pack “IPONZ VC with Fiji FAD Committee re Madrid Protocol and Nice Convention 11 August 2020.pptx”, particularly slide 11.

9. How was this plan rolled out and how long did the process take?

Most of the implementation plan was rolled out in the period just before the Trade Marks Amendment Act 2011 which amended the Trade Marks Act 2002, and December 2012, so approximately 18 months.

10. How much in terms of NZ Dollars was spent in the roll-out exercise?

The costs were folded into the IPONZ business transformation project, meeting many needs and objectives across IPONZ therefore, the costs solely attributed to the Madrid accession cannot be easily determined. These costs were easily met by fees for Madrid filings designating New Zealand. Refer to fees document also provided.

11. Which areas of IPONZ Capacity Building was impacted by the above exercise?

Capacity building of New Zealand examiners, IP profession, and others has included: WIPO guest speakers visiting New Zealand; IPONZ examiners attending WIPO’s Madrid System seminars (now provided online); IPONZ training and presentation conducted by examiners of examiners and attorneys; IPONZ has assisted in providing study visits regarding Madrid Protocol accession eg Cambodia and Laos, Malaysia, Indonesia, Samoa; some IPONZ examiners have also completed WIPO distance learning courses online.

We have gained a lot of knowledge and experience from IPONZ examiners being successive WIPO Madrid Fellows based within WIPO examination teams since 2013.

12. For New Zealand Based Law Firms and companies that were affected drastically by New Zealand acceding to the above Treaty, how many were they? What were the effects in terms of revenue and skills lost to other markets and jurisdictions?

There was no evidence that New Zealand patent and trade mark attorneys firms were drastically affected by accession to the Madrid Protocol. No measures were adopted or implemented to protect the interests of patent and trade mark attorneys in respect of the revenue they receive from providing advice and services related to the registration of trade marks.

We note that one of the aims of Madrid Protocol is reduce the business compliance costs for registering trade marks, i.e. reducing the need for businesses to rely on the services of patent and trade mark attorneys when registering their trade marks.

13. In terms of IP Laws protecting Traditional Knowledge and Culture for Maori language and knowledge, what laws are in place to protect Maori Culture and Arts in Modern Business, Movie Making, Sports (All Blacks use of the Haka), Science and Technology, Media etc?

The Government recently announced a comprehensive work programme to address issues, associated with protection of traditional knowledge, traditional cultural expressions and genetic resources. Information about that work programme is available [here](#).

Currently New Zealand's IP laws offer limited protection for traditional knowledge, traditional cultural expressions and genetic resources. Some of the practical measures taken under IP laws to provide protection include:

- IPONZ to refuse registration of a trade mark where its use or registration is likely to be offensive to Māori
- Māori trade marks advisory committee to provide advice to IPONZ on whether registration or use of a trade mark or geographical indication comprising a mark derived from Māori text or imagery is likely to be offensive to Māori.
- IPONZ to refuse grant of a patent where the invention claimed is contrary to public order or morality
- Māori patents advisory committee to provide advice to IPONZ on whether:
 - an invention claimed in a patent application is derived from Māori traditional knowledge or from indigenous plants or animals; and
 - if so, whether the commercial exploitation of that invention is likely to be contrary to Māori values.
- In relation to the granting of plant variety rights, the Government recently took a decision for the Plant Variety Rights Act 1987 to be amended to provide for IPONZ to:
 - refuse a grant that would affect the kaitiaki relationship;
 - be supported by a Māori advisory committee;
 - refuse registration of plant variety simply discovered in the wild refuse a denomination (name) for a new variety if registration or use of that name would offend Māori.

The Haka Ka Mate Attribution Act 2014 provides acknowledgement from the Crown that the haka Ka Mate is a taonga (treasure) of Ngati Toa Rangatira and Ngati Toa Trangaira have a right of attribution in relation to the haka Ka Mate when used in:

- any publication of Ka Mate for commercial purposes
- any communication of Ka Mate to the public and
- any film that includes Ka Mate and is shown in public or is issued to the public.

14. For well known NZ Artists Andy Williams and Prince Tuiteka in terms of intellectual property rights and copyright laws protecting their work and music, does current New Zealand Law guarantee this for the artists who are deceased their next of kin and trust beneficiaries?

NZ's IP laws, and in particular the Copyright Act 1994, does not accord any special treatment for well-known artists or performers. To do so would likely breach NZ national treatment obligations under various international IP treaties such as the WTO TRIPS Agreement and the WIPO Berne Convention for the Protection of Literary and Artistic Works.

We understand that Andy Williams was a US citizen and resident and, therefore, it is most likely that any copyright in his music and performances would be primarily determined by US copyright law.

For Prince Tui Teke, as a New Zealand citizen and resident, his music and performances will have qualified for copyright protection in New Zealand under the Copyright Act 1994. However, we are unable to confirm without substantial investigation who owns any copyright in his music and recordings of his performances.

If he had retained copyright when he died, ownership of that copyright will have passed to his next of kin/relative in accordance with any provisions in his will regarding the transfer of that copyright. However, we note that it is not uncommon for well-known artists and performers to assign copyright in their musical works and performances to their record companies. We don't know whether this occurred and, if so, under what conditions.

We do know, however, copyright in his musical works will expire 50 years after his death meaning this copyright will expire on 30 December 2035 (his death was in 1985). Copyright in any recordings of his performance will expire 50-years after the making of these recordings.

Other information

- How long did the accession take?
Whilst it may appear it took New Zealand from 2006-2012 to accede to the Madrid Protocol, it did not take 6 years to implement. Rather, it was just a consequence of government priorities of the day. The Bill was first introduced in 2008, and passed in 2011. We'd suggest changing legislation before accession as this cannot be managed in the 3 months following accession.
- A member state may manage time pressures to issue refusals with declarations such as:
 - **Article 5(2)(b) of the Protocol (extension to 18 months of the refusal period)**
 - **Article 5(2)(c) of the Protocol (possible notification of refusals based on an opposition after the 18-month time limit)**
 - Article 14(5) of the Protocol (in respect of international registrations effected under the Protocol prior to the date of accession of the Contracting Party concerned, no subsequent designation)
- Statistics on the size of the NZ Trade Marks register in 2012 (if known), and NZOO and NZD filings (increasing 5-8% per annum), and fees review information informing the impact of joining the Madrid System:

Year	Total Applications	Total classes	NZ Designations (applications)	NZ Designations (Classes)	National Trade Mark applications	National trade marks (classes)	% of NZDs where an objection was raised (article	Total Trade Marks on the Register	Number of examiners

FPRA SUBMISSION TO PARLIAMENT STANDING COMMITTEE ON FOREIGN AFFAIRS & DEFENCE

							5)		
2011/2012	17,675	32,729	N/A	N/A	17,675	32,729	N/A	230,633	23
2012/2013	17,842	32,372	1,495	2,787	16,347	29,585	14%	242,561	23
2013/2014	19,758	38,330	5,630	12,332	14,128	26,001	17%	244,373	23
2014/2015	18,970	38,262	5,860	13,564	13,110	24,698	19%	243,146	23
2015/2016	22,227	45,390	7,395	17,129	14,832	28,261	22%	239,862	26
2016/2017	23,222	46,368	7,844	17,968	15,378	28,400	20.5%	257,524	26
2017/2018	24,889	50,360	8,598	19,475	16,291	30,885	17.35%	264,929	29
2018/2019	26,016	53,860	9,830	22,319	16,186	31,541	25.71%	273,234	29
2019/2020	25,741	53,535	9,640	22,126	16,101	31,409	31.26%	283,922	38

Fees information, refer to page 13: <https://www.iponz.govt.nz/assets/pdf/about-iponz/fees-review-and-consultation-2018/discussion-document.pdf>

- How long did it take to digitise IPONZ records?
Unconfirmed, approximately two years from 2007-2009.
- How was/is the Trade Marks examination team organised? Collocation vs multi-site, and working from home arrangements.
Examiners used to be collocated in one Wellington site. Based on IT and training improvements in recent years, the Trade Marks team has had a number working predominantly from home within the greater Wellington area. Also, as MBIE is able to provide access to offices around the country, we have had staff working from Auckland, Hamilton, and Christchurch as well.
- Information on prerequisite competencies and qualifications and on the job training for IPONZ TM examiners:
All we require for examiners is a tertiary degree, and pass a written test within the recruitment process. We also use a two-year on the job training and progression framework.

Also:

- Link to any appropriate pages on the role of our MACs: <https://www.iponz.govt.nz/about-ip/maori-ip/maori-advisory-committees/>
- Link to IPONZ information on advantages of Madrid System as promoted to NZ clients: <https://www.iponz.govt.nz/about-ip/trade-marks/international/>
- Link to information regarding IPONZ examination of existing marks: <https://www.iponz.govt.nz/about-ip/trade-marks/practice-guidelines/current/relative-grounds-identical-or-similar-trade-marks/>

Written Submission – Ministry of Commerce,



SUBMISSION BY THE PERMANENT SECRETARY FOR COMMERCE, TRADE, TOURISM AND TRANSPORT, SHAHEEN ALI

TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

- **BACKGROUND**
- The global economy provides opportunities for smart businesses, both large and small, to sell goods and services beyond the national borders. In today's competitive environment, and as the world is working towards economic recovery for the post-COVID period, innovation is the mainstay for every business that leads to development of intellectual property. Globalisation and technological developments have provided even the smallest of enterprises with unprecedented access to export markets.
- However, operating in international markets means competing on the world stage. In a competitive market, a strong trademark or brand can be the best commercial asset for businesses, helping them build consumer loyalty and command premium prices.
- A trademark can be any name, word, symbol, slogan, or device that serves to both identify and distinguish a business or product from others in the market. Fiji Water is one of the examples that testifies that competent product branding can elevate even the simplest of commodity. Other examples are Fiji Airways, Fiji Mahogany, Pure Fiji, Fiji Kava, J Hunter Pearls etc.
- While it is not required by law, it is a good idea to register a business as a trademark. In the event that another business tries to use the same or similar name, the business will have legal recourse to stop it. Once an individual has trademarked their business or product and someone else makes an attempt to use something similar enough to confuse customers, then that individual has the right to legally protect themselves and stop the other party.

- The demand for consumer goods and services has also created an ever-increasing supply of similar, often illegally-copied, products and services. Registering a mark internationally, to protect and differentiate products and services from those of competitors is both the first step for businesses in protecting their commercial interests abroad and an integral part of any successful global business strategy.
- Similarly, the protection of Intellectual Property is very important. Intellectual Property is not limited to technology companies, but is valuable for every business, which invests huge sums of money into research and development for creating original products and services. Innovations are crucial for the success of every business and can be patented to exclude competitors from exploiting the invention during the period.
- Without protection of such ideas, innovators cannot reap benefits of their inventions and would focus less on research and development. Intellectual property rights help innovators in every stage of business development, competition, and expansion strategy.
- In today's global economy, Fijian businesses must be attuned not only to their trademark protections and rights in Fiji, but also to protecting their trademarks in foreign countries. There are two main treaties that govern foreign trademark registration:
 - The Madrid System; and
 - The Paris Convention for the Protection of Industrial Property
- Through the Madrid System and the Paris Convention, there are international processes of seeking and receiving international trademark protection. This submission discusses those methods and why each may be beneficial for Fiji and Fijian businesses.
- **THE MADRID SYSTEM**
- The Madrid System is a centrally administered system by the International Bureau of the World Intellectual Property Organisation (“WIPO”), for obtaining a bundle of trademark registrations in separate jurisdictions, creating in effect a basis for an “international registration” of marks.

- Registration of trademarks in multiple jurisdictions around the world is governed by two independent treaties:
 - The Madrid Agreement (**“Agreement”**); and
 - The Madrid Protocol (**“Protocol”**)
- Together, the Agreement and protocol are known as the **Madrid System**.
- The Madrid System is a convenient and cost-effective solution for registering and managing trademarks worldwide. File a single application and pay one set of fees to apply for protection in up to **122 countries**. Modify, renew or expand your global trademark portfolio through one centralised system.
- **WHO CAN USE THE MADRID SYSTEM?**
- You can use the Madrid System if you have a personal or business connection to one of the System’s members. This means you must either: be domiciled, have an industrial or commercial establishment in, or be a citizen of one of the 122 countries covered by the Madrid System's 106 members.
- **HOW DOES THE MADRID SYSTEM WORK?**
- The nationals of a country, which is a member to either the Madrid Agreement or the Madrid Protocol or both can register their marks in any of the member countries by filing a single application in their National Trade Marks Office.
- The National Trade Marks Office, after checking some formalities, will forward the application to the International Bureau of WIPO for the international registration of the mark. After checking the procedural requirements, the mark is published in the WIPO Gazette of International Marks. Subsequently, the application is forwarded by WIPO to the designated Contracting Parties mentioned in the application of the applicant for the registration of the mark according to the national legislation of the designated Contracting Parties.

- For example, if South Pacific Elixir (Fiji) Limited, registers a new trademark “Fiji Kava” with Fiji Intellectual Property Office (FIPO). Then through the FIPO South Pacific Elixir (Fiji) Limited can file an international application, which will be certified and forward to WIPO for international registration. This way South Pacific Elixir (Fiji) Limited is able to protect its trademark “Fiji Kava” internationally, without registering in separate jurisdictions.
- The registration process for an international trademark is depicted by **Diagram 1**.

Diagram 1: The International Trademark Registration Process



(6) Stage 1 – Application through your National or Regional IP Office (Office of origin)

Before you can file an international application, you need to have already registered, or have filed an application, in your “home” IP office. The registration or application is known as the basic mark. You then need to submit your international application through this same IP Office, which will certify and forward it to WIPO.

(7) Stage 2 – Formal examination by WIPO

WIPO only conducts a formal examination of your international application. Once approved, your mark is recorded in the International Register and published in the WIPO Gazette of International Marks. WIPO will then send you a certificate of your international registration and notify the IP Offices in all the territories where you wish to have your mark protected.

(8) **Stage 3 – Substantive examination by National or Regional IP Offices (Office of the designated Contracting Party)**

The IP Offices of the territories where you want to protect your mark will make a decision within the applicable time limit (12 or 18 months) in accordance with their legislation. WIPO will record the decisions of the IP Offices in the International Register and then notify you.

- **BENEFITS FOR BUSINESSES FROM THE MADRID SYSTEM**
- The Madrid System for international registration of marks has advantages for the trademark owners, national economies and Governments, as well as for professionals, like agents and attorney in the field of trademarks.
- The Madrid System allows companies and individuals to obtain and maintain protection for their marks in an ever-increasing number of countries by means of a simple and economical procedure.
- International registration has several advantages for the owner of the trademark. After registering the basic trademark, or filing an application for registration, with the Office of origin, the owner has to only file one international application, in one language, and pay one fee, in one currency.
- This simple procedure takes place instead of filing separately in the trademark Offices of the various Contracting Parties, in different languages and paying fees to each Office, in different currencies. Different national/regional procedures, involving different languages and fees payable in different currencies, give rise to translation and exchange-related expenses.
- Where trademark protection is sought by filing direct to national/regional Offices, most of these Offices require the applicant to appoint a local representative to act on their behalf before the Office, at the time of filing of the application.

- With the Madrid System, the designated Contracting Parties may only require that the holder appoints a local representative in case the holder has received a notification of a provisional refusal and the holder intends to contest this decision before the Office concerned.
- The main advantages for trademark owners consist of the simplicity of the international registration system and the financial savings made when obtaining and maintaining the protection of their marks abroad.
- The companies most affected by the considerable cost involved in registering and maintaining marks abroad are Micro Small and Medium Enterprises (**“MSMEs”**). While a large company may afford to devote considerable funds to protect its marks abroad, an MSMEs cannot afford the registration of marks abroad, due to the high procedural costs.
- The Madrid System is used by one-third of worldwide applicants seeking protection of their marks. Of these, about 80 per cent is categorised as an MSME, having a small portfolio of one or two marks.
- The Fijian Government has a strong focus on nurturing and growing the MSMEs. Therefore, Fiji being party to the Madrid System will provide impetus for MSMEs to actively protect their trademarks internationally.
- In the current economic context, the possibility of providing easy, low-cost protection for marks provides a welcome advantage for companies and individuals as a factor that will favour exports.
- It is important to note that trademarking products and services can also protect businesses and consumers from counterfeit products. As such, trademarks are also used to protect consumers. Counterfeit goods cause billions of dollars of losses each year to brand owners. Often, the more successful a brand, product, or service becomes, the more it is targeted by counterfeiters. In addition to direct monetary losses, trademark piracy and counterfeiting can lead to harm to reputation and goodwill.

- A further important advantage is that changes subsequent to registration, such as a change in the name or address of the holder, or a change (total or partial) in ownership can be recorded with effect for several designated Contracting Parties through a single, simple and centralised procedure with the International Bureau of the WIPO and with the payment of a single fee. Moreover, there is only one expiry date and only one registration to renew, which makes it for easy portfolio management.
- The Madrid System can also benefit the national/regional economy and the Government's finances, in particular. The overall volume of work for local trademark agents is expected to increase by accession to the Madrid System.
- Trademark agents can expect to engage, in addition to tasks ensuing from the filing of applications, in tasks like searches, responses to objections, raising of objections, requests for annulment or cancellation, dispute settlements, license and assignment contracts, among others.
- Bearing in mind that the number of marks protected locally would gradually increase as a result of accession to the Madrid System, the overall volume of work for trademark agents should also increase commensurately. This in return is expected to generate demand for employment in FIPO and over all in the field of Intellectual Property Rights.
- The Madrid System will also support Fiji's exports to the extent that it simplifies protecting trademarks abroad. Furthermore, it allows individuals and companies established in other Contracting Parties of the Madrid System to have easier access to the protection of their marks in the country/regional territory, since they can seek protection of the mark in any of the applicable Contracting Parties by merely designating these in the international application, or in a subsequent designation. This facility helps to strengthen the climate for foreign investment.
- If Fiji becomes a Contracting Party, Fijian trademark owners with a mark registered in or an application pending with the FIPO will be able to file not only a single application but one in a single language using a single currency.

- Businesses can thereby obtain a single international registration with one renewal date. By doing so, Fijian trademark owners will apply for protection in all countries they designate that are signatories to the Madrid Protocol, subject to objection by a country within approximately eighteen months of application on the basis of examination or opposition. Similarly, certain owners of foreign trademarks can easily apply for a Fijian trademark registration and obtain the same protection in Fiji, as would a domestic applicant.
- There will be unprecedented opportunities for trademark owners that have chafed under the cost and complexity of filing separately for national trademark registrations in the vast majority of countries around the world. Indeed, the budget-minded business should find it possible to expand trademark coverage to multiple countries, if its mark is eligible for registration there, with the somewhat greater cost of a single application, rather than being limited to fewer countries for the same cost. Much of the savings will come with renewals, assignments and making changes in contact information.

(a) **THINGS FOR CONSIDERATION BEFORE ACCESSION TO MARDID SYSTEM**

- (b) The MSMEs sector of developing countries is not financially strong to afford the fees for the international registration of marks via Madrid Protocol.
- (c) The staff requirements, capacity building of the staff, workload analysis and automation requirements are also the key factors before accession to the Madrid Protocol. Training programmes for officials need to be provided to gear up for the anticipated influx of applications, both from Fijian and foreign companies.
- (d) Capacity building of the MSMEs sector of Fiji to understand the importance of registration of marks through public awareness campaigns. Financial support to the SME sector may need to before the international registration of marks via Madrid System.
- (e) A comparison of the fees for national registration of a mark in Fiji with the fees of international registration of a mark via the Madrid System needs to be conducted.

- (f) The international trademark remains dependent of the base country trademark for five years since the international filing date. If during the first five years, the base country trademark is rejected, removed, cancelled or limited, the international trademark will be cancelled. This is known as “**Central Attack**”.

- **THE PARIS CONVENTION**

- The Paris Convention was signed in Paris, France, on 20 March 1883, and is administered by the WIPO. There are **over 170 countries** who are contracting parties to the Paris Convention. The Paris Convention doesn't only apply to patents, it also includes protection for trademarks, trade names, and services marks.
- The Paris Convention offers some of the most widespread protections for individuals and businesses that own trademarks, patents, utility models, industrial designs, geographical indications and trade names. It was the first major step in ensuring that creators are given protections for their works even in other countries.
- This convention created the provision of **national treatment**. This establishes that each state must offer individuals or businesses with a patent, the same protections as they would give national citizens of their own state.
- The convention also established the **right of priority**. This means that an individual could file a patent for his or her invention in whatever country that person lives in. After a given amount of time, the inventor could file for a patent within any other countries that is Party to the Paris Convention. The amount of time a person would need to wait is six months for industrial marks and designs and 12 months for utility models and patents. This provision is incredibly beneficial because it means that patent filers do not have to file patents at several countries at the same time, which can cause a lot of headaches. You can focus on your homeland first and then decide what other countries would be best for getting a patent filed.

- The convention also lays down a few **common rules** that all contracting states must follow in relations to **patents, marks, industrial designs, trade names, indication of sources and unfair competition**. These go into great detail within the actual text of the treaty, but one of them is that patents are independent of each other when dealing with different contracting states. While a patent cannot be terminated or refused on the grounds that it was terminated or refused in another state, a country is under no obligations to accept the patent if it fails in some other capacity. These common rules also apply to collective marks such as unfair competition, indications of source, trade names and industrial designs.
- The **indication of source** is another common rule that is very important for Fiji. **Article 10** protects against any direct or indirect use of a false indication of source or identity of the producer, manufacturer or merchant, and **Article 10bis**, protects also against any act of unfair competition through the use of an indication. Remedies, if available under domestic law, include those referenced in **Article 9** concerning the seizing of goods bearing false indications and the prohibition on the importation of such goods. **Article 10(2)** empowers interested natural persons and legal entities to prosecute actions within the affected nation, while **Article 10ter** requires member countries to allow interested federations and trade associations to take actions with a view to the repression of such acts.
- This section of the Convention is important for Fiji as the Ministry of Commerce, Trade, Tourism and Transport has received numerous complains in relation to trademarks registered in international jurisdictions that contains the word “Fiji”, despite bearing no connection for originating from Fiji. One such example is a product “Fiji Ocean” trademark by suppliers of canned fish in Canada and the United States. In both instances, the products did not originate from Fiji.
- The use of “Fiji” in their product names misleads consumers to believe that the product in fact originates from Fiji. The World Trade Organisations (“**WTO’s**”) Trade Related Intellectual Property Rights (“**TRIPS**”) Agreement defines “geographical indications” as “indications which identify a good as originating in the territory of a Member (of the WTO), or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributed to its geographic origin”.

- In 2008 the Fijian Embassy in Washington in conjunction with the Attorney-General's Chambers had filed a Notice of Opposition against Kohinoor Grocery Ltd of Surrey British Columbia, with the Canadian Intellectual Property Office ("**CIPO**").
- The matter was handled by Ann Carlsen and Company, a law firm based in Canada, on behalf of the Fijian Government. Subsequently, the Fijian Embassy in Washington was able to successfully block the application by the Canadian company for registration of the trade mark "Fiji Ocean". However, other similar applications for the use of "Fiji" in trademarks appeared.
- Not only filing a notice of opposition a time-consuming exercise, it is also very costly. Therefore, acceding to the Paris Convention will provide a long terms solution to this issue for Fiji.
- **WAY FORWARD**
- Fiji's accession to the Madrid System and the Paris Convention will offer unique benefits to all domestic companies and entrepreneurs to protect their trademark and industrial property portfolios across the world. Similarly, the option of choosing Fiji as a designated country will ease the economics of filing trademark applications for many international parties and investors.
- Since filing a single international application is equivalent to filing a bundle of national applications, the Madrid system will save both time and money for Fijian businesses. The system's centralised registration also offers a simple and efficient way to manage any businesses mark portfolio.
- The accession to the Madrid Agreement and Madrid Protocol is welcomed, with the disclaimer that it may not be for everyone. Businesses should carefully weigh the pros and cons before deciding to rely on the Madrid System for trademark protection in other countries.

- Moreover, the Paris Convention establishes a right of priority, which means that an applicant can use his or her first filing date as an effective filing date in other contracting countries. This is expected to provide tremendous boost to scientific research and innovative activity in the country.
- Fiji will also be able to play a more significant role in determining matters related to industrial property in international fora, and articulate its concern on such issues.

VERBATIM REPORTS

[VERBATIM REPORT]

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

TREATIES

1. **Madrid Agreement Concerning the International Registration of Marks 1981**
2. **Madrid Protocol Relating to the Madrid Agreement**
3. **Paris Convention for the Protection of Industrial Property**

INSTITUTION: Siwatibau & Sloan Barristers & Solicitors

VENUE: Big Committee Room (East Wing)

DATE: Monday, 8th June, 2020

VERBATIM NOTES OF THE VIRTUAL MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE VIEWED AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON 8TH JUNE, 2020 AT 10.40 A.M.

Online Interviewee/Submittee:

Siwatibau & Sloan Barristers & Solicitors

In Attendance:

Mr. Aminiasi Vulaono – Lawyer

MR. CHAIRMAN.- Welcome Honourable Members, to today's Committee Meeting. You are aware of your submission this morning and I ask that our Submittee have a brief introduction of himself and then the floor is yours. Thank you.

MR. A. VULAONO.- Thank you so much, Mr. Chairman. I just want to confirm whether the Committee can hear me?

MR. CHAIRMAN.- Yes.

MR. A. VULAONO.- Thank you very much, Mr. Chairman. Firstly, our firm is very thankful to the Committee for inviting us to make a submission.

In terms of introduction, I am a partner at Siwatibau & Sloan Law Firm. Our law firm has been in practice in Fiji for 15 years now. As part for our practice, a major area of our practice is Intellectual Property Law. So, you can imagine how interested we are in terms of the efforts of the Government in updating our legislations with regards to Intellectual Properties and the Treaties.

I have been involved, together with my colleagues, in leading our IT Team for the last 12 years or 13 years. So, I am thankful for the invitation from the Committee for these legislations are really relevant to us in terms of our practice. That is, Sir, our brief introduction. Perhaps, I will now go onto the submission.

I have emailed our submission earlier this morning, Sir, so I would now summarise our submission in a brief form. We fully welcome the information on the three Bills are being passed by Cabinet and we are thankful to the Government for its effort in updating the Intellectual Property Laws of our country.

In terms of our IP laws, the current law that we have, as you would know, dates back as far as 1933. So, when we read that Cabinet has agreed to the three Bills - the Trade Marks Bill, the Patent Bill and the Designs Bill, we truly welcome the effort by Cabinet and we do agree that there is an enormous need to update our legislation in terms of our local Intellectual Property laws.

Now, our concern is that the three Treaties and Fiji's intention to enter or accede to the three Treaties. In terms of these Treaties, considering all the circumstances, our recommendation is for Fiji to put aside the Treaties, not at this time, but instead concentrate on updating our local laws which has already been agreed to by Cabinet. In terms of the Treaties Sir, with utmost respect, from the origins of the Treaty and from what we have seen in other nations, these Treaties are very relevant and helpful to developed countries.

In terms of the developing countries such as ours, the disadvantages through it is much more than the advantages. So, our submission, Sir, is for the honorable Committee is to reconsider the idea of acceding to the Treaties. Instead of that, just update the local laws of Fiji because updating our local laws only benefits our local businesses, benefits our local IP owners and also on a national level, Sir, it provides more benefits for Fiji as a whole, instead of entering into the Treaties.

Now, I will go into details on the reasons why we do not think that it is good to enter into the Treaties at the moment. Now, from the analysis that we have seen, we understand that the main reason for these Treaties is perhaps, they are related to the requirement by ADB. In our understanding, the ADB Bank only requires local laws to be updated, it does not require us entering into the Treaties. So, if the priority for Fiji is to meet the requirements from the ADB, Sir, we can easily do that by updating our local laws. There is no need to enter into the Treaties as of now.

If we are wanting to attract business owners, if we want to attract investment, this can also be done by simply updating our local laws because obviously the 1933 law, by any means, is so outdated. So, on that basis, Sir, update the local laws, but the Treaties, we discourage the idea of acceding to the Treaties.

I will just explain briefly, Sir, some of the possible effects of Fiji entering into the Treaties. Now, there is an argument that it will benefit Intellectual Property owners. In our submission, Sir, it will benefit IP owners but moreso, Sir, it will only benefit overseas IP owners, not our local IP owners because what it does is that. They do not need to come back to Fiji to come and register. They just file applications from their country and nominate Fiji so they do not need to come to Fiji whereas for local IP owners, Sir, the cost itself would be raised under the treaties.

Our IP owners, from my experience in dealing in this area, there has only been a handful of local IP owners who are interested in registering overseas. So, majority of our local businesses are small and medium sized businesses, who are more concerned about their protection here in Fiji. So, the Treaties will not really be useful to our local IP owners because practically at the moment, to register in Fiji costs around FJ\$600. For that, most of our businesses find it too expensive.

But under the Treaties for our local IP owners, from my understanding, it depends which country, it is charged in francs - 1,000 francs, 2,000 francs for one trademark. Now, if our local businesses pay FJ\$700, that is expensive. So, how will these Treaties assist them when the cost is high as that? So, on that basis in terms of our local IP owners, the Treaties will not really assist them because of the nature of their business and the size of their business. What will benefit our local IP owners is simply for us to update our local laws.

Most of the local companies, the big ones that we have represented, even their main priority was just within the Pacific. They did not really want to extend all the way to Sweden, which are the members of Singapore. They were not even interested in that, so the idea that most of this IP owners will want to get registered globally, Sir, under the treaty is misplaced, in our humble opinion.

On that basis, Sir, entering the treaty will not necessarily benefit local intellectual property owners, it will not benefit local businesses, but it will just benefit foreign companies who will just sit from their office in overseas and just easily register in Fiji whereas the other way round, we can ask them to come directly to Fiji and file in Fiji, instead of through the treaty.

The second point that we are raising is that, in our opinion, entering into the Treaties may not be beneficial for our local resource in terms of complying with the Treaties. As you have seen under

the Treaties, there are a few requirements that is required of Fiji in order to comply, maintain and facilitate the requirements.

At the moment, Sir, while we are talking about acceding to the Treaties, we are not aware of any infrastructure in place or any office in place that is prepared to cater for the requirements of the Treaties. So, in terms of the impact on the local IP registry, Sir, it will require a huge overhaul in terms of our registration system, in terms of the way we keep our records and how we accept applications. So, the question there, Sir, is, are we ready in terms of our resources to invest in such a change in our registration?

A few things that are required of Fiji to maintain a registration system that complies with the Treaties and one is that, Fiji needs to have highly trained and qualified human resources who will manage to operate the system. Also, one thing we tend to forget is that, Fiji is intending to accede to three different Treaties here, and the three different Treaties have all their individual requirements, have their own required systems, so Fiji has to accede to all the three. It has to set up systems that cater for all the three Treaties.

Again, this is a resource that I believe, at this point in time in our nation, it can be well utilised in other areas instead of this, at the moment. There are the pressing needs, so in my opinion, whether we have the resources to cater for the requirements of these three Treaties, perhaps the timing is wrong at the moment to accede to the Treaties, that I think it is something to revisit in the future in terms of acceding to the Treaties.

In terms of our local IP registry, it is a huge, huge requirement on our IP registries. As a minor example, Sir, is that, under our current laws, the registry is required to conduct proceeding of trademarks under our current laws. For the last 15 years or 20 years, the registry has not been able to do any proceedings as such, because there is no Tribunal in place. So, compare that Sir, that (inaudible)..... The Treaties has required us to(inaudible).... under the Treaties.

Again, whether we have the resources to do that, at the moment, I do not think so. Perhaps, the timing is wrong, Sir, and again, how to address this is simply for Fiji to update its local laws. It does not really need to go into the Treaties and by updating its own local laws, Sir, it does not need to comply with any Treaty. It just can set its own condition on how to set up its own systems, that is the advantage of concentrating at the moment on our local laws instead of jumping to the idea of acceding to the Treaties.

Apart from our IP registry, Sir, the other reason why we think it is a bad idea at the moment, or we recommend that Fiji do not accede to the Treaties at the moment, Sir, is the impact on our national income. As you would have seen in our submission and from our experience in filing trademarks in Fiji, we can simply say that 80 percent to 90 percent of registration in Fiji are by foreign companies.

By entering into the Treaties, Sir, those registration do not need to come directly to Fiji. They will just file an international registration application from their home country and the World Intellectual Property Organisation (WIPO), who is in charge of the Treaties, will simply inform the registries, instead of getting the IP owners into our country and file directly into our registry.

Fiji may not have much control in terms of the filing fees because I believe the Treaties are considered as a one-stop shop, one fees should (inaudible). By that definition, it does not benefit Fiji greatly, if you are to compare the fact that we could easily control our applications ourselves - the registrations in Fiji and the fees if we just update our local laws, set out the fees that Fiji wants and

the requirements of how IP owners are to file in Fiji, instead of the Treaty whereby most of the requirements are already set for Fiji to follow.

So, we have stated that in terms of the national income, Sir, at the moment, to file a trademark in Fiji is very, very cheap. In fact, it is FJ\$10 plus VAT. If you compare that to other countries, Sir, for example, Tuvalu, filing fees are as high as US\$400. The filing fees can be as up as US\$100. So in terms of income for a nation in Fiji is to improve on its local laws only, if there is more of a benefit for Fiji as a country. As I had stated, Fiji can then set its own fee schedules, its own system, and it has a wider control of registration in Fiji, as opposed to being a member of those Treaties.

In summary, Sir, again, about 80 percent to 90 percent of IP owners who come directly to Fiji to file, may not now come because of the Treaties. They will simply just file through the Treaties, instead of our national application. Now, that will determine the national income.

The other point, Sir, is that, the Treaties, like all other Treaties, it affects the sovereignty of a nation in terms of decision-making, and for these ones, if you have seen our submission is that, we are tying it with our traditional knowledge.

Traditional knowledge, Sir, has a very unique place in terms of IP Law, especially for us in all the Pacific, Sir. As we have seen in the previous years where there were cases of cultural knowledge and traditional knowledge that may have been misappropriated abroad. Now, for these, Sir, the Treaties are not strong in the protection of traditional knowledge.

In their own magazine, the WIPO does acknowledge that the protection of traditional knowledge is an ongoing issue that they still have yet to fully address. For Fiji, that causes challenges, not only for our local traditional knowledge but also from abroad whereby, in terms of traditional knowledge, an overseas company would be able to register it and whether it will be accepted in Fijian or not is another story. But in terms of the procedures that are required, if Fiji does not comply with those procedures, we may inevitably register traditional knowledge without knowing through those Treaties.

There is a lot of nuts and bolts of these Treaties that, I think, we need to take further time to think about. The Treaties have the potential to have, not only implications in terms of filing but even on social settings for Fiji as well. As we know that as a country, we have in the past, made a great effort to protect vernacular words. I believe there was attempt to register Fiji abroad by some overseas IP owners who, I believe, the Solicitor General's Office successfully opposed that, which was a great effort on their part. I think, recently, this was in (inaudible) in the United States of America.

All of these, Sir, we are not even....(inaudible).... under the Madrid System, they were able to be registered. If we are member of the Madrid, they may actually get to register that even in Fiji as well. So the social impacts of these Treaties is something that we need to really think carefully about.

I am somewhat disappointed at the explanatory analysis that has been given, it is quite brief but does not really address the possible wider effects of the Treaties. I think it is vital that we do research of how the Treaties have impacted other developing countries, who are members of the Treaties, and for such a short time, Sir, this may not be possible in terms of reviewing(inaudible).

Apart from our traditional knowledge, Sir, the other point that we have stated here impacts our local IP agents. As I have stated, foreign IP owners make-up about 80 percent to 90 percent of

registration in Fiji. These IP owners Sir, in one or the other, file their application through local agents (like ourselves), and there are so many other agents around who have built up businesses around this service to provide this service.

With these Treaties, Sir, there is a possibility of all these agents, perhaps a great effect on their business, especially at this time, Sir, when there are so many issues in terms of unemployment going on, so it goes back to the fact on the timing of this effort in trying to enter into the Treaties. These agents, most of whom have been in business of servicing IPs way, way longer than us will greatly be affected by the introduction of the Treaties whereby clients do not need.....(inaudible)..... more. They simply file from their home country. So that is another aspect of these Treaties, Sir, that we strongly recommend or hope that the Committee will consider in terms of its effect on our local environment.

