

# **APPENDICES**

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

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

Oral Submissions		
Date	Time	Submitters
Monday, 15 <sup>th</sup> June, 2020	10.34am	Ministry of Education, Heritage and Arts
	11.28am	Office of the Solicitor-General
Tuesday, 16 <sup>th</sup> June, 2020	9.30am	International Committee of the Red Cross (ICRC)
	10.01am	Republic of the Fiji Military Forces (RFMF)
	10.38am	Office of the United Nations High Commissioner for Human Rights (OHCHR)
	11.05am	Ministry of Defence, National Security and Policing
	12.02pm	Ministry of Women, Children and Poverty Alleviation
Monday, 22 <sup>nd</sup> June, 2020	9.25am	United Nations Children’s Fund (UNICEF)
	9.58am	International Labour Organization (ILO)
	11.29am	Ministry of Foreign Affairs
	12.17pm	Methodist Church of Fiji
Written Submissions		
4 <sup>th</sup> June, 2020		Fiji Police Force
16 <sup>th</sup> June, 2020		Primate and Archbishop of the Anglican Church in Aotearoa New Zealand and Polynesia Bishop of Polynesia
		Ministry of Commerce, Trade, Tourism and Transport
17 <sup>th</sup> June, 2020		House of Sarah
29 <sup>th</sup> June, 2020		Human Rights and Anti-Discrimination Commission



A PRESENTATION BY THE MINISTRY OF  
EDUCATION, HERITAGE & ARTS TO THE STANDING  
COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

OPTIONAL PROTOCOL TO THE CRC ON  
THE INVOLVEMENT OF CHILDREN IN  
ARMED CONFLICT

12<sup>th</sup> JUNE, 2020

OUTLINE OF PRESENTATION



- o What is the position of the Ministry of Education on the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict?
- o What is the current existing legislations and policies of the Ministry of Education with regards to the above Treaty?
- o What are some of the experiences faced by teachers in kindergarten, primary schools, secondary schools and tertiary levels and the exposure of our young children through the years in terms of the political crisis in Fiji in 1987, 2000 and 2006?
- o What are the experiences of children during the political crisis?
- o 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?
- o Should Fiji ratify the Treaty with or without reservation?
- o Identify Gaps
- o Way Forward

### **What Is The Position Of The Ministry Of Education On The Optional Protocol To The CRC On The Involvement Of Children In Armed Conflict?**



- MEHA [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 UN CRC and this Optional Protocol being an addition to that Convention, is supported by MEHA as it looks after the welfare of school aged children.
- The Constitution of the Republic of Fiji [2013] talks about the State making sure that every child has access to progressive realization 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.
- Children may not have the maturity & wisdom 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 Legislations And Policies Of The Ministry Of Education With Regards To The Above Treaty?**



- The Education Act 1972
- MEHA's Policies [Child Protection and the Behaviour Management ]
- Child Welfare Act 2010
- Constitution of the Republic of Fiji (Section 31)

**What Are Some Of The Experiences Faced By Teachers In Kindergarten, Primary Schools, Secondary Schools And Tertiary Levels And The Exposure Of Our Young Children Through The Years In Terms Of The Political Crisis In Fiji In 1987, 2000 And 2006?**



**EXPERIENCES OF TEACHERS**

- i. Needed 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
- ii. Experienced and qualified teachers have also migrated due to the unstable political climate of Fiji.
- iii. They get affected personally, some lost homesteads, spouses lost work, livelihoods change.
- iv. Work is affected. Schools closed, curriculum coverage affected, students' attitude and attention changed
- v. Some needed trauma counselling and assistance to cope with the situations they were in



**EXPERIENCES OF STUDENTS**

- i. It was something new. It took their whole interest out of school; hence it became difficult to continue. Some students even dropped out.
- ii. Violence became an issue, it became popular and an in-thing for some students.
- iii. 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.
- iv. What message went across to students in those days? One thing is for certain, today we are reaping the consequences in our schools, in our homes and in our community.
- v. Relocated to other places: urban to rural/ migration and vice versa
- vi. Examination/Assessment performance affected
- vii. Students had to adapt to new arrangements – curfew/ school hours/ transport etc.

**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?**



- 2013 Fiji Constitution and Education Act
- Child Protection Policy
- Behaviour Management Policy
- Counselling Policy
- Psycho-Social Support (PSS) through Counselling Programme – in schools by teachers/ counsellors and NGOs, mentors
- Government Initiatives to increase access to schools and encourage equity among gender/ geographic locations, for students with disabilities
- Proposed and current policies to ensure safety and care for students in schools

**SHOULD FIJI RATIFY THE TREATY WITH OR WITHOUT  
RESERVATION**



**Fiji should ratify without reservations –**

- We have our Fiji laws and legislations that are agreeing 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 UNCRC
- Fiji's current legislations and Practice is conducive for the ratification of this Optional Protocol.
  - ✓ Military recruitment at 18 years
  - ✓ Worst Forms of Child Labour Convention – ratified [so the State does not encourage exploitation of children]
  - ✓ Prevention of Child Abuse and Neglect commitments of the State

## GAPS AND WAY FORWARD



### IDENTIFYING GAPS

- What happens when some children join their parents [like 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?
- MEHA Policies do not have reference to Children's engagement in Armed Conflicts



### WAYS FORWARD



- 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 the Compulsory Education till Year 12 [so that it becomes mandatory for all students to be in school]
- 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.



## Submission by the Office of the Solicitor-General

### **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT**

#### **WRITTEN ANALYSIS**

#### **1.0 INTRODUCTION**

- 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.<sup>1</sup> 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.<sup>2</sup>
- 1.3 The Optional Protocol is a commitment that:
- States will not recruit children under the age of 18 years to send them to the battlefield.
  - States will not conscript soldiers under the age of 18 years.
  - States should take all possible measures to prevent such recruitment – including legislation to prohibit and criminalise the recruitment of children under the age 18 and involve them in hostilities.
  - States will demobilise anyone under the age of 18 years conscripted or used in hostilities and will provide physical, psychological recovery services and help their social reintegration.
  - 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.<sup>3</sup>

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<sup>1</sup> United Nations Treaty Collection – 11. Convention on the Rights of the Child, Accessed 26 May 2020  
[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtidag\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtidag_no=IV-11&chapter=4&clang=en)

<sup>2</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict – Optional Protocol on the Involvement of Children in Armed Conflict, Accessed 26 May 2020  
<https://childrenandarmedconflict.un.org/tools-for-action/opaac/>

<sup>3</sup> *Ibid*

- 1.4 As at 26 May 2020, 170 countries have ratified the Optional Protocol.<sup>4</sup> There are 17 countries that have neither signed nor ratified the Optional Protocol and 10 countries that have signed but are yet to ratify.<sup>5</sup> Fiji signed the Optional Protocol on 16 September 2005 and has yet to ratify the Optional Protocol.<sup>6</sup>

## 2.0 **SUMMARY OF THE OPTIONAL PROTOCOL**

- 2.1 The Optional Protocol contains 13 Articles.
- 2.2 Article 1 provides that States Parties must take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.
- 2.3 Article 2 provides that States Parties must ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.
- 2.4 Article 3(1) provides that States Parties must raise the minimum age for the voluntary recruitment of persons into their national armed forces from that which was set out in Article 38(3) of the CRC and recognise that persons under the age of 18 years are entitled to special protection.
- 2.5 Article 3(2) provides that each State Party must deposit a binding declaration upon ratification or accession to the Optional Protocol that outlines the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.
- 2.6 Article 3(3) also provides that States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
- (a) such recruitment is genuinely voluntary;

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<sup>4</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict – Ratification status of the Optional Protocol, Accessed 26 May 2020 <https://childrenandarmedconflict.un.org/tools-for-action/areas/ratification-status-of-the-optional-protocol/>

<sup>5</sup> *Ibid*

<sup>6</sup> United Nations Treaty Collection - 11.b Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Accessed 26 May 2020 [https://treaties.un.org/Pages/ViewDetails.aspx?m=TREATY&midsg\\_no=IV-11.b&chapter=48&lang\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?m=TREATY&midsg_no=IV-11.b&chapter=48&lang_en)