The last point that we have stated here, Sir, if we put those Treaties aside and just develop our own local IP laws, there is a great potential for our country, not only in terms of potential IP domestically but even abroad as well, Sir. But all these, we can all address them by updating our local IP laws.

I have noted that the Written Analysis says that acceding to the Convention will demonstrate Fiji's commitment to developing intellectual property in Fiji, and it also goes further to say that it uplifts businesses and(inaudible). Sir, both these points, we believe, can be addressed simply by updating our local IP laws. We do not need to enter into Treaties that will only require further compliance by Fiji, further effort to update our register, et cetera, whereas if we simply update our local laws we can address those principles that have been outlined in our Written Analysis, which is to protect of local businesses, protect of IP owners (overseas and local) and it gives confidence to invest, the fact that there is an updated and strong local Act that are in place.

In terms of the potential growth that IP laws have in Fiji, apart from filing, it gives confidence to businesses. If that is what we are going for, an update of the local laws is all that we need. We do not need to accede to the Treaties as alluded to by the Written Analysis.

The last issue, Sir, that we wish to address is that, unfortunately, we do not have copies of the draft Trade Mark Bill, Patent Bill and Design Bill. We will reserve our comments on those Bills but I think that perhaps, we should also be looking at the Bills in line with our efforts to enter into the Treaties in terms of discussions whether the clauses of the Bills comply with the Treaties, whether the clauses also protects local IP owners, we do not know because we do not have copies of those Bills.

It would have greatly helped in this submission of ours, but perhaps it will come in due course and we look forward to seeing those Bills. But until then, Sir, our humble submission to this Committee is that Fiji is to solely concentrate and uplift its local IP laws and to shelve the idea of entering into the Treaties, at least, for now, until we really consider the possible effects of these Treaties on our laws because IP laws is a huge area of law. These treaties will have a huge impact on the landscape of how we practice intellectual property in Fiji.

I think we need more time to review it. Until that, Sir, we recommend that we hold off from acceding to the Treaties as alluded to in our submission. But we do strongly support any effort to update our local laws.

That is our submission, Sir. Unfortunately, due to time, we could not really provide further details but as stated in my email to the Secretariat, that if given time and if the Committee requires

so, we are more than happy to provide further submission to support and include examples from around the world of how the Madrid Systems and the Convention have affected their country, their IP registration systems. That is something that we are more than happy to commit to.

Mr. Chairman, that is our verbal submission this morning in brief. We are happy to take any questions that the Committee may have.

MR. CHAIRMAN.- Thank you, Mr. Vulaono. It is surprising to say that we hold back on that but definitely we look forward to the Committee going through your submission which you have emailed through this morning to the Secretariat.

Honourable Tikoduadua, do you have a question?

HON. LT. COL. P. TIKODUADUA.- *Bula vinaka*, Mr. Vulaono. MR. A.

VULAONO.- *Bula vinaka*, Mr. Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- Can you hear me loud and clear? MR. A.

VULAONO.- Yes, Sir.

HON. LT. COL. P. TIKODUADUA.- Now, I am going to ask you a few questions. MR. A.

VULAONO.- Sure.

HON. LT. COL. P. TIKODUADUA.- Just by way of background, I was part of the establishment of the new FIPO, Fiji Intellectual Property Office.

MR. A. VULAONO.- Yes, Sir.

HON. LT. COL. P. TIKODUADUA.- As former PS for Justice. So, last week, I had raised an issue in Parliament on traditional knowledge, cultural expression and also the issue of biodiversity. I wanted to make sure I get that out of the way, just so you can see, I have quite an interest particularly in the area of intellectual property and two areas in particular; one is Traditional Knowledge and Traditional Cultural Expressions (TKTCE) which you alluded to earlier which is, perhaps, the neglected aspect of IP in many ways because it deals with collective group rights, correct?

MR. A. VULAONO.- Yes, Sir.

HON. LT. COL. P. TIKODUADUA.- And then the other part of which, maybe these Treaties do not quite cover under the Madrid Agreement relating to the copyright which is an area that may not be covered specifically here, except for the trademark that copyright owners actually use for their trade in terms of music, audio or video.

MR. A. VULAONO.- Correct, Sir.

HON. LT. COL. P. TIKODUADUA.- So that is where my interest lies but interestingly today, listening to you because much of your submission points to the fact that if Fiji is going to accede to the Agreement and the Protocols, you believe it is going to seriously affect maybe, or it will be against much of the rights of our local IP owners, is that correct?

MR. A. VULAONO.- What I think, Sir, is that, yes, to a certain extent, but it will also not benefit our local IP owners.

HON. LT. COL. P. TIKODUADUA.- So that is the word that I am looking for, it is not going to be beneficial to them?

MR. A. VULAONO.- Yes.

HON. LT. COL. P. TIKODUADUA.- Now, if it is not beneficial, then it means that contrary to that it is going to cost them, if we actually sign on to this Agreement.

MR. A. VULAONO.- Correct, Sir, that is what we submitted today.

HON. LT. COL. P. TIKODUADUA.- much of my question really depends on this, you are suggesting that instead of Parliament of Fiji acceding to the Treaties or whatever that we have now and the Protocols, we should just amend or develop our own local laws on Intellectual Properties.

MR. A. VULAONO.- Correct, Sir, that is 100 percent. Our submission is to just concentrate on our local laws, update our local laws because from our experience most of our IP owners, Sir, are more concerned with their protection in Fiji which is lacking at the moment. Well, we have certain mechanisms but I think we can do more.

Whatever we are trying to achieve through the Treaties for our local IP owners, we can simply achieve it by improving our local laws and as I have stated before, Sir, most of our IP owners are not really interested in registering abroad.

HON. LT. COL. P. TIKODUADUA.- I get that because I am trying to consider here the case in point about Fiji in terms of Fiji Water that was registered by Natural Waters of Viti Limited in the United States (US). And you also alluded to those two cases with regards to Fiji and *Bula*, that the Solicitor-General's Office had contested in other jurisdictions because of these laws. I mean, even without acceding to this Agreement now, there is already powers in other jurisdictions to register names that we absolutely have no control over.

MR. A. VULAONO.- Correct, Sir.

HON. LT. COL. P. TIKODUADUA.- And then this multinational corporations are able to trade in those names here, even though our own IP cannot register them here because of our own laws.

MR. A. VULAONO.- Correct, Sir, it does not stop them from trading, from using it.

HON. LT. COL. P. TIKODUADUA.- Yes, exactly like, for instance, we have Fiji Water been sold here but Fiji objects to them actually having ownership over that name which is a brand. So having discussed all that, you made one really good observation because there needs to be some harmonisation between agreeing to this Agreement and Protocol versus the new Patent, Trademark, and Copyright laws that has not yet been put on the table here in Fiji for people to know.

MR. A. VULAONO.- Correct, Sir.

HON. LT. COL. P. TIKODUADUA.- If I am trying to think like the enemy here (No, I am not the enemy) or I am trying to dissect what Government is doing, the reason why I believe that

putting this Trade Agreement first is that when the laws come, it is going to be consistent with it and then you are saying that those laws may actually cost our local trademark owners who are not necessarily worried about patents and trademarks been registered in other jurisdictions, correct?

MR. A. VULAONO.- Correct, Sir.

HON. LT. COL. P. TIKODUADUA.- You are suggesting that maybe this is a pre-emption and maybe the Committee, because if I am going to recommend to the Chairperson and the other honourable Members of the Committee that we hold off on this, I know Government is pushing for it and I do not quite agree with the idea because ADB is saying so or under the WTO rules it does not favour us at all, so we are more interested in the regional trade agreements that actually benefit our economy in a much better way like PACER Plus(Pacific Agreement on Closer Economic Relations Plus), et cetera.

MR. A. VULAONO.- That is right.

HON. LT. COL. PIO TIKODUADUA.- So, in anticipation of these laws and in my view, the Madrid System and Convention is, in a way, trying to circumvent. It is already going to get our hands in terms of what laws Government can now bring into the House. Correct?

MR. A. VULAONO.- If we accede to the Treaties now without seeing the Bills, now whatever Bills you bring in has to be ensured that it complies with the Treaties. So, that goes back to our saying that as a nation, we have, sort of, decreased our right to say what we need for our own laws. I think that it is better to see the Bills first whether it is beneficial and then move forward and then see whether entering into the Treaties is actually beneficial for us.

HON. LT. COL. P. TIKODUADUA.- Maybe that is one thing the Committee can take away but even better perhaps because you are already saying that this is going to cost our local IP owners, you are recommending that we should re-write our own laws, would you have specific examples on what new laws we could write?

Through the Parliamentary process, it might be good for the Committee to make certain recommendations to ensure that when the laws come out, I mean, assuming here that the Committee agrees with your recommendation...

MR. A. VULAONO.- Correct.

HON. LT. COL. P. TIKODUADUA.- ...the Committee could suggest and say, "Well this is what the Fijian people are thinking - 1, 2, 3, 4, 5, 6 or 10 included in the laws. In that way, we do not have to succumb to the international requirement or having to concede to everything, and then at the cost of our own people.

MR. A. VULAONO.- Correct. Yes, Sir, there is a lot of things that we can do with regards to our local laws. As I had stated, I think back in 2009 we, as a firm, actually worked with the Solicitor-General's Office in a committee was set up to review our current IP legislations. We had submitted our thoughts on how to develop those laws. It is basically just to update and just to come up to par with the rest of the world in terms of our traditional knowledge, one of which is very important, the filing fees, et cetera, and the type of classification that we use.

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A simple example, Sir, is that, even for trademarks in Fiji, we do not even reach the service mark which is another big area that we are lacking tremendously. We do not need a Treaty to do all

of these, we simply can update our local laws, not only for our IP owners but for foreigners as well. Basically, the overhaul of our Trademark Act which is already on foot which is the Bill, the Patent Bill and the Design Bill. Unfortunately, Sir, we have not seen copies of those so we would very much like to see the Bill when it is ready, then can we really comment on which aspects of those Bills to amend, change or we can input further ideas or recommendations on those Bills that may benefit the whole local IP owners.

HON. LT. COL. P. TIKODUADUA.- And you also alluded to one of the reasons why you believe we are not quite ready is the capacity to enforce the Convention because our own Intellectual Property Offices do not have the capacity to be able to implement this right now.

MR. A. VULAONO.- That is my view, Sir, based on how the resource available to Fiji Intellectual Property Office (FIPO) at the moment. I firmly believe that we do not have the resources or the capabilities yet to comply with the requirements under the Treaties.

As I have stated, Sir, even for our own current laws, we are not able to comply with the requirements of our own current laws so I am not too sure how we will be able to comply with the requirements of the Treaties that require digital platform, a strict timetable of things. But under our current Act, Sir, there is a requirement that trademark should be registered within 12 months.

Some of the registrations have been pending for three years or four years but under the Treaties there is a requirement timeline strictness on how FIPO should act. In some cases where FIPO will not meet those timelines, it is assumed that the registration will go through. So, we end up losing any opposition from Fiji. Those are the examples of how I think we are not ready in terms of infrastructure, resources to cater for the requirements under those Treaties. It is a big task, Sir.

HON. LT. COL. P. TIKODUADUA.- I apologise, Mr. Chairman, this is my last question. I want to touch a little bit on traditional knowledge, cultural expression and biodiversity. You are saying that may be (and I am not sure what reasons you gave) this Convention is not going to develop Intellectual Property but the reality in Fiji is that, it has taken forever to bring traditional knowledge, cultural expression laws into Parliament, and I raised this last week.

For your benefit and the benefit of the Committee, this process endeavoured to do back in 2007 and that was when I started doing it and now it is 13 years. I mean, you as an IP lawyer would understand that the rules of origin is always something quite sensitive.

MR. A. VULAONO.- Correct.

HON. LT. COL. P. TIKODUADUA.- We see here in Fiji, and I gave examples of the motif on the tail end of the Fiji Airways.

MR. A. VULAONO.- Correct.

HON. LT. COL. P. TIKODUADUA.- That was a big one and, of course, there are others being used right now as business names, trademarks, all to do with, and if you want to call it that word the native intellectual property or intellectual knowledge. Those are *masi vakaviti*, et cetera.

I have not quite concluded it yet, but because you are so concerned about this in relation to cultural knowledge and cultural expression, how would this be an impediment to Fiji if we accede to this, even though we do not have a law right now, protecting our own cultural knowledge and cultural expressions?

MR. A. VULAONO.- Correct, Sir. Without seeing the Bills, without knowing when the Bills will come into effect, our current laws do not have any provision of course, for traditional knowledge. That is one of the reasons that for the *masi* motif, they were able to raise it in Fiji simply because there were no laws addressing...

(Hon. Lt. Col. Tikoduadua interjects)

MR. A. VULAONO.- ...traditional knowledge. So, in terms of these Treaties, my opinion is that without any local laws in place to protect traditional knowledge, there will not be any grounds to oppose anyone from overseas filing under the Treaties, ticking Fiji as one of the countries for its trademark because to oppose it, we need to rely on local laws to say; "Look, we have a provision on traditional knowledge, this is identified as...", but if you do not have those, someone that is filing from the US picks Fiji, it automatically applies to Fiji to be registered in Fiji. So that is another concern in terms of traditional knowledge.

HON. LT. COL. P. TIKODUADUA.- I will raise another case in point. Some years back, some local businessmen wanted to register the word, "*sisi*", and it met a lot of objections. *Qo me vaka na sisi ni Lakeba*. Someone wanted to own the rights over that word, and it became a very big debate because iTaukei recognise that this is the word unique only to Lakeba. Maybe, Honourable Adimaitoga, would know that this is probably renowned only to Tubou in many ways.

But someone wanted to register that name as a business trademark and also even the recognition of the scent made out of the *yasi*, special *yasi* from Lakeba. So those, to me, would be a good reason if you are saying that traditional knowledge and cultural protection in terms of financial benefit to people who own that particular knowledge, would probably be deprived if we did accede to this now without understanding our own laws first to protect it. Is that correct?

MR. A. VULAVOU.- Correct. Yes, Sir, what I keep recommending, that before acceding, we really need review this quite seriously in detail, not only the Treaties, but the effects on our local circumstances, our local IP owners or traditional settings, because I think perhaps for many, it is just a matter of acceding to a Treaty without realising that it may actually have a very immense impact. That is why in our submission we have said that it will change the landscape of intellectual property laws in Fiji. It is something that we really need to think about.

In terms of the example that you have stated, just from our own experience, we have in the past, registered vernacular words but we are perhaps would like to caution that on the two cases whereby we registered two vernacular words, but on both occasions it was not for an individual, it was for national sporting bodies.

Prior to that, even though there were no provisions in the law, we had to approach the iTaukei Affairs Board, just to highlight to them that, "Look, this is the intension of our client, but it does not relate to this nor does it infringe on this and whether you agree on it." We were thankful to the iTaukei Affairs Board that they allowed, they did not raise any opposition, but in other instances where we have seen vernacular words being advertised for registration, we have highlighted it to the iTaukei Affairs Board and say, "Are you aware of this?" So we have in the past, sort of, been the watchdog.

I am not too sure how far the iTaukei Affairs Board have taken it in terms of their opposing of that, but as far as we know, we highlighted in some cases about the use of vernacular as the trademark in terms of the opposition. But we hope that those ones that did not really go through, I

am not too sure what happened those. But, again, in the absence of any written law, those efforts are available to us. We do hope that those Bills have expressed provisions for traditional knowledge.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, through you, *vinaka vakalevu*, Mr. Vulaono. Thank you so much for that. *Vinaka*.

MR. A. VULAONO.- Thank you, Sir.

MR. CHAIRMAN.- Honourable Members, do you have any questions?

HON. DR. S.R. GOVIND.- I hope I hear you correctly. I just want to thank Mr. Vulaono for a very comprehensive presentation and giving us a lot of insights. However, I need little bit of time to digest all those information that have been provided to us and then maybe, we will have a few more questions for Mr. Vulaono.

MR. A. VULAONO.- Sure, Sir.

MR. CHAIRMAN.- Since there are no other questions, Mr. Vulaono, thank you again on behalf of the Committee, for your effort in presenting to us this morning. If we do have any other pertinent questions in the days ahead, we will certainly get Jacob to get it back to your Office.

MR. A. VULAONO.- Thank you so much, Mr. Chairman, that is duly noted.

MR. A. VULAONO.- Thank you Mr. Chairman, thank you for the meeting. *Vinaka*.

The Committee adjourned at 11.26 a.m.

STANDING COMMITTEE ON **FOREIGN AFFAIRS AND DEFENCE**

TREATIES/CONVENTIONS

- 59. **Madrid Agreement Concerning the International Registration of Marks 1981.**
- 60. **Madrid Protocol Relating to the Madrid Agreement.**
- 61. **Paris Convention for the Protection of Industrial Property.**
- 62. **Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.**

INSTITUTION: **Munro Leys Lawyers**

VENUE: **Big Committee Room (East Wing)**

DATE: **Tuesday, 9th June, 2020**

VERBATIM NOTES OF THE VIRTUAL MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE VIEWED AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON TUESDAY, 9TH JUNE, 2020 AT 9.33 A.M.

Online Interviewee/Submittee: **Munro Leys Lawyers**

In Attendance:

Mr. John Apted – Lawyer

MR. CHAIRMAN.- Mr. Apted, a very warm welcome from the Standing Committee of Foreign Affairs and Defence.

(Introduction of Committee Members)

Thank you, Mr. Apted for acceding to our request to come before the Committee to present or submit on the:

- Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement);
- Protocol Relating to the Madrid Agreement (Madrid Protocol), (together known as the Madrid System); and
- Paris Convention for the Protection of Industrial Property; and
- Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.

Mr. Apted, if you can just give a very brief account of what you with the team Munro Leys have affirmed and then the floor is yours for your submissions, Sir.

MR. J. APTED.- Thank you very much, Mr. Chairman. I would like to, first, thank the Committee for the invitation to make a submission. I have this morning a tentative written submission to explain. I am one of the five partners of Munro Leys and I am the one who is making this presentation. We have a trademark team and a specialist IT team within the firm and that team comes under my supervision. I am a partner within the firm who runs Intellectual Property practice, so that is the reason I am here. I have actually run the practice after six years now.

Just to go to my submission, the submission is very brief because the time that I had to prepare is short so I apologise for the gravity of it. I do not want to read it and I do not know whether you had time to go through it but I will speak to it, if that is alright.

MR. CHAIRMAN.- We are fine, thank you.

MR. J. APTED.- To begin in summary our position is that it is premature for the Committee to be considering acceding to these Agreements at this time principally because the criteria for acceding which is set out in the Analysis Paper that was kindly provided to us does not exist. So, even by the standards or the acknowledged standards of the person who prepared the paper, we do not need the criteria for acceding to these Conventions yet.

In particular, what is required to accede to these Conventions is compliant legislation. The Analysis Paper says that two Bills have been approved by Cabinet. They have not been tabled, they have not been circulated and they have not been passed.

I am sorry the screen has frozen.

MR. CHAIRMAN.- That is alright, we can hear you.

MR. J. APTED.- So, what the criteria is, is to have the legislation in place, not Bills that are not yet in the public domain. So, we cannot even comment yet on whether the legislation fits with Madrid or with Paris because we have not seen these Bills and the Committee itself cannot even consider whether we can accede because the non-Government Members of the Committee have not seen the Bills and Parliament have not seen the Bills.

Secondly, the Analysis Paper seems to misunderstand whether or not we have a legal obligation to join these Conventions. It seems to precede on a basis that we must, when that is not actually the case.

Thirdly, in terms of our administrative abilities, we are not equipped yet, in terms of the Fiji Intellectual Property Office, to choose the port membership of the Madrid System, in particular, not only will our inadequacies affect our reputation in terms of being able to service our obligations, but it could work to the detriment of Fijians, and I will explain that to you.

Lastly, in terms of our own business, as well as another four firms' business, moving to the Madrid System will disrupt our IP practices; those five firms that work in IP, and it will mean an immediate loss of a significant amount of foreign exchange, a number of jobs and tax revenue, and I will explain that. Although joining the Madrid System will result in increased government revenue by way of filing fees in Switzerland that will to the come to the Government, that gain can be achieved in the short term or can be offset by Fiji increasing its fees or under the current system, and I will explain that as well.

If I could just go to our points, in summary, our position is that although it may be in Fiji's interest in the longer term to join Madrid, it is premature to do so now, we should look more carefully at what we are going to gain from it, what the costs are, and review what other similar-sized economies are doing. So, if I could just now elaborate on my submission.

Munro Leys is Fiji's largest law firm. We have the biggest IP practice in Fiji. We roughly handle about 45 percent to 50 percent of IP filings in Fiji. A lot of our business comes from connections that we make with international law firms and international brands, and Richard Naidu and I travel every year to the big international meetings to meet people and look for business to bring to Fiji.

As part of that process, we also interact with them about their views on our standards in our IP Office and, of course, always the disappointed at the lack of speed there and what the priorities are globally. So we are speaking from a position of some experience in specialisation.

Although, we are the largest IP practice, there are four other firms, so it is not just us. There is Siwatibau Sloan Barristers & Solicitors; Mitchell Keil Law Firm; Nilesh (Lajendra Lawyers); there is another IP specialist firm called Oceanica IP, who were set up to deal specifically with trademarks; and there is also Cromptons Barristers & Solicitors, who do trademark work.

In our own practice, we have seven staff who do solely IP, apart from me. Let us just go to the Madrid System. Before you are three Madrid Conventions, there are two Madrid Agreements and one Paris Convention. We are not going to talk much about the Paris Convention because we do not have any objection to the Paris Convention, but we cannot really make an informed submission about joining it at this time because we have not seen the legislation. So we cannot say whether we have the framework to join it, and Conventions give governments options about how to implement each of the provisions.

The Conventions are not detailed, they are permissive so without the Bill, we cannot see how we are proposing to implement and join the Paris Convention.

So, we cannot make a submission and we would respectfully submit, the Committee cannot yet decide what the benefits and disadvantages of joining Paris Convention are without seeing the legislation that will support that process. The main thrust of our submission though is about the Madrid Agreement and the Madrid Protocol which they are generally called the Madrid System. The paper that you have before you, precedes as if it is necessary to join both, the Madrid Agreement and the Madrid Protocol, when that is not actually the case.

To give you some background, generally in Treaty Law, you have an Agreement and then a Protocol which is like a minor amendment to the agreement. With Madrid, it is completely different. The Madrid Agreement was not, as your paper says, entered into in 1981. It was first entered into in 1881, but it did not succeed and it was not popular. It sets up an international system of registration.

To give you an idea of how it works, what it does is, under the Madrid System it works like this, outside of the Agreement, you must file in each country if you want to get a trademark. And then you follow the local law and the local process. With the Madrid Agreement, they devised a convenient way for an international brand owner to file an application in one country and then you designate which other countries you want your trademark to be registered in, and that central office will send it on to each of those countries, where it is processed according to the national laws. So the system is a convenient one-stop filing system.

The original Madrid Agreement, the provisions did not work, so not enough people joined. The World Intellectual Property Organisation (WIPO), the international organisation that services that Agreement, about 20 years ago had another meeting where they entered into the Madrid Protocol, which addressed all of the problems for countries of the Madrid Agreement. So the Madrid Protocol is the modern one and the practice, since the Madrid Protocol is that, many countries do not join the Agreement anymore, they just joined the Protocol. Countries that had originally joined the Madrid Agreement have joined the Madrid Protocol, but there are many countries that were not in the Agreement, who just joined the Protocol, and we have given you a list of those countries, and it shows in the Schedule how that happens.

To the extent that the paper makes you think that you have to join both, that is not the case. So, let us go to the main result of acceding. If we accede to the Madrid System, whether by joining the Agreement or the Protocol, or both, it will benefit international brand owners, because they can then just file in their own country and then if they want to designate their mark for Fiji, they can tick the box which says, "Add Fiji to our list." For example, if you are sitting in the United States, you are registering in your own country, you look down the list, you will say, "Okay, I also want to apply to register this mark in Australia, New Zealand, Fiji, China, Indonesia and then what happens there, is that, Switzerland, which is the headquarters, will send the application to Fiji where it will be processed in our office."

What happens under the Rules of WIPO, which is not here and I will come to it in a little while, is that, the local registry has 12 months in which to decide whether to accept the mark under our law, or say it does not meet our law. That period of 12 months can be extended to 18 months if we ask for 18 months when we accede. So that is the question that the Committee should be considering if they are going to accede. Do you understand my point? Like, at that time of accession, we are supposed to tell them whether our period should be 12 months or 18 months. That is what you should be considering.

Anyway, apart from that, an important point (and this will become more clear later) is that, assuming it is 12 months. If our Office has not responded to the application at the 12 months state or 18 months state, that application is automatically deemed accepted. So the default position for inefficiency is that a trademark that may not be the one that we want or one that needs our legal requirements will automatically be in process because our Office here has not gone around to respond. When you look at our statistics which I will show you in the minute, this is not a small risk because our trademark Office is consistently late with the processing of trademarks, and I will come to that.

I just go back to where I was in my paper, the advantage of the Madrid System is to international trademark owners. They can easily extend here. The disadvantage is that, there is no advantage to local brand owners though, because most of our local businesses are restricted to local markets. They are not yet at the size where they want to register overseas.

The gap between the two is this, the ease with which international businesses can register their mark in Fiji means that commonly used brand names that are used in those countries that people here might want to use locally, locals will not be able to use that, if those people get in first. You get what I am saying? I will give you an example.

If you start a product in the USA called, "Super Delicious". The brand owner for Super Delicious in the USA can easily say, "Alright, I will extent to Fiji just in case I want to go there," but he might never come here. He might never bring his product here. But once it is registered here under Madrid, a Fiji business that wants to use that word cannot use it, even though it is not actually being used here. So big international people can control words and images as trademarks, or a sun logo, for instance.

If someone wants to use a sun logo for a car, they can apply from Korea, it gets registered here and their car will never come here. But someone who wants to use that logo here to start a Fiji business, then he cannot use it because it has been registered under Madrid here. Under the current system, that owner of the "sun" mark or the "super delicious" would have to apply locally for that mark which would not happen unless they have some interest in Fiji. You see the ease with which under the Madrid, you can just extend, which means that the big businesses can reserve trademarks all over the world with great ease, even though they do not want to go there and they prevent locals from using it.

That is why if you go down the list of countries that are in Madrid, they are the big to medium countries. The small countries do not join Madrid because they do not have big enough industry to get the benefits going out to the world. They are not exporting on a major level, their brands. We have got only a few brands that we export, for example, Pure Fiji, Fiji Water, the FMF brand but the FMF brands are only to New Zealand and Australia. They are not global.

So the local businesses have very little advantage to gain from Madrid. It is the international that have the advantage and it could be to the detriment of local businesses.

Is Fiji ready? The Analysis Paper in paragraph 5.1 has a list of requirements. We do not need any. That is the fact. We do not need any of those requirements at all, yet.

On the list it mentions a Madrid-compatible trademark legislation in place. We have a Bill that has been approved by Cabinet, but it has not been tabled in Parliament, there has been no consultation with stakeholders like ourselves, universities, chambers of commerce, manufacturers and businesses, so it is a long process ahead before that comes into place. So that criterion has not been met.

On institutional organisation and staff trained in Madrid; we do not have that yet.

On operational procedures in place for handling international applications, not yet, we do not even have efficient systems to deal with the current national applications.

We do not have an agreement with WIPO yet on sending and receiving information, so the criteria in the paper itself has not been met.

We do not have an online system of registration which is a prerequisite, so we are a long way from meeting the criteria in itself.

It is really important to note that your Analysis Paper does not evaluate any of these criteria. It suggests we join, it says we need to have achieved all of those things but does not evaluate whether we have. And the reality, I will submit to you as we meet, none. That is the situation.

The other problem with the Analysis Paper is, as it goes through the Conventions, it informs the Committee briefly what each provision of the Agreement or Convention means. But it offers you no analysis of what it will mean in Fiji. It, sort of, says, "Clause six of this Treaty says this...", but it does not say what this means in Fiji is that our trademark's Office or an applicant will have the right to do this. So it is not enough information before you to decide whether it is beneficial or detrimental or what it means for Fijians. It is just not in the paper. There is no local context.

As I said earlier, the conclusion of the Paper offers to the Committee only one justification for joining the Agreement and that is, it will enable us to meet our international obligations. That is incorrect. We have no international obligation to join any. This is not like a human rights convention, where there is pressure on a country to accede to international human rights standards. There is no pressure at all on any country to join any of these Agreements.

As I have said earlier, if you look at the list of those that have joined the Madrid System, countries of our size other than Samoa, have not joined. The best comparator for us generally is Mauritius, in terms of the size of the country, in terms of make-up, in terms of what we can do, and Mauritius has not joined. Even though it is far more successful than us with exports, diversification of the economy and all the industry, they have not joined because it is not really an agreement that benefits small economies.

Also because the compliance costs of running a registry and all of that which meets international standards is too high for the volume of local applicants. So, you are running a big registry to deal with international marks costing you money. You get some fees from there, but most of the benefit is for foreign brand owners because we have hardly any brands at this time of our development that need to be exported under our own local brand makes. So where we export, we generally export to only one country or two countries, we are not exporting to 100 countries.

In the Pacific, the only country that has joined is Samoa. Papua New Guinea which has a bigger economy than us has not joined, Tonga and Vanuatu have not joined. And the main point about that is PNG, Tonga and Vanuatu have modernised their Trade Mark Law, which is what this proposal is attached to, but they have not joined Madrid.

Sir, just because you are modernising your Trade Mark Law, it does not mean you need to join Madrid and then most, sort of, developing countries have not joined. Papua New Guinea has a brilliant Trade Mark Law, Tonga has a modern Trade Mark Law, Vanuatu has a very modern Trade Mark Law, but they have not joined because the benefits are not there for them.

The only benefit of joining Madrid for Fiji is that the fees for filing a registration will go up. When someone files an application in Geneva or in their home country and tick Fiji, Fiji will get a share of that fee. So, the problem for Fiji is that our filing fees here are very low, it is only \$10.90. If Fiji thinks that if they join Madrid they are going to get US\$100 for every filing over there, but that US\$100 you can get without joining Madrid, just by putting up our fees here. And that is what Tonga, Samoa and Papua New Guinea has done, and even Kiribati. Kiribati is like US\$300 to file a trademark application in Kiribati because we do a lot of filing there too.

So to wrap this up, the only immediate benefit to us as a country of joining Madrid is that the Government potentially gets more filing fees out of the Madrid System. But it can get that same return simply by putting up the fees here, and that is what our Pacific Island neighbours did. They modernised their Trade Marks Law, they put up the fees, they have met the ADB Standards, their local businesses are protected, they are not under international pressure to run an efficient trademarks office and it is all cool. Everyone is happy.

I do not want to criticise our local trademarks Office because the reality is, in all developing countries, we do not have enough local trademarks work to justify resources for a department like that. The moment we have two permanent staff in that office, when they get busy, two staff from MIDA come and help them out.

There is one lawyer from the Attorney-General's Office, who generally does the legal work there. But because it is only a small area and this is a small country, when they train staff from there in WIPO stuff, the staff only lasts there for six months to a year, because they get promoted to other duties or they immigrate or leave Government to go to the private sector. And that has actually been the experience at FIPO over the past 10 years.

WIPO in Geneva has consistently trained people from there, but they do not last because that is the reality of a country like ours. For example, if you are a bright lawyer, you are going to get promoted to be a magistrate which was what happened to the Minister for Health's sister. She was a lawyer and then now she is a magistrate in Labasa. There was an indo-Fijian gentleman there before who has gone somewhere else. Now, Sofina is there.

Within a year or so, Fiji will need Sofina because her experience will be greater, to go to another job somewhere else, somewhere important because trademarks is really not that important to us. They are going to go to AG's Office or somewhere like Cabinet Office, et cetera. That is the reality for small countries and that is why, in spite of all the training, et cetera, they will tell you, "WIPO will come and train." But we will never be able to retain people there because the volume is too small and it is not important. We have scarce resources. Clever people have got to be used in the best place for them and efficient people, we move them to where they are best used. So, that is the problem.

If you look at my paper, you will see at Attachment B, we have only gone back three years. We have got applications sitting in there and some have been waiting there for 10 years. But we are only looking at our filings here in Attachment B for the last three years, just to give you an idea, and we offer it in the context of the requirement under Madrid for acceptance within 12 months or 18 months.

I will explain. There are three kinds of applications that can be made under Madrid or to the Trademarks Office. One is registration, and that is where you file a new trademark registration;

HON. LT. P. TIKODUADUA.- Renewals?

MR. J. APTED.- Renewals is trademark registration, plus for 10 years or 14 years depending on what basis. After that you file to renew it for the next 10 years.

Recordals are when the name of the owner changes, the business sells it to someone else or the business address changes because you have to give where your business address is. So, it is a change in name or a change in address of the owner that we record, that is why we call them recordals. So, those are the three kinds of applications.

In 2017, there were a total of 833 registration applications at the trademarks office and we can tell by the numbers because every trademark application gets a number - No. 1 of 2017, No. 2 of 2017, so we know that in 2017 there were 833 applications filed. We filed 474 of those, so out of 474, 72 are still pending, meaning they are still working on them in their office and this is three years later.

In 2018, there were a total of 920 filed, we filed 424 of those. Of our 424, 105 are still pending. In 2019, there were 748 applications filed, we filed 423, of which 346 are still pending.

Sir, these are not small numbers and we are not criticising the Fiji Intellectual Property Office (FIPO). They have only limited resources and that is because the work has that value for the Government. But we cannot pretend that by joining these big Agreements, we become this global player if we do not have the ability to perform.

You look at renewals. Renewal is a very simple process, it is just stamping. In 2017, out of our 336, 15 are still outstanding. In 2018 - 384, 50 are still outstanding. In 2019 - 343 renewal applications, 149 are still outstanding. So, that is the reflection of our actual capability under our national system.

Imagine under the sophisticated Madrid System, unless we can get our efficiencies up before we join, we are going to end up looking very, very bad towards the international community and there could be default disadvantages for us when international brands are deemed accepted, if they are not actually what we want. So, that is that.

Direct impact on IP practices, like I said, we have business like ours, we have seven people who work in our team that deal with IP. If we join Madrid, international businesses will no longer need to file with us directly. At the moment, outside of Madrid, they have to engage a local law firm and what we do is (it is not just a money making thing), we advise them on local law. We tell them, "No, this mark cannot be registered in this class. You are going to drop these goods." So there is work involved.

If we join Madrid, they will just do it straight from wherever they are. So, we anticipate, based on what our colleagues and other countries have told us about their practices when their country has

joined Madrid, like New Zealand and Australia, that our business will drop by about 70 percent. Australia and New Zealand, some of them have disappeared, other law firms have found business in this way. What happens with Madrid is that you file there, it get sent here and advertised. If there is a local opposition or the trademarks Office do not like something about the mark, then they appoint a local lawyer to deal with the opposition or the Office action.

In countries like Australia and New Zealand, the market is big enough for the brand owner to appoint a local lawyer to fight it. In small countries, if they have this issue, they will just abandon the mark here because they are not going to make enough money here to justify litigation. So, in reality for a small country like us joining Madrid will reduce our business by rather a lot and out of our 70 members, we would probably reduce the team and make five redundant because there will be no work for those five. I do not know how many at Siwatibau & Sloan Barristers and Solicitors or at Oceanica IP because they just do IP at that firm.

At the moment, we are just guessing but all of us would probably bring in about \$3 million to \$4 million a year in foreign exchange for trademark registration work in our fees. That money will not come in anymore because that is not for Government fees, that is for lawyers doing trademark work. Since we will not be doing it because all the work will be done by the lawyers in their country, that will be the foreign exchange loss here. We also pay VAT and Income Tax on that, so that revenue will also be a loss to the Government.

So, we say at the middle ground a win-win for everyone is to just pause this, let us work on our legislation, let us put up the fees at the trademarks Office so that Government gets more directive fee revenue. There is no reason why it should still be \$10 when all of our neighbours are charging US\$100 to US\$150, Kiribati US\$300, and people are still filing there and we keep this under review. I do not think that this is the time to be causing people to lose their jobs, or for us to be transferring those foreign exchange earnings that we are currently getting to overseas law firms, who would be doing the filing. So, I think it should be one step at a time.