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- (b) such recruitment is done with the informed consent of the person's parents or legal guardians;
  - (c) such persons are fully informed of the duties involved in such military service; and
  - (d) such persons provide reliable proof of age prior to acceptance into national military service.
- 2.7 Article 3(4) provides that each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations ('Secretary-General').
- 2.8 Article 3(5) provides that the requirement to raise the minimum age for the voluntary recruitment of persons into their national armed forces pursuant to Article 3(1) of the Optional Protocol does not apply to schools operated by or under the control of the armed forces of the States Parties.
- 2.9 Article 4 recognises that armed groups are distinct from the armed forces of a State and should not under any circumstances recruit or use in hostilities persons under the age of 18 years. States Parties must also take all feasible measures necessary to prevent such recruitment and use including the adoption of legal measures necessary to prohibit and criminalise such practices. The application of this particular Article must not affect the legal status of any party to an armed conflict.
- 2.10 Article 5 provides that nothing in the Optional Protocol must be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realisation of the rights of the child.
- 2.11 Article 6 provides that each State Party must take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the Optional Protocol within its jurisdiction. States Parties must also undertake to make the principles and provisions of the Optional Protocol widely known and promoted by appropriate means, to adults and children alike. It must also take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the Optional Protocol are demobilised or otherwise released from service and when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

- 2.12 Article 7 provides that States Parties must cooperate in the implementation of the Optional Protocol, including in the prevention of any activity contrary to the Optional Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to the Optional Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organisations. Further, States Parties in a position to do so must provide such assistance through existing multilateral, bilateral or other programmes, or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.
- 2.13 Article 8 provides that each State Party must submit, within two years following the entry into force of the Optional Protocol for that State Party, a report to the Committee on the Rights of the Child ('Committee') providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol, including the measures taken to implement the provisions on participation and recruitment. Thereafter, each State Party must include in the reports they submit to the Committee, in accordance with article 44 of the CRC, any further information with respect to the implementation of the Protocol. Other States Parties to the Optional Protocol must submit a report every five years.
- 2.14 Articles 9 to 13 outline administrative matters including procedures for ratification or accession, entry into force, denunciation and amendments to the Optional Protocol.

### **3.0 REQUIREMENTS FOR IMPLEMENTATION**

- 3.1 Article 9(2) provides that instruments of ratification or accession are to be deposited with the Secretary-General. Upon ratification or accession, Article 3(2) requires a deposit of a binding declaration to the Optional Protocol that outlines the minimum age at which each State acceding or ratifying the Optional Protocol will permit voluntary recruitment into the national armed forces and a description of the safeguards that has been adopted to ensure that such recruitment is not forced or coerced.

- 3.2 Article 10 provides that for each State acceding or ratifying the Optional Protocol after its entry into force, the Optional Protocol must enter into force one month after the date of the deposit of its own instrument of ratification or accession.

#### **4.0 IMPACT OF THE CONVENTION**

- 4.1 The Optional Protocol clarifies and narrows the obligations of States Parties under Article 38 of the CRC.
- 4.2 Given that Fiji is a 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 all relevant existing national laws and policies.
- 4.3 With respect to the age of eligibility for military service in Fiji, the Republic of Fiji Military Forces Act 1949 ('RFMF Act') establishes recruitment qualifications and does not provide for compulsory military service. Section 7(3) of the 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 Fiji Military Forces may permit the enlistment of such number of persons of or above the age of 16 years.
- 4.4 The Employment Relations Act 2007 prohibits forced labour of children in Fiji. 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".
- 4.5 Moreover, section 41(1)(d) of the Constitution of the Republic of Fiji specifically provides for the rights of a child to be *inter alia* "protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour...".
- 4.6 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.

- 4.7 Ratification of the Optional Protocol will also promote co-operation and strengthen international relations with other State Parties who have ratified or acceded to the Optional Protocol.
- 4.8 Upon ratification, Fiji will be required to submit within two years, a report to the Committee providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol, including the measures taken to implement the provisions on participation and recruitment.

## **5.0 RECOMMENDATION**

- 5.1 It is recommended that Fiji ratify the Optional Protocol.