Let the Bills come, let us look at it, let us talk to other small developing countries like Mauritius and see how they go. Even, for countries, like Indonesia, Malaysia which have much bigger economies; than us have only just joined. They joined like last year, they took a period of years to get themselves ready and to really consider because of the effects for their local people. But they are different from us and that they have lots of products, with lots of brands that they export. We do not.

That is my submission. Does the Committee have any questions?

MR. CHAIRMAN.- Thank you, Mr. Apted, for your very, very informative submission. These has cast a lot of doubt on our minds now, I know for me personally. Honourable Members, do you have any questions for Mr. Apted?

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman.

Mr. Apted, thank you so much for that presentation. I think you have summarised it well enough in terms of revenue lost to Fiji, the capacity of FIPO, et cetera, and recommending that we speak to other jurisdictions and upgrade our laws first. I just want to take you back to one of the requirements of the Madrid Protocol. That time deadline for processing in the country where the application has been referred to, the time limitations of 12 months or 18 months as you have said, is that true?

MR. J. APTED.- Yes, it is 12 months, unless when the country acceded, it asks for 18 months.

HON. LT. COL. P. TIKODUADUA.- Good. Now, I want to perhaps, refer you to Attachment B again. Those figures of 2017, particularly those pending ones on registration, renewals and records, you got that?

MR. J. APTED.- Yes.

HON. LT. COL. P. TIKODUADUA.- If we were are under Madrid right now, those 2017 pending applications if they were filed from WIPO to Fiji and they were extended, for example, big business people with big names or whatever, those 72 would now already be considered as a proof, even without us saying 'yes' or 'no'.

MR. J. APTED.- Yes, and the reality is, in knowing how Fiji people work, these 72 that are pending are the hard ones. You know like, people tend to put the harder ones aside, like human beings. So, these 72 that would be deemed accepted would be the ones that we really do not want to make a decision on because it is too hard.

This is the other thing about what holds them up, that the people working in the Office are sometimes frightened to make a hard decision because these big sophisticated people from overseas are going to challenge them. At the moment, we are the buffer between those people and FIPO, and you know that international brand people are very aggressive.

HON. LT. COL. P. TIKODUADUA.- Yes, you talked about sort of foreign revenue losses to Fiji and spoke about \$3 million or so dollars, and you also said that the beneficiary of this might be Government in terms of the benefits of filing them in through WIPO.

MR. J. APTED.- No, the Government's benefit is in the fees. The Government will lose the foreign exchange that we earn on lawyers' fees, they will get the filing fee from WIPO - the \$100, which is smaller than this amount which they can get by putting up the local fees.

HON. LT. COL. P. TIKODUADUA.- Alright, in your case, because Munro Ley is probably the biggest firm dealing the most in IP, how much traffic of the international marks and trademarks that you get through Munro Leys in terms of the total in Fiji? Can you just give us any indication?

MR. J. APTED.- You can see from the registration numbers, we get about 45 percent to 50 percent.

HON. LT. COL. P. TIKODUADUA.- Alright, so you get the biggest chunk of that?

MR. J. APTED.- We get the biggest chunk, Siwatibau & Sloan Lawyers gets the second biggest and the other three get the rest.

HON. LT. COL. P. TIKODUADUA.- Alright, just take theirs for instance and say, for arguments sake, those are all foreigners coming to Fiji, Fiji would earn more in these applications filed here than what Government would earn by way of fees, of it being filed in Geneva?

MR. J. APTED.- Yes, that is correct.

HON. LT. COL. P. TIKODUADUA.- Because that is important here because at the end of the day ...

MR. J. APTED.- Without more than \$100.

HON. LT. COL. P. TIKODUADUA.- Yes. There are many reasons why in this Madrid Protocol in particular, we need to put Fiji's interest first, rather than the big businesses.

MR. J. APTED.- Yes, and to be honest, what happens is that, WIPO, which runs Madrid, itself has a vested interest in signing up members. So what WIPO does is that, it calls people from Fiji to go to training, gives you a trip to Colombo or to Geneva, et cetera, so you come back to Fiji all converted to the course.

I was a civil servant, I know how these things work. I mean, you get taken to these workshops which are to train you, but it is really like a religious conversion. So, we always ended up with many laws that are far sophisticated for our needs.

HON. LT. COL. P. TIKODUADUA.- Yes, I am just really trying here to weigh the cost and benefit to Fiji in light of what you have said. Because of what you said, I am just trying to rationalise in terms of the analysis we were given by Solicitor General, and in terms of why Government is pushing for this right now. We have been told about some requirements so that we can benefit from ADB, I mean, that is one of the analysis, I think.

MR. J. APTED.- No, with all due respect, Honourable Chairperson, the Analysis says, ADB requires us to update our laws. It does not require us to join Madrid.

HON. LT. COL. P. TIKODUADUA.- All right, good.

MR. J. APTED.- We will qualify for the ADB loan by updating our laws. And that is all we say, the focus should be updating the laws, we will get the ADB loan, then we can look at Madrid in more detail. Why the rush?

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Apted.

MR. J. APTED.- Update our laws and at the same time, increase our fees to the Madrid level. So in that way, whatever benefit of joining Madrid, we get anyway and straightaway. Trademark owners are always amazed at how cheap our \$10.90 VAT inclusive is. That can easily be put up. That is money waiting to be made.

HON. LT. COL. P. TIKODUADUA.- Honourable Chairperson, through you, Mr. Apted, I think you are saying we should put Fiji's interest first now rather than the big businesses through WIPO?

MR. J. APTED.- That is correct, yes. Fiji businesses, Fiji jobs and Fiji foreign exchange. HON. LT.

COL. P. TIKODUADUA.- Yes. Through you Chairperson...

MR. J. APTED.-....(inaudible) 40 percent, 60 percent is being earned by other people in this country, including some Government lawyers.

HON. LT. COL. P. TIKODUADUA.- That is all I had, Mr. Chairman. Thank you, Mr. Apted. MR. J.

APTED.- *Vinaka*, through you, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Honourable Tikoduadua. Honourable Members, are there any other questions?

HON. DR. S. GOVIND.- Mr. Chairman, I also would like to thank Mr. Apted for a very comprehensive and informative submission that gives you a fair idea of the discussions, looking at both sides of the file. Other than that, I do not have any questions for Mr. Apted right now.

MR. CHAIRMAN.- Thank you, Honourable Members.

Mr. Apted, on behalf of the Committee, I take this opportunity to thank you once again for your submission. We will certainly, if we do have any other pertinent question, if you do not mind, we will have our Secretariat send that through to you by email.

MR. J. APTED.- Thank you, good. Before I go, Mr. Chairman, I had informed Siwatibau & Sloan Lawyers, but I have not told the other two people, the Oceanica IP and Mitchell Kyle, who also work in this. So, I do not know whether you want to reach out to them to make a submission.

MR. CHAIRMAN.- Alright. Thank you, Mr. Apted, because of time constraints perhaps, we could still write to them and ask them for a written submission.

MR. J. APTED.- Very well. Thank you very much.

The Committee adjourned at 10.22 a.m.

[VERBATIM REPORT]
STANDING COMMITTEE ON
FOREIGN AFFAIRS AND
DEFENCE
TREATIES/PROTOCOL/CONVENTIONS

4. Madrid Agreement Concerning the International Registration of Marks 1981
5. Madrid Protocol Relating to the Madrid Agreement
6. Paris Convention for the Protection of Industrial Property
7. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

INSTITUTIONS: (1) Ministry of Education,
Heritage and Arts

- Office of the Solicitor-General
- Fiji Intellectual Property

Office VENUE: Big Committee Room (East Wing)

DATE: Monday, 15th June, 2020

VERBATIM NOTES OF THE VIRTUAL MEETING OF THE STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE VIEWED AT THE COMMITTEE ROOM (EAST WING),
PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON 15TH JUNE, 2020 AT 10.34
A.M.

Online Interviewee/Submittee: Ministry of Education, Heritage and Arts

In Attendance:

- | | | |
|----------------------|---|---|
| • Mr. Timoci Bure | – | Head of National Education and Service Delivery |
| • Mr. Iosefo Masivue | – | Director Secondary |
| • Mr. Isoa Wainiqolo | – | Senior Education Officer |

MR. CHAIRMAN.- Welcome, Mr. Timoci Bure, of the Ministry of Education, Heritage and Arts. As you will see, there before you is my Committee Members.

(Introduction of Committee Members by Mr. Chairman)

For the benefit of the general public, also a very warm welcome to you all and deliberations this morning with the Ministry of Education, Heritage and Arts (MEHA) is on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

Very briefly, Fiji signed the Convention on the Rights of the Child (CRC) on 2nd July, 1993, and ratified the CRC on 13th August, 1993. The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict is an international instrument that State parties to the CRC may ratify.

The Optional Protocol aims to protect children from recruitment and use in hostilities. It was adopted by the General Assembly on 25th May, 2000 and entered into force on 12th February, 2002.

With those few words, Mr. Bure, I welcome you once again to the Standing Committee on Foreign Affairs and Defence and a very brief introduction on your good self and the floor is yours for your submission. Thank you.

MR. T. BURE.- Thank you, Honourable Chairperson, on behalf of the Permanent Secretary for Education, I wish to take this time to thank the Committee most sincerely for the opportunity to be able to deliberate on the Ministry of Education's views on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.

With me this morning, I have the Senior Education Officer Research and Planning, Mr. Isoa Wainiqolo; the Director for Secondary Education, Mr. Iosefo Masivue; and I am, Mr. Bure, Head of National Education and Service Delivery and I previously held the position of Deputy Secretary with the Ministry of Education, Heritage and Arts.

Mr. Chairman, our presentation I believe is in front of the Honourable Members. Just briefly, the outline of the presentation is as follows:

- What is the position of the Ministry of Education in regards to the Convention on the Rights of the Child and the involvement of armed conflicts?

- What is the current existing legislation and policies of the Ministry of Education with regards to the above Treaty?
- What are some of the experiences by our teachers, as well as experiences by children during the political crisis in Fiji?
- What are some plans, policies and proposed legislation in place to respond to such crisis in terms of education of our young children, their welfare and their security?
- Should Fiji ratify the Treaty with or without reservation? Also, the Ministry's decision on that.

What is the position of the Ministry of Education on the Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of Children in Armed Conflict? The Ministry of Education, Heritage and Arts supports the Optional Protocol as it protects the children from this form of abuse and from the physical and mental harm of violence from the use of arms through involvement in armed conflicts.

Fiji has ratified the United Nations Convention on the Rights of the Child (UNCRC) and this Optional Protocol being an addition to that Convention is supported by the Ministry of Education, Heritage and Arts as it looks after the welfare of school-aged children.

The 2013 Constitution of the Republic of Fiji talks about the State making sure that every child has access to progressive realisation of the right to education until secondary level, at least. Supporting the Optional Protocol will be prudent as it assists us in ensuring students remain in school until the age of 18 years.

Children may not have the maturity and wisdom, Mr. Chairman, to use and manage arms in the appropriate approach and manner, hence will be exposed to trauma affecting personal character and development. The risk associated with children, especially when their actions are highly influenced by emotions rather than conscience.

What is the current existing legislation and policies of the Ministry of Education, Heritage and Arts with regards to the above Treaty? We have listed the number of Acts and Policies, as follows, the:

- (5) Education Act 1978;
- (6) Ministry of Education, Heritage and Arts' Policies on Child Protection and Behaviour Management;
- (7) Child Welfare Act 2010; and
- (8) 2013 Constitution of the Republic of Fiji (Section 31) on the rights of the child to education.

What are some of these experiences faced by teachers in kindergarten, primary schools, secondary schools and tertiary level? The experiences of teachers on the various political crisis that took place in Fiji, teachers need to have the necessary skills and knowledge to deal with children exposed to such trauma from what they see, what they hear and what they are exposed to in the media and also in real life experiences.

Experienced and qualified teachers have also migrated due to the unstable political climate of Fiji. They got affected personally, some lost homesteads, for example, teachers in the main cane farming belt of Fiji and also main agricultural sector in Fiji, spouses have lost work and their livelihood changed.

Work of teachers is also affected, schools are closed, curriculum coverage are affected, student's attitude and attention also changed.

Some of our own teachers needed trauma counselling and assistance to cope with the situations they were in during those period of political crisis.

Experiences of students, it was something new. It took their whole interest out of schools, hence it became difficult to continue attending school. Some students even dropped out of school during those period of political crisis and afterwards.

Violence became an issue, it became popular and an in-thing for some students who were in the school system then, as well as the current batch of students in the school system now. This became more disastrous when children accompany or saw their own brothers, uncles and parents directly involved in confrontation during the period of political crisis.

What messages went across to the students in those days? One thing is for certain, Honourable Chairperson and Honourable Members of the Standing Committee, today we are reaping the consequences in our own schools, in our own homes, and in our community.

Students were also relocated to other places, students mainly from urban to rural and vice-versa, as a result of the political crisis.

Examination and assessment performances of children were also affected and students have to adapt to new arrangements, curfew, school hours and transportation of students.

What are some plans, policies and proposed legislations in place to respond to such a crisis in terms of the education of our young children, their welfare and security? The 2013 Constitution of the Republic of Fiji and also the Education Act 1978 addresses the need for our children to have compulsory education and the rights of the child to receive education.

The Ministry of Education also has its own Child Protection Policy and Behaviour Management Policy which are used in the school system.

The Ministry of Education has its own Counselling Policy and the Psycho- Social Support (PSS) with counsellors and also NGOs, and mentors.

There are also Government initiatives to increase access to schools and encourage equity among gender, geographic locations for students with disabilities and there are proposed and current policies to ensure safety and care for students in schools.

Should Fiji ratify the Treaty with or without reservation? Honourable Chairperson, the Ministry of Education strongly feels that Fiji should ratify without reservation. We have our Fiji laws and legislation that are in agreement to the Articles in the Optional Protocol.

We ratify to protect children from potential risks. It will complement the work done on Fiji's implementation of the United Nations Convention on the Rights of the Child (UNCRC).

Fiji's current legislation and practice is conducive for the ratification of this Optional Protocol, for example, military recruitment at the age of 18 years; the Worst Form of Child Labour Convention has been ratified so the State does not encourage the exploitation of children; and the prevention of child abuse and neglect commitments of the State.

Identifying Gaps and Way forward, Honourable Chairman, what happens when some children join their parents, such as in the 2000 *coup*, and were seen with guns or engaged in militant duties. Can the State hold parents or those responsible as per the Convention?

Secondly, the MEHA policies do not have reference to children's engagement in armed conflicts.

Mr. Chairman, our way forward is that, MEHA could update its Child Protection Policy and other relevant policies to ensure protection of children from engaging in armed conflicts.

Identify laws and Conventions dealing with children and identify loopholes which can negate the impact of ratifying the Optional Protocol.

Legislate Compulsory Education until Year 12 so that it becomes mandatory for all students to be in school right up to the age of 18.

Perhaps, Fiji could also consider other Optional Protocols that may become solutions to problems facing the children of Fiji, for example, the commercial sexual exploitation of children.

Mr. Chairman and Honourable Members, that is the contribution from the Ministry of Education, Heritage and Arts. Thank you very much and *vinaka vakalevu*.

MR. CHAIRMAN.- Thank you, Mr. Bure, for that very brief but informative presentation.

Honourable Members, do you have any questions for Mr. Bure?

HON. DR. S. GOVIND.- Thank you, Sir, for that very brief but very comprehensive presentation. I have two questions or comments:

- (9) Does the Ministry have any record of children who are below the age of 18 and have been in the military service over the decade? Does the Ministry have any figures on that?
- (10) There was lack of capacity to provide counselling both, to students and teachers during times of crisis. Has this situation improved after the political crisis or there still remains a gap in terms of counselling of students and teachers?

Those are my two questions.

MR. CHAIRMAN.- Mr. Bure?

MR. T. BURE.- Thank you, Mr. Chairman, through you, I thank the Honourable Member for those questions.

In response to the first question, I am requesting that we be given time to seek our records and probably work with the Ministry of Defence and National Security to find out if there are records

of children below the age of 17 years and 18 years who have been recruited by the RFMF. So I request that I come back to the Committee on that.

MR. CHAIRMAN.- Certainly, Mr. Bure.

MR. T. BURE.-In response to your second question, Mr. Chairman, through you, the Ministry of Education, I think over the last four years or five years have worked with another statutory body known as the Substance Abuse Advisory Council. We have identified several officers in our education system who end up with qualification on counselling.

There are close to about 34 Counsellors that we have identified and we have given them training programmes for capacity building. They will be taking up those important position from 2021 as Counsellors in respective schools with large school roll and also schools that have issues pertaining to behaviour management. So, yes, we have prepared our officers, teachers will be teaching the right skills to be able to take up that challenge from next year. Thank you very much, Mr. Chairman.

MR. CHAIRMAN.- Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. I would like to thank the representative from the Ministry of Education. My question is in relation to the used arms for school cadet training in Fiji. Sorry are you with me, Deputy Secretary?

MR. T. BURE.- Yes, Sir.

HON. LT. COL. P. TIKODUADUA.- The question is; how valuable is the use of arms for drills? Have you noticed any positive value of that to our students and I believe these are secondary school students who use arms or do drills with arms?

The second part to the question is, has the Ministry ever conducted any evaluation since this started in terms of continuing in this tradition because there is school of thought as well, given that they are using cadet training in terms of the military influence in the use of arm? May be it is a negative aspect also for the child going forward in terms of the future in having this very small gap of training and being introduced to arms in a very small way and the bearing of that later on for the child. I just wanted to get your views on that right now.

MR. T. BURE.- Thank you, Mr. Chairman, through you, I thank the Honourable Member for the question and the concerned raised. From my observation, I think we have around three traditional schools who are doing cadet training and they are Natabua High School, Queen Victoria School and Ratu Kadavulevu School.

If we are to see the relationship between the use of probably, gun and cadet training, we do not think that there is a relationship between the uses of that gun training purposes related to violence in school. For example, Natabua has been using guns during cadet training, but we do not really have an issue of violence because of the nature of the schools. It has a very small boarding capacity, unlike Queen Victoria School and Ratu Kadavulevu School, that have very large boarding capacity.

The violence and bullying that are happening in this school, we believe it does not have anything to do with the use of guns during training or cadet training in general but has to do with other factors surrounding the environment where children, especially boys live in as boarding students. It has to do more with food, the abuse of responsibility, especially with the senior students.

We do not think it that it has any relationship with the use of guns for cadet training and that is what we can share at this moment, Mr. Chairman. Thank you.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, in supplement to that, I ask the question, what value does this cadet training with arms have anything at all, with the development of the child in education?

I hear what you are saying that there seems to be no direct correlation between violence in school with the use of arms, however, the question is, what value does it add to the child's education? The concern is that after the child leaves school, there is this attachment about this arm's training that has some negative value in terms of the child going forward.

Right now, if you tell me what good value does it have in terms of the education system? I mean, forget about the rest of the cadet training, I can understand that, in terms of barrack week and trying to instil discipline to the child. But I am talking about the handling of arms as part of the child's education, what value does it add to the child? That is what I wanted to know.

MR. T. BURE.- Thank you, Mr. Chairman, and thank you, Honourable Member. We feel that the use of guns for training purposes is just for improving discipline. It is probably just additional...(inaudible).

HON. LT. COL. P. TIKODUADUA.- How does a gun improve discipline? That is my question. The cadet drill is fine but what about weapon? I mean, we are talking about the use of cadet soldiers and it deals with weapons everywhere. The only time a school child handles arm in Fiji, apart from some tours up to camp where they have a display of weapons but where they actually touch arms *per se*. What value does that add to the development of a child? That is my curiosity. Why do we accept it as something that the child needs to learn in terms of being in school?

MR. T. BURE.- Thank you, Mr. Chairman. I think we probably will not be able to go to the finer details of the question that the Honourable Member is raising, but our understanding is that, it is being used for marching drills, just to instil some form of discipline while they are marching, instil discipline while they are on parade during graduation day. That is my understanding of the use of guns during those days or cadet training.

The arms do not have any live bullets, they do not do any shooting or any target setting, but just drills for marching. That was all that we knew on what the guns were being used for during cadet training.

Thank you, Mr. Chairman, and thank you, Honourable Member.

MR. CHAIRMAN.- Thank you, Honourable Member.

Honourable Members, since there are no other questions you have for the Ministry of Education, Heritage and Arts, on that note, Mr. Bure and Mr. Masivue, I take this time on behalf of the Committee to thank you for availing yourselves this morning to present your submission. If we do have some pressing questions, we will certainly get through the Secretariat to get those through to your goodselves.

With those few words, I thank you, again. Do you have any departing message, Mr. Bure?

MR. T. BURE.- Thank you, Mr. Chairman. I wish to also thank the Standing Committee and you, Mr. Chairman, for the opportunity for us to be here and present before you. Thank you for the opportunity. *Vinaka Vakalevu.*

MR. CHAIRMAN.- Thank you again.

The Committee adjourned at 10.59 a.m.

The Committee resumed at 11.28 a.m.

Interviewees Submittees: **Office of the Solicitor-General**
Office of the Fiji Intellectual Property

In Attendance:

4.	Mr. David Solvalu	-	Principal Legal Officer
5.	Ms. Seema Chand	-	Principal Legal Officer
6.	Ms. Sophina Ali	-	Principal Legal Officer
7.	Ms. Priscilla Singh	-	Senior Legal Officer
8.	Ms. Nazia Ali	-	Legal Officer

MR. CHAIRMAN.- Thank you, Honourable Members, for the benefit of the general public who are viewing this delayed coverage, a very warm welcome to you goodselves. Before the Standing Committee on Foreign Affairs and Defence, are officers from the Office of the Solicitor-General and Fiji Intellectual Property Office. A very warm welcome to you all - Ms. Sophina Ali, Ms. Priscilla Singh, Ms. Nazia Ali, Ms. Seema Chand and Mr. David Solvalu.

For the benefit of the general public, the team from the Office of the Solicitor-General and Fiji Intellectual Property Office will be submitting on the four Conventions, briefly:

- (3) The Madrid Agreement that was established in 1891 to provide a mechanism that would allow for a single and inexpensive international trademark registration and to eliminate the need for filing, prosecuting or maintaining separate registrations in multiple countries. It came into force in 1892.

Fiji's Intellectual Property (IP) laws date back to 1933. Fiji is in the process of modernising its IP laws, hence the three Bills endorsed by Cabinet on 31st March 2020; the Trade Marks Bill 2020; Patents Bill 2020; and Designs Bill 2020.

The Madrid Protocol was established in 1989. It was created to address perceived defects in the Madrid Agreement, and to make the international system of registration of marks more flexible and compatible with the domestic legislation of the individual States.

- (4) The Paris Convention was established in 1883. It was created to provide protection for industrial property, including patents, trademarks, trade names, industrial designs, utility models, service marks, geographical indications and to address unfair competition.
- (5) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict; Fiji signed the Convention on the Rights of the Child (CRC) on 2nd July, 1993 and ratified the CRC on 13th August, 1993.

The Optional Protocol to the Convention on the Rights of the Child of involvement of children in Armed Conflicts, Optional Protocol, is an international instrument that States parties to the CRC may ratify. The Optional Protocol aims to protect children from recruitment and use in hostilities. It was adopted by the General Assembly on 25th May, 2000, and entered into force on 12th February, 2002.

Ladies and gentlemen, before you, is my Standing Committee on Foreign Affairs and Defence.

(Introduction of Honourable Members by Mr. Chairman)

With those few words, I now give the floor to the Officers from the Solicitor-General's Office and the Fiji Intellectual Property Office to make their presentation. Thank you.

MS. S. CHAND.- Thank you, Honourable Chairperson and Honourable Members. This morning what we will do is, we will present first on the Optional Protocol to the Convention on the Rights of the Child in the involvement of Children in Armed Conflict. (Inaudible). Thereafter, we will have the team from Fiji Intellectual Property Office making their presentation on all of the IP Conventions.

MR. D. SOLVALU.- Good morning, Honourable Chairperson and the Honourable Members of the Committee. Just by way of introduction, the reasons why we preferred to start with the Optional Protocol is because, currently, the video has been sent to your Office which will assist with the presentation on the IP Treaties. So once your IT team has set up the video properly on your end, then that presentation will be ready to be delivered.

While they are working on that, we are just going to go ahead and start with the Optional Protocol. Is that is all right Honourable Members?

MR. CHAIRMAN,- Yes, thank you.

MR. D. SOLVALU.- Ms. Chand will actually be going into the substantive details of the Optional Protocol, but what I would like to bring to the Committee's attention are two things; firstly, we would like to make a slight clarification and correction to the Written Analysis that was tabled.

Sir, it is just the typographical error that we would like to draw your attention to. That will be on page 5 of the Written Analysis for the Optional Protocol, on paragraph 4.4, which says, "In relation to forced labour...)", at the end of the sentence it says, "...as including...", it should actually read as, "...not including...". If the Committee could, please, make the correction to the copies that are in front of them. This is a simple typographical error when the analysis was typed out. The words, 'not dismissed' should read as 'not including'. If that is all right with the Committee.

The second issue we would like to raise is that, we did receive a list of questions from Jacob in relation to what questions are anticipated to be raised today. However, we would like to clarify that in our presentation, we have focussed only on the legal aspects. Some of the questions that were sent to us dealt with social, political and extremely historical issues that were not legal in nature.

However, our presentation, given our expertise as a legal office, we will focus on the legal aspects of this Protocol and we will also focus on that legal aspect in the context of the Optional Protocol itself. If that is alright, then Ms. Chand will continue.

MR. CHAIRMAN.- Certainly, the floor is yours, Ms. Chand and Mr. Solvalu.

MS. S. CHAND.- Thank you, Mr. Chairman and Honourable Members. As David had alluded to, you would have already received the copy of the Treaty and the Written Analysis. So I will not go too much into the summary of the Protocol. 9

However, just by way of introduction, we would like to state that the Optional Protocol is an international instrument as State parties to the Convention on the Rights of the Child (CRC) may ratify and Fiji had signed the Optional Protocol in September 2005 that we have to actually ratify.

The purpose of the Optional Protocol is to strengthen the protection of children from involvement in armed conflict. So under the Protocol, some of the standards or obligations that parties wish to undertake is to:

- (a) take Optional Protocol measures to ensure that members of the Armed Forces who had not attained the age of 18 years do not take part in direct hostilities;
- (b) ensure that persons who had not attained the age of 18 are not compulsorily recruited into the Armed Forces; and
- (c) set the minimum age of voluntary recruitment into its national Armed Forces and the description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

So any such recruitment of any children into the Armed Forces who is above the age of 15 would have to be voluntarily recruitment and not a compulsory recruitment. And I will talk about that a little bit more further in my presentation.

The Optional Protocol also requires that armed group distinct from the Armed Forces of state party must not recruit or use in hostility its presence under the age of 18 years. So, it is not just limited to your Armed Forces or the Military or the Army, but it is also extends to other groups that are also involved in hostilities as we would have in other regions.

The Optional Protocol is a very short Treaty with 13 Articles. Article 1 to Article 8 outline the various standards and obligations that state parties must adhere to, once the Optional Protocol is ratified.

Article 9 to Article 13 essentially outline the various administrative matters pertaining to the Protocol. This is when the Protocol comes into effect, how it can be amended and the translation of the Protocol.

It is prudent to know that under Article 38 of the CRC, the Optional Protocol essentially or actually increases the age of recruitment of children into our country's Armed Forces or state parties' Armed Forces.

The Optional Protocol cannot be read in isolation, it should also be read in line with Article 38 of the CRC, and Article 38 essentially allows for the recruitment of children from 15 years of age. So under the CRC, if you are 15 years of age you can be voluntarily recruited into the Armed Forces. However, there is caveat in Article 38 which also says that, if you have children under the age of 18 being voluntarily recruited into the armed forces, then the age is from 15 years to 18 years. So, if you have a group of applicants, say between 15 years to 17 years, then the caveat under Article 38 of the CRC is that, consideration has to be given to the older applicant.' So, if someone is 16 years old or 17 years old, you would take that into account.

However, with respect to the Optional Protocol what this has done is, it essentially raised that minimum age of 15 years. So for other jurisdictions or other countries, instead of recruiting at 15 years, you can now recruit at 16 years or 17 years. . And when you do recruit at 16 years or 17 years,

you have to make sure that your recruits essentially do administrative work and are not there in combat or facing hostilities. So that is the expansion of the Protocol viz-a-viz Article 38 of the CRC.

It goes back to Article 3 of the Optional Protocol which basically says that State parties undertake to raise minimum age for voluntary recruitment above 15 years, and I understand in some jurisdictions, this could mean recruitment as early as 16 years or 17 years.

Going briefly into our legislations in Fiji and in particular section 7 of the Republic of the Fiji Military Forces Act, it deals with recruitment qualifications. Section 7 essentially says, and I quote:

“No person shall be enlisted in the Forces who is under the age of eighteen years:

Provided that the Commander may permit the enlistment of such number of persons of or above the age of sixteen years and under the age of eighteen years as he may from time to time determine.”

Fiji's established age of eligibility is consistent with the Optional Protocol's call for a set of minimum age of voluntary recruitment. So in Fiji, our voluntary age of recruitment, in terms of the minimum age, would be 16 years in line with the Optional Protocol.

With respect to the RFMF, the RFMF currently has peacekeepers engaged in the United Nations mandated Peacekeeping Missions in Syria, Sudan, Sinai, Lebanon and other jurisdictions. And the United Nations have unequivocally stated that troops and national contingents must not be less than 18 years of age. So all of our peacekeepers that have been deployed are all over the age of 18 years, and Fiji has met the minimum age requirement as set by the United Nations, so this has been complied with fully, Honourable Members.

There are no armed groups in Fiji, therefore, the Optional Protocol's requirement that they also refrain from recruiting persons under the age of 18 years is not applicable to the Fijian context, nor is it relevant. And given that our laws are in compliance of the RFMF Act, we would strongly recommend that Fiji ratifies the Protocol because there is no impediment or no barrier for Fiji essentially in this ratification process.

Honourable Members, I am happy to take any questions.

MR. CHAIRMAN.- Thank you. Honourable Members, you have any questions for Ms. Chand?

Since there are no questions, you may proceed.

MS. S. CHAND.- Honourable Chairman, we have our Team from Pacific Intellectual Protocol Office and in terms of their presentation, I am not sure whether the Secretariat has actually received the video and can they indicate whether they have received it or not.

MR. J. ABRAHAM.- Yes, Mr. Chairman, we have received the video.

MR. CHAIRMAN.- How are you going to do that Jacob, will you play that video later and we just hear from the IP Team now?

MR. J. ABRAHAM.- Correct, Sir, yes. 1

MS. S. ALI.- *Bula vinaka*, Mr. Chairman and Honourable Members. Just to let you know the video will be played when we reached Slide 4 of our presentation and we will have to play it simultaneously, from your end and our end. My apology, on Slide 3 of the presentation, if you can follow my powerpoint.

MR. J. ABRAHAM.- Correct, Madam.

HON. LT. COL. P. TIKODUADUA.- Through you, Mr. Chairman, can I just say something.

MR. CHAIRMAN.- Yes, go ahead, Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- What medium are we referring to here? Sorry, there has been reference to a video and I am asking what video is this.

MR. CHAIRMAN.- The video is from the Intellectual Property Office.

HON. LT. COL. P. TIKODUADUA.- So how is that going to relate to what they have to present to us today? Do we watch it first, or do they represent and then we watch it later?

MR. CHAIRMAN.- They will present from their powerpoint presentation which we all got a copy of, and there is a section in there, when they arrive at that, then they will play the video.

HON. LT. COL. P. TIKODUADUA.- Thank you.

MR. CHAIRMAN.- You may carry on, Ms. Ali.

MS. S. ALI.- Thank you, Honourable Chairman. Good morning, Honourable Chairman, and Honourable Members of the Standing Committee. I thank you for the invitation to present our submissions on three Intellectual Property Conventions - the Madrid Agreement for the International Registration of Marks, the Madrid Protocol Concerning the International Registration of Marks and the Paris Convention on Industrial Property.

Honourable Chairman, I will be making submissions today, together with my colleagues - Ms. Nazia Ali and Ms. Priscilla Singh. Also for your information, Honourable Chairman, similar to my colleagues who presented earlier, we had also received questions from the Parliament Secretariat in relation to the Conventions and we will attempt to answer your queries to the best of our abilities.

Honourable Chairman, we will start with a brief discussion on each Convention, but before we do that, because these Conventions are quite technical in nature, we would love to present a very short video which is 2 minutes/45 seconds long, to give you a visual explanation on how the international system of registration actually works. After that, we will present on the requirements of accession to the international system, and we will discuss briefly whether Fiji is ready.

Thirdly, we will look at New Zealand's past accession to the system, after that, we will talk about the financial implications of this endeavour. We will follow this and explain some of the benefits of accession and finally, we will provide a brief summary before opening up the floor to questions and answers.

Honourable Chairman, we are now going to move on to the third slide of our presentation, and this is where we are going to start the video. We request if the Secretariat can play the video for the Honourable Members from your end, please.

(Video Presentation to Honourable Members)

MS. S. ALI.- Are you able to hear at your end, Honourable Chairperson?

MR. CHAIRMAN.- No sound at the moment.

MS. S. ALI.- It seems like there is still a technical problem, Honourable Chairperson, because there is no volume. I think one option is that, we can try to play it at the end after our presentation is finished.

MR. J. ABRAHAM.- Thank you, Honourable Chairperson. We will play it at the end of the submission, Sir. Over to you, Honourable Chairperson.

MR. CHAIRMAN.- All right, that is fine. You can proceed, Sophina.

MS. S. ALI.- Thank you, Honourable Chairman. Essentially what this video shows is the linkage between the two Treaties - the Madrid Agreement and the Madrid Protocol, and how the International System of Registration actually works under these two Treaties.

It establishes the path way on how an application is made to the national office, how it goes to the World Intellectual Property Organisation (WIPO) International Bureau, the assessment of the application by WIPO, how it is published in the WIPO Gazette, then it goes to the national office, again, for registration to all the contacting parties where the applicant wishes to register their trademark and leading to an eventual approval or refusal of the trademark.

Honourable Chairman, we would just like to confirm at this point whether you will have the PowerPoint presentation playing for you as well?

MR. CHAIRMAN.- We have copies of the PowerPoint presentation. We can move on to the first slide, the Madrid System, if you do not mind.

MR. CHAIRMAN.- Yes, go ahead.

MS. S. ALI.- This is my introduction slide. We are on the same page.

Mr. Chairman, I have just spoken about the Madrid System, so we move on to the next slide now. The International System as we have said before is made up of the Madrid Agreement. The Madrid Agreement is a Treaty that was established in 1891, which provides a result for a single and international registration of trademarks. Nationals of any of the contracting parties are able to secure their mark in the country where they wish, and/or other States that are parties to the agreement.

The Agreement eliminates the need to file separate applications in multiple countries. Basically this means, Honourable Chairman, a person can apply for protection of their trademark, not only in the country where they reside but in many other jurisdictions where they wish to conduct to conduct their business, or market their product. All of these can be done within the comfort and confines of their homes with a single application.

Our next slide is on the Madrid Protocol. As we have stated earlier, this Protocol was established in 1989, and its intent was to support the Madrid Agreement and to make the International System of Registration more flexible and compatible with the domestic legislations of the State

parties. This Protocol also provides administrative provisions on the registration processes. There are currently 106 members to the Protocol.

The Madrid System, Mr. Chairman and Honourable Members, for your information, is centrally administered by the World Intellectual Property Organisation (WIPO) which is based in Geneva.

We will move on to our next slide, Mr. Chairman. The next Convention is the Paris Convention for the Protection of Industrial Property. This particular Convention was established in 1883 and it provides for the protection of intellectual property relating to industrial property, such as patents, industrial designs, utility models, service marks, trade names and geographical indications. And it also attempts to represent the (Inaudible)..... Currently there are 177 members to this Convention.

Now, the question, obviously, is; why do we need to accede to the Paris Convention if we want to be a party to the International System of Registration? The answer simply is that, it is a requirement by WIPO that in order to become a party to the Madrid System, we need to be on board with the Paris Convention as well, given that it deals comprehensively with protections of other types of intellectual property.

Mr. Chairman, we will move on to the discussion part of our presentation to the next slide, and the big question, of course, for us; is Fiji ready? Our answer is, yes, we are ready. We are ready for the following reasons.

Honourable Chairman, when we are looking at acceding to an international treaty, there are a few factors that we looked at and in this instance, we have laid out five requirements that will assist us in ensuring that we are ready:

- (1) Fiji will need to become a party to the Paris Convention, as we have stated earlier. For this, we will deposit our Instrument for Accession with the WIPO Office.
- (2) We will also need laws that impart the provisions of the Convention in order to interlink them. On this note, we would like to inform you, Mr. Chairman and Honourable Members, and as we have already mentioned, the Office of the Solicitor-General has recently obtained Cabinet approval to update our Trademarks, Patent and Design laws. Those three legislation will cover the requirements of the three Conventions.
- (3) After the Instruments of Accession are deposited, we will enter the implementation phase. For this phase, the Fiji Intellectual Property Office (FIPO), will be required to have an electronic or online system of registration.

Now, Mr. Chairman and Honourable Members, on this aspect at this stage, it is important to inform you that currently, FIPO is running on fully manual operations. Our clients physically walk into the office or served by an officer, data is entered manually into our physical register, payment is made physically, all searches are conducted manually, and certificates are typed by hand and issued on paper.

Given this scenario, FIPO has recently engaged in discussions with the digitalFIJI Team and the ITC Department to assist FIPO to transition into electronic system of registration. As you may be aware, Honourable Chairman and Honourable Members, the digitalFIJI Team has recently done this successfully for companies under the Birth, Deaths and Marriages Office (BDO), and it will leverage

their experience in FIPO as well. As you can see, Honourable Chairman and Honourable Members, we have already taken steps in the direction of digital transformation.

The fourth element of requirement is that, FIPO will need compatible IT infrastructure in order to make sure that this system runs smoothly. And on this aspect, we have had discussions with the ITC Department, we have received a positive response on what is needed within and will be sourced from within.

The fifth element, our staff will also need comprehensive training. For this, WIPO will either provide training remotely or onsite.

Moving on to our next slide, Honourable Chairman, we have presented a brief case study of the New Zealand path to the accession through the international system of registration. As you can see from this slide, in 2012, Honourable Chairman and Honourable Members, New Zealand went through the process of accession to the system.

The Intellectual Property Office of New Zealand (IPONZ) started the process in May 2012 and was able to do this by the end of the year, a period of little over six months. IPONZ started by reviewing its trademark regulation, and over the next four months it conducted system testing, regulation drafting and conducted consultations.

In September 2012, New Zealand deposited its Instrument of Accession, and this was followed by two months of user training on the system, and IPONZ was ready in December. We have to follow a similar schedule.

Moving on to the next slide, Honourable Chairman, one of the concerns of undertaking any new adventure is the impact on Government's finances. In our view, there will be no immediate loss of revenue for the Fijian Government, nor any loss of jobs.

The software will be provided by WIPO, therefore, there is no Government expenditure to buy new products. IT needs will be provided by the ITC Department, and digitalisation assistance will be provided by the digitalFIJI Team. The FIPO's operational budget will cover the expenses associated with running the Office, and there are no other direct costs.

We can move on to the next slide, Honourable Chairman. We envision that once this new system is up and running and we have worked through the difficult features, FIPO will be able to provide a simple and easy method for our clients to register their marks internationally by making one online application. This endeavour is also in line with the Fijian Government's Ease of Doing Business and digitalFIJI initiatives.

Honourable Chairman and Honourable Members, there are a number of benefits of modernisation and in transitioning our processes from manual to digital processes, it increases customer satisfaction by reducing turnaround times, increases efficiency in the processes and improves service delivery overall.

Clients are able to track their applications from anywhere at any time. They know, at any given time, what is happening with their applications and thus, reduces desk work. In line with this, the international system of registration will enable Fijian citizens to easily register their marks now in international markets. This will not only increase recognition of their products, but will have the added benefit of increasing Fiji's presence in the international platform.

Acceding to the system also sends a message to the international community, Honourable Chairman and Honourable Members, and more importantly to our trading partners that Fiji is serious about promoting Intellectual Property Rights and this in turn creates an environment that is highly conducive to receiving foreign investments.

Honourable Chairman and Honourable Members, we would like to end our submission by emphasising that one of the key benefits of the system of international registration is that, it opens up foreign markets to our local Fijians by allowing them to register their trademarks overseas with one application by paying just one set of fees, instead of hiring lawyers in different countries and paying exorbitant fees.

An electronic and online system will greatly enhance our service delivery free, streamline the application process, which will be able to be done from anywhere in the world, and reduce our approval process.

That brings us to the end of our submission, Honourable Chairman and Honourable Members. We would kindly like to request the Secretariat to play the video with the volume, and we can then move on to questions and answers.

MR. CHAIRMAN.- Thank you, Ms. Khan. We will await the Secretariat to play your video. Thank you.

(Video on Madrid System (Agreement and Protocol))

MR. CHAIRMAN.- Jacob, we can only hear the sound but no video.

MR. J. ABRAHAM.- Sir, we will replay the video

(Replay of the video)

MS. S. ALI.- Honourable Chairman, perhaps, if it is suitable may be Honourable Members can watch the video at a later time. The Secretariat can circulate it to Honourable Members.

MR. CHAIRMAN.- I think that will be the best bet, Ms.Ali. We will have the Secretariat email each Honourable Member a copy of the video.

MS. S. ALI.- Very well, Honourable Chairman. That is our submission and I open the floor for questions.

MR. CHAIRMAN.- Thank you, Ms. Khan. Honourable Members, do you have any questions for the FIPO?

Honourable Dr. Govind, the floor is yours.

HON. DR. S.R. GOVIND.- Honourable Chairman, I would like to thank the presenters for a very comprehensive presentation. Last week, we had a submission from Munro Leys and the lawyer who presented had a very strong opposition for us signing and ratifying this Convention. His grounds were that there were no capacity and currently there is delay in registration of marks, a delay in dealing with applications, and also the advantage it will give to overseas larger companies if we are not able to act on time.

Now, we are hearing from the Office of the Solicitor-General that we are ready to ratify this, but at the same time we are having very strong opposition from the lawyers who are dealing with many companies. So can some comments be made on this?

MS. S. ALI.- Honourable Member, thank you for your question, and we would like to respond. Let me just begin by saying that out of the 200 or so law firms in Fiji, there are only a handful who do trademarks business currently, and only two or three out of them would do it on a large scale.

However, it is fair to say that businesses from trademark registration is not the core business of any law firms in Fiji, because the IP market here in Fiji is relatively small, compared to other jurisdictions, such as Australia, New Zealand, Tonga and Samoa.

As far as how the implementation process will go, part of that process will take into consideration the capacity building and by the time we get to the place where we are able to go online with our registration, we will ensure that we have full capacity to run the system in an efficient manner.

Also, as far as the issue of delaying as has been raised by Munro Leys, the Protocol allows us 12 months to process applications, so it is not really clear what kind of delay is being alluded to.

Another thing that I would like to add to this is, accession to the System is subject also to laws being passed by Parliament. So that also gives ample time to ensure that our offices are up and running smoothly by the time we are able to offer our services on the international platform.

MR. CHAIRMAN.- Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman, and I thank the team for their presentation today. I would just like to take them to Slide 7, that we have been given. It asks, "Is Fiji Ready?" The short answer given is, "Yes."

MS. S.ALI.- Yes, Honourable Member, Slide 8.

HON. LT. COL. P. TIKODUADUA.- This is relative also to what Honourable Dr. Govind has alluded to earlier. I am more concerned about how Fiji is ready to accede to this.

My point is, in time, yes, we may be. I mean, today you have given us five different steps that you still have to undergo and they are quite substantive. I do not think the answer yet right now is, "ready."

You have said earlier that the laws need to come to Parliament, they are not there, we have not seen them and there are no consultations on the law. How can Fiji be ready when that is a major requirement?

MS. S. KHAN.- Honourable Member, thank you for the question. I would like to respond to this question.

We do note that there is a pre-condition to enter into these Conventions and the most important pre-condition here, Honourable Member, is the review of our current laws. The major impact with our laws is that the laws does not provide for international registration.

HON. LT. COL. P. TIKODUADUA.- So, we are not ready.

MS. S. ALI.- Apart from the International Registration Convention, Honourable Member, we already(inaudible).....to accede to the Convention is the updating of our national laws. The other requirement and as we have seen in New Zealand's case study as well, that the online system, the(inaudible).... system and the training of staff was undertaken by WIPO after the Instrument has been deposited.

HON. LT. COL. P. TIKODUADUA.- Can I stop you there?

I apology, Mr. Chairman, through you, I am hearing that you are talking about things that we have to do. I am going back to your slide that says, "Is Fiji ready?" You said, "yes". There are things we have to do, we are not ready yet, are we? The laws are not passed yet, they are still old laws.

MS. S. ALI.- That is correct, Mr. Chairman. The Bills are ready and they have been approved by Cabinet.

HON. LT. COL. P. TIKODUADUA.- Alright, let me stop you there. Maybe, the Bills are with Cabinet but they are not laws yet. They have not gone to Parliament, so we are not ready. It has to be ready before we go through.

MS. S. ALI.- Honourable Member, let me answer your question. The slide asks the question, "is Fiji ready? The question is, is Fiji ready to accede to the Conventions?"

Now, as you are well aware, acceding to the Convention is a process in itself. It is similar to New Zealand, we start the preliminary work now, and that is what we mean, we are ready to start the preliminary work and by the time we deposit the Instrument of Accession...

HON. LT. COL. P. TIKODUADUA.- So, we are ready to start the preliminary works, we are not ready to accede right now. The requirements are not there, the laws have not been laws, they are Bills at this stage. You are not online yet, WIPO is not online.

MS. S. ALI.- We are not online.

HON. LT. COL. P. TIKODUADUA.- Yes.

MS. S. ALI.- We are not online, it is a process that we are going to undertake starting from digitalisation of our records, to getting on to the international system of registration. This is a concurrent process.

While the Bills are going through the process of being implemented, we will also be working side by side to ensure that by the time we accede to the Conventions, the international system is ready for accession.

HON. LT. COL. P. TIKODUADUA.- I have a question; does Fiji have an obligation?

MR. D. SOLVALU.- Honourable Member, may I give some assistance, my name is David Solvalu from the Solicitor-General's Office and I was part of the team that drafted the IP Bills. Just to make it quite clear to the Committee that the Bills will go after we have acceded to this international system. The reason for it is because the Bills domesticate an international framework. So we must

first enter the international framework in order for us to put into place the domestic requirements that give effect to the system.

First, we need to be acknowledged to enter the international framework and the international system, and once we have, then our Bills as can be seen in the New Zealand legislation and the Australian legislation, their laws refer to the international system that they are domesticating. So our Bills also will be referring to the international system that we will be domesticating, but first we must enter into the international system. So the status of being ready is actually the status of us being ready to initiate and enter first, the international system, and then domesticate it accordingly, which is the process that needs to be followed for these types of things.

HON. LT. COL. P. TIKODUADUA.- Alright, maybe I will ask some more questions. In the Written analysis that you sent us earlier (I am sure you have it), on the last page on paragraph 6.3, it says, "The accession to the Convention will ensure that Fiji is compliant with its international obligations for the protection of intellectual property." I put it that Fiji does not have any obligation for accession to this Convention, unless if you can tell me where we have an obligation to do so.

MR. D. SOLVALU.- I am sure that the Honourable Members do not have the Agreement before them right now but the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement which is an agreement that Fiji has signed, if you were to look at Article 2 - Paragraph 1, of the TRIPS Agreement, it specifically states that in applying the TRIPS Agreement, which our country (Fiji) has signed, we will also apply Article 1 to Article 12 and Article 19 of the Paris Convention. So there is already some substantive obligations that Fiji is subject to under the international framework by virtue of the relationship between the TRIPS Agreement and the Paris Convention which we are referring to today. So in actual fact, there are obligations that do exist for us under the international framework and by acceding to the Paris Convention and is complement, the Madrid Protocol, we will give further effect and become even more a part of this international framework.

HON. LT. COL. P. TIKODUADUA.- You are referring to TRIPS, so what is TRIPS? I, sort of, missed that?

MR. D. SOLVALU.- Sir, TRIPS Agreement is actually a Treaty on Intellectual Property as well. The long form is Trade-Related Aspects of Intellectual Property Rights, so the entire IP Framework internationally, they complement each other, which is why these two - Madrid Protocol and the Paris Convention, have been submitted together.

The TRIPS Agreement is one of those aspects and it already connects to the Paris Convention. So it can be said that we are already under a system, we already part of the international framework but for us acceding to these two will further complement our presence in the international framework.

HON. LT. COL. P. TIKODUADUA.- But, do we have an obligation?

MR. D. SOLVALU.- By virtue of how we read the TRIPS Agreement, and I see where you are coming from where you appear to be of the view that 'obligations' is a very strong word but this is not a legal mandatory obligation. However, it is an obligation in the sense of our being a part of this framework, or our being fully engaged, then we would need to become compliant. We would need to accede to these Conventions. So, it is obligation in that sense, in order to be a full participant in the international framework and to fully comply with the rules that are under an international framework.

HON. LT. COL. P. TIKODUADUA.- Alright, I will leave that there for now. I have a reservation with regards to the strong position of us, yes, being ready to accede now for the reasons that are given and also for the five reasons that WIPO has already given to us.

Now, let me ask; are you confident that using the timeline of New Zealand, which we have been told, six months, we will be ready to accede? Are you sure about that, if we are using the New Zealand example, and for what reason are you saying that?

I asked the Honourable Attorney-General the other day about traditional knowledge and cultural expression, an essential element of Intellectual Property and also dealing with biodiversity which has been sitting there for a good 13 years, I am told. Well, I know since the draft. You are talking about a very intact timeline based on the New Zealand example. So, how confident are you with all our limited restrictions now, are we going to be ready by then?

MR. D. SOLVALU.- Honourable Member, before I hand this over to FIPO to discuss the operational aspects, I would just mention that the Traditional Knowledge and Expressions Bill, in draft form, it has its own creature. The Trade Mark, Designs and Patents are part of a very highly developed international framework that is extremely efficient across the world. Entering that system, there are clear well-defined guidelines and rules.

The traditional knowledge bundle requires domestically a significant amount of effort to categorise and register different forms of traditional expressions, which is quite a very complicated issue that also requires a significant amount of respect in dealing with traditional issues sensitively and safely. So, it has its own bundle, it has its own distinct challenges and its own distinct requirements. I do not believe that it is the same thing in relation to the process of implementing the rest or more widely acknowledged and clearly established IP systems. This system is part of the framework that is clear and as to whether we have the physical and manpower capacity, FIPO would be best to give advice on that.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I do not necessarily agree with that because I think we have had two cases where the Solicitor-General has had to rush off to Geneva to try and protect the two words from Fiji; one is '*Bula*' and the other one is '*Fiji*'. There are these things that happen abroad that are well beyond our reach which is why these words, that are not only Pacific in nature but Fijian in nature which needs to be protected. And these are words that other jurisdiction can actually apply for, through WIPO, and if we cannot say, 'Yes' in 18 months, they are going to go ahead and register it like the other ones. But, anyway, I will leave that for now and will come back to those later.

Maybe, by way of revenue and that has been raised here, FIPO is saying that there is not going to be any revenue loss to the people of Fiji?

MS. S. ALI.- With regards to revenue loss, at the moment, we are charging a minimum fee of less than \$6 per application. On the international platform, Honourable Member, application fees are being charged from \$200 to \$500. Fiji has not raised its fees.

FIPO has not raised its fees in a number of years and I think you would agree that our fees are drastically on the lower side. So, one of the things that come into mind is that, there was never the intention of FIPO to generate revenue from trademark applications. It was more a service that we are providing for the Fijian people to be able to register the trademarks and keeping in mind the economic complexity of our people.

Now, the revenue that we are taking in at the moment is a fraction of what Government's net income is, so that is why we have said that there is no immediate loss of revenue. Once we are under the international system of registration, most offices do(inaudible).....are up and running, the number of applications that they receive do go down.

The other good news when becoming part of this process is that, under the Madrid Protocol, we are allowed to set our own national fee for the applications. So, obviously at that time at a later stage when we have acceded, once we get the approval to accede to the Conventions, we will be able to set a national fee at our own discretion and obviously, we will then raise our fees comparable to other jurisdictions so that we are able to generate substantial revenue for Government.

HON. LT. COL. P. TIKODUADUA.- So, you are saying right now that in terms of outsourcing, it is really the registration of marks in Fiji to WIPO is not going to cost any revenue for Fiji at all? I am not talking about Government, I am generally talking for Fiji and I am talking about here the communities, businesses, et cetera.

MS. S. ALL.- Honourable Member, I think I would like to correct that statement, that we are not actually outsourcing to WIPO. We continue to be very much a functioning national office. We will be the office of origin.

An application made to WIPO does not mean that we are shutting down our office and there is no more work for us. On the contrary, there will be even more work required from us because we will be complying with an international system of registration which is fully electronic and there are a lot more processes that we need to undergo.

Once we receive an application under the International System of Registration, we might need to be considering applications from other jurisdictions, such as Australia, New Zealand, Canada, United States of America, or people who want to register their marks with us. So, I do not think there is a reason for us to be concerned that our Office will not be doing any work and our people will be losing jobs.

HON. LT. COL. P. TIKODUADUA.- I am only raising that because we are getting advice as well on the contrary in terms of how it would cost to Fiji economy generally. Government may be earning more because it is going to collect fees from abroad but that would be something that Fiji could still do here and I heard from you that have not raised your fees for Intellectual Property trademark, patents and the others, for a long time. So that might be something that is worth considering.

As Honourable Dr. Govind had alluded to earlier, one of the concerns that we have and we have been briefed in terms of us acceding to the Conventions is that, it would benefit international firms more than our local businesses, who have only a very minimum range in terms of how the IP would reach out.

One of the concerns as well is that, international firms from abroad can register essentially a name and if you do not respond in time, we have also information that because of the capacity if the IP Office, you are unable to process even local applications and they have lasted up to 18 months and two years in some cases.

We are concerned about that because it seems that whilst trying to accede, and I recognise earlier our friend from the Office of the Solicitor-General, I said this is not a mandatory obligation for accession, but it is a good thing to do so that we are relevant in other IP areas and international

practise when it is not quite an obligation *per se*, like other Conventions. What about just increasing the fees here and protecting our people more, than looking after the interest of other businesses from abroad that would benefit a lot on this one?

MS. S. ALI.- So, Honourable Member, the way we look at that scenario is like this, there are.....(inaudible) States across the world that are members of this international system. This membership includes both, large and advanced States, including small Pacific Island jurisdictions, such as Vanuatu, Tonga and Samoa.

Essentially, this means that this system works, it has benefits. In fact, Fiji should have done this long time ago, however, it is not too late and we are saying we should do this now because it is in line with Government's digitalFIJI initiative and ease of doing business.

I also wish to highlight that countries, including Singapore, have also shown that their lawyers and law firms and others are initially not keen to develop this system. However, as we now know, Singapore as well as Australia and New Zealand, to name a few, have moved ahead with the accession and they are thriving under it.

It is a comfort factor, we do not want to transition from what we already know and what we already have to something that is new. However, I do not think that these objections should stand in place, as for modernising(inaudible)....the Fijian Government progress. Like I have alluded to earlier, the Fijian Companies Office recently underwent this digital transformation as well from manual to digital. There was also a lot of reservation and hesitation to move forward with this, but now that we have done it, we realise how beneficial it is, and how simple and easy just to make out(inaudible) applications now and the drastic reduction in turnaround times.

As far as our capacity and whether we will be able to make applications and refusals in time, we will only be able to tell that when the time comes and we will be able to improve our processes as we go along.

Honourable Member, we also want to be able to take advantage of this international tax registration, so that other people in Fiji are able to market their products in international markets and get the recognition that they rightfully deserve.

MR. D. SOLVALU.- If I may expand on what Ms. Ali had said, being a part of this international framework means it has corresponding effect or it turns as a protection for local businesses as well because the very nature of an international framework is that, when you enter the system, you get legal protections that are accorded to every State that is a part of that framework. So the procedures or system is established firmly by international law, and then you also get a corresponding protection and recognition within your country.

HON. LT. COL. P. TIKODUADUA.- Just two more issues. We were informed that Samoa is the only State that had acceded to it and not anyone else.

MR. D. SOLVALU.- In the South Pacific?

HON. LT. COL. P. TIKODUADUA.- Yes, not Vanuatu, not any other of the Pacific States, only Samoa.

MS. S. ALI.- The information that we have is that Vanuatu and Tonga are also party to this. We can certainly check on this and get back to you with the confirmation.

HON. LT. COL. P. TIKODUADUA.- Yes, I would really like to know that. If you can correct and check that out, if that is possible, because we are informed that it is only just Samoa.

I apologise, Mr. Chairman, if you can just bear with me, I am just looking through something here. Because our colleagues from the Office of the Solicitor-General is here, I will have one last question, because you have used that model from New Zealand, the steps that were taken before New Zealand acceded to it, that was part of the slides.

MS. S. ALI.- Yes.

HON. LT. COL. P. TIKODUADUA.- Alright, I am having a problem and would like to understand how it is, particularly for this Committee to accede to this Convention without understanding the law first, that would make our Fijian laws consistent with this Convention both, the Paris Convention, as well as the Madrid Agreement and the Madrid Protocol. Is there a way at all that these legislation would be brought to the House before the House even considers acceding to this or not because it seems to be putting the cart before the horse, in my view.

MR. CHAIRMAN.- Mr. Solvalu.

MR. D. SOLVALU.- Mr. Chairman, I could cite the New Zealand Trade Marks Act, so the New Zealand Trade Marks Act actually refers to these Conventions - the Paris Convention, the Protocols, so if they were Act, they would be referred to it because they are a part of this international framework. So that is why to join the international system to be a part of it and then to domesticate that by written law is actually not a new thing, it is how it is done often.

I am sure that the Honourable Members is familiar with a lot of Human Rights Conventions and the thing with Human Rights Conventions is that, Fiji happens to be in quite good position because a lot of the Human Rights Conventions we ratify or accede to, our laws are already compliant with them. So that is why many of the Conventions that come all seems as though we get the laws into proper shape first and then we sign on to the Conventions.

That is not always the case. For example, if the Honourable Member would refer to the International Arbitration 2017, that legislation was domesticated into local law in 2017 but Parliament approved the ratification of that Convention before that, I think, in 2015 or 2016. So it is not a crosscut situation, it is actually dependent on the needs of the system, the needs of the framework, whether you enter into the international system first or you domesticate your laws first, but these IP laws happen to be in a situation where entering the international framework is actually more appropriate because when we domesticate the law, it allows us to refer to systems that we know will already be applicable to those laws. And the international system allows for a transitional period to allow us to cater for this very type of situation, and that is basically it.

HON. LT. COL. P. TIKODUADUA.- I thank the FIPO and the Solicitor-General for those clarifications. But you will understand from the perspective of Parliament and the Committee, that it is good to be compliant to the obligations and to be consistent with the rest of the world. However, concerns that have been raised to us are concerns on whether we do need it at all because if revenue was an issue, then maybe raising our fees would be the way to go. And we just want to be assured that there is not going to be a loss to the people of Fiji and it is going to cost us, nor to be compliant when we do not necessarily have to.

MR. CHAIRMAN.- Alright, any further comments from Mr. Solvalu or Ms. Ali?

MS. S. ALI.- Just to reiterate what we have said earlier on the issue of revenue generation whereby the Honourable Member had suggested that maybe we raise the national fees. What this actually means is that, our people will just have to pay more for their trademark applications, and that is counterproductive to what we are trying to do.

What we are trying to do is we are trying to generate Government revenue by getting income from overseas foreign markets. Also by doing something like this, it makes our environment more conducive to foreign investments. It is not attractive for putting investors to(inaudible).....to be part of this IP Convention, we are serious about protecting the emblem for copyright.

As I have said, all of these countries that have not entered into these Conventions, they were also cognizant of the fact that there might be revenue loss but they might go on to do it and they have eventually been able to come back and even generate more revenue.

Just to add on to that, this is international best practice. So, I think Fiji should just move ahead to this international system of registration without hesitation.

MR. CHAIRMAN.- Honourable Selai Adimaitoga, you have a question?

HON. S. ADIMAITOGA.- Yes. Thank you very much for your presentation. I am still not satisfied because of the question that is being written here, "is Fiji ready? You have answered, "yes."

According to the submission made by my Munro Leys Lawyers, the current process is premature because the relevant Bills have not been circulated. Joining the Madrid System or the Paris Convention does not make Fiji compliant with them. Fiji still has to ensure that its new IP laws meet the requirements of the Madrid System and Convention. Can you elaborate further on to that? Thank you.

MR. D. SOLVALU.- So, yes, that is pretty much the conversation we were having with Honourable Lt. Col. Tikoduadua. Our position is that if we accede to the Conventions, then the laws will be domesticated. So, Parliament's approval for acceding to the Conventions is like a display of commitment to the international framework and the Bills will domesticate that commitment in detail. So, the Bills themselves have been drafted with the assistance of numerous international agencies, for example, WIFO. We had their assistance in drafting the Bill and we also worked with the New Zealand IP Office. So we are actually meeting the standards, the Bills are drafted to meet those standards domestically but we need to enter into the framework or else we will have references in our Bills to a Convention that we have not ratified.

If we have a Bill that says, "This Bill is applying a Convention that we have not acceded to, then the obverse will happen. When we table those Bills, then Parliament will question as to why those laws are referring to Conventions and Protocols that we are not a part of.

As I have said earlier, it is similar to how we dealt with the New York Convention on International Arbitration. We preceded to that Convention first and then we domesticated with the International Arbitration Act in 2017, a good year or more later.

So, there are some Treaties or some international frameworks where you enter the framework, you even receive assistance after you have entered the framework. You coordinate with international bodies and then you domesticate your laws. So, these Conventions usually allow for that transition period, which we currently have for this Bill. So₂ that is why our position is such. The best way to

go about this is to join the international framework, take what we can from it and table the Bills which domesticate and refer to those international documents

HON. S. ADIMAITOGA.- Thank you.

MR. CHAIRMAN.- Since there are no other questions, Honourable Members, I would like take this opportunity, again, to thank the Office of the Solicitor-General and the Office of the International Property for your presence and submission this morning. If we do have any other further pressing questions, we will certainly get back to you through our Secretariat office.

With those few words, I thank you once

again. The Committee adjourned at 12.51

p.m.

[VERBATIM REPORT]
STANDING COMMITTEE ON
FOREIGN AFFAIRS AND
DEFENCE

TREATY/PROTOCOL/CONVENTION

8. Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement)
9. Protocol Relating to the Madrid Agreement (Madrid Protocol)
10. Paris Convention for the Protection of Industrial Property
11. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

INSTITUTIONS: (1) United Nations Children's Fund (UNICEF)
(2) International Labour Organization (ILO)
(3) Sherani & Company
(4) Ministry of Foreign Affairs
(5) Methodist Church of Fiji
(6) Fiji Performing Rights Association Limited (FPRAL)

VENUE: Big Committee Room (East Wing)
DATE: Monday, 22nd June, 2020.

**VERBATIM NOTES OF THE VIRTUAL MEETING OF THE STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE VIEWED AT THE BIG COMMITTEE ROOM (EAST WING),
PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON 22ND JUNE, 2020, AT 9.25 A.M.**

Online Interviewee/Submittee: United Nations Children's Fund (UNICEF)

In Attendance:

Mr. Sheldon Yett - Representative of the United Nations Children's Fund
(UNICEF) to the Pacific Island Countries

MR. CHAIRMAN.- Thank you, Honourable Members. First, a warm welcome to members of the public who are listening in to this livestream this morning to hear submissions.

On behalf of the Standing Committee on Foreign Affairs and Defence, we have before us Mr. Sheldon Yett from the United Nations Children's Fund (UNICEF), to brief us or submit to us the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.

Fiji signed the Convention on the Rights of the Child (CRC) on 2nd July, 1993 and ratified the CRC on 13th August, 1993.

The Optional Protocol to the Convention on the Rights of the Child of involvement of children in Armed Conflict (Optional Protocol) is an international instrument that States parties to the CRC may ratify. The Optional Protocol aims to protect children from recruitment and use in hostilities. It was adopted by the General Assembly on 25th May, 2000, and entered into force on 12th February, 2002.

I welcome you again, Mr. Yett, and for the benefit of your good self, I will introduce the Members of my Committee.

(Introduction of Committee Members by Mr. Chairman)

I will appreciate from your good self, Sir, a very brief introduction and then the floor is yours for your submission. Thank you.

MR. Y. YETT.- Thank you, Honourable Chairman of the Standing Committee on Foreign Affairs, Honourable Members of the Committee, the Secretariat and colleagues. Let me begin by thanking you for this opportunity to reaffirm our support for the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. I am Sheldon Yett, the representative of the United Nations Children's Fund (UNICEF) to the Pacific Island Countries.

The work of UNICEF in Fiji and throughout the world is guided by the Convention on the Rights of the Child. To help stamp the abuse and exploitation of children worldwide, the UN General Assembly in 2000 adopted two Optional Protocols to the Convention.

The objective of the first Optional Protocol is to increase the protection of children from involvement in Armed Conflict (OPAC). The objective of the second Optional Protocol is to protect children from sale, prostitution and pornography. As UNICEF, we advocate for the ratification of both Optional Protocols.

For today's purpose, our focus is on OPAC which came into force globally in 2002 as you quite correctly indicated, Mr. Chairman, which Fiji signed on 16th October, 2005. The OPAC is a further milestone in campaigning to strengthen the legal protection of children, helping to prevent their abuse in armed conflict.

The aim of OPAC is to provide greater protection to children, and is provided in Article 38 of the Convention of the Rights of the Child, which sets the minimum age of 15 years for direct participation in hostilities and recruitment in armed forces.

The UNICEF applauds the Government of Fiji for progress and commitments made at global and national level towards progressively realising the rights of children.

In addition to ratifying the CRC, Fiji's commitment to child rights law is manifested through the ratification of the ILO Conventions on the minimum age of employment and the elimination of the worst forms of child labour. Fiji has also regularly engaged with the Committee on the Rights of the Child to provide progress on the implementation of the Convention on the Rights of the Child.

As part of the constructive dialogue with the Government of Fiji on its second and fourth Periodic Report on the implementation of the Convention, the Committee on the Rights of the Child recommended that the Government ratify the Optional Protocols.

Domestication of Global Child Rights Standards in Fiji is evident throughout national laws and in the 2013 Constitution which aligns the definition of the child to that of the Convention, recognising a child as an individual who has not reached the age of 18 years.

The 2013 Constitution of Fiji explicitly recognises the protection of the rights of children in Section 41. Section 41(1)(d) provides for the protection of children from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour.

The Employment Relations Act 2007 also makes positive steps in bringing labour standards in compliance with ILO Conventions 138 and 182.

The 1949 Republic of the Fiji Military Forces Act establishes that no person shall be enlisted in the Forces who is under the age of 18 years.

While there, undoubtedly, has been progress in meeting the rights of children in Fiji, more needs to be done. This will only be possible if we work together as partners in providing our children an environment that is safe and free from discrimination and harm.

We recommend that the Government of Fiji ratify the UN Convention on the Rights of the Child Optional Protocol on Armed Conflict. The ratification of this treaty would be another step, demonstrating our commitment to the rights of our children.

We encourage the Government to remove the exception to Section 7(3) in the RFMF Act that allows the Commander to order the enlistment of persons of or above the age of 16 years should he or she deem it necessary, despite the general requirement of 18 years.

We recommend that the Government consider adopting the “straight 18” policy on both, compulsory and voluntary recruitment in armed forces.

UNICEF encourages the following; that children are given the broadest possible protection in national laws under international human rights law. This includes the explicit prohibition of compulsory and voluntary recruitment of children under 18 years into the armed forces, as called for in the OPAC.

We also encourage that the ongoing review of national legislation be used as an opportunity to review compatibility of domestic legislation with international standards.

Please, consider programmes to build awareness for Government officials and key stakeholders as part of the broader national action plan that can strengthen implementation and help build partnerships between Government, civil society and development partners. We, as UNICEF, will be pleased to support any efforts to this effect.

We ask that you also consider ratifying the remaining two Optional Protocols to the Convention.

We welcome the Government of Fiji’s history of very strong engagement with the Committee on the Rights of the Child and other international human rights bodies.

Fiji is due to submit to the CRC its next Periodic Report this September and we call on the Fijian Government to continue the timely engagement with the Committee.

In closing, for children, the right interventions at the right time can bolster development, break intergenerational cycles of inequity and provide a fair start in life for every child.

I want to congratulate the Government for this critical proposal to ratify the OPAC. The ratification will result in further strengthening protection for the rights of all children and helps to meet Fiji’s compliance with international standards.

I also want to reiterate that the Fijian Government is a key partner for UNICEF, and we look forward to continuing this good work that we have been doing together for so many years.

Thank you again, Honourable Chairman, Honourable Members of the Committee and the Secretariat for making this dialogue possible. *Vinaka* and thank you.

MR. CHAIRMAN.- Thank you, Mr. Yett, for your brief submission this morning, Sir.

Honourable Members, do you have any questions for Mr. Yett?

HON. DR. S.R. GOVIND.- Yes, Mr. Chairman. Mr. Yett, thank you for your brief but comprehensive presentation.

I just wanted to know whether you have some figures from the countries in the Pacific where children below the age of 18 years have been employed in the military and if so, are those countries now ratified this Convention? What are the challenges they are facing? Thank you.

MR. S. YETT.- Thank you for this very good question, Sir. In the 14 Pacific Island Countries that is supported by UNICEF, we have figures on the number of these countries. Four countries that have ratified the Optional Protocol are Kiribati, FSM, Samoa and Vanuatu. Three countries have signed but not yet ratified this Optional Protocol and those three countries are Fiji, Nauru and Solomon Islands and we continue to work with all countries in the Pacific, to ensure that their laws are consistent with best practices as outlined in the Convention on the Rights of the Child (CRC).

MR. CHAIRMAN.- Honourable Dr. Govind, does that answers your question?

HON. DR. S.R. GOVIND.- Yes, I wanted to ask whether there are some figures of countries where children have been employed in military who are below 18 years? Do you have any facts and figures?

MR. S. YETT.- The facts and figures of Countries in the Pacific that children are regularly employed below that age?

HON. DR. S.R. GOVIND.- Yes.

MR. S. YETT.- I also want to make sure that this good work continues and there are no loopholes in the domestic legislation and to ensure that the domestic legislation is fully compliant with best practices as outlined in the Optional Protocols and in the Convention of the Rights of the Child.

HON. DR. S.R. GOVIND.-Thank you.

MR. CHAIRMAN.- Honourable Members, we do not have any other questions.

Mr. Yett, perhaps, should we have any pressing questions during our report writing, if you do not mind, we will get the Secretariat to email your good self.

I take this opportunity to say, 'thank you', again, for adhering to our request and if you have any parting words, the floor is yours, Sir.

MR. S. YETT.- Thank you, Mr. Chairman, and absolutely, we are honoured and pleased to continue our strong collaboration with your Committee, and continue working with all Honourable Members to ensure that we answer any questions and to provide any clarifications that may be necessary.

And at UNICEF, we continue and look forward to build on our excellent relationships and work together with your Committee and the Government of Fiji for the sake and rights of our children throughout the country.

MR. CHAIRMAN.- Thank you again, Sir, and may you have a blessed day.

The Committee adjourned at 9.38 a.m.

The Committee resumed at 9.58 a.m.

Online Interviewee/Submittee: International Labour Organisation (ILO)

In Attendance:

- Mr. Matin Karimli - Director of International Labour Organisation in the Pacific
 - Ms. Elena Gerasimova - International Labour Standards Specialist
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MR. CHAIRMAN.- Thank you, Honourable Members. A very warm welcome to the members of the public who are listening in to this livestream broadcast from the Standing Committee on Foreign Affairs and Defence. We have before us Mr. Matin Karimli, Director of International Labour Organization (ILO) in the Pacific. He will be assisted by Elena Gerasimova and the subject is the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.