## Submission by the International Committee of the Red Cross (ICRC)

### Notes Accompanying ICRC Oral Submission to Standing Committee on Foreign Affairs and Defence on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

**Date and time:** Tuesday 18<sup>th</sup> June, 2020 at 9.30am SUV (7.30am CAN), for 30 minutes  
**ICRC representative:** Ms Georgia Hinds, Pacific Regional Legal Adviser ([ghinds@icrc.org](mailto:ghinds@icrc.org))

The International Committee of the Red Cross ('ICRC') thanks the Committee for inviting this submission and commends the Parliament of the Republic of Fiji for tasking the Committee with examination of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict ('OPAC').

#### The ICRC

The ICRC is a neutral, impartial and independent humanitarian organisation that operates worldwide. Our mandate, which stems from the universally ratified 1949 Geneva Conventions, is to protect the lives and dignity of people, including children, affected by armed conflict and other situations of violence, and to provide them with assistance. As part of this mandate, the ICRC works with governments to promote and strengthen international humanitarian law and universal humanitarian principles.

The ICRC was one of the organisations that expressed early support for the development of an optional protocol to the Convention on the Rights of the Child ('CRC'), and it participated actively in the drafting process.

#### Recommendations

We recommend that the Republic of Fiji:

1. **Ratify OPAC without reservation;** and
2. **Consider additional action** to strengthen protections for children in armed conflict by:
  - a. extending the existing legislative prohibition on enlistment in armed forces (s 7(3) of the *Military Forces Act 1949*) to include **recruitment** and **conscription**;
  - b. creating a criminal offence for the recruitment, conscription or enlistment of a person under the age of 18 into **armed groups**, in line with Article 4(2) of OPAC; and
  - c. criminalising the use (whether **direct or indirect**) of a person under the age of 18 years in hostilities. This should be worded to cover not only forced or compulsory use, but also voluntary use, in line with the Article 1 and Article 4(1) of OPAC.

#### Ratification of OPAC

##### Background

- Tens of thousands of boys and girls are recruited and used by armed forces and armed groups in conflict in over 20 countries around the world.
- Their participation can vary, from combatants to cooks, spies, messengers and even for sexual exploitation. Of growing concern is the use of children to carry or plant explosive devices. In the past few years, the UN Special Representative on children in armed conflict has noted an increase in the use of child suicide bombers.
- These children are exposed to acute levels of violence – as witnesses, direct victims and as forced participants. Physical and psychological trauma may be felt by survivors for the rest of their lives, and they face different challenges **demobilising** and **reintegrating** back into civilian society.
- Girls who are recruited and used by armed forces and groups have specific vulnerabilities due to their gender and place in society, and so they suffer specific consequences including, but not limited to, rape and sexual violence, pregnancy and pregnancy-related complications, stigma and rejection by families and communities.
- The **detention** of children is another concern to the ICRC. They can be detained because of their alleged association with an armed group, or because they have allegedly participated in hostilities.



Instead of being considered victims of the adults who recruited them, children are considered security threats. When children are arrested, they are too often detained without due process, for long periods of time and in contravention of international standards applicable to juvenile justice.

- The call in the preamble of the OPAC for the “*continuous improvement of the situation of children without distinction*.” “Without distinction” means that the crimes that a child may have committed, or the name of the armed group that he or she may have fought with **cannot erase the entitlement to the special protection** afforded to all children.

#### *Fiji's current obligations under international law*

- Fiji is a party to the Geneva Conventions of 1949, their 1977 Additional Protocols and the 1989 UN CRC.
- The 1977 Additional Protocols already prohibit the recruitment into armed forces of children under the age of 15, and require Fiji to **take all feasible measures** to prevent children under 15 from participating, directly or indirectly, in hostilities.<sup>1</sup>

#### *Arguments for ratification*

- Overall, the OPAC represented a clear improvement of existing international law. It lifted the age limit for the prohibition on compulsory recruitment and direct participation in hostilities to **18 years**. It also insisted that armed groups should not recruit or use children under 18 in any circumstances and called on States to criminalise such practice.
- By ratifying OPAC, the Republic of Fiji would be helping to safeguard future generations of **Fijian children**; whilst the Pacific region is fortunate in not currently being affected by armed conflict, we can never be certain that this will always be the case.
- Ratification would also contribute to the protection of **children worldwide** by strengthening the message, already sent by 170 States, that it is never acceptable to involve children in armed conflict.
- Fiji's adherence to OPAC would have concrete effect, since it is a significant contributor of police, military experts, and troops to **UN peacekeeping operations**.
- The Republic of Fiji often plays a **leading role in the Pacific** on international human rights and international humanitarian law issues. We urge it to continue to do so by becoming party to OPAC.<sup>2</sup>