Fiji signed the Convention on the Rights of the Child (CRC) on 2nd July, 1993 and ratified the CRC on 13th August, 1993. The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict is an international instrument that States parties to the CRC may ratify.

The Optional Protocol aims to protect children from recruitment and use in hostilities. It was adopted by the General Assembly on 25th May, 2000 and entered into force on 12th February, 2002.

Mr. Karimli, before you are Honourable Members of the Standing Committee on Foreign Affairs and Defence.

(Introduction of Committee Members by Mr. Chairman)

With those words of introduction, Mr. Karimli, a brief introduction of your good self and Ms. Elena Gerasimova, and the floor is yours. Thank you.

MR. M. KARIMLI.- Thank you, Mr. Chairman and Honourable Members of the Committee on Foreign Affairs and Defence. I am pleased to join this meeting, along with Ms. Elena Gerasimova, who is the International Labour Standards Specialist, to make submission on behalf of ILO.

Mr. Chairman and Honourable Members of the Committee, as per ILO 2017 Global Estimates of Child Labour, 250 million children live in areas affected by armed conflict. Many of those 168 million children who are engaged in child labour are living in conflict and disaster-affected areas.

Tens of thousands of girls and boys find themselves fighting adult wars in, at least, 17 countries in different regions around the world. During conflicts, children are recruited, particularly by armed groups, to be used not only as combatants, but also as spies, helpers and porters, or become victims of sexual exploitation and abuse.

Besides the dangers of combat, they often suffer physical and psychological abuse, harsh duties and punishments, and are frequently exposed to alcohol and drug consumption. This creates deep scars in children's minds and reintegrating them once the conflict is over, is often complicated.

The use of children in armed conflict is a worst form of child labour, a violation of human rights and a war crime. Child labour in conflicts and disasters violates international law, Security Council Resolutions (SCR) and UN Conventions, including ILO Convention No. 138 on Minimum Age for Admission to Employment, ILO Convention No. 182 on the Worst Forms of Child Labour, ILO Recommendation No. 71 on Employment Organisation in the transition from war to peace, as well as the Convention on the Rights of the Child and Security Council Resolution 1612 on children and armed conflict.

The ILO Convention No.182 on the Worst Forms of Child Labour defines forced or compulsory recruitment of children for use in armed conflict as a worst form of child labour. Convention No.182 is one of the ILO fundamental conventions covering subjects that are considered to be fundamental principles and rights at work.

Addressing this violation of fundamental rights has been a concern and an obligation for the ILO ever since the coming into force of the Worst Forms of Child Labour Convention No. 182 in 2000. Fiji has ratified ILO Convention No.182 in 2002.

In accordance with the ILO Worst Forms of Child Labour Recommendation No.190, members should provide the following worst forms of child labour - all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict, are criminal offences.

The Convention on the Rights of the Child contains several provisions on child labour, including addressing protection of children in armed conflicts. It was reinforced in 2000 by the adoption of two Optional Protocols, one on the sale of children, child prostitution and child pornography, and the other on the involvement of children in armed conflict.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict prohibits all recruitment, voluntary or compulsory, of children under 18 years by armed forces and groups.

Armed conflict is one of the major challenges to meeting the target of eliminating all worst forms of child labour. Children must be protected from harm at all times, including they have the right to be protected during conflicts and disasters, and the best interests of the child have to be upheld. They have the right to regain their normal life and to return to learning as quickly as possible.

Education is the key to combating child labour and for the development of prosperous societies. It is wrong for the children to have to work to ensure their own survival and that of their families.

Eradicating child labour, including its worst forms, is a global and globally-agreed priority. Target 8.7 of the Sustainable Development Goals (SDGs) calls for States to take immediate action and effective measures to eradicate forced labour, end modern slavery and human trafficking by 2030 and

secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers and by 2025, end child labour in all its forms. This target can only be achieved if no child is left behind in the fight against child labour and especially, worst forms of child labour.

In 2018, Fiji signed up to the Global Alliance 8.7 as a pathfinder country, committing to accelerating efforts to achieve SDG Target 8.7 and sharing the lessons and knowledge generated among their other 21 pathfinder countries. As Alliance 8.7 pathfinder country, Fiji has committed to accelerate action, implement innovative solutions and to share knowledge about best practice and lessons learned.

The ILO welcomes that Parliament of Fiji considers the ratification of the Treaty on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, and tasked the Standing Committee on Foreign Affairs and Defence to examine this Treaty and support the recommendation to ratify the Optional Protocol.

Mr. Chairman, this concludes my submission and I thank you for your attention.

MR. CHAIRMAN.- Thank you, Mr. Karimli. Ms. Gerasimova, do you have any words for us?

I have a question, Sir. You had mentioned that the Convention on the Rights of the Child Security Council Resolution 1612 on children is still being formulated. Do you have any idea when this should be released to the States parties?

MS. E. GERASIMOVA.- Which Convention, Sir?

MR. CHAIRMAN.- You have mentioned under revision - employment organisation in transitional war.

MS. E. GERASIMOVA.- This means that currently, ILO is revising this recommendation and in a few years, it may come and there is a new edition of this recommendation. But currently, the current edition is in force and fully implemented but our member States of ILO are considering it as a new edition of this document.

MR. CHAIRMAN.- Thank you, Madam.

Honourable Members, do you have any questions?

HON. DR. S.R. GOVIND.- I want to thank the presenter for his comprehensive presentation this morning. My question is, what are some of the challenges that the Pacific Island countries are facing in overall eliminating child labour? Are there variations in countries in terms of child labour in general?

MR. M. KARIMLI.- Mr. Chairman, I want to thank the Honourable Member for that question. I will ask my colleague, Ms. Gerasimova to answer that question.

MS. E. GERASIMOVA.- Thank you very much for this question, Mr. Chairman, and I thank the Honourable Member of the Committee for the question. You are right, there are very different challenges in various countries to eliminate child labour. The main challenge we will say, is the lack of economic power and economic wealth of countries, which would be able to provide proper educational systems

and would be able to provide decent employment for parents of children, allowing children to fully concentrate on education and, at the same time, allowing their parents to keep their families and their children and not only feed them but provide an opportunity for decent development and future development.

But in some particular cases, as we are discussing right now, there are some very special cases of worst forms of child labour, particularly we are speaking about participation of children under 18 years in armed conflicts. With these, of course there are much more other reasons and problems and, of course, the lack of political and economic stability are a part of that. Also, political contradictions and internal and inter-state disagreements and problems, that is all involving children into these forms of child labour.

But for the ILO, what we want to emphasise, as Mr. Karimli said, the use of children in armed conflicts is a human rights violation, and it is a war crime. That is why many different organisations, international organisations and national agencies, work with this problem but for the ILO, we see it as one of the worst forms of child labour and today, all ILO Member States are committed to do everything possible to eliminate these worst forms of child labour as use of children in armed conflicts.

HON. DR. S.R. GOVIND.- Thank you.

MR. CHAIRMAN.- Honourable Tikoduadua, do you have your question?

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. Through you, I thank our presenters this morning for a brief but comprehensive presentation on the Optional Protocol before us.

The UN agencies that had presented to the Committee earlier, made a specific mention of provisions within the Republic of Fiji Military Forces (RFMF) Act that gives discretionary powers to the Commander of the RFMF to recruit persons between the ages of 16 years and 18 years into the Force as required.

Other UN agencies have strongly recommended that Fiji review this provision because it does allow for the recruitment of children below the age of 18 years and I know that, that power is discretionary. What is the ILO's position on this, do you share the same views as the other UN agencies? We have just had the United Nations Children's Fund (UNICEF), we have had the Office of the High Commissioner of Human Rights (OHCHR) so, yes, I am just interested to know that. Thank you.

MR. M. KARIMLI.- Honourable Chairman, I also thank the Honourable Member for the question. I will ask my colleague, Ms. Gerasimova, to address this specific question but before, a question was asked whether all forms of work done by children are classified, why it was not child labour and, therefore, prohibited?

As we see, there are more than 152 million children in labour across the world but when we look at the overall number, the number of children in labour is bigger than that, it is more than 218 million. And the difference of 66 million is because not all children engage in work are considered to be child labour and forced labour. These includes children from 12 years to 14 years old - boys and girls, who are working in non-hazardous kind of work and less than 14 hours a week is not child labour and, again, is not forced labour. Children from 15 years to 17 years old who do non-hazardous work is not

considered a forced child labour. But all working children below 12 years old are considered to be child labour. As for the military service, I will ask my colleague, Ms. Gerasimova, to answer this question.

MS. E. GERASIMOVA.- Thank you very much, Mr. Chairman and Honourable Members of the Committee, for the question. To answer this question, we can use the ILO Convention 138 which was also ratified by Fiji. This is the Convention on minimum age for admission to employment so in accordance with this Convention, the minimum age for children when they can start working is either 15 years, or the age when they complete their obligatory education.

There are some exclusions from this general rule which were mentioned already by Mr. Karimli but I want to focus only on exclusions which are required to raise the minimum age for employment. So, the minimum age for employment should be high above 15 years in cases where children work in hazardous works. So countries should adopt special lists of hazardous work. Actually, this list of hazardous work exists in Fiji and Fiji is one of the countries last year that convened a workshop to develop a roadmap to see how to deal with various aspects of the Alliance 8.7 Agenda. And part of this roadmap was to review the list of hazardous works in Fiji and to consider whether it should be updated, but the fact that it exists right now.

So with hazardous work, children should not be employed unless they are 18 years, but also there are specific worst force of child labour which should be eliminated always in all countries and they include the use of children in armed conflicts.

So for these cases it also should not be for armed conflicts but if it is for participation military service of armed conflicts, the recruitment should not start earlier than people reaching 18 years old. So as we know, the ILO supervisory body - the Committee of Experts, never made any comments or suggestions regarding the new age of employment to Fiji.

So as much as we know, the legislation in Fiji regarding minimum age of accessing employment is fully in compliance with Conventions 138 and 182. Based on that, we consider that Fiji may ratify this Optional Protocol, we do not have any concerns on that, but at the same time as I mentioned, we do have a plan developed by Fiji's national state agencies - the CSOs and other organisations last year, during the Alliance 8.7 Workshop which considers the list of hazardous works should be reviewed and analysed from the point of view whether any changes or updates are needed. But there are no obvious contradictions with the ILO Conventions 138 and 182. Thank you.

MR. CHAIRMAN.- Thank you. Honourable Selai Adimaitoga, your question please.

HON. S. ADIMAITOGA.- Thank you, Mr. Chairman, through you to the submittees, I would like to thank you for your comprehensive statement this morning. The question I would like to ask is on Target 8.7 of the Sustainable Development Goals which calls for States to take immediate action and effective measures to eradicate forced labour, end modern slavery and human trafficking by 2030. So, are we really sure right now that we can eliminate worst forms of child labour, including recruitment and use of child soldiers by 2025?

What you have stated is that, there should not be child labour in all its forms. You are trying to eradicate that but the thing that I am worried about and an example is the sugarcane farmers. I believe

some children who are underage are doing hazardous work, for example, cane cutting, and that can be looked into and that is my plea.

Even now, we are trying to ratify this but then in other areas, like farming, and I come from a farming area and I believe that this should be looked into because some of the farmers are using under aged children to cut sugarcane.

MR. M. KARIMLI.- Thank you, Honourable Chairman and also the Honourable Members of the Committee. The Conventions under the recommendations are very clear on the age of children to be engaged in child labour. So, as I mentioned earlier, there are certain conditions for children starting from 12 years to 17 years to engage in different fields.

For the children aged 12 years to 14 years, they can actually work in non-hazardous work but less than 14 hours a week. As you have already mentioned that most of the children in child labour are concentrated more in the agricultural sector which accounts to about 71 percent of children.

As per the target to eliminate the child labour by 2025, this actually is the political will and determination that all countries, first of all, are to come together and to eliminate child labour. If we look back to the last decade, child labour has been reduced, in my view, and thanks to the the common joint efforts of the global community that that has been decreased by 100 million. So, this demonstrates that having coming together and putting the necessary resources together and demonstrating the political will and the need to decrease child labour.

As to the Alliance 8.7 activities in Fiji, I will ask my colleagues, Ms. Elena Gerasimova, who is in charge of the relevant projects to answer this question, thank you.

MS. E. GERASIMOVA.- Thank you very much, Honourable Chairman and Honourable Members of the Committee. Yes, you are quite correct about agriculture. There is definitely this fear that there is a majority of children who do work, as all over the world, and I think this is also the situation in Fiji.

We all understand that the situation became worse now during the COVID-19 pandemic because schools were closed and many families and adults lost their employment and income, so this situation has really changed for worse for many families. Many families had to return back to their villages from cities, for example, et cetera. And they have been doing much more than earlier to this style of life around their farms and around their land and children are involved more than earlier in this type of activities in agriculture, even if earlier they were not.

Right now, we are facing probably even more challenges than we have had before the COVID-19 pandemic and it is really a challenge for all the people whose work is to deal with this problem, that the situation is now of children in child labour which may become much worse now after COVID-19. We can say probably that it is already worse now than it was before the COVID-19 pandemic and that now to achieve our goals as established by SDG 8, particularly Target 8.7, it will be much more complicated, of course, but work can be done now.

I had mentioned already that last year and 2018, we had here a national workshop on the achievement of SDG 8 - Target 8.7 in Fiji because Fiji culminated to become an 8.7 pathfinder country

and you had developed a roadmap. So as part of this roadmap, we have started a project in Fiji to help map the next steps to eliminate worst forms of child labour and just to improve the situation with the use of child labour in Fiji in general.

So we are starting this project right now, together with the Ministry of Employment and their social partners, the Fiji Trades Union Congress (FTUC), I understand, are workers and employers organisations, and we hope that all tripartite partners will work on this project.

I also want to mention and this is probably important for you, as Members of Parliament, to consider that in all countries, we understand that there is beating direct link between children in education and children at work. More children are now going to schools and less are at work, so it is really important to provide an opportunity to get to receive free education for all children from all families no matter what is the level of income of their parents and their families.

What ILO recommends specifically right now that during COVID-19 pandemic because many families lost their income and parents lost their salaries and their employment, there is struggle for many countries to provide an opportunity for their children to attend school.

And it is not only the problem of free or paid education, it is also a problem to provide very simple things for which usually parents could pay but now they cannot pay. I mean, free lunches at school, free uniform, free transportation to get to school and the opportunity to receive free books.

As I understand, not all of these options exist in Fiji and this may really create problems for many Fijian children to return to school when schools are re-opened. So probably, you can think about opportunities to provide some of these options that would really help to return more children to schools in a situation where their parents lost their employment and their income. Thank you.

MR. CHAIRMAN.- Thank you, Mr. Karimli and Ms. Gerasimova, for conceding to our request. Time is pressing and we thank you once again for acceding to our request to join us this morning. If we do have any other pressing questions, I hope you will oblige, and we will email these to your good selves.

With those words, thank you, and if you have any parting words, Sir, the floor is yours. Thank you.

MR. M. KARIMLI.- Honourable Chairman and Honourable Members of the Committee, we are very grateful for this opportunity to make this submission and we look forward to future invites to come and brief Members of Parliament. Thank you very much.

MS. E. GERASIMOVA.- Thank you very much. It is a great initiative and we fully support the decision to consider ratification of this Optional Protocol. From the ILO, we are here to support you and the whole country, Fiji, to improve the situation in support of or concurring to improve the situation on child labour. Thank you very much.

Mr. CHAIRMAN.- Thank you again and you both have a blessed day.

The Committee adjourned at 10.29 a.m.

The Committee resumed at 10.48 a.m.

Online Interviewee/Submittee: Sherani & Company

In Attendance:

- Ms. Mele Rakai – Partner
- Ms. Mere Navurai – Trade Marks

MR. CHAIRMAN.- For the benefit of the general public, I welcome those listening to this livestream from the Parliamentary Standing Committee on Foreign Affairs and Defence. Before us is Ms. Mele Rakai and Ms. Mere Navurai from Sherani & Company, who will be submitting on the three Treaties.

The Madrid Agreement was established in 1891 to provide a mechanism that would allow for a single and inexpensive international trademark registration and to eliminate the need for filing, prosecuting or maintaining separate registrations in multiple countries. It came into force in 1892.

Fiji's Intellectual Property Laws date back to 1933. Fiji is in the process of modernising its Intellectual Property (IP) laws, hence the three Bills endorsed by Cabinet on 31st March, 2020. They are the:

- (9) Trade Marks Bill 2020;
- (10) Patents Bill 2020, and
- (11) Designs Bill 2020

The Madrid Protocol was established in 1989. It was created to address those defects in the Madrid Agreement and to make the international system of registration of marks more flexible and compatible with the domestic legislation of individual States.

The Paris Convention was established in 1883 and was created to provide protection for industrial property, including:

- (11) Patents;
- (12) Trademarks;
- (13) Trade Names;
- (14) Industrial Designs;
- (15) Utility Models;
- (16) Surface Marks;
- (17) Geographical Indications; and to
- (18) Repress unfair competition.

Honourable Members and members of the public, we have before us, as I mentioned earlier, Ms. Mele Rakai and Ms. Mere Navurai of Sherani & Co.

(Introduction of Committee Members by Mr. Chairman)

With those words of introduction, Madam, a very brief introduction of your good selves and the floor is yours. Thank you.

MS. M. RAKAI.- Mr. Chairman and Honourable Members of the Committee, these are submissions that are being made on behalf of Sherani & Company, which is a law firm based in Suva and was founded in 1952.

The firm has been in existence for about 68 years. It has three partners, namely; Mr. Hemendra Nagin, seasoned Practitioner, with over 42 years of experience; and two recent partners, Mr Ritesh Singh and Ms. Mele Rakai. The firm has two associate lawyers and about 24 support staff.

The firm provides various ranges of legal services to its clients in Fiji, the region and the world. It has a Litigation Team which all the lawyers are a part of, and a very large Conveyancing Team. Part of the services that we provide is the provision of trademark or intellectual property to our clients, and those are currently handled by two of our staff, one of which is before the Honourable Members of the Committee this morning, Ms. Mere Navurai.

For the registration of trademarks as Mr. Chairman has already mentioned, its processes are currently provided under the Trade Marks Act 1933. Now, it is largely a paper-based system, not electronic, so everything is done manually.

We received the invitation from the Committee to make submissions on the two Treaties, and we are very honoured to make the submissions on the relevance of these three Treaties to our work. I am not going to go into the extent of the years these Treaties came into existence, as Mr. Chairman had already mentioned that, but I will basically talk very briefly on how they affect our work.

The Paris Convention creates international reciprocity and other benefits for trademark registrations. The Madrid Agreement and Protocol indicate a type of international registration for a mark.

In our submission, we will first begin by talking about the firm's experience with the current Trade Marks Act 1933, and its experience on the services that are provided by the Trade Marks Registry. These are submissions that are being made on behalf of the firm, and may not necessarily reflect the views of other firms and other organisations on this matter.

What is our experience with Fiji's Trade Mark Act 1933? As the Act was adopted in 1933 during the colonial period, it provides for independent registration of goods marks, not service marks in Fiji, and it is something that we adopted from our colonizer. In Fiji, goods are still classified according to the old British classes, so we currently have 50 classes.

Our priority is not based on filing under the existence of the prior application, so it puts the registrar on notice, if any of the applications are opposed or there is a possible conflict.

Now, as with most registries in Fiji, the Trademarks Registry is one that is not computerised. So, our searches are still conducted manually...

There is often a lack of resources, relative to the volume of filings, so you will see that if you file or try to register a trademark in Fiji, it takes several months to several years for a registration application to be completed.

For the Firm, the only trademark application we have had pending is the one that we lodged in 2010. It is almost 10 years and we still have not received an update on the application that we have lodged on behalf of our client, and this is despite follows ups that we have made by way of letter, by way of follows ups, by Mere going to the Registry, or even calling the Registry. So those are some of the experiences that the Firm had with the current Act and the services of the Registry.

As Mr. Chairman had stated, Cabinet has already approved the Trademarks Bill 2020, the Patents Bill 2020 and the Designs Bill 2020. For the purpose of submission to the Honourable Committee this morning, we have not been provided with those three pieces of proposed legislation so because we have not been provided with those, we are not in a position to make submissions on that. So our submission will be limited to our experiences with the Registry and whether there is a need to ratify the two Treaties or not.

However, at the outset, what we would like to submit is that, the Registry could always be empowered with better resources so that it could improve the efficiency of the services that it currently provides to the stakeholders.

If you would go to the Trademarks Registry today to lodge a trademark or to make a search, you would go to the Registry which is at Level 3 at Suvavou House, you fill a form and it is served by two or three staff at the Registry counter. It generally takes about 40 minutes to an hour to be served.

More often than not, when you go and search at the Registry, the files are missing, they are able to assist you. Sometimes they are able to assist you but more often than not, the files are missing and you need to come back later to see if they have located the file.

If you need to go to the Trademarks Registry, payments are made at Level 5 and the Registry is at Level 3. If you want to file any application, a counter statement or an opposition, it is filed at Level 9. Those are some of the issues that we currently face at the Trademarks Registry.

More often than not, as other registries, when Mere goes to the Trademarks Registry, there is no running water, there is no electricity and the Registry closes for the day. Those are some of the disruptions to the services. When these services are disrupted, it also affects the timeline delivery that we have for our clients. So the Registry is closed, obviously we are not able to conduct our searches and we are not able to provide timely delivery to the clients, who come to the Firm for the provision of legal services.

Furthermore, from 2000 onwards, there has been no Tribunal. So if a trademark is contested, what we found from our experience is that, there is an opposition, there is a counter statement that is filed and there is no outcome by the Trademarks Registry. So for the experience of the Firm, we have a matter that was pending in 2018. We advertised, it was opposed and the opposition left the counter statement file and all the relevant documents are before the Registry.

However, from 2018 till now, we still have not received an update from the Registry on the status of our clients' trademark. So what that means is, we are unable to advise our clients on the status of their registration of their trademark. They tend to then question us on the efficiency of the services of the Trademarks Registry. Those are some of the challenges that we face.

The other challenge that we face is that, the Act itself is quite outdated. They adopted it during the colonial period which is 1933. It has been 87 years since then and we are still using the Act. There is a need to revise the legislation.

We are happy that Cabinet has approved the three Bills. But it would be important if we were provided with the three Bills so that we could have a look at whether the concerns that we have, have been improved in those proposed three pieces of legislation.

Mr. Chairman and Honourable Members of the Committee, obviously you are interested in what our stand is on the Treaties. Why do we propose that Fiji is in a position to ratify the Treaties or not? The Firm has been around for about 68 years. Sherani & Company has been operating in Suva for 68 years and those number of years, we have served many clients from Fiji, from the region and clients from the world.

We have not once utilised the three proposed Treaties - the Paris Convention, the Madrid Agreement and the Madrid Protocol. Now, because we have not utilised or used those three Treaties, we are not very familiar with the Treaties, apart from the fact that we have read about them. And because we are not familiar with them, our submission is basically based on what we read about the Treaties. In terms of experience, we have not used them. So our humble submission to the Honourable Chairman and Honourable Members of the Committee is that, our submission will basically be narrowed down to what we read about the three proposed Treaties.

As the Honourable Chairman had submitted, the three Treaties are supposed to make foreign registration of trademarks much easier. If you were to compare the Paris Convention with the Madrid Agreement and the Madrid Protocol, you will see that the scope of the Paris Convention is very wide. It is not limited to only trademarks, it covers other forms of industrial property, as the Honourable Chairman had mentioned. So it covers copyrights, patents and it also covers trademarks.

One of the advantages of using the Paris Convention is that, it provides you with the same protection if you were from that country. An example is, if you are a US-based business and you want to register a trademark in France, you would be accorded the same protection that a French corporation would be given, subject to certain restrictions, making sure that the trademark does not go against loyalty and public order for that matter.

The other advantage of the Paris Convention is that, it includes priority rights. What that means is, if you file in one of the member countries, that application will be taken from the date you filed and it can be extended as well. Now, the only downside to using the Paris Convention is that, you need to register country-by-country. As I talk about the other two pieces of Treaties which are the Madrid Protocol and the Madrid Agreement, you can see the advantage of using the other two, as opposed to the Paris Convention.

Now, the Madrid Protocol and the Madrid Agreement are very different from the Paris Convention because it has really streamlined international registration of foreign trademarks, meaning that you can apply, you can file a single international trademark and it could be potentially extended to many foreign countries. For any other customers or clients that we serve, you know the key word is cost-cutting. You want to reduce your costs so if you are going to have to register only once, it means cost is greatly reduced as opposed to the Paris Convention where you have to register country-by-country.

The Madrid Protocol and Madrid Agreement in comparison to the Paris Convention is cost efficient. It is because you only register once and you extend. However, the disadvantage of using the Madrid Protocol and Madrid Agreement is that, if there is a cancellation in any of the home countries, then it automatically will also cancel the subsequent international registration. So that is the downside to using the Madrid Protocol and Madrid Agreement. Those are perhaps, in brief, the advantages and disadvantages between the two.

Now, I am coming to the important part of my submission which includes the question; what would Fiji need to implement the two Treaties. In order for Fiji to implement the two Treaties, apart from looking at which of the three is better, we would have to make sure that we have the six requirements in place.

The first requirement is ensuring that we have:

- compatible local legislation;
- an institutional organisation;
- staff that are properly trained to use the two Treaties, whichever it is, whether it is the Paris Convention, or the Madrid Agreement and the Madrid Protocol;
- operational procedures for handling international applications in the registration system;
- agreements in place for the Treaties and their respective bodies, so it is going to be the Madrid Agreement, ensuring that we have proper agreements with WIPO; and
- making sure that the national office has an online system for registration.

As we have already submitted earlier on, Mr. Chairman and Honourable Members of the Committee, we have been informed that Cabinet has approved the Trade Marks Bill 2020, Designs Bill 2020 and the Patents Bill 2020, but have not been provided copies of those Bills so with respect, we need to submit that.

Out of the six requirements that Fiji will need in order to ratify the new treaties, we do not have any of the sixth at the moment and until we have those sixth requirements we are not in the position to ratify the three Treaties, so to speak today.

What we do have today? What do we have this morning? What we have this morning is the Trade Marks Act 1933. We have the Trade Marks Registrar at Suvavou House and we have the staff who are employed there. We have the trademarks system that is in place, we have trademarks experience, experiences of the good and the bad from 1933 until to date and that is what we have.

In respect to our submission, why do we not have the sixth requirement to implement and ratify the three Treaties? We have with us the current legislation where we have a team that is already in place. Why do we not empower them? Why do we not revise our laws? Why do we not improve our systems?

Why do we not better train our staff? Why do we not improve the resources in the Trademarks Registry, which is improving the system from manual base or computerised system and improving our delivery time based on our past experience?

When we improve what we currently have, realistically we are in a better position to consider whether we are in a better position to ratify the proposed Treaties.

Honourable Chairman and Honourable Members of the Committee, our respectful submission this morning from the Firm is that, we already have a system in place. Can we improve that?

When we improve the efficiency of the services of the Trade Marks Registry, it then reflects well on the Registry, it reflects well on the laws that we have and it reflects well on a country and when the services or the efficiency is improved, from it also would flow to the stakeholders. Then we, at Sherani & Company, would be able to then give timely advice to our client on the registration process about trademarks and not have trademarks that have been pending for 10 years or two years. If that is improved and the system is improved, it is also a better reflection on all of us, including the stakeholders that utilise the services of the Registry.

So our submission and coming to the end of my submission is, today we are not in the position to ratify the two Treaties, that is our humble submission. Perhaps, we will one day, but certainly not today.

Those are our submissions, Honourable Chairman and Honourable Members of the Committee, unless if you have any questions so ask.

MR. CHAIRMAN.- Thank you, Ms. Rakai, for that very informative submission. I am very much surprised to hear that with today's advanced technology, we still have not been able to digitize the system. Certainly, the other thing is not being able to centralise the officers, like you have said, they are all at different levels in the Suvavou House. I would imagine that they would have been all centralised now.

Apart from that, Honourable Members, do you have any questions for the two ladies?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, if I may.

MR. CHAIRMAN.- Yes, go ahead Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- Thank you Ms. Rakai and Ms Navurai. I understand that Sherani & Company, in terms of Intellectual Property, it deals primarily with trademarks, is that correct?

MS. M. RAKAI.- Yes, that is correct.

HON. LT. COL. P. TIKODUADUA.- I am curious because the intention of the Madrid Protocol on this matter for Fiji and the argument that has been made to the Committee is that, it makes it easier for foreign companies to register here, as you have explained. Now, I just want to know, as far as Sherani & Company is concerned, how many trademarks from Fiji do you register overseas, let us say, in the region - Australia and New Zealand? Do you register any trademarks at all?

MS. M. RAKAI.- Thank you, Honourable Tikoduadua, Honourable Chairman and Honourable Members of the Committee. In respect of the question, most of the clients that we have, we deal with our local registration of trademarks here in Fiji, we do not register outside. If it from outside the country, we utilise the services of law firms from those respective countries.

HON. LT. COL. P. TIKODUADUA.- Alright, which means that your Firm does not handle any registration of trademark from Fiji with your counterparts, for instance, in Auckland or Sydney or wherever for that matter. You would not have any indication of that?

MS. M. RAKAI.- Honourable Chairman and Honourable Members of the Committee, in respect to that question, at the moment, we do not register outside of the country. We received instructions to register locally in Fiji.

HON. LT. COL. P. TIKODUADUA.- What about the other way round? What about clients from abroad registering trademarks and patents here through Sherani & Company?

MS. M. RAKAI.- We do received instructions.

HON. LT. COL. P. TIKODUADUA.- Alright, is there any significant number?

MS. M. RAKAI.- Honourable Chairman and Honourable Members of the Committee, we have a range of clients. So, in terms of numbers, we may receive instructions a few a month.

HON. LT. COL. P. TIKODUADUA.- Now, for those ones, can you give me a relative time because you said the registering process here, as we have been told by other firms, the Fiji IP Office seems to be of the opinion that they are ready to have it now. They are the only ones saying that and I do not agree with them personally due to my own understanding of what they have and you are also saying that here today.

The businesses of trademark is covered in three floors of the same building. Because things are so manual right now, how long does it take? I mean, currently in the cases that you have lodged with Trademarks Office and have yet to be approved, how long does it take for these applications to be processed? Do you have pending ones that are beyond 12 months there already?

MS. M. RAKAI.- Honourable Chairman and Honourable Members of the Committee, Mere has just indicated to me that it takes several months. Now, in our submission, we have stated that a general application to lodge a trademark takes between several months to several years. We have given two examples. The oldest trademark application that we have pending is the one that we lodged in 2010 and we have not received an update.

In another matter, we lodged an application in 2018 and it was opposed. All the relevant counter statements and notice of opposition have already been filed, we have not received a response to-date. So, 2010 and 2018, so about two years and 10 years is pending. But for applications that do go through, it takes several months. So, Mere has indicated that it takes about three months to six months. If it is a trademark that goes through, three to six months to several years.

HON. LT. COL. P. TIKODUADUA.- I understand you have read a little bit of the Madrid Protocol because it is significant. If you are talking about a 10 years delay the Madrid Protocol allows only up to 12 months, if not, 18 months before any application from abroad becomes automatically approved in the receiving State. Are you aware of that?

MS. M. RAKAI- That is correct. That is why in coming towards our conclusion, we looked at whether Fiji is in a position to ratify the three Treaties, we listed out the six requirements and we said that out of the six requirements, we have not fulfilled any of them. So that is why our conclusion, Honourable Chairman and Honourable Members of the Committee is that, we are not in a position to date to ratify the Treaties at all.

Apart from the fact that we have a manual system, there are six requirements that need to be fulfilled. We do not have any of the six to date, including a compatible domestic legislation, we do not have that either.

HON. LT. COL. P. TIKODUADUA.- Thank you, Ms. Rakai and Ms. Navurai. Thank you, Mr. Chairman.

HON. LT. COL. P. TIKODUADUA.- Thank you, Ms. Rakai and Ms. Navurai. Thank you, Mr. Chairman.

MS. M. RAKAI.- Thank you, Honourable Tikoduadua.

MR. CHAIRMAN.- Honourable Members, any further questions?

HON. DR. S.R. GOVIND.- Yes, Honourable Chairman. Under the Madrid Protocol, once we ratify, then businesses can register from their own countries. I just want to know in terms of revenue, what sort of revenue figures? You may not be able to get that from overseas companies that are registering through you now. Is that significant or not so significant? So in terms of revenue loss, what are your thinking in terms of revenue loss to your company?

MS. M. RAKAI.- Honourable Chairman and Honourable Members of the Committee, I think that is a very, very good question. How does that affect the business? How does that affect a firm like ours?

One of the advantages of the Madrid Protocol is that, a single international trademark registration can be extended to its members. What that means is that, clients who used to come to the firm before, once Fiji ratifies the Madrid Agreement and Protocol, they do not need to come to Sherani & Company. That is the long and short of it.

They do not need to come to us. They just apply directly to their home country and they can ask for a registration to be extended to the member countries, so there will be a reduction of legal services, there would be reduction of clients that come to us because there is no need for them to come to us. That is one of the advantages of the Madrid Agreement and Protocol. It streamlines the international processes. So, in a way, it would reduce the number of clients that the firm would currently have. That is a good point in terms of how will it affect the business for the stakeholders. I mean, we are one of the many firms that is based in Suva.

MR. CHAIRMAN.- Does that answer your question, Honourable Dr. Govind?

HON. DR. S.R. GOVIND.- Yes, thank you. I just wanted to ask; is it significant revenue loss in terms of millions or in terms of thousands of dollars?

MS. M. RAKAI.- Thank you, Honourable Chairman and Honourable Members of the Committee. In terms of dollar figures, how significant it is? You asked whether it is going to be in millions or is it going to be in thousands.

In order to answer that question, I have to put some context. Sherani & Company has been around for 68 years. We do trademarks, we do provide intellectual property services, but that is not a large part of our business.

As compared to Munro Leys, that has a very large intellectual property division, as compared to Siwatibau & Sloane that has a very large intellectual property business, it is one of the services that we provide, it is not the main service that we provide. So, in terms of business, it is going to affect us in terms of thousands of dollars, but I cannot say the same for the other law firms that deal primarily in this business. It would affect their businesses a little bit more than it would affect us.

I think in terms of the question, we need to put the context in terms of how big is the intellectual property division for the different firms or the different stakeholders. For us, it is just one of the many services that we provide to our clients, so obviously it is going to affect us in terms of thousands, if we were to ratify the two Treaties today.

HON. DR. S.R. GOVIND.- Thank you very much.

MR. CHAIRMAN.- Thank you, Honourable Members, time has caught up again. I take this opportunity to thank Ms. Rakai and Ms. Navurai for their submissions this morning. If you have any departing remarks, the floor is yours.

MS. M. RAKAI.- Honourable Chairman and Honourable Members of the Committee, we are very grateful to be given this opportunity to make submissions. We do hope that when the Bills are ready, that we would be given an opportunity to make submissions again so that we can see whether the proposed legislations are, indeed, compatible. Thank you very much for this opportunity.

MR. CHAIRMAN.- Thank you and may you have a blessed day.

The Committee adjourned at 11.22 a.m.

The Committee resumed at 11.29 a.m.

Online Interviewee/Submittee: Ministry of Foreign Affairs

In Attendance:

- | | | | |
|-----|---------------------|---|-----------------------------------|
| (6) | Mr. Peter Emberson | - | Director Multilateral |
| (7) | Ms. Keleni Seruvatu | - | Principal Admin Officer |
| (8) | Ms. Karyn Gibson | - | Principal Foreign Service Officer |
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MR. CHAIRMAN.- Thank you, Honourable Members. A warm welcome to members of the public who are listening in on this livestream at this hour. Before us we have the Ministry of Foreign Affairs Team led by Mr. Peter Emberson. Welcome, Sir.