### Recommended additional action to strengthen protection

#### **1. Interpreting OPAC**

##### *Age limit for voluntary recruitment*

- Whilst Article 3 of OPAC leaves open the possibility of voluntary recruitment into national armed forces of persons under the age of 18, the ICRC strongly encourages States to read this in light of the CRC and OPAC as a whole, noting in particular that Article 3(1) speaks of raising the minimum age for voluntary recruitment above 15, and recognises the special protection to be afforded to persons under 18. Accordingly, we recommend that the Republic of Fiji set a strict age limit of 18 for recruitment (voluntary or forced) into the armed forces.
- Each State seeking to ratify OPAC must also deposit a binding declaration that “sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced” (article 3(2)). We urge the Republic of Fiji, in its declaration, to set this age at a minimum of 18 years.

##### *Prohibition on indirect participation in hostilities*

- On the question of participation in hostilities, we note that Article 1 of OPAC only requires measures to prevent persons under 18 taking a **direct** part in hostilities. Whilst this is certainly important, we urge States to also prohibit **indirect participation**, since this will often be equally dangerous for children involved. This broad prohibition is in line with existing obligations under Additional Protocol II to the Geneva Conventions, which prohibits children under 15 taking any part in hostilities.<sup>3</sup>

<sup>1</sup> Additional Protocol I Art 77, Additional Protocol II Art 4(3)(c).

<sup>2</sup> Of the Pacific Island States, only Kiribati, Samoa and Vanuatu have yet joined OPAC.

<sup>3</sup> Additional Protocol II Art 4(3)(c)

## 2. Fiji's current implementing legislation

- As noted in the written analysis on OPAC provided to this Committee, the Republic of Fiji, through its laws and practice, already has a solid framework on which to base compliance with the minimum requirements of OPAC.
- Section 7(3) of the *Military Forces Act 1949* prohibits the enlistment into the armed forces of any person under the age of 18 years. However, the provision allows the Commander to permit enlistment of persons **of or above the age of 16**. It is also silent as to **recruitment or conscription** of persons under the age of 18,<sup>4</sup> and in relation to recruitment or use by **armed groups**.
- These prohibitions are complemented by section 91(a) of the *Employment Relations Act 2007*, which prohibits any form of forced or compulsory labour, including forced or compulsory recruitment of children under the age of 18 in armed conflict.

## 3. Recommended legislative action

- To strengthen these existing protections in Fijian law and to offer the broadest scope of protection in line with OPAC and the ICRC's above recommendations, we urge the Republic of Fiji to consider:
  - extending the existing legislative prohibition on enlistment in armed forces (s 7(3) of the *Military Forces Act 1949*) to include **recruitment and conscription**;
  - creating a criminal offence for the recruitment, conscription or enlistment of a person under the age of 18 into **armed groups**, in line with Article 4(2) of OPAC; and
  - criminalising the use (whether **direct or indirect**) of a person under the age of 18 years in hostilities. This should be worded so as to cover not only forced or compulsory use, but also voluntary use, in line with the Article 1 and Article 4(1) of OPAC.

## Resources

The following three ICRC resources may be of assistance to the Committee and to the Republic of Fiji's legislative drafters:

- **Annex I:** [\*Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated With Armed Forces or Armed Groups\*](#); these are the result of an ICRC consultation process that included detailed examination of the various rules and principles relevant to the protection of children affected by armed conflicts. These *Principles* include practical **preventative measures** including strengthening identification through strong birth certificate systems and measures which should be taken by military schools.
- **Annex II:** A model law developed by the ICRC to assist States ([\*Model legislative provisions on the recruitment or use of children in armed conflict\*](#)), which includes examples from States around the world.
- **Annex III:** [\*An update of model provisions from around the world which includes practice from 2014 – 2019\*](#) implementing obligations including those under the Optional Protocol, published in the latest *International Review of the Red Cross* edition dedicated to Children and Armed Conflict available freely online and which may provide other useful resources.

The ICRC Regional Delegation in the Pacific remains available to assist the Committee, Parliament and the Government of the Republic of Fiji with this inquiry and with any of the above recommended action.

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<sup>4</sup> We do note that Fiji does not currently have any policy of conscription to military service.

## Submission by the Republic of Fiji Military Force (RFMF)



REPUBLIC OF FIJI MILITARY FORCES

Office of the Commander

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COMMANDER RFMF SUBMISSION TO THE STANDING  
COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

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

The Honorable Chair and Members of the Standing Committee

Thank you for the opportunity to share my views, on behalf of the Republic of Fiji Military Forces (RFMF), on the Treaty on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol hereafter).

I note that in the Written Analysis on the Optional Protocol provided by the Standing Committee secretariat, the recommendation is that Fiji ratifies the Optional Protocol.

Let me then state upfront that the RFMF supports this recommendation for Fiji to ratify the Optional Protocol, and that there is no further action required on the RFMF side (either to amend or change existing rules and or regulations) as RFMF

currently operates within the parameters of the Optional Protocol. In essence Fiji and the RFMF has the framework in place and relevant and applicable laws, to ensure the Optional Protocols are covered and perhaps, more importantly, enforced domestically, within our domestic legislation framework.

The RFMF recruits on a voluntary platform and we as a Nation do not have compulsory military or national service as a requirement by Law.

The minimum recruitment age for RFMF is 18 years and this also dovetails nicely with our general minimum/benchmark qualification standard which is a Form 7 (Year 13) pass. The minimum age of a Year 13 student is 18 years unless the student is up classed for some reason.

According to Institutional (RFMF Internal) Regulations, Administration Instruction No. 29 on Recruiting, Para 8a reads: "...Applicants should be no younger than the attained age of 18 years..." Under the National Regulations in this case, the Republic of Fiji Military Forces Act (CAP 81), Section 7 (3) reads: "Qualification as officer or soldier of the Forces" - No person shall be enlisted in the Forces who is under the age of eighteen years.

Even though Article 3 of the Optional Protocol allows voluntary recruitment into armed forces of those under 18 with safeguards as laid out in Art 3, 3 (a,b,c and d), there is no reason for RFMF to recruit anyone under 17 because of the benchmark qualification that I mention above.

Child soldiering or children associated with armed forces and groups as the United Nation defines it, **must be eliminated**. It is one of the cruelest forms of abuse as seen mainly in volatile regions around the world.

Being a child soldier has many mental and physical effects on the children involved. First of all, they are raised in severe violence,

and are forced to commit horrible cruelties. This can cause chronic and traumatic stress, depression, personality changes, and social isolation. All of these side effects of being a child soldier are crippling to the children they effect. They prevent the children from having normal lives. Some children will live a life of violence since that is all they have known since they were young<sup>1</sup>.

Honorable Chair and Members of the Committee,

Child soldiers not only affect the child but also the family. Their sons or daughters are ripped from their arms, given a gun and told to kill. The emotional damage to a family is exponential. Often times their children are forced to kill their own family. After the children are rescued from being soldiers the families often do not want anything to do with the children or the children are left as orphans because they killed their own family. Child soldiers destroy individuals, families and communities.

I mentioned earlier, the fact that child soldiers are mainly seen in volatile regions around the world. They surface when there is lawlessness within a country that eventually escalates into a civil war. This was the case close to home during the Bougainville crisis.

If we read the reports and write ups on the Bougainville crisis, we see the trend - protests led to riots (lawlessness) and riots led to insurgency and there was a civil war between factions within the population for 10 years. You just have to google search photos of the Bougainville crisis and you will see photos of children holding/posing with weapons as members of one of the two fighting groups.

I said what I said earlier on what “soldering does to children based on the numerous reports on child soldiers which I read and also out

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<sup>1</sup> [www.warchild.uk](http://www.warchild.uk)

of my firsthand experience in dealing with these child soldiers when we deployed to Bougainville in November 1997 as part of the Truce Monitoring Group. We found out that some young men we worked with started as young as 13 years old (when they were in class 8) and some in that 10 year period rose to positions of Command in their organization. In my discussions (more of a “talanoa session”) with them, I saw the dilemma they were in, giving up the power and the prestige they had earned and to replace it with a life that they were not familiar with and was to them scary. These 13 year olds grew up in the volatile environment of a civil war (which was to them the norm) and now that they were 23 - 27 years old and some married with children, they had no faith or trust in the “new life” (life in a peaceful environment) that we were advocating.