For the benefit of the general public, the submission before us this morning by the Ministry of Foreign Affairs is on the Madrid Agreement which was established in 1891 to provide a mechanism that would allow for a single and inexpensive international trademark registration and to eliminate the need for filing, prosecuting or maintaining separate registrations in multiple countries. It came into force in 1892.

Fiji's Intellectual Property (IP) Laws dates back to 1933. Fiji is in the process of modernising its IP laws, hence the three Bills endorsed by Cabinet on 31st March this year. The Bills are, the:

6. Trade Marks Bill 2020;
7. Patents Bill 2020; and
8. Designs Bill 2020.

The Madrid Protocol was established in 1989. It was created to address those defects in the Madrid Agreement, and to make the international system of registration of Marks more flexible and compatible with the domestic legislation of individual States.

The Paris Convention was established in 1883. It was created to provide protection for industrial property, including:

- (g) Patents;
- (h) Trademarks;
- (i) Trade Names;
- (j) Industrial Designs;
- (k) Utility Models;
- (l) Surface Marks;
- (m) Geographical Indication; and to
- (n) Repress unfair competition.

Honourable Members, we have before us Mr. Peter Emberson and his Team. For your benefit, Sir, may I introduce the Honourable Members.

(Introduction of Committee Members by Mr. Chairman)

Mr. Peter Emberson, the floor is yours. Thank you.

MR. P. EMBERSON.- Thank you, Mr. Chairman.

(Introduction of Ministry of Foreign Affairs Officials by Mr. Emberson)

Thank you very much for the honour to make this presentation on the three important Treaty regimes that you have alluded to, Sir. I will now hand over to Ms. Keleni Seruvatu, who will be leading us on the first part of our presentation before she hands over to Ms. Gibson.

Thank you again, Honourable Chairman, for the introductions and I will now hand over to Ms. Seruvatu.

MS. K. SERUVATU.- *Vinaka*, Mr. Chairman and the Honourable Members of the Standing Committee. On behalf of the Honourable Minister for Foreign Affairs and the Acting Permanent Secretary for Foreign Affairs, it is our privilege to come before you this morning to present our submission on these multilateral Treaties.

For the purpose of this presentation, the Ministry has opted to merge the Paris Convention for the Protection of Industrial Property and the Madrid Agreement and Protocol in highlighting the significant implications of Fiji's ratification of these Treaties, on the global context and the sustainable development agenda.

By way background just to complement the fact that you have rightly and sufficiently highlighted pertaining to these two multilateral Treaties, Mr. Chairman and Honourable Members of the Committee, the Treaties that have been said earlier, the Paris Convention for the Protection of Industrial Property 1883 is one of the earliest multilateral treaties which is still in force today. The Convention applies to all aspects of industrial property, such as the application of patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition.

The Madrid System which comprises of the two - the Madrid Agreement concerning the International Registration of Marks 1891 and the Protocol Relating to the Madrid Agreement 1995. Both are essential and significant features of multilateral legislation and arrangements that complement the Paris Convention.

The Madrid System, we would like to highlight, makes it possible to protect the mark in a large number of countries by obtaining an international registration that has effect in each of its designated contracting parties.

Mr. Chairman and the Honourable Members of the Committee, together, the Paris Convention and the Madrid System provide a holistic protection of the Fijian Intellectual Property (FIP).

Allow me to speak on the global government structure of Intellectual Property (IP), that is, the World Intellectual Property Organization (WIPO) which Fiji joined in 1972. WIPO, as it is known is

short, is a global forum for IP services, policy, information and co-operation. Fiji has also acceded to a number of WIPO-related Treaties, such as the:

- (a) WIPO Convention 1971;
- (b) Berne Convention 1971;
- (c) Rome Convention 1972;
- (d) Phonograms Convention 1972; and
- (e) TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights.

Fiji is a member of the WIPO General Assembly, the WIPO Conference and the Berne Union.

The Fiji Permanent Mission to the United Nations Organisations in Geneva are accredited to WIPO and they represent Fiji on WIPO-related matters.

Mr. Chairman and the Honourable Members, we would like to speak to you on why Fiji should ratify the Paris Convention, along with the Madrid System. The Paris Convention, as we have been sufficiently informed, guarantees the protection of IP beyond our national borders by having our local patents, trademarks and designs recognised and protected in other countries. We believe that the Convention is key to counter unfair trading practices, such as in situations where foreign industries would replicate and manufacture local patents without our consent.

The Convention also safeguards our infant industries and local designers in light of the substantial demand for trade under the IT platform or e-commerce.

As for the Madrid System, Mr. Chairman and Honourable Members, as we have also been informed, the Madrid System also allows a person to register a trademark with any IP Office. This registration enables the IP Office, to internationally register the trademark via the WIPO Madrid System.

In ratifying the Madrid System, Fiji will join more than one hundred countries who represent more than 80 percent of world trade, with potential for expansion as membership grows. This is another opportunity that Fiji may wish to explore through its subscription to the Paris Convention and the Madrid System.

I will now speak on the significance of IP in the context of sustainable development. On these, Mr. Chairman and the Honourable Members, I wish to refer to the comments or the sentiment of the WIPO Director-General in saying, and I quote:

“Intellectual Property as a policy exists to create an enabling environment for, and to stimulate investment in innovation; to create a framework in which new technologies can be traded around the world and shared.”

Mr. Chairman and the Honourable Members, this is the crux of the issue that we have before us this morning in Fiji’s ratification of these multilateral Treaties. The IP, as it pertains to fostering innovation, is covered under SDG 9, which is to build resilient infrastructure, promote sustainable industrialization and foster innovation.

As we venture into the last decade of the implementation of 2030 Agenda, the world is now challenged with exposure to the next generation of technologies in every field from biotechnology, blockchain and digital connectivity, to material science, artificial intelligence and more. And currently COVID-19 has presented newer challenges for us to find innovative ways to address the global challenges that we now face.

In ratifying the Paris Convention and the Madrid System, Fiji is taking steps to counter these challenges that we have. And also, as we ratify the Paris Convention, Fiji will now join 176 other countries, including countries from the Pacific region - Papua New Guinea, Tonga and Samoa. Fiji's ratification of the Madrid System, together with the Convention, offers a holistic measure and protection for Fijian IP.

I wish to reiterate the Ministry's submission on these two multilateral Treaties in saying that these Treaties align to Fiji's strategic objectives of global leadership at the various regional and multilateral forums. Fiji has ratified four conventions of human rights, the International Labour Organization Conventions, among other key international instruments.

Last year, we also were the first to ratify the Singapore Convention on the use of mediation for cross-border commercial transactions. In keeping with this momentum, it would be beneficial for Fiji to ratify the Paris Convention and the Madrid System accordingly.

Mr. Chairman and Honourable Members of the Committee, it is our recommendation that Fiji be a contracting party to both, the Paris Convention and the Madrid System, which includes the Madrid Agreement and the Madrid Protocol for the purpose of easing the process of doing business in Fiji and protecting intellectual property in Fiji and abroad. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you.

MS. K. SERUVATU.- If the Committee wishes to raise any issue on what we have shared, we will be obliged to discuss but if the Committee wishes to reserve its comments to the end of the presentation, then I now invite Ms. Gibson to present on the Protocol.

MR. CHAIRMAN.- Yes, please. We will reserve questions on discussions to the very end of your entire submission. Thank you.

MS. K. SERUVATU.- *Vinaka*, Mr. Chairman.

MS. K. GIBSON.- Thank you, Mr. Chairman and Honourable Members of the Committee. My presentation this morning is on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.

By way of background, Fiji signed the Convention on the Rights of the Child (CRC) on 2nd July, 1993, and ratified the CRC on 13th August, 1993.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict is an international instrument that States parties to the CRC may ratify. It

aims to protect children from recruitment and use in hostilities. It was adopted by the General Assembly on 25th May, 2000, and entered into force on 12th February, 2002.

In terms of the scope of the Convention, the Optional Protocol is a commitment to increase the protection of children from involvement in armed conflict, and requires five considerations listed on your paper, as follows:

- (1) States will not recruit children under the age of 18 years to send them to the battlefields.
- (2) States will not conscript soldiers under the age of 18 years.
- (3) States will take all possible measures to prevent such recruitment, including legislation to prohibit and criminalise the recruitment of children under the age of 18 years and involve them in hostilities.
- (4) States will demobilise anyone under the age of 18 years conscripted or use in hostilities, and will provide physical, psychological recovery services and help their social reintegration.
- (5) Armed groups distinct from the armed forces of a country should not, under any circumstances, recruit or use in hostilities anyone under the age of 18 years.

Mr. Chairman and Honourable Members, as at 26th May, 2020, 170 countries have ratified the Optional Protocol. There are 17 countries that have neither signed nor ratified, and 10 countries that have signed but are yet to ratify. Fiji signed the Optional Protocol on 16th September, 2005, and has yet to ratify the Optional Protocol.

Mr. Chairman, allow me now to discuss the applicable national policies to the Optional Protocol. Given that Fiji is party to the CRC and signed on 16th September, 2005, a ratification will further strengthen Fiji's commitments and obligations under the CRC and complement relevant existing national laws and policies.

The Employment Relations Act 2007 prohibits forced labour of children. The Act defines a child as a person who is under the age of 18 years and defines forced labour as including, any work or service exempted in accordance with compulsory military service laws for work of a purely military character. Therefore, consistent with the Optional Protocol, the laws of Fiji prohibit compulsory military service of children under the age of 18 years.

With respect to the age of eligibility for military service, section 7(3) of the Republic of Fiji Military Act 1949 provides that no person who is under the age of 18 years must be enlisted in the Military Forces, provided that the Commander of the Republic of the Fiji Military Forces may permit the enlistment of such number of persons of or above the age of 16 years.

Fiji's established age of eligibility is consistent with the Optional Protocol's call for a set minimum age of voluntary recruitment. If children below the age of 18 years are enlisted, the Optional Protocol further requires that safeguards are implemented to ensure that they do not take part in direct hostilities. To the best of our knowledge, Fiji meets this criteria as it does not engage officers under the age of 18 years in direct hostilities.

Therefore, consistent with the Optional Protocol, the laws of Fiji prohibit compulsory military service of children under the age of 18 years, and provide an effective legal framework for ensuring compliance with the minimum requirements of the Optional Protocol.

Mr. Chairman and Honourable Members, Fiji's legacy in peacekeeping is, in itself, a remarkable feat. It has acted as a catalyst for our elevation in the international community and our global leadership in foreign policy strategy. Fiji's ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict is in line with the legacy. It is not only consistent with the laws of Fiji, but it also reflects the truly Fijian value system of protection for our children and our commitment to it. Thank you, Sir.

MR. CHAIRMAN.- Thank you. Can we have your last submission?

MS. K. GIBSON.- Yes, that was it, Mr. Chairman.

MR. CHAIRMAN.- Thank you all presenters for your informative submission this morning.

Honourable Members, do you have any questions for the submitters? Honourable Pio Tikoduadua?

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. First of all, I would like to thank our presenters today from the Ministry of Foreign Affairs.

In terms of the first presentation on the Madrid Protocol, how much does the Ministry expect in terms of revenue when we accede to this Protocol because right now, much of the IP applications in Fiji are from locals, we have very little coming from abroad. You said, "We will be compatible with so many other hundreds of countries around the world that have not aligned to this Protocol or have signed it", but what significant gain will we get? We are talking here about the benefit of being with the rest of the world which is one thing, but what about benefits to our people - benefit in terms of revenue? I keep asking that question, so I am interested in your thoughts.

MR. P. EMBERSON.- Honourable Member, if I may be allowed to take this question, the Solicitor-General's Office look after this particular area of the Convention. However, how we will work from now on is of benefit to our knowledge especially, that belongs to our people. How do we ensure that we protect this knowledge and innovative practices that belongs to segments of our community or individuals?

I think this is something that we will work through, through this current regime and to ensure that our people are safeguarded against the threat of their knowledge. So, I think for us, we will need to work through understanding the full benefits and how we can access the full returns for the benefits of our people and we will need to work closely with the Solicitor-General's Office, to work through a proper formula so that the benefits come back to our communities. It is really to safeguard against the Intellectual Property theft.

HON. LT. COL. P. TIKODUADUA.- My second question is on the Optional Protocol to the Convention on the Rights of the Child. I am interested, again, and I had posed this question to many

others who have come before us, and I am interested in your thoughts, particularly from Ministry of Foreign Affairs.

I got the impression from your presentation that you are quite alright with the powers of the Commander to recruit soldiers between the age of 16 years and 18 years. As far as the Protocol is concerned, do you believe that Fiji's position in terms of ratification would be in a much better position, if we actually review those laws, not to allow any conscription or voluntary recruitment into the RFMF of children below the age of 18 years? Would it be more perhaps, of a higher regard for Fiji, if it is actually did that? I am interested to know your views.

MR. P. EMBERSON.- Honourable Member, even though the RFMF Act is quite clear on the age eligibility of military service section 7(3), and I think it seems to be working very well and Fiji meets this criteria. It does not engage officers under the age of 18 years in areas of direct hostilities.

I think anything below the age of 18 years, who might be contrary to the RFMF Act 1949 and from the Ministry of Foreign Affairs' perspective, our coming on board in support of this Optional Protocol is very much attuned to international perspective, Sir.

HON. LT. COL. P. TIKODUADUA.- That is all, Mr. Chairman, thank you.

MR. CHAIRMAN.- Thank you. Honourable Dr. Govind?

HON. DR. S.R. GOVIND.- Thank you, Honourable Chairman. I also like to thank the presenters for their comprehensive presentation. I would just like to know the draft Bills that had been presented to Cabinet, when do you expect to be tabled in Parliament for debate? Is there any timeframe for that?

MS. K. SERUVATU.- Thank you, Honourable Member. In terms of the timeline for the submission of the Bill to Parliament, we will be guided by the parliamentary process that will be undertaken in terms of the timelines the Bills were submitted.

HON. DR. S.R. GOVIND.- Thank you.

MR. CHAIRMAN.- Honourable Members, since there are no other questions, I wish to take the opportunity to say 'thank you' again to Mr. Peter Emberson and the team from the Ministry of Foreign Affairs for acceding to our request to come before us this hour. Should we have any other pressing questions, if you would oblige the Secretariat will be writing to your good selves through email. I thank you again and if you have any departing remarks, the floor is yours, Mr. Emberson.

MR. P. EMBERSON.- Thank you very much, Mr. Chairman and Honourable Members of this Committee. We thank you for the opportunity and the privilege to come before you, and we look forward to receiving further queries, should you wish for us to make clarifications. Thank you, again, Sir.

The Committee adjourned at 11.57 a.m.

The Committee resumed at 12.17 p.m.

Online Interviewee/Submittee: Methodist Church of Fiji

In Attendance:

- | | | | |
|-----|----------------------------|---|---|
| (1) | Mr. Apisalome Tudreu | - | Secretary for Christian Citizenship at the Social Services |
| (2) | Mr. Waisake Ravatu | - | Secretary for Education |
| (3) | Reverend Sainimere Degei | - | Secretary for Methodist Youth & Fellowship |
| (4) | Reverend Sitiveni Tua | - | Deputy Secretary for Christian Citizenship at the Social Services |
| (5) | Reverend Pita Qasevakatini | - | Secretary for Young People's Department. |
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MR. CHAIRMAN.- Thank you, Honourable Members. For the benefit of the general public who are listening in to this livestream at this hour, before us - the Standing Committee on Foreign Affairs and Defence, a very warm welcome to Reverend Pita Qasevakatini and the Team from the Methodist Church of Fiji and Rotuma.

For the benefit of the general public, the meeting at this hour is to submit on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict which Fiji signed on 2nd July, 1993 and ratified the Convention on the Rights of the Child (CRC) on 13th August, 1993.

The Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict is an international instrument that States parties to the CRC may ratify. It aims to protect children from recruitment and use of hostilities. It was adopted by the General Assembly on 25th May, 2000, and entered into force on 12th February, 2002.

Thank you, Reverend Qasevakatini and the Team, for acceding to our request. Before you proceed, I wish to introduce my Committee.

(Introduction of Committee Members by Mr. Chairman)

With those words of introduction, Reverend Qasevakatini, a brief introduction of your good self, your team and the floor is yours. Thank you.

REV. P. QASEVAKATINI.- Thank you very much. The Honourable Chairman and Honourable Members of the Standing Committee on Justice Law and Human Rights, on behalf of the Methodist Church in Fiji and its President, I would like to convey our sincere gratitude for giving us this opportunity to present the Methodist Church of Fiji's views on this very important issue.

First of all, before I give the floor to the presenter, I would like to introduce the Team to you.

(Introduction of the members of the Methodist of Fiji by Rev. P. Qasevakatini)

I will now give the floor to the presenter from our side, the Secretary for Education, Mr. Waisake Ravatu.

MR. W. RAVATU.- Thank you, Sir. Mr. Chairman, and Honourable Members of the Standing Committee, I understand that you have copies of our presentation which was forwarded to you and may I seek clarification. We understand that we have 30 minutes for our presentation and then questions and answers to follow. Can we just get that clarification first, Sir?

MR. CHAIRMAN.- Yes. Thank you, Mr. Ravatu, you have 30 minutes for your submission.

MR. W. RAVATU.- Thank you very much and I thank you for the invitation. Our apology for not having met the initial indication and we appreciate this second time to present to you.

Sir, our presentation is divided into four main areas. First, is the presentation on the issue from the Church's context. We believe this is the whole point of our getting invited to do our presentation and that is important, to try and present things from the context of the Methodist Church or just Christian in general.

After that, we will try and raise issues on a couple of the Articles already in the Protocol before we touch on few other areas in Item 4, and we will then conclude with six recommendations. So, that constitutes a brief of what I intend to do in this first few minutes.

Mr. Chairman and Honourable Members, starting with Item 2 - the issue from the Church's context. We understand and this is very important for us to raise the sanctity of human life. The Church believes that all of creation, including man belong to God and that we are just custodians of His creation for Him as revealed in His Words for which we will all give account to Him on decisions that we make. I quote from Psalms 24:1 which says, and I quote: "The earth is the Lords...the world and all who live in it and in Romans 14:10-12, it says, and I quote: "For we will all stand before God's judgment seat...So then each of us will give an account of himself to God."

Furthermore, Sir, we believe that man was firstly created by the God Almighty in His image for a particular purpose, and I quote Genesis 1: 27 which says, "God created man in His own image...male and female He created them."

Sir, as if to confirm the value that our Creator has for us, His special creation, He has set a special commandment in the Ten Commandments for man's protection. I quote from Exodus 20:13 which says: "Thou shall not kill". Despite man's decision to live outside of God's loving intentions for us. He has continued to pursue us, to enable us to experience His original intentions for us, and I quote from John 10:10: "...I have come that you may have life, and have it to the full."

Sir, all these, to the Church suggest that we must carefully consider the decisions that we make or become a party to, as man does not belong to leaders or governments, but to Almighty God Himself.

Sir, we believe the universally accepted and defined declaration for a child is, and I quote: "A person who is under the age of 18 years" and as such, should be accorded all the entitlements of a child, irrespective of where he or she is in that child spectrum, right from Year1 to Year 17. And if he or she is even 17 years and 11 months, at the other end of the spectrum, it is important that we see that that person is still a child.

The Scriptures, Sir, says in Psalms 127:4, and I quote: “Children are a gift from the Lord.” Sir, if children are precious gifts from God Himself, then the onus is on us to cherish, value and appreciate them.

Any denial they feel, or mistreatment on our part, must mean offending the Giver of this most precious gifts and we believe there are grave consequences individually and collectively, and we believe rightly, Sir, for the abuse of these priceless gifts. In Mathew 18:6 it says and I quote:

“But if anyone causes one of these little ones ...to sin, it would be better for him to have a large millstone hung around his neck and to be drowned in the depths of the sea.”

Sir, we believe, therefore, that we all should take heed of the stipulations of our national Constitution, the 2013 Constitution of the Republic of Fiji, which specifically provides for the rights of a child to be protected from abuse, neglect, harmful cultural practices, any form of violation, inhumane treatment and punishment, and hazardous and exploitive labour. Sir, we believe being in the Military makes most of our children susceptible to most of the above.

We believe children belong in the home and to society and not the military. They are still physically and emotionally immature and easily manipulated, very significant consideration in the context of the military service where they are exposed to acute levels of violence - as witnesses, it could be witnesses to deaths, killings, sexual violence, et cetera, and direct victims and also as forced participants.

Secondly, with greater frequency of wars and easy to operate weapons nowadays, that is, mass killings are greater, thus the chance of death is far greater.

The significant effect for armies such as ours where it is dominated by a particular ethnic group, Sir.

They are at the most productive age. We are placing more importance, Sir, on endangered animal species, like turtles and *kawakawa*, than our young ones.

We also believe that the use of children is a discrimination against them. Sir, their death or loss perhaps, is a lighter burden, compared to the married or perhaps, the lesser of the two evils. This discriminates against them as they would miss out on the experience of marriage and life as a whole with the future before them.

Sir, I now wish to touch on certain Articles that we have issues with. First, we have issues that Articles still acknowledge and accept the continued presence of children in the military. I quote Article 1 where it is mentioned: “...members of their armed forces who have not attained the age of 18...” In Article 2, I quote: “...persons who have not attained the age of 18...” Sir, we feel that those are a contradiction to the stated or expressed objective to prevent the recruitment of children.

We ask, what is the desperate need to enlist and recruit children? Is it because they:

- are ‘cheaper’ to have in terms of the money spent on feeding them and the pay that they get or their income?

- are readily available?
- are a more convenient group, teachable and vulnerable in that sense?
- weapons are easy to use, given advance in technology, so that means it is easier to get just anyone educated to use these weapons?
- sadly, are they being chosen because they are easily manipulated?

Sir, by starting with this that we are still accepting them, we believe we are defeated from the start. Our search revealed that in 2007, there were 300,000 child soldiers in the world. In Chad alone, it was estimated there were between 7,000 to 10,000 child soldiers in the same year.

The second one is the acceptance of voluntary recruitment. I quote Article 2: "...not compulsorily recruited..." Article 3(1) says, I quote: "...shall raise the minimum age for the voluntary recruitment ..." Article 3(2) says, I quote: "...permit voluntary recruitment..." Article 3(3) says, I quote: "...permit voluntarily recruitment..." Here, we question the voluntary issue, Sir, as the children or their parents or elderly legal guardians may have pressing issues in influencing their 'voluntary' decisions, issues such as an escape from poverty, perhaps seeking a source of income and source of food, the issue of being displaced from families, and the issue of having little access to education, the need for security and the need to do something, or to follow a course.

We believe, Sir, that children sometimes have very little or clear understanding of the implications - the full implications or full impacts of what they are getting into, assuming that somehow they would be prevented from taking part in hostilities which is our third issue on Article 1 and after being recruited, I quote: "...the age of 18 years, do not take part in hostilities". Other than participating, Sir, in the usual military drills that we are very familiar with, perhaps as engineers and other particular groups, they have been known to be used as cooks, porters or messengers

But it is common knowledge, Sir, that they have also been used in areas mentioned because of their lack of education, their vulnerability and their gullibility. They have been used as suicide bombers, as human shields and sadly, Sir, for our female children should know that they have been used for sexual purposes. It has been estimated, Sir, that 10 percent to 30 percent of these soldier children recruits are female or girls. Sir, we wish to think that in war, it is difficult to monitor age, as priorities dictate decisions on the ground or on the field at any time.

I now, Sir, wish to go into Item 4, our plea for consideration of military presence or military influence in educational institutions, like schools. A study that we look into with regardless to the British Army by the child soldier intervention group revealed that:

- (a) While they are not being allowed to recruit in schools, the presence of representation is a kind of recruitment.
- (b) While a representative may be tasked to recruit only two out of 1,000 students, they "also want to recruit the whole school to the ideas of military".
- (c) Though presence is to instil self-discipline, loyalty and respect, strong leadership, teamwork and resilience, it must be noted that we are posing the question. At the same

time it discourages free thinking, criticism of authority, the hallmark in the new society that we are trying to prepare our students for.

- (d) Under 18 has historically from that study, been an important source of recruitment. The only country in Europe recruiting under 18 year olds (25 percent of its recruitment), Sir, is the United Kingdom and increasingly taking more of 16 year olds, compared to 17 year olds. Sir, I am just talking about 18 years they are going even further down.
- (e) We think, Sir, that just as you cannot advertise smoking and alcohol to children, you should not be able to advertise a job where there is a good or high probability that you can be killed, maimed or disabled for the rest of your life.

May I, talk on this particular section, Sir, on the Military or Naval Cadet Programmes in Fiji schools. While no study has been done to ascertain their effectiveness, schools that have taken them have not displayed any significant difference in school discipline and performance. It should be of concern though that some very serious indiscipline, Sir, bordering on violence have frequently cropped up from one or two of these institutions where they normally take up cadet programmes.

We also wish, Sir, to highlight what we believe are things of concern with regards to violent video games and other things that are easily accessible to our young people nowadays. It would be interesting, Sir, for a study on the effects of the lack of control on these games that our children are exposed to, now all readily available in our homes and internet shops.

Dare we equate, Sir, the rise of bullying and sexual crimes in our country to these home invasions by these so-called harmless entertainment which have taken over babysitting in most of the homes of our country.

On the State's support for family's role, the Methodist Church firmly declares that children are a blessing from God, worth beyond human capacity to measure, that they belong to God alone, with parents being their God-ordained steward and God gives parents the primary responsibility and authority for the education and physical, social, emotional and spiritual well-being of children.

In the Church's social policy, Sir, children and families, which includes its commitment to the articles of CRC, the Church declares firmly that parents cannot be replaced but must be strengthened by the State in this important responsibility.

Children's upbringing in the national education system, Sir, must help strengthen the role of the family institution, as it is understood within the religious and cultural communities as enshrined in the nation's Constitution. This requires real partnership and institutionalized collaboration rather than unilateral legal exercise of authority by public service officers, whose duty it is to protect and strengthen our national governance and social institutions.

Central in the national outcomes on the care and development of our young people, Sir, are the essential attributes of good citizenship, as well as the opportunities for equitable development of our diverse communities in their rich heritage, aimed at making our nation prosper as a truly democratic society.

It is important, Sir, for the State to ensure that there is adequate protection and support for the essential role of the parents and the family in the upbringing of the child, particularly also to properly establish the family strengthening role of the State and the public service.

The need for discipline in principles and in life choices must be firmly inculcated in our young people at home and in their education, and not 'spare the rod and spoil the child' by failing to insist on strength and authority in spiritual knowledge, insight and transformation of the child. This must not be spared, Sir, when regulatory authorities exercise their discretion about education, law enforcement and security services, online safety, et cetera.

The Christian admonition to 'love one another' and 'turn the other cheek' or to 'love your enemy' should remain strong in our basic set of values. Without spiritual knowledge, our children which includes our young adults will be worthless, even dangerous for society.

All of the Articles of the CRC should be effectively and visibly incorporated in our key national systems and programmes that affect our young people, and this Protocol must reflect real commitment as a nation to the transformation for good that we claim to espouse in our communities.

In this current exercise, for example, official agencies have referred to the impact of the military involvement in our political and social development over the last four decades on our young people's development, of many citizens now in leadership roles in society and in all sectors, including our current political system.

The call presumably, and the Church expects the State, especially through its governance and integrity institutions, to lead the way, together with all our faith and cultural communities, the business sector and civil society, is that we all are duty-bound today to free our future by removing that influence on the lives of our young people. It must be visible in our curriculum throughout their 18 years and in development programmes in all media and other activities.

I conclude, Sir, with six recommendations that we wish to bring to your Committee. In light of the issues raised above, we wish to humbly recommend the following, that:

- (1) we include the religious or spiritual (definitely Christian) dimension to our conversation on the matter as the issue in question involves a being who we firmly believe is a spiritual one, no matter how other world views might want to deny it.
- (2) leaders, governments acknowledge that they are accountable, not only to us the people but more so to the God almighty, and we do not want to be paying the costly price that Government and leaders make.
- (3) needed structures that is important to the basic unit - the family, we believe, be strengthened and Government to allow families to carry out their intended functions, and not to try and carry it out as part of its services as, we believe, it will fail and will be more costly in the end.
- (4) we make a stand on putting a stop to any recruitment of any children for military services or armed conflict. We stop it from the source, Sir, and make it an international crime.

- (5) we carry out a study on the possible correlation between the effects of violent or demonic videogames and sexually explicit shows our citizens, especially our children, are exposed to, with the rise in violent behaviour and sexual crime.
- (6) we re-look at the present militarization of our nation, including cadet training inschools.

Sir, with our prayers and best wishes, we thank you again for your patience and for your indulgence. We await your questions and your clarifications. Thank you very much, Sir.

MR. CHAIRMAN.- Thank you, Mr. Ravatu, for that very comprehensive and informative submission.

Honourable Members, do you have any questions for Mr. Ravatu and Team who are before us?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, if I may?

MR. CHAIRMAN.- Yes, Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- First of all, I would like to thank Mr. Ravatu and the members of the Team from the Methodist Church for a comprehensive and very forthright and provocative brief this morning on the Optional Protocol on the rights of the child that they have discussed with us today.

Of course, Mr. Ravatu was doing the presentation on behalf of the Church there and anyone can answer my questions. I have continuously raised two questions with speakers who have come before the Committee, including the Commander of the RFMF, the Ministry of Defence, the Ministry of Education and also the Office of the Solicitor-General on this matter.

The first question, you have not raised it, but I am going to raise this with you and this is on section 7(3) of the RFMF Act which allows the Commander discretionary powers to recruit soldiers between the ages of 16 years and 18 years. I am not sure if you are aware of that but those powers are available today.

I have noted your concerns in terms of Recommendation 7.6 and you noted earlier with regards to militarization, et cetera. I am of the view that for the Protocol to be effected in its full spirit, those discretionary powers need to be reviewed. My question is, what is the view of the Church in this supposed freedom that is being given to recruit below the age of 18 years?

There are no guidelines at the moment with regards to that, but I suppose it is the discretionary power that the Commander can exercise. So your views, please, and I am really interested.

MR. W. RAVATU.- Thank you very much, Honourable Tikoduadua. Honourable Chairman, I would like to give a brief response. The commitment by the Church to the Convention includes our understanding that the State when it ratifies the Convention, it will make necessary amendments to laws which are contrary to the intentions of the Convention.

We believe in our presentation, we tried our best to convey this message, that when we ratify, we must follow it up with the changes in our regulations, along with the approach that must reflect our

interest in changing the way we do things in the country to prevent the sort of values, the lack of opportunities, et cetera, that drive our people to fall into the kind of trap that will take the children away through the Military or any other armed activity. But we believe that as a Church, that includes the need to change the existing provisions that gives discretion on whether you are to involve young people below 18 years in any armed conflict of any kind. Thank you, Mr. Chairman and Honourable Members.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, just a supplementary question, by the same token, I also raise this question to the other stakeholders I have mentioned earlier. I think the question arises about the extent of militarization within government and within society. Hearing from the Church today, you are also echoing those concerns, particularly on Recommendation 7.6 about the concerns of militarization effects on the national cadet training programme.

Now, I am glad you raised this because I am raising the same issue and I had asked a similar question to the Commander in that regard and the Ministry of Education because I am curious of the value, not so much as in the cadet training but in terms of the use of arms, as you are aware.

You have noted two schools here that have a very, very significant disciplinary problem and I am only assuming here that it is related to the schools that I am thinking, that have been brought to the national stage lately in terms of bullying, et cetera, so parents are concerned about that.

I really want to find out because I am not getting any straight answer on this in terms of the Government presentation that have come through. I want to understand the value, the Church as an institution primarily dealing with family. I want to understand the value of arms training in our current cadet training schools, that how is that when you value add it to your children, value adding Methodist children for that matter because you are part of the Methodist Church. Do you see any value of it at all?

I am hearing your concerns about militarization so I believe that you will be concern primarily even more with the use of arms, even though the rifles, of course, they have taken out the breech, the firing parts, et cetera. So, I am interested to know your views on it because I do not quite understand the value of it.

MR. W. RAVATU.- Mr. Chairman and Honourable Members of the Committee, I want to make a brief statement about the way in which the Church looks at the programmes in the institutions. There are probably a number of dimensions towards this.

I just want to say that as far as the Church is concerned, the upbringing of the children is with the parents and the family. Everything that is done in any programme outside the family, must support that role and that role, of course, is defined by the way our people deal with virtues, development, the development of young people within the context of what they understand is what a good human being and a good nation, a good community is and these, of course, are well understood.

So, the programmes that we have highlighted belong to the State. They must, in fact, support perhaps, our God given role. Some of the programmes that are now run in the schools are well outside the control of the Church and so the proposals actually meet the responsibility of the State and the Ministries, the public offices, to exercise those roles. Whatever the regulations say, they must support the family. So those activities which really are confusing to many of us, many parents do not understand but because of the way the authorities say, they will do whatever the principal says.

Many of the cadet programmes are not discussed with parents. They are approved by the school boards and the school principals - the staff who are in the system with the Ministry. So, Sir, I thank the Church as it made its point very clear, but it is unable to influence the way in which these matters are decided.

That is probably the only thing we can say, whatever is the purpose of the curriculum, the activities that derived from that, quite a lot is at lost to many of us, because the relevance of that is supposed to be decided by the professionals in the schools, the Ministry and Government. But quite often, some of the activities are very doubtful in their contribution to our development, particularly after the experience of teaching in the last 14 years or so. Thank you very much, Mr. Chairman and the Honourable Members.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I thank the answers that were given. *Vinaka va' levu, talatala* and the rest of the team.

MR. CHAIRMAN.- Thank you. Honourable Members, time has caught up with us again.

I take this opportunity to thank Mr. Ravatu and the team from the Methodist Church in Fiji for acceding to our request and coming before us this morning. If you have any departing remarks, Mr. Ravatu, or any member of your team, the floor is yours. Thank you.

MR. W. RAVATU.- Thank you very much, Mr. Chairman and Honourable Members. On behalf of the team here at the Methodist Church Headquarters and the Methodist Church President, once again, I would like to convey our *Vinaka va' levu*. Thank you very much for giving us this time and we pray that God's blessing will be upon you, Sir, and your Committee in the work that you are called for this very important issue.

MR. CHAIRMAN.- *Vinaka*, and a blessed afternoon to you all.

The Committee adjourned at 12.57 p.m.

The Committee resumed at 1.12. p.m.

Online Interviewee/Submittee: Fiji Performing Rights Association Limited (FPRAL)

In Attendance:

- | | | | |
|-----|------------------------------|---|----------|
| (1) | Mr. Eremasi Tamanisau | - | Chairman |
| (2) | Mr. Seru Serevi | - | Director |
| (3) | Ms. Laisa Vulakoro | - | Director |
| (4) | Mr. Saimone Vuatalevu | - | Director |
| (5) | Mr. Inoke 'Knox' Kalounisiga | - | Director |
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MR. CHAIRMAN.- Honourable Members, we lost Honourable Dr. Salik Govind, who has an appointment with the bank but we welcome the members of the Fiji Performing Rights Association Limited (FPRAL). Before you are Honourable Selai Adimaitoga and Honourable Pio Tikoduadua. I am Alex O'Connor as the Chairman.

Welcome Mr. Eremasi Tamanisau, Mr. Saimone Vuatalevu, Mr. Seru Serevi, Mr. Inoke Kalounisiga and Ms. Laisa Vulakoro to the Parliamentary Standing Committee on Foreign Affairs and Defence.

I understand you will be submitting this afternoon on the Madrid Agreement Concerning the International Registration of Marks 1981, Protocol Relating to the Madrid Agreement (Madrid Protocol), together known as the Madrid System and the Paris Convention for the Protection of Industrial Property. Perhaps, a brief introduction from your good selves, Mr. Tamanisau, and the floor is yours. Thank you.

MR. E. TAMANISAU.- Thank you, Honourable Chairman and Honourable Members of the Parliamentary Standing Committee on Foreign Affairs and Defence. May I take this opportunity to express our respect and appreciation made by the FPRAL to present our submission.

(Introduction of FPRAL Directors by Mr. Tamanisau)

Firstly, we would like to acknowledge Government support:

- (1) On Fiji's very own Copyright Act 1999.
- (2) The Copyright (Amendment) Act 2009. This amendment has been ... (inaudible)...where the allegation of corporate piracy has been made, the onus is on the person to approve that he or she has not pirated the case.
- (3) The acknowledgement is for the creation of the Fiji Intellectual Property Office within the Attorney-General's Chambers in 2011. This also established the Copyright Enforcement Unit within the Police ... (inaudible).... member registration, Mr. Chairman.

We will go straight on to Page 3, at the top brief on the Fiji Performing Rights Association. FPRAL is a collective management organisation and the only one of its kind in Fiji. It was registered on 8th

June, 1992, and FPRA has been granted the right over the international (inaudible)...by virtue of a licence granted by APRA and also APRA's Reciprocal Agreement with over 70 foreign societies.

Mr. Chairman, to be a member of the FPRA, you must either be a composer, author or publisher of music.

As to how FPRA earns its revenue is through FPRA's negotiation with users on licence fees. These are businesses that utilise music on their business premises which is then distributed as royalty annually. Mr. Chairman, as of today, they are 913 members.

We will now turn straight to our comments and recommendations which is on page 11. On Madrid System on Trademarks, counterfeit trademarks have given rise to piracy and the blatant abuse of Intellectual Property Rights (IPR) owners. In Fiji, we have counterfeit CDs, DVDs, pharmaceutical products, brand names like Nike, Puma, famous perfumes like Dior, sunglasses such as Oakley and Rayban, et cetera.

Counterfeit occurs in many areas, including sport, automotive, luxury, fashion, footwear, electronics and cosmetics. Counterfeit of CDs & DVDs is normally termed piracy.

Composers & Musicians have lost millions of dollars in Fiji since local production of cassette tapes began around 1978 when Bula Cassettes was established by Mr. Trevor Agar.

The ways in which consumers enjoy content such as music, films, books and videogames have changed drastically over the past 15 years. Copyright- protected content used to be acquired mostly in the form of physical carriers, for example, CDs, DVDs, books, whereas nowadays the internet is becoming the main means of content distribution.

A survey done by FPRA in 2009 showed that the contribution of copyright-based industries in Fiji to the GDP was \$111.9 million.

A recent study undertaken by the Organization for European Cooperation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) shows that international trade in counterfeit and pirated goods represent up to 2.5 percent of world trade, or as much as €338 billion. In the European Union counterfeit and pirated goods amount to up to 5 percent of imports, or as much as €85 billion.

It has been proven globally that illegal earnings from counterfeit have helped to finance organised crimes dealing with drugs, human trafficking, prostitution, extortion, money laundering, et cetera.

Sir, our recommendation is that, FPRA fully endorse the intention by Government to ratify the Madrid System on trademarks.

On the Paris Convention for the Protection of Industrial Property, with the establishment of the Fiji National University (FNU) in 2009 came the strengthening of its technological streams in Engineering, Science and Medicine.

The University of the South Pacific (USP) also has a vibrant Science and Engineering Faculty while the University of Fiji has a Medicine Faculty. Growth in their Research & Development will surely

nurture creations via inventions and innovations and these require protection not only under the Fiji Patents Act, but also internationally via the Paris Convention for the Protection of Industrial Property. The licensing of these patents to industrial users will be a substantial source of revenue to Fiji.

Our recommendation, therefore, is that FPRA fully endorses the intention by Government to ratify the Paris Convention for the Protection of Industrial Property.

On Page 13, Berne Convention for the Protection of Literary and Artistic Works - Duration of Copyright.

In Table No.1, it comprises some of the areas that are relevant. Fiji has got a copyright terms of life of the author or composer plus 50 years. Samoa has got the life of composer, plus 75 years of collaborate and its life of composer plus 70 years. In Jamaica, life for composer, plus 95 years and Mexico which got the life of the composer, plus 100 years.

Currently in Fiji, the copyright in pop-music lasts for the life of the composer, author or creator, plus 50 years after death and to date, 64 countries around the world protect sound recordings for 70 years or longer. It is revealing to note that our neighbour, Samoa, has placed a high priority on this principle, hence their life, plus 75 years term.

The rationale for 'Part 2 of the three Basic Principles of the Convention' was that, lawmakers became convinced that allowing robust protection for creators encouraged production of valuable works by rewarding authors for their efforts and requiring others to create their own works so the copyright duration gradually lengthened from a short period to several decades to the author's life and a little.

Now, the COVID-19 pandemic has also proved beyond any shadow of doubt that under challenging situations like the current or recent shutdown, music, arguably becomes the most important term of relaxation and comfort by reducing mental stress and tension. Social media bears witness to this fact.

On a parallel tangent, one of Fiji's most famous songs will, in the near future, lose its copyright and be relegated to the public domain namely, '*Isa Lei*'. This is because its copyright will expire soon. This beautiful song and the haunting melody and lyrics that is appreciated worldwide is synonymous with Fiji simply, '*Isa Lei*', a vital part of our Fijian identity and heritage. Being in the public domain leaves it open to use and possible abuse by anyone in the world as consequently loss of meaning, relevance, value and national pride to Fiji and its people.

However, we have a choice temporarily at least, by extending the duration of copyrights retroactively to life, plus 100 years. Therefore, the FPRA respectfully submits to the Committee that the duration of copyright be amended retroactively in the Fiji Copyright Act 1999 to life, plus 100 years.

Part (d) on the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) 1996 and the WIPO Performances and Phonogram Treaty (WPPT), these internet Treaties set down the international norms aimed at preventing unauthorized access to and the use of creative works, such as music on the internet or other digital networks. Over the past 15 years, the ways in which consumers enjoy content, such as music, films, books and videogames have changed drastically.

Copyright-protected content used to be acquired mostly in the form of physical carriers, such as CDs, DVDs and books, whereas nowadays the internet is becoming the main means of content distribution. Piracy followed the same pattern and shifted from physical to online piracy by the internet.

Fiji has not incorporated those two Treaties; WCT and WPPT into the Fiji Copyright Act 1999, resulting in widespread, blatant abuse and piracy of copyright owners, musical works over the internet and other digital domains. This must be curbed as a matter of priority as other profound implications globally, such as our Government maybe accused of not honouring its bilateral agreement, including the Bernes Convention, WIPO membership and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which is the trade-related aspects of IPR which may result in the suspension of Fiji as a member nation of the World Trade Organization (WTO).

On the traditional Knowledge and Expression of Culture (TKEC), there is an urgent and critical need for the protection of IPR in traditional knowledge, such as art, for example, tapa design; craft such as canoe building; navigation (ocean voyages); traditional biological knowledge, such as herbal medicine, dances in *mekes*; chants like *vakalutuivoce* and *vakavunigasau*; games like *veititqa*; legends such as the firewalkers of Beqa; storytelling or *itukuni*, amongst others.

Those Traditional Knowledge and Expression of Culture (TKEC) have long been exploited for their economic returns by the former academia and business interests over wide, unbounded domain to the detriment of the owners of this IPR.

Big Pharma have also been huge financial beneficiaries, for example, in exploiting the health benefits of *yaqona* via the kava lactones. They registered the patents for the lactones and are reaping millions of dollars from the licensed users.

Traditional dances, such as *meke* are routinely filmed and exploited by business interests for marketing and publicity purposes, with no economical returns to the traditional IPR owners.

Canoe design and construction (*Drua* double-hulled) and sailing were recently exploited by Walt Disney for their film '*Moana*', which earned a record worldwide box office of over \$600 million. The film featured the Fijian canoe, specially constructed, sailed and filmed for the purpose amongst other IPR, by the people of Fulaga in Lau. Did the canoe builders, or the sailors from Fiji benefit from a share of this record box office, never mind the meagre payment received for their services? No!

We are aware that the Traditional Knowledge & Expression of Culture Bill has been under consideration by Cabinet since April 2014. The FPRA humbly requests the expediting of the process. So, accordingly our recommendation is that, FPRA respectfully submits to the Committee that the Traditional Knowledge & Expression of Culture Bill be fully enacted expeditiously.

Piracy and effects on the economy. The first Head of the Fiji Intellectual Property Office (FIPO) under the Attorney-General's Chambers made the survey on the piracy of IP and the illegal earnings, termed as proceeds of crime for pirate operators in 2017, it was at least \$30 million. Uncovered also was the fact that the illegal sales were not deposited into a commercial bank and this was confirmed by the Reserve Bank of Fiji. We appreciate that FIPO has caught and a copyright enforcement unit.

So, our recommendation is that, FPRA respectfully submits to the Committee that the Copyright Enforcement Unit and FIPO be invigorated and that the enforcement of the Copyright Act by the Police Department is stringently and effectively executed.

On the eternal protection of the song, '*Isa Lei*' by an appropriate legislation, given the love Fiji's peoples share for the song, it has intrinsic values, emotional values, identity factor and heritage awareness. This beautiful song, and its haunting melody and lyrics that is appreciated worldwide, and being synonymous with Fiji, we as Fijians, simply have a profound duty to provide full eternal protection for '*Isa Lei*' or posterity, and to bless our descendants. A timeless pulsating beat within our Fijian hearts.

It is, therefore, incumbent on us to provide eternal protection through an appropriate, meaningful and encompassing legislation. Accordingly, our recommendation as we declare *Isa Lei* as a national heritage and classify *Isa Lei* as a geographical indicator, or that a totally new and encompassing legislation be introduced by the Fiji Government.

In conclusion, may I take this opportunity to express our respect and appreciation to the Honourable Chairman and the Honourable Members of this august Committee, for inviting the Fiji Performing Rights Association to present this submission. We also acknowledge the effective work done by the secretariat and technical staff of Parliament. We trust and it is our hope that our submission will be taken into careful consideration in good faith, a clean heart, and love for our beloved Fiji. *Maleka vakalevu, Bahut dhanyavaad*, thank you very much.

MR. CHAIRMAN.- On behalf of the Committee, I thank you Mr. Tamanisau for a very, very important submission. I do personally feel that some of the information you have shared are very close to heart because I love my Fijian songs and my attribute go all the way back to the *Southern Brothers* because I am a *kai Kadavu* too, but that is how much I love my Fijian song. I sing it a lot in public.

Yes, I sympathise with you, and be rest assured that the contents of your submission will certainly take charge of what we intent to do in the outcome of our final report.

Honourable Members, do you have any questions for the team?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, if I may, first of all, I would like to thank Mr. Tamanisau and the members of his group, especially to the Vude Queen. It is not a question, I think the group and Mr. Tamanisau will be aware that FPRA and I personally have worked very hard in the past because of the recognition that copyright seems to be the most neglected cousin in IP business in Fiji.

If Fiji is to suffer the most in terms of benefits to locals directly, in the area of vital IP, it is in copyright. I think Mr. Tamanisau and group will agree with me that a lot still has to be done and I recognise that, and I thank our Committee Chairman for coming out publicly in terms of the intimate attachment, particularly to music in Fiji. You ladies and gentlemen, of course, are all musicians and very popular in Fiji.

I also want to thank Mr. Tamanisau for raising that issue with regards to the internal protection of the song, "*Isa lei*". I was talking to our friend in New Zealand earlier today, in fact, when you were talking, I think you know whom am I referring to here, he has done a lot with regards to protection on copyrights.

I just want to perhaps, bring to the attention of the Committee as well, that I personally recognise three things out of the presentation today. Firstly, the great leakage to copyright benefits to locals in the internet, is still a very big problem. I think you have raised that already.

What makes that worse is that, yes, we definitely need to strengthen our copyright laws, strengthening WIPO Copyright Treaty (WCT) and WIPO Performances and Phonogram Treaty (WPPT). Otherwise, you only have to look in the streets of Suva and in our main centres, then you can actually witness. *Erawa ni da tukuna na butako*, this is a broad daylight robbery as it is happening. I am not going to mention companies or names here, but I think we are aware.

One thing that I just want to assure the Committee, and I thank our Committee Chairman for clearing the way around that, is that, we value our music, the creativity and the innovation of our people so much, that it is important that we protect it. Unfortunately, I must say that the commitment at the moment from the Government and the authorities responsible for it, is still well short of protecting IP, especially, in music and you mentioned in particular, a very close thing to my heart, which is traditional knowledge and cultural expression.

I remember that Fiji in particular, is benefitting so much, if not from the knowledge of our own local people and I am not only talking about the *iTaukei* here, I am talking about the whole of Fiji, particularly this creation, it needs to be protected and enforced. I mean, I just want to speak first for myself here because I know I have been journeying with FPRA on this matter for a very long time. So I just want to show you, I know that the additional Protocol here had to do primarily with trademarks and all that but, of course, it brings out the fact that copyright continues to be a neglected cousin, and it is taking a lot of money away from the people in Fiji that could actually benefit, not only through money but also the protection of knowledge.

Earlier on, I was saying to the Committee that someone was trying to register the trademark of the *Sisi ni Lakeba* and that was rejected very strongly. So we just want to show you that we stand with you on this matter. And this, we are going to try and include it as part of our report, but I am not sure whether the Honourable Chairman is going to agree with that or not. Thank you.

MR. CHAIRMAN.- *Vinaka*. Thank you, Honourable Tikoduadua. Do you have any other comments or questions?

Honourable Members, since there are no other questions, I take this opportunity of thanking the FPRAL for acceding to our request to come before us today. We will definitely take on board your concerns.

With those few words, if you have any departing comments, the floor is yours, Mr. Tamanisau.

MR. E. TAMANISAU.- Thank you very much, Honourable Chairman and Honourable

Members of this august Committee. Now, we are really encouraged by your assurance that this submission by the FPRA will be taken up seriously and we are assured that there is light at the end of this tunnel. *Vinaka vakalevu sara.*

MR. CHAIRMAN.- Thank you all once again and you have a blessed afternoon.

Thank you. The Committee adjourned at 1.43 p.m.

STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE

[Verbatim Report of Virtual Meeting]

VIEWED IN THE

COMMITTEE ROOM (EAST WING)

ON

TUESDAY, 11TH AUGUST, 2020

VERBATIM NOTES OF THE VIRTUAL MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE VIEWED AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON 11TH AUGUST, 2020 AT 10.00 A.M.

Online Interviewee/Submittee: New Zealand Intellectual Property Office (NZIPO)

In Attendance:

1. Mr. Steffen Gezley, IPONZ Hearings Manager
2. Ms. Gaby Cowcill, IPONZ Patents Manager
3. Ms. Rebecca James, IPONZ Trade Marks Manager
4. Mr. George Wardle, Senior Policy Advisor CGIPP
5. Mr. Jason Holland, Senior Advisor, IPONZ
6. Ms. Tanya Carter.

MR. CHAIRMAN.- A very warm welcome to our Intellectual Property Office representatives in Wellington, New Zealand, this morning. By way of introduction, I will Honourable Members to probably on the screen if you could just lift your right hand. The Honourable Selai Adimaitoga and the Honourable Dr. Salik Govind from the Government side, the Honourable Pio Tikoduadua and the Honourable Anare Jale from the Opposition and I, Honourable Alex O'Connor, as the Chairman of the Standing Committee on Foreign Affairs and Defence here in the Republic of Fiji Parliament.

I do have listed names here with me but perhaps if I could just go through those names and for the benefit of my Honourable Members, by name if you do not mind, just a show of your right hand.

(Introduction of the members of IPONZ by Mr. Chairman)

With those words of introduction, I thank you all. Our Team from the Intellectual Property Office New Zealand, Ms. Tanya, do you still want to go through, as being highlighted by your good self a couple of days ago, the layout that you have already done with Jacob?

MS. T. CARTER.- It is really up to how you would like to propose your questions. I gave an indication about the particular expertise of our speakers and I note that we were given some questions and perhaps you might want to have them answered first.

MR. CHAIRMAN.- Would some of those questions that we send out last evening, Ms. Carter, be handled by the four different submissions?

MS. T. CARTER.- Yes. Certainly, whether or not you would like to ask those as per their expertise and then have that supplemented by Ms. James and Ms. Cowcill, who as managers, can talk about the operational impact of the various Treaties on their examination processes in their teams. Then we also have Mr. Wardle and Mr. Holland, who will join us and will be able to talk at the large on the New Zealand policy perspective and how we manage - how efficient and preparations for this Treaty.

Yes, you could either ask them to describe their experience broadly in answering your questions as they see fit, or you could decide to lead with the way that you have posed your questions, and have

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them volunteer their answers and supplement each other's experience. In that way, I think, our delegates could work to achieve a format that suits you.

MR. CHAIRMAN.- Thank you for that, Ms. Carter. So, perhaps, we will start with Mr. Gezley. If you are not able to probably touch on the questions that had been sent out last evening, perhaps we could ask your good selves to compile those answers as broadly as possible and then submit them to us after this teleconference. If there are any other pertinent questions that we need to ask, if we could do that after your individual presentations. So without further ado, I now hand the floor to Mr. Gezley. Thank you.

MR. S. GEZLEY.- Hello everyone. I apologise for that. Mr. Gallagher is not ready quite yet so I thought I could get ourselves to start. My name is Steven Gezley, I am currently the Hearings Manager at the IPONZ but prior to that, I was working in the Trademark Examination Team so I had a little bit of experience from New Zealand's path to join Madrid in our post-implementation. So I will start running through some of our initial work and stakeholder, sort of, consultation that we did in the lead up to New Zealand's accession to Madrid.

One thing that we looked at to start us around was, what it does mean for us to join the Madrid Protocol. So New Zealand is a small nation, we rely on trade, so protecting your trademark cost effectively within a single process is really important. So what the Madrid Protocol shows is the, sort of, ease of doing business, so easy for international fire to protect their trademarks in New Zealand but equally and not more importantly make it easier for your local businesses to be able to protect their trademarks internationally and particularly in our export markets. All our main trading partners - Australia, China, Japan, European Union, United States of America, for example, are all members of the Madrid Protocol when we were looking to join, so that was an important starting point for us.

Overall to our path to join the Madrid Protocol, the decision was made back in 2006 for the New Zealand Government's decision to join Madrid Protocol. We passed an Amendment Act in 2011 to enable us to do so, so it was around 10th September, 2012, that is when we deposited our Instrument of Accession to the Madrid Protocol with the World Intellectual Property Organization (WIPO) in Geneva and on 10th December, 2012, was when the Madrid Protocol entered into force in New Zealand.

Part of the main policy objectives we had in terms of joining the Madrid Protocol were to:

- reduce compliance costs associated with seeking and maintaining trademark protection in both, New Zealand and overseas;
- also encourage and facilitate New Zealand businesses to expand into overseas markets;
- also more closely align to the New Zealand trademark system with our leading trading partners; and
- confirm to the world that New Zealand's commitment to provide an efficient and effective trademark registration regime.

So, obviously, an important part of our accession process was our formal stakeholder consultation, so this was discussion documents. This was when the Government decided whether to join the Madrid Protocol. It was a stakeholder consultation around when the Amendment Bill to our legislation was passed. We also had discussion documents in relation to our trademark regulations to give effect the Protocol for New Zealand. So we had discussions around also the declarations that we made, so that was discussions

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with our stakeholders. But outside of that formal consultation process, we, sort of, had a number of informal consultations with key stakeholders around what our plans were, what our thinking was and what some of the procedural and systems tips, et cetera, would look like.

What we did in terms of our stakeholder awareness was, keeping them informed of how we were progressing, we were assessing our likely volumes on –what we, sort of, predicted we had seen. So we provided as much information as possible around seminars, we did visits, we had meetings, we had a number of website updates and we also had some training sessions.

We were quite fortunate overall that most of our key stakeholders were largely on board with the change. When you look at it, sort of, objectively, the benefits to a country in terms of joining the Madrid Protocol are good, and generally, most of our stakeholders were largely on board. There was a few little incidents that came up because obviously for a number of our key stakeholders, the Intellectual Property (IP) attorneys, et cetera, do have some fear around the impacts that Madrid Protocol possibly has on their businesses, so that is where we, sort of, we did our regular stakeholder awareness. You can, kind of, mitigate and, sort of, discuss some of their concerns in that context which is helpful.

But as part of our law reform, we actually did a bigger piece of work. It was not just Madrid, I just want to say you need to do this but we, sort of, took the opportunity to do so. So we did a number of updates to our general regulations and we introduced 100 percent electronic filing at the same time. We joined another two international Treaties, that was the Singapore Treaty and the Nice Agreement, and we also did some additional updates to our Hearings regulations as well.

I mean, the big push around the hundred percent electronic filing was a big change and it provided a number of benefits, but you do not necessarily have to do that to join the Madrid Protocol. But it has obviously significantly been official if you can, and I know WIPO offers help with some of those electronic filing these days because that is a big push or move towards that filing method.

One thing that was interesting though was that, joining the Madrid Protocol did form a part of a broader transformation at IPONZ. Again, you do not necessarily have to do this when you are joining the Madrid System, but obviously there is a number of benefits because at the time, IPONZ had a few challenges around aging technology, we had a recently high staff turnover at the time, we had a number of different paper-based processes, for example, so there was administrative challenges and we were also introducing new legislations at the same time. That is what we looked at moving towards improving IT systems, looking at career pathways for our people, introducing more fit-for-purpose modern legislations and regulations and just re-organising some of our business processes.

In terms of some of our Madrid preparation, what we found really helpful was learning from a number of other IP Offices. This was notably Australia but also Singapore as well. We got good advice from the WIPO. Their advice was really helpful and obviously they administer the Madrid Protocol, so that is really useful. But, we also did some of the things around introducing new trademark, examination searching tools, the new IT system, updating some of our processes and, again, at all times, we were giving our stakeholders an early indication of what our thinking and what the new system would look like.

Again, we did not, sort of, try and reinvent everything though. We tried to tailor our information towards what was most important and what was the actual information our users want to know. Equally, a whole lot of information is already out there. When we joined, a number of countries were already

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members, so WIPO has been administering the Treaty for a long time. So all those helpful information already exists at WIPO and other jurisdictions and a lot of that is likely to be relevant to local businesses.

So, in the overall scheme of things, the outcome of New Zealand joining the Madrid Protocol has been really good. We have had a strong uptake of New Zealand businesses using the Madrid Protocol to protect their trademarks overseas and this has been on the upper range of our predictions. And Ms. James might be able to speak more on that a little bit later on in terms of some of our filing trends, et cetera. Forty percent of all our trademark filings are now via the Madrid Protocol, and we have also got the benefit, now that our trademark legislation will align with our major trading partners.

So, the good way as I, sort of, sum up is just that the Madrid Protocol has contributed to both, our customers - our trademark filers and our IPONZ's efficiency around administering the trademark legislation. So, it has been a good path and I think the benefits to our users since joining Madrid has been significant.

So, I hope that was a useful introduction but if you have any questions, we are happy to take some of those and maybe answer some of the questions you sent through. If anything new comes up, feel free to ask and I will either ask or invite one of my fellow colleagues to answer. Thank you.

MR. CHAIRMAN.- Honourable Members, you want to ask questions or we proceed to the next presenter?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I recommend that they do their bit first and then we can ask our questions and whoever can answer will answer whenever we shoot the questions to them.

MR. CHAIRMAN.- Alright. Thank you, Honourable Members.

Thank you, Mr. Gezley. . Perhaps, we can go on to the next presenter, Ms. Carter.

MS. T. CARTER.- Perhaps, Mr. Chairman, I would suggest having Ms. James continue on from Mr. Gezley's messages, just perhaps around the operational impact of the Madrid filings on the Trademarks Team from maybe looking at the perspectives but also the similarities between the examination and filing systems, if I can propose that.

MR. CHAIRMAN.- Thank you. The floor is yours, Ms. James.

MS. R. JAMES.- Thank you very much for giving me this opportunity. I will try and answer as many of your questions and give an oversight of this process as possible.

As we were looking to the Madrid Protocol, obviously there was a lot of training required to get our examiners up to speed on the differences between what WIPO and the Madrid System look for in examination, compared to what our national applications assist us.

The biggest challenge that we had to refer to is under the Madrid Protocol, if we are issuing a total or partial refusal under Article 5 of the Madrid Protocol, you need to indicate quite specifically the goods and services that your objection relates to.

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Previously, with our national mark examination, we will be a bit more general, outlining our objections, so in order to fulfil our duties under the Madrid Protocol, we needed to upskill our examiners on being very specific as to the type of objections we are raising and how they are related to the goods and services concerned.

My colleague, Ms. Carter actually did a lot of this preparation work and training for the team in 2011 and 2012, as we were preparing for this work which was incredibly beneficial. We ran a lot of in-house training sessions for our examiners before our accession date, talking through the type of assistance that we would be making and talking through on how our reports would need to be structured in a way that was different to our national marks.

And the other large part of the training was obviously around how to get Marks filed into the Madrid System so the requirements around making New Zealand Office of Origin application and how we can submit that to WIPO. The key message that we have to learn was around the requirements of when we should certify and when we should not. It is a really honing in around the exact obligations that we needed to do in making our New Zealand office of origin application.

The case has being that there is a New Zealand basic mark which is the basis for the New Zealand office of origin application. There has been trademarks filed before our office which has an entitlement to address proving that they are either a New Zealand natural person or have a New Zealand business address indicating that they have a real commercial presence in our country.

Obviously, that basic mark may not have gone through our examination process before they made the offices of origin application so a lot of our work was around when we should highlight to the New Zealand particularly if there were issues within the basic mark before we send the funds into WIPO as obviously if objections are raised then the basic mark cannot be protected that means they lose their Madrid application as part of that. Thank you Mr. Chairman.

So, there was a lot of just talking to our applicants, our agents about what information we are looking at as part of making an office of origin application and also understanding that sometimes as long as they meet the minimum filing requirement required by the Madrid System that we do watch our applicants have been wanting and so far we have ended up to WIPO as long as those requirements quote the minimum filing requirements are mentioned.

The other frameworks we have identified as a must to have such as the on the basic mark that they are aware of that and that they are aware of the digital risks of continuing with the New Zealand office of origin application. They are also fully aware that they are allowed to make the decisions that they want and any rest of it go on part of that.

Another area that we had to learn quite a lot about is how to interpret the WIPO and identifications that we received as part of joining the Madrid Protocol. So obviously, the office of the origin application out of New Zealand application but we did team onto WIPO and share counter point obviously we had I think been data proceeding and Madrid application designating New Zealand where it examined the marks as we would assist a standard examination in New Zealand with a few exceptions around formalities within a nation and classification objections which are dealt with by WIPO.

As part of that occasionally we would realise that each application received may have been missed or that we would have queries about so we learnt to use our Madrid fellow, so a New Zealand examiner who is based in Geneva about how to query with WIPO and some of the terms that we had if we did not have the legal mechanism to do it under the protocol, at least you have to get more wider view to link about what WIPO does and how we can query these things that do not particularly right. So, that that was a bit of a challenge but it is not an incident for one, WIPO are quite lovely to deal with. When you first joined, you got them to answering the questions and we go quite strong relationship with some of the members got team 2 which deals with New Zealand at operations. As far as volumes that we reach the age by the New Zealand designations as Jacob said, it is about 40 percent full of our trade marks cases that follow the Madrid system and thus, statistics stage, those procedures stay pretty statistic since we joined and was part of our projected measures. So it stayed pretty true to form.

We do notice that there are few more classes for Madrid applications in the national mark filings but it is completely manageable. The only thing that we find difficult from examination standpoint is, we received these applications in batches every week. So we get between 160 to 220 New Zealand designations per week in one bunch, as we have a 15 working day turnaround on our examination procedures that we set internally. That can sometimes be quite a challenge to get the results in to complete them within our turnaround times but obviously, that is the decision that we made around our expected turnaround times so you would like to be able to mitigate any concerns around that, depending on the volumes that you receive.

I am happy to answer any further of your questions, if you have anything that you want to know specifically. But that is pretty much an overview of how things are at the moment and what we thought about.

MR. CHAIRMAN.- Thank you, Ms. James. Would you have the next submitter or presenter, please Ms. Carter.

MS. T. CARTER.- Yes, Sir. Now, I know that part of your inquiries regarding the Paris Convention whilst New Zealand joined many years ago, Ms. Cowcill is available to talk about the impact of the Paris Convention on the patents examination process and perhaps, now is an opportunity to talk on that. And then Mr. Wardle could give a description overview of the activities in respect of both, or even answer the remaining questions. That would be my proposal.

MR. CHAIRMAN.- Thank you. Ms. Cowcill, the floor is yours.

MS. G. COWCILL.- *Kia ora*, everyone. As Ms. Carter said, obviously we acceded to the Paris Convention a few years ago now, so I am not really sure I can speak to our experience of that. At the moment, obviously we have some parts in our Act which pertain to effect the Convention, which means that Convention applications are treated pretty much as any other application within New Zealand, subject to a couple of extra provisions in our Act.

So we get a very large proportion of our filings via WIPO which obviously a majority of those will be making use of the Paris Convention. We did get a couple of direct applications using the Convention but numbers were relatively low. Yes, when it comes in, it is all electronic filings as in the *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 7. Tuesday, 11th August, 2020*

trademarks area and they are very much treated as any other applications within New Zealand. So they get examined under the same criteria for patentability and at the end of that process, they are either granted or refused, or have a hearing, or various other things which can go on.

Yes, that was pretty much all I wanted to cover on that one. So, Mr. Wardle, perhaps if you want to jump in and perhaps, give a bit more of the broader context around the Convention and Treaty applications.

MR. G. WARDLE.- Thank you, Ms. Cowcill. I am George Wardle from the Intellectual Property Policy Team.

As Ms. Cowcill mentioned, we joined the Paris Convention (the London Act) which, I think, dated from 1928. We joined the Paris Convention in 1931 so to be honest, the extent that the Paris Convention has any impact on our filings, that was so long ago that we cannot distinguish what impact, if any, the Paris Convention has on an ongoing basis here in New Zealand.

New Zealand subsequently joined the most recent Act which is the Stockholm Act which dates from 1967. We joined that in 1984 and the key obligations in the Paris Act are actually a requirement from the WTO (World Trade Organisations) TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. So, any member of the WTO essentially needs to apply the obligations of the Paris Convention as they relate to the protection of trademarks, patents, industrial designs and confidential information trade secrets.

MR. CHAIRMAN.- Thanks, Mr. Wardle. Ms. Carter, do we have any other presenters from your side?

MS. T. CARTER.- I think you have had an introduction now to our speakers and some of them have prepared material. I note that, just by looking at the questions that you have provided us, there were some questions that were focussed on which areas of capacity building were impacted by these pieces of work and if there was, how we manage the cost and benefits there. I am not sure if Mr. Gezley have given more thought to that, maybe not on a very specific way, but maybe in a broader way of how he would answer those types of questions, or even thinking about what has been shared by the last speakers, if you have anything more to add currently. Mr. Gezley, please.

MR. CHAIRMAN.- Thank you, Ms. Carter. Perhaps, if we open up questions to our Honourable Members, if they so wish to ask questions and perhaps, if at all possible, Ms. Carter, the questions that did come your way last evening, if those could, sort of, be enlightened and then forwarded back to Jacob in your time.

I will open up the floor now to our Honourable Members to ask questions. Honourable Tikoduadua, the floor is yours.

HON. LT. COL. P. TIKODUADUA.- Yes, thank you, Ms. Carter, and the members of your Team. I believe much of my questions would be directed to Mr. Gezley. Just by way of background, I am sure our Committee Secretariat would have briefed you on the work of the Committee and the kind of information that we are looking for and some of that had been captured in the questions that was sent to you. *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 8. Tuesday, 11th August, 2020*

The intent is to accede to the Madrid System. As you are aware, Fiji wants to accede to the Agreement and Protocol, and for Parliament to give the green light on that. But before we do, I thank you for the presentations that you have made.

MR. CHAIRMAN.- You are frozen, Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- Sorry, I think I lost you there. But can you hear me?

MR. CHAIRMAN.- Yes, we got you back.

HON. LT. COL. P. TIKODUADUA.- Great! Thank you.

One of our challenge as a Committee and one of the contentious area, that is, the subject of our discussion is whether we are ready. Is Fiji ready to accede to the Madrid System? Much of my questions will evolve around that, particularly on the Madrid-compliance legislations, on all those matters of Intellectual Property that your Office gets to do, covered under the Madrid Protocol and the Madrid System.

Secondly, the institutional organisation and in this case, Fiji Intellectual Property Office, to effectively use the Madrid System that Parliament will hopefully accede soon too.

Now, my first question, Mr. Gezley, you mentioned that the political intent to use Madrid was first established in 2006, is that correct? Did Government intended to do that in 2006?

MR. S. GEZLEY.- Yes, that is right. That was when the process really got underway but then from that point on, there were still a number of extra steps and I do not think necessarily we could say that 2006 and through to 2012, you might look at that and think, "Well, that took six years." It does not necessarily always take that long. As you have said, there is a number of steps you need to do. Well, let Mr. Wardle have a jump at it, if he has anything extra to add around the 2006 decisions.

But there is also a number of steps that we need to do. So there was legislation that needed to be passed and has to go through a Parliamentary process, et cetera. Also, then there is the operational readiness, I guess, that you need to do as well. So you have to get that foundation in place around your legislation, et cetera, commitment and decision to join. Then looking at what your local laws look like and where they will need to be amended and changed to enable the accession to the Madrid Protocol and that at the same time, there is also the office operational readiness that you need to do and prepare for, to ensure that when you do join, that everything is in place and you are ready to go. There is a number of help and assistance that you can get along the way. The WIPO is a very good starting point. I know they provide a number and a lot of assistance to prospective members in order to get them on board and at the same time, we also looked across other offices as well. So there is differences from that operational point of view. There is the assistance out there to look at whether you are ready and also what you need to do to get yourself ready.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Gezley, because that is exactly the point in question here; is Fiji ready? It took you six years and with all of those issues involved in between, that you acceded on 10th September, 2012, and it became effective in December 2012. *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 9. Tuesday, 11th August, 2020* -----

You have also alluded to the fact that much of your legislation, and I am actually looking at some references that I have, in terms of some of the more critical legislation that you had prior to acceding to Madrid in September 2012. For instance, you had your trademark legislation passed in 2002, four years before, and I am talking about the parent legislation. Certainly, there would have been amendments in between as you progress to suit your business situation and however well that IPONZ conducts its business.

The patent legislation was adopted in 2013, so that would have been like within 12 months from when you acceded. Obviously, the laws would have been discussed well before that. It would have been passed before you actually got to start using.

Copyright was in 1994, the Fair Trade was in 1996, Geographical Indication in 2006, Plant Variety in 1987, and Matters of Design in 1954. So, those are essential enabling legislation that I am sure you would have had some capacity with before you acceded in 2012. So I am interested, really, in how well New Zealand was legally structured in that capacity to have all the laws in place before actually acceding to the Madrid System.

The reason I am saying that is because in Fiji, presently, we have not quite used the Nice system, but we are pretty much still using the British Imperial Classification System. I hope you catch my drift here of why legislation is very important for it to be in place before you adopt it because I can tell you that first, we do not have the new legislation in place yet. It is still in Bill form, so if you can just tell us, I mean, how essential are those laws, before you can actually adopt the Madrid System?

MR. S. GEZLEY.- You are right, there was a whole lot of legislative changes that happened over the years. In terms of the Madrid Protocol, the essential legislation that we had to get in place to enable that to happen was primarily almost solely within the Trademarks Amendment Act.

You pointed out the Trademarks Act 2002 which came into force in 2003. At that point in time, when that legislation was passed, it was not Madrid-ready, if that makes sense. So that was one of the important or initial things that had to be done in order to enable us to join the Madrid System. I was not sure whether that legislation then was amended and updated to allow us to join the Madrid Protocol, but that was actually primarily done via the ability to create regulations. So that was the regulations to allow the operation of the Madrid Protocol in New Zealand.

In terms of some of those other legislations, such as....

HON. LT. COL. P. TIKODUADUA.- I apologise, Mr. Gezley, can I just cut in, in between?

MR. S. GEZLEY.- Yes, that's no problem.

HON. LT. COL. P. TIKODUADUA.- The question is, was it essential for New Zealand to adopt the trademark regulations in 2002 before you wanted to accede to the Madrid System?

MR. S. GEZLEY.- So, the main thing that had to happen was, the 2002 Act which was passed had to be amended later and I think that was passed in 2011, if I recall. An amendment to that Act was passed to enable us to join the Madrid Protocol and that was to create regulations so that we could join Madrid, so that was had to be done in the Trademarks. So the 2002 Act as it was passed, was not at that S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 10. Tuesday, 11th August, 2020 -----

point, enough for us to join, that is why the legislation was subsequently amended later to enable us to join. So that was an important step that we needed to take first.

When part of that did review, generally a lot of our legislation were still relatively up-to-date and on that point, you did mention the Nice system as well. New Zealand had not been a member of Nice or have not used that system for a number of 60 odd years before we joined that as well. So obviously the Madrid System and the Madrid Protocol uses this classification system, so these are the sort of questions you look at prior to joining, that you have got all that lined up and you are consistent with what is in the Madrid Protocol.

HON. LT. COL. P. TIKODUADUA.- So, you would say that it is actually essential to have that before you could effectively use the Madrid System as a system for intellectual property?

MR. S. GEZLEY.- What we had to have was to ensure that the legislation allowed us to create regulations to join the Madrid Protocol. So, most of our administrative provisions were around the Madrid Protocol in terms of its operations in our regulations rather than the actual Act itself. So, the Act will apply in actually the whole part to the Madrid Protocol and the Madrid applications that we receive, but it needed to be amended and that is important, to make sure that your legislation is where it needs to be complied and enables the joining of the Madrid Protocol. That is why there is a change we had to make, to ensure that was the case.

HON. LT. COL. P. TIKODUADUA.- Just to be very clear to me, so New Zealand did not accede to the Madrid System and then write its legislation to suit the system.

MR. S. GEZLEY.- No, all that work were put in first, so when we actually did the formal accession process in September 2012, most of it or all of that preparation and change in legislation had already happened up until that point. So you are, sort of, doing all those work in advance and then once you think you have got everything in place - your legislation is correct, your systems and internal procedures, et cetera, are ready, that was when the decision was made to join at that point. So, you can do all those work beforehand so in that way, when you join you know that everything is in place and that you are ready to go at that point. So all that background and preparation work happens long before the actual decision to join the Madrid Protocol and you actually make that formal accession to the Madrid Protocol. Yes, so you do a lot of that background work. It is all done before that point.

HON. LT. COL. P. TIKODUADUA.- Thank you. I just want to move forward with another question to you because you spoke about the length of time that you use in consultation with your major stakeholders. We have an issue right now in Fiji, not an issue really but a concern if you might call it, from firms that deal with intellectual property, including trademarks, patents and copyright under our existing British Imperial Classification System.

They are raising their concern about losing money, that it fine, but I want to just ask you, you had six years in between when the political intention was made before you adopted. The laws that you finally wrote in 2012 for trademarks and then the regulations in 2013 and adopted just before you acceded in 2012, were those all done in consultations with all your stakeholders, including those firms that used to deal with trademark application and patents before Madrid kicked in? *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 11. Tuesday, 11th August, 2020* -----

MR. S. GEZLEY.- Yes, that is correct. This is all public consultation when all those Regulations and Act Amendments were made at that point in time where any interested party in New Zealand was able to make submissions and members were consulted. So that included our usual main stakeholders which are our IP or trademark attorneys, et cetera, were one of those.

So, they definitely made submissions on the regulations and Act Amendments and that was all worked through that process as well. That was the formal consultation process where we heard their views and we looked at that as well.

We also did more informal consultations as well. You mentioned the six years, it is a long time to join and it does not necessarily always take that long but throughout that process, there was a number of opportunities for impacted stakeholders to make their views known.

I mean, it is quite common for any country that joins the Madrid Protocol that IP lawyers in particular do have concerns around the potential impacts on their business. We were relatively fortunate. I think some countries do have a few more challenges around that area, our users were largely on board with the change for the most part and as it turned out, what happens is that, the reality is actually not as bad as I think they sometimes initially think, and also the new opportunities come out of the Madrid System as well.

Obviously, we often see an increase in filings and that sort of thing as well comes in sometimes as well. So that is the process, where we, sort of, take the lead and we try to keep ahead a little bit just so we do not yet know what we are planning and sort of involving them in those processes that definitely help, sort of, mitigate some of the concerns they had. But we always have some who are little bit concerned but ultimately, we have looked at the outcome we have but I do not think there has been a dramatic or drastic impact on a lot of our key users.

HON. LT. COL. P. TIKODUADUA.- My apology, Mr. Chairman. I still have few more questions here if you do not mind, Mr. Chairman.

MR. G. WARDLE.- Mr. Chairman, can I jump in a little bit because I have got some information that might be useful?

MR. CHAIRMAN.- Yes, carry on.

MR. G. WARDLE.- The Government made the decision in 2006 to join the Madrid Protocol, and a Bill to amend the Trademarks Act to facilitate that process was introduced into Parliament in 2008. There were a number of reasons for that delay between the decision being taken and the actual introduction of the Bill to amend the Trademarks Act. That was essentially unrelated to the process of joining the Madrid Protocol, that was more concerned with the enforcement of the Intellectual Property Rights.

So the Bill was introduced into Parliament in 2008 and was not finally passed by Parliament until 2011 and that was largely because the Government of the day's priorities did not feature high for the Government of the day to progress that legislation. So it did sit on in Parliament for an unusually long period of time until Government took a decision to prioritise it towards enactment. *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 12. Tuesday, 11th August, 2020* -----

Although we have talked about the concerns of Patent, Trademark and Intellectual Property lawyers in relation to joining the Madrid Protocol. Those concerns were raised here in New Zealand both, around the public consultations prior to the introduction of the Bill, as well as in submissions made to the Select Committee who were considering that 2008 Bill.

Essentially, what you need to bear in mind is that, one of the primary purposes of the Madrid Protocol is to reduce the regulatory in business compliance costs for businesses protecting their trademarks overseas. So inevitably, your Intellectual Property lawyers make up the substantial amounts of any costs to protect your Intellectual Property overseas through the fees that they charge for advice. So the Madrid Protocol essentially reduces local businesses as well as foreign businesses' reliance on Trademark Attorneys to protect their trademarks, especially in key export markets. Yes, that can have an impact on the money that Intellectual Property lawyers can make out of the system by providing advice and assistance.

But ultimately, the decision to join Madrid Protocol was not about supporting the revenue of Intellectual Property lawyers, it was about making the cost to protect trademarks, especially in export markets, cheaper for them to encourage them to look more to export.

There is no evidence ever provided in New Zealand to establish that our local Intellectual Property law firms were in anyway dramatically impacted by loss of revenue through joining the Madrid Protocol. I think if we examine the filing statistics for trademark applications around the time that we joined the Madrid Protocol, there was an initial period of six to 12 months with the trademark filings were less than average, and that is because the foreign applicants were switching from using direct filings into New Zealand into using the Madrid Protocol. So there is always a time lag it takes for that process to occur between the filing an application with the International Bureau of WIPO and that application filing making it into the New Zealand system as international registration.

What is recently clear from the statistics is that, the overall number of filings of trademark applications have increased after the initial six to twelve months to a level that was higher than previously to joining the Madrid Protocol. So in some respects, IP lawyers, patent and trademarks attorney firms are actually getting more work out of the Madrid Protocol, not less work because there has been an overall increase in filings in New Zealand from foreign applicants looking to protect their trademarks in New Zealand.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman.

MR. CHAIRMAN.- Yes.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Wardle, is it?

MR. G. WARDLE.- Yes.

HON. LT. COL. P. TIKODUADUA.- Yes, I take your explanation. As I have said, there is the issue of them losing revenue but I think that is something that we have to take on our chin. Well Fiji, eventually, will have to take that when it does accede to the Protocol, but the concern right now for the Parliamentary Committee and my concern is whether we are legislation compliant. *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 13. Tuesday, 11th August, 2020* -----

I think, Mr. Gezley had already addressed that because I tend to get this understanding that it is very critical to put the essential legislation in place before you decide to adopt the Madrid System because then it would obviously help the organisation which, in Fiji's case, is the FIPO to administer the Madrid System by protecting intellectual property, but I will leave that aside.

I want to ask another question to Mr. Gezley and the question is to do with the institutional organisation - the capacity of IPONZ. You mentioned that New Zealand is 100 percent digital, is that correct?

MR. S. GEZLEY.- Yes, that is right. That decision was made back in around the same time as joining Madrid to go one hundred percent electronic. That was across all aspects of the IPO that was trademarks, patents, designs, et cetera, would have a fully electronic system. So that was the decision made at the same time to, sort of, help improve the operational efficiency of the Office.

Up until that point, we already had a very high uptake of our online services anyway, so we are somewhere in the vicinity of 99 or something percent and that number was quite high. So the actual impact of the change was fairly minimal because most people were already using our online services. But we did make significant operational efficiencies in terms of our implementation. We were also one of the earliest adopters of electronic communications with WIPO for our notifications, et cetera, which were all sent electronically and that was a huge benefit in that area because it did reduce the administrative burden on the Office to be able to communicate not only with our users, but also with WIPO by electronic means.

HON. LT. COL. P. TIKODUADUA.- So New Zealand was already almost compliant digitally, I mean, part of your work were almost 100 percent digital.

MR. S. GEZLEY.- That is right, in the lead up to 100 percent online because that actually mandated and lessened the number of Trademarks and Patents Regulations that the filings or communications to the Office must be online, but that was, as I said, the impact for our users was small because we have been updating and improving our online services and had a good adoption of them already. So even though it sounds like a big change, the work was done in the lead up to it.

HON. LT. COL. P. TIKODUADUA.- This question, perhaps Ms. James would also like to pitch in because you were talking about training and the capacity of the Office to be able to deal with the requirements of the Madrid System. I am interested in the number on average every year. I know Ms. James was referring to some kind of bundle earlier, but I am just interested by the time.

Perhaps, Ms. James or Mr. Gezley might like to give me the statistics when you eventually acceded to the Madrid, how many cases in all, such as registered trademarks, patents, the lot that you looked after in IPONZ was already saved within your own system digitally? How many cases altogether? You may not have all the numbers and I know it is a lot because New Zealand exports a lot so I am sure there is going to be a lot. I do not expect you to remember all.

MS. R. JAMES.- Yes, I would have to dig out that information from what our registered totals were in 2012. As far as what was online at the time we joined Madrid, all of our cases were in our Online Case Management System.

As part of the work in 2006, we did a massive digitization project to convert all of our outstanding paper files into an electronic database, as well as make that accessible to our outside users through just *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 14. Tuesday, 11th August, 2020*

on login process. That was also part of the business transformation that Mr. Gezley talked about in the beginning of his presentation, about getting us ready for future-proofing our business. So, every single application and registration was online in 2012 when we joined and we had that captured. Most of the cases that had expired in the seven years prior to the digitization project just for completeness, in fact, any other cases that expired prior to that point was considered no longer to be relevant and were destroyed as part of government's recordkeeping requirements. I hope that answers your question but if you have any follow ups, please let me know.

HON. LT. COL. P. TIKODUADUA.- My interest in asking that question is because Fiji right now, as far as my understanding of FIPO, we are before 2012. We are somewhere stuck between 2006 to 2012.

Majority of our applications in Fiji are for business stakeholders for Marks that are used locally. There is only very few Fijian Trademarks that are being registered overseas for our major exporters but the rest of our business people only have local Marks and the majority of our record is still very much analogue.

We have been given this assurance that we would be able to get digitized in 12 months. Now, you have been digitized for seven years, transferring all your data within that time. We have only six months to be able to become like you, and I am struggling with this notion. Can you help me out a little bit?

MS. R. JAMES.- I am just trying to remember how long our digitization project lasted. I believe we started in late 2007 and had mostly concluded the work in late 2008 to early 2009. So it took about 18 months with our external contractor, who was responsible for digitizing all the records and getting them into our database prior to the Online Case Management System where we adopted in 2012. So, depending on the number of cases you have to digitize, it could be possible but obviously, you need to speak to the Officials of FIPO about the numbers. But, potentially, you could do it within six to 12 months.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. One last question for me, I know other Honourable Members want to ask questions.

The question is specific to the protection of Intellectual Property within Maori cultural element. Now, this is a very sensitive area and it is very important, I know in New Zealand and also here in Fiji. I have with me which I had downloaded from your website, the user guide, I suppose, and you might be familiar with this piece of document. Now, I am interested in terms of how you build capacity around protecting Maori cultural element within the scope of your work. Inside the document, there is a whole range of protecting just the signs and things like the *Haka* and plant materials. How does that work? I recognise there is an advisory committee process, can you just elaborate on that?

MS. T. CARTER.- Yes, I can have an attempt to answering that question and Mr. Wardle, if you would like to pitch in as well, please feel free to do so. *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 15. Tuesday, 11th August, 2020* -----

When we undertook our legislation update in the 2002 Act, it specifically allowed for the creation of the Maori Advisory Committee to advise us on whether trademarks containing Maori words or imageries would be considered offensive to Maori. So, going through that process obviously as New Zealand Government Officials, we are not best placed to make those determinations.

So, as part of our consultation piece of work was Maori leading on from the Wai 262 Claim on indigenous knowledge to go out to the *Iwi* (Tribe) and find members who are extremely fluent in today's words and have fantastic background on *Mātauranga* - Maori traditional practices. One of the members of the committee is an expert in Maori designs in the history thereof, so we created the Maori Advisory Committee in 2003. Three of the members are still sitting, almost 20 years later as they consider the matter of protecting Maori words and imageries of credible importance. One of the founding members, unfortunately, passed on a number of years ago and one member did resign after about 15 years.

The way that the Committee is set up is our examiners, when we identify trademarks containing anything that looks like a Maori word or image, is to send it to the Committee for them to provide us with their advice.

The decision making process on what Maori considers offensive has obviously evolved over time, as there have been ongoing treaty settlements before our Waitangi Tribunal, leading to the creation of different pieces of legislation to protect. We are trying to use a western IP system to protect things of importance to Maori with the Waitangi River. Mr. Gezley, I cannot remember the name of that piece of legislation, unfortunately, basically to create a personage around the Whanganui River and the Haka Attribution Act.

Obviously, it is still not a perfect system as intellectual property is a private property right, but we are trying to do more on that base. The Patents Act when we amended it in 2013 led to the creation of an advisory committee for patents and I believe we are looking at creating something similar in the consultation process we are doing on the Plant Variety Act at the moment.

Mr. Wardle, would you like to takeover and answer any questions?

MR. G. WARDLE.- Yes, to be honest, our intellectual property legislation does not do much to help protect traditional knowledge and cultural expressions, nor genetic resources. So, one of the first Acts that the Government did was in the Trademarks Act 2002 when it was introduced that the Māori trademarks advisory committee provide advice to IPONZ on whether that registration or use of the trademark would be culturally offensive to Maori.

In the Patterns Act 2013, the Government also introduced a Maori Advisory Committee and that Committee has slightly brought us scope. So, that Committee can then help advise the IPO, not only on whether the use of an invention would be culturally offensive to Maori but also to help patent examiners identify any relevant prior art that involves traditional knowledge, that might be relevant for refusing the grant of a patent.

The Government has an early stages of initiating a substantive work programme, looking at the broader issues around the protection of traditional knowledge, cultural expressions and genetic resources. But that process says that in the very early stages of consulting with Maori about how to

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move that project forward and probably will take some years for any material changes to flow out of that process.

HON. LT. COL. P. TIKODUADUA.- My apology, Mr. Chairman. Mr. Wardle, in the meantime before New Zealand adopts traditional knowledge, cultural expressions and related legislation, you used the Committee as the determinant of what is offensive for Maori then, is it not?

MR. G. WARDLE.- Yes, so the Committee provides advice to the Intellectual Property Office on whether patents or trademarks, or their use by anyone would be culturally offensive to Maori.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I have a few more but I leave it to the Committee to ask a few more questions. I think I have one or two more, and then I will be done.

MR. CHAIRMAN.- Thank you, Honourable Tikoduadua. Honourable Jale, perhaps you wish to ask one or two questions before we hand the floor back to Honourable Dr. Govind or Honourable Adimaitoga and then Honourable Tikoduadua again. Honourable Jale?

HON. A. JALE.- Thank you very much, Mr. Chairman. I would like to the IPONZ for allowing this opportunity for us to interact with them and I found this interaction very useful. The questions and answers that are coming through could be useful and being able to understand the requirements under the Madrid Agreement and Protocol and what Fiji needs to prepare if it has to accede or ratify these Instruments in the future.

I am going to ask two questions. I think Mr. Gezley has touched on this issue about reduction of cost and I am glad that this issue came up because it was an issue that was being debated and talked a lot about in the Committee. The issue of Ease of Doing Business was also raised by you, Mr. Gezley, can you just cite some of the example of Ease of Doing Business? It was one of the considerations of you deciding to accede to the Madrid Protocol. Can you just give us some examples of Ease of Doing Business and what you mean by that?

MR. S. GAZLEY.- Yes, certainly, I can touch on that. So in terms of the Ease of Doing Business, the idea of the Madrid Protocol was to simplify the protection of our businesses trademark internationally. So what that means is, for example, if a business is looking for export to five or six different countries, if your home country or the country you are based is not a member of the Madrid Protocol, what that means is that when you go into each of those countries, you will need to file a single national application in each of those jurisdictions in order to secure your trademark registrations. What the Madrid Protocol does is simplifies that process which means a business can make a single application which will then be administered essentially by WIPO, who then sends it out to all those different jurisdictions. So that is one aspect where Madrid Protocol makes the Ease of Doing Business.

It reduces costs to protect your trademark in the market and also reduces the cost to international filers who file into, for example, New Zealand or Fiji. So the cost of them to file and Mr. Wardley touched on that a little bit earlier too. So when they file into New Zealand, the cost of doing so is significantly easier because they do not have to necessarily engage a local attorney to do the filing of paperwork, et cetera. So in general, when a business is looking to export and protect trademark overseas, the Madrid Protocol greatly simplifies that because in a number of countries, of course, you may have to file in multiple different languages, et cetera, whereas the Madrid Protocol allows the filing in English, *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 17. Tuesday, 11th August, 2020*

French or Spanish, so those are the three languages that you can use. So in terms of filing, it does make that significantly cheaper, assuming that you might not run into too many issues. So that is one aspect of the Madrid Protocol which is just businesses to protect their trademark overseas and lowers the cost.

HON. A. JALE.- Thank you very much. I just want to have some clarification. We do not know much about this Agreement and also the Protocol. We now are trying to learn from you. What is the difference between the Madrid Agreement and Protocol because you tend to be talking more on the Protocol.

I know that they speak similar languages, but there are some slight differences in it, particularly the enforcement period once international registration is registered under the Madrid Protocol. It lasted 10 years, and the Agreement talks about 20 years. What is the difference between those two, because we are reporting on those two documents - the Madrid Agreement and Madrid Protocol? Can you enlighten us on that, Ms. James or Mr. Gezley with some explanation?

MR. S. GEZLEY.- Yes, certainly. The Madrid Protocol, I guess was newly adopted or relatively, and in the late 1980s it came into force, I think, in the late 1990s. The Madrid Protocol was designed to modernise and update the previous Madrid Agreement that was implemented way back in the late 1800s, I think.

The idea around the previous Madrid Agreement was a little bit narrow in terms of its scope. In order to encourage more countries to join, the Madrid Protocol was created to introduce English as a filing language, for example. So what that means though is that, these days, actually countries do not join the Madrid Agreement anymore so that has been removed when you actually join the Protocol rather than the Agreement. That is why you will possibly hear us always referring to the Protocol because New Zealand did not actually join the Madrid Agreement, we joined the Protocol to the Agreement. So that would have make sense so the Madrid Agreement is, sort of, the old version and Madrid Protocol is the updated new version which is what countries these days join, so countries do not join the Agreement anymore.

HON. A. JALE.- Thank you Mr. Chairman. The last question is a small question that I would like to raise with Ms. James. When you register a Mark in your jurisdiction in-country, how do you verify that, that mark has never been used before?

MS. R. JAMES.- I guess we do not make a decision about whether the trademarks have never been used before. We do an assessment under our section 25 of the Trademarks Act about whether we consider a new trademark as the same or similar to another trademark that is currently on our register. We would not look into marketplace realities or common law rights and trademarks as part of our examinations. That would be quite administratively burdensome.

We limit ourselves luckily under section 25 which just talks about what is on the register. So we would run an assessment of the distinctive elements within the mark against other marks that may be currently on our register with an application accepted or registered status, and then make a determination as to whether the marks and the goods and services applied on are similar enough.

If we consider them to be similar, an objection would be raised, allowing the rights holder different mechanisms to try and overcome that objection, such as seeking consent from the owner of the previous mark, filing, honest concurrent use which would be evidence of the use and trade in the marketplace over a relevant period, concurrent with the mark that we raised as a citation, depending on the evidence that they

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provide that maybe sufficient. We trust that anyone who has unprotected trademarks that are not currently on our register would be able to utilise our Hearings functions to oppose the registration of the trademark, if they consider it to be similar to the one that they are using but have not protected it with our office.

HON. A. JALE.- That is quite clear, thank you very much for that.

MR. CHAIRMAN.- Thank you. Honourable Dr. Govind, do you have any pressing question?

HON. DR. S.R. GOVIND.- Yes, and thank you, Mr. Chairman. I would also like to thank our colleagues from New Zealand for giving us such a useful submission. I would like to thank the Team for providing information that will help the Committee to make a decision. My question is centred on what Honourable Tikoduadua asked, is Fiji is ready for this.

In the New Zealand case, there were certain amendments to the law which were passed prior to joining the Convention. I just wanted to know that if Fiji signs the Protocol before those amendments are passed, will there be any problem, or how much time would be needed before the actual implementation of the Protocol can be instituted? Will we be given some time? If we sign the Agreement or Protocol prior to the amendments being passed, will there be any problem? That is my first question.

My other question, was there a major concern raised by the private sector, especially the law firms in losing revenue and the capacity we do not have to really implement the Agreement at the moment. So, in that particular situation, what New Zealand did in terms of educating or creating awareness among the private sector so that these concerns are minimised. So, those are my two questions at the moment. Thank you, Mr. Chairman.

MR. S. GEZLEY.- I can definitely answer the first question. The window of opportunity happens between joining and when the Protocol comes into force. So there is only a three months window that is mandated in the Protocol from when you formally accede to the Protocol, so the Protocol comes into force in your country three months after that time. So, if you have not got everything together and ready to go, you have only got three months to do so. We certainly would not recommend that because you may find that for the time the three months window comes around, you have not got everything in place.

We still did some operational work in that three months window, we still have that time to use but in terms of all the requirements around the legislation, et cetera, that was all worked on prior to that because you only have that three months window and it cannot be changed, it is mandated under the Protocol. So, it is not a long period of time to get things fixed and sorted by the time it comes into force.

The second question, I think, centered on the concerns of the private sector and obviously, the benefits of the Protocol to your local businesses and virtually your case as well, outweigh the potential loss to particularly some of the IP attorneys, et cetera. The work that we did was just obviously involving them in part of our formal consultations and informal consultations along the way, thinking about discussing the benefits the system brings.

Mr. Wardle touched on filing increases as an example of where services is made. They think they are going to lose business but in general, because your system is more opened up internationally, *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 19. Tuesday, 11th August, 2020* -----

that does mean that potentially more filing can come in, et cetera. So actually the businesses can still have that work that comes in, et cetera.

Most of our work was around just keeping them involved in our decision-making and in our processes and involving them in some of those decisions as well or sort of discussing with them just to, sort of, mitigate any of their concerns but if anyone else wishes to jump in and add anything, you are welcome to.

MR. CHAIRMAN.- Mr. Wardle, do you wish to say something?

MR. G. WARDLE.- Yes, just on the first question, you do need to have everything in place before you join the Agreement. It is simply not possible legally to be able to join the System - the Madrid Protocol and then look to try and implement it.

As Mr. Gezley pointed out, you only have a three months window between depositing your Instrument of Accession with WIPO and the Agreement having to enter into force in Fiji, so that is not enough time to make any laws passed or create any regulations to give effect to it. So it is really a case of having to do all the lag work in terms of developing the legal system, changing the processes and procedures so that you are ready to go at the point that you deposit an Instrument of Accession. Again, if we come to the question of what did the New Zealand Government do in respect of IP attorney firms who were concerned that they would lose money, to be frank with you, the Government did nothing for those firms. I think to be honest, the Government nor Parliament found their concerns were persuasive enough. They did not provide evidence. In fact, that was what was projected to happen and it certainly was not nothing that happened in practice after we joined. Yes, as I discussed earlier, some firms did lose some money over the short term or did not make as much revenue in the short term, well that has not had a dramatic impact on firms and as I noted, the filings had gone up higher than what we were receiving before we joined the Madrid Protocol. So in essence, there was greater opportunities for IP lawyers to make more money after the process than to lose money.

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

HON. DR. S.R. GOVIND.- Mr. Chairman, Sir, I have another question. I do not need the answers now but maybe the Team can send us the information when they send the response to the questions. We are interested to know the amendments that were made in New Zealand prior to joining the Agreement? If they can send us the list of amendments that were done prior to joining.

MR. CHAIRMAN.- Thank you. Honourable Tikoduadua, I think you said you have one more question. Thank you.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. This is the last set of questions, they are pretty simple and probably targetted at Ms. James. What are your filling fees for patents and trademarks? *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 20. Tuesday, 11th August, 2020*

MS. R. JAMES.- I can disclose first the trademark fees. We have recently undergone a fees review process in February this year but prior to that, our filing fees were NZ\$150 per class in an application. Post that fees review, it has dropped to NZ\$100 per class or NZ\$70 per class if they use a pre-approved goods and services, basically have online where they can select from specification interest that we have already ascertained are quickly classified and clear which obviously is a time saving benefit for us that we have already made that examination so that they get a slight discount in the filing fee.

There was also a decrease in our renewal fees from NZ\$350 per class and renewal at 10 years to NZ\$200 per class of renewal.

HON. LT. COL. P. TIKODUADUA.- I am interested in how the IPONZ is organised. Do you have a central office? I am not sure where you are all talking from, whether it is Wellington or Auckland. Is it all centralised in one city or do you have offices that deal with these applications in other cities of New Zealand. I understand because you are all digitized so, I mean, if it comes to a central area, I suppose it would make sense. Is it only under one shop or in different shops?

MS. R. JAMES.- It is definitely moving towards different shops now. Historically, we were always based in Wellington so the majority of the IPONZ Teams were based all at Wellington, except for the Plant Variety Rights Team who were based down at Christchurch. Since we moved to our Online Case Management System, obviously that had added benefit and greater flexibility for our staff so we have had more of our staff starting to work remotely from homes.

In the last few years, a few people have moved to other cities in New Zealand. We have finally reached the capability in the Trademarks Team that I now I head, Senior Trademark Examiners or hire them based in Auckland and Christchurch and some will be moving to Hamilton shortly, which would then allow us to recruit in additional cities. Obviously, the majority of IPONZ are still based in Wellington but we are slowly getting more and more regional with certain members of our staff.

HON. LT. COL. P. TIKODUADUA.- Thank you. In relation to that in terms of staffing for IPONZ, I am interested first in terms of the competencies and qualifications of the staff who are integral to your work. How many staff do you have now centrally in your office in New Zealand? What are some of the essential requirements, I mean, do you have lawyers or examiners, so what are your qualifications for Examiners? How do you pay them? Are they great enough for them to stay, I mean, because that seems to be a problem here in Fiji - retention?

MS. R. JAMES.- That was definitely the problem we had in the past. So in the Trademarks Team, our requirement is just we need tertiary qualification and as long as they pass a written test that we set as part of our recruitment process which is basically about legislative interpretation, they can get a job with our office.

We undertake a formal training regime for our new staff which can take between 12 and 24 months, to train our examiners to be fully proficient in trademark examination. Through that process, if they make certain milestones, we have created a progression based system whereby when they go from Associate Level 1 Examiner to Associate Level 2 Examiner, there is a salary increase. So people going through the arduous training regime do get small salary, bonuses or recognition going through that process. *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 21. Tuesday, 11th August, 2020*

Ongoing salary retention, obviously, that can still be a challenge. A large proportion of our team are lawyers or they got legal Degrees. So after we have trained them, a lot of our legal professionals that deal with us like to see our staff as fantastic additions to their firms. Obviously, a commercial law firm can potentially pay or remunerate staff a lot better than a Government agency, so there is occasional staff loss to our profession. We have been working on our salary and remuneration packages for the last four years to try and improve retention, it is still not perfect but we are getting slightly a bit of retention statistics.

HON. LT. COL. P. TIKODUADUA.- My next question is, if and when we do adopt the Madrid system, perhaps a significant process that will be omitted in between is the use of the lawyers who understand the Intellectual Property rules and regulations and now, they can come directly into the FIPO.

I am interested to understand the experience in New Zealand about your own systems. Now, that you do not have the lawyers in between, how friendly is your system for people to understand the processes on how to apply for a trademark or a patent or whatever it is that you do in your office, now that the lawyers are, sort of, left on the side?

MS. R. JAMES.- I would not say they are left on side, they are still quite an integral part of what we do but as far as national mark filings go, I would say a good half of them are still filed using a New Zealand-based law firm.

We have been trying to improve our Online Case Management System and our website content to make it easier for private applicants who are not fully across Intellectual Property Law to make an application and work their way through the process. We have Tanya Carter managing the Stakeholder Team. They obviously deal with a lot of queries that come through our website. We have got our Contact Centre who can help these private applicants make their applications and respond via our system and our examiners are trained to tailor our responses based on the level of intellectual property knowledge that we are writing to.

So if we receive submissions from a lawyer, obviously, we would respond in very legal terms whereas if there is a private applicant, we would use more clear and easy to understand business language. We will not use as much case law, we will try and refine it down to make it easily understandable about what we are looking for or why they cannot keep their registration through. So, as part of our examiner training, all of our staff are expected to do a business writing course so that they can easily and fluently communicate with people who are not legal experts, which seems to work quite well.

The lawyers are obviously still involved, especially with the Madrid Protocol. It is a requirement to make response through our Office so if we have examined New Zealand destination and find there is an objection, someone would have to become a user in our Case Management System and provide New Zealand as local address for service in order to respond to us. So a lot of overseas businesses will not bother going to the hassle of trying to find a New Zealand-based address to use to make a response to us, so they just go to a New Zealand-based law firm and ask them to represent them with our office. So there is still a mechanism for your lawyers to attain valuable hours through the Madrid Protocol if you got a familiar requirement in your legislation to have a local address for service. S/C

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Obviously, you would also be looking at how many international companies would be wanting to protect and Fiji our numbers since 2012 obviously the most recent year have been increasing on an annual basis so between 5 percent to 8 percent in our trademark application volume year on year, so we have to scale down our team quite substantially. In 2012, I believe we have 23 examiners and we got signed off to increase our team to 40 examiners last year so that is obviously quite an increase in scale, and that has been driven from both entering national mark filings as well as through the Madrid Protocol.

HON. LT. COL. P. TIKODUADUA.- The next question is a very Fijian question. I know you are 100 percent fully digitized but do you still have some elements of analogue record keeping?

MS. R. JAMES.- Examiners may take handwritten notes but no, everything is kept online - all of our legal reports that are drafted in our Online Case Management System and in the event that we do anything analogue, it would be expected that the examiners would be later on input into the Case Management System and we would reckon their staff do anything analogue.

MS. T. CARTER.- Mr. Chairman, if I may add something to that for the benefit of our existing trademark rights holders, for example, we do allow for renewal and for some renewal notices to be delivered as they were when the Marks were registered. If we do have an email address, if we do have an electronic means to contact rights holders we will, but you are right.

Is the system perfect? There are a few exceptional cases, such as needing at times to contact existing rights holders but prior to that, it all changed. Paper-based system is a backup there but slowly and surely, there are many benefits to our rights holders by maintaining that online login with us. So, yes, the new applications are all captured 100 percent online but for the benefit of some existing rights holders, there are few exceptions there.

HON. LT. COL. P. TIKODUADUA.- Thank you. I have one last question. One of the challenges here in Fiji because of the current system that we have is to be able to meet the time deadline allowed under the Madrid System to have a national Intellectual Property Office process and application that has come from abroad. I believe it is 12 months and some added months further clarification, is that correct? No, I am just asking you if that is correct, like you have to reply within 12 months?

MR. S. GEZLEY.- Yes, that is right. So the Madrid Protocol under Article 5 defaults to a 12 months period. That means the Office has to have reviewed and issued a refusal within that time and if that is not done, then that means that trademark is deemed rejected but it is possible to extend that out. That is one of the decisions that you make during your accession processes, to identify. There is an opportunity under Article 5 of the Madrid Protocol to extend that timeframe out to 18 months.

We have done that as well but that was not an issue for us necessarily but that was required because you got to look at your current processes and your opposition procedures, et cetera, and that was just one of the decisions you make around, the declarations, but you can push that time right out to 18 months.

But it is important that if you do not meet that timeframe in any application that is filed into Fiji by the Madrid Protocol, that should be deemed rejected at the end of that timeframe if you have not issued a refusal via that appointment. That is just raising in the initial refusal, it is not having the whole *S/C on Foreign Affairs & Defence Virtual Interview with IPONZ Officials 23. Tuesday, 11th August, 2020*

process finished. So it is just making sure that the examination has been conducted within that 18 months period if you choose to extend the timeframe out.

HON. LT. COL. P. TIKODUADUA.- My concern is, I think we have been informed that we have some applications that have not even been replied to dating as far back as 5 years to 10 years. So, this becomes a concern for us, particularly around the capacity of our FIPO here to be able to respond effectively to WIPO, given those applications that come from WIPO to Fiji. Did New Zealand ever had cases like that where it had like legal challenges and was not able to reciprocate within 12 months, and what did you do?

MS. R. JAMES.- I recall us ever having a lag in examination time to that extent. From time to time, we have had backlogs in our examination case load up upto three months for our first examination of a trademark case but the majority are a long term backlogs would be after the first examination when we are dealing with particularly tricky cases. So, unfortunately, I do not believe I can help you in that front. We have been trying to always make sure that we have got back as we in place to deal with our filing numbers and it is different in any overview that we need to keep in mind and look at, depending on how quickly we are getting through cases.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, my last question and I am not going to ask another one. The question is obligation for the State. I know that in 2006, yes, New Zealand wanted to start work to accede to the Agreement. But did you ever feel pressured at all to be obliged internationally for New Zealand to accede to the Madrid Convention? Did you ever feel the need for that, that there was international pressure on New Zealand to do it?

MS. R. JAMES.- Mr. Wardle, maybe cast some light on this. From my perspective, I do not believe we were pressured to join, we could definitely see the benefit of our position as part of our wider transformation process but I do not believe we were being lobbied to join, Mr. Wardle, unless you know otherwise.

MR. G. WARDLE.- Yes, Mr. Chairman, I can perhaps help answer that question. At the time the decision was made to join the Madrid Protocol, there was no external pressure on New Zealand Government to join the Madrid Protocol. So the decision was taken on what was in the best interest of New Zealand at that time.

I do note though that New Zealand has entered into trade agreement subsequent to that 2006 decision that ever require New Zealand to be a member of the Madrid Protocol. Since we were, that is easy enough to comply with all those trade agreements.

There are obligations around best endeavours to join the Madrid Protocol if it does not include a specific obligation too, so yes, I mean, I would expect Fiji would likely come under international pressure from its trade partners to join the Madrid Protocol.

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

HON. LT. COL. P. TIKODUADUA.- Thank you very much. *S/C on Foreign Affairs & Defence*
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MR. CHAIRMAN.- Honourable Members, since there are no other questions, I would like to take this opportunity to say ‘thank you’ and we say it in the iTaukei language, ‘*vinaka vakalevu*’. A very big ‘thank you’ to Ms. Carter, Mr. Gezley, Ms. Cowcill, Mr. Wardle and Ms. James for your interactions with us, the Standing Committee on Foreign Affairs and Defence of the Republic of Fiji Parliament. I do hope that what you have shared with us can be shared with our public as you will know that we are going to be able to put together our report to Parliament and anything tabled in Parliament becomes public document. I do hope you will accede to that.

Also, thank you all once again to acceding to our request to come before the Committee. With those few words, if you do have any departing comments, the floor is yours and I do thank you again.

MS. T. CARTER.- I think we do not have any departing comments but I would extend my gratitude to Mr. Jacob for assisting me in making the preparations. Thank you very much.

MR. CHAIRMAN.- Thank you all once again.

The Committee adjourned at 11.50 a.m.