To end this short recollection on the Bougainville crisis on a positive note, one of my best memories was when we managed to convince one of these child soldier come Commander, now married with a six year old child to go back to school. There was no school in the whole 10 years of the Bougainville crisis so there was a lot of catchup to do and young men and women would start school again from where they left off or one class back from where they left school. This gentleman did go back to school and so did his wife and their child. He was now 25 years old and he was in class 8, his wife in class 7 and their child in class 1- all in the same makeshift primary school that we managed to put up.

I mention this story to point out the fact that through Fiji’s participation in Peacekeeping (42 years now), Fiji is already contributing to fighting this form of child exploitation. When there is peace there are fewer chances of children being exploited as soldiers or being involved with armed groups.

Honorable Chair and Members of the Standing Committee

RFMF supports the recommendation for Fiji to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

Thank you for the opportunity to present to your Committee and I will be glad to answer your questions if you have any. Vinaka Vakalevu.

Viliame Naupoto

Rear Admiral

Commander RFMF

16 Jun 2020

## Submission by the Office of the United Nations High Commissioner for Human Rights

UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



NATIONS UNIES  
**DROITS DE L'HOMME**  
HAUT-COMMISSARIAT

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS  
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### **Written submission by the Office of the United Nations High Commissioner for Human Rights, Regional Office for the Pacific to the Standing Committee on Foreign Affairs and Defense on the ratification of the Optional Protocol**

to the Convention on the Rights of the Child on the involvement of children in armed conflict

15 June 2020

#### **1. Introduction to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

The Convention on the Rights of the Child (hereafter “the Convention”) was adopted by the General Assembly in November 1989 to set out international standards on the rights of children, defined as every human being below the age of 18 years. Fiji ratified the Convention in 1993, three years after the Convention entered into force.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (hereafter “the Optional Protocol”) was adopted by the General Assembly on 25 May 2000 and entered into force on 12 February 2002. The Optional Protocol came about as a result of efforts to raise the minimum age for recruitment and participation in hostilities from 15 years, as set out in article 38 of the Convention, to 18 years of age. Given the strong support for the Convention, the idea arose to draft an Optional Protocol to the Convention focusing specifically on the involvement of children in armed conflict.

As at 15 June 2020, there are 170 States parties to the Optional Protocol.

Fiji signed the Optional Protocol on 16 September 2005, together with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The Optional Protocol has 13 articles in total and aims to protect persons below the age of 18 from recruitment and use in hostilities. It makes two important distinctions with respect to recruitment by State parties versus non-state armed groups or entities; and the implications of compulsory versus voluntary recruitment.

### *Recruitment by armed forces*

The Optional Protocol requires States parties to ensure that persons below 18 years of age do not take a direct part in hostilities (article 1). This provision therefore raises the minimum age of direct participation in hostilities from 15 years to 18 years.

It also raises the standard for voluntary recruitment by national armed forces from 15 to at least 16 years and above (article 3(1)). If a State allows voluntary recruitment below 18 years of age, a State party is required to establish safeguards to ensure that any voluntary recruitment is genuine. This includes, as a minimum, the informed consent of the person's parents or legal guardians, provision of information on the duties involved in military service, and reliable proof of age.

While voluntary recruitment of children at 16 with adequate safeguards is permissible under the Optional Protocol, the Office of the United Nations High Commissioner for Human Rights (OHCHR), together with the Committee on the Rights of the Child, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UNICEF, and the Office of the United Nations High Commissioner for Refugees and the Coalition to Stop the Use of Child Soldiers, has advocated for a "straight 18" ban to provide broadest protection for children,<sup>1</sup> which would also be consistent with the general age of majority specified in the Convention, as well as the national legislation in Fiji (elaborated below). Majority of States parties have indicated 18 as the minimum age for voluntary recruitment.

### *Recruitment by non-state armed groups*

Article 4(1) of the Optional Protocol prohibits non-State armed groups from recruiting children under 18 years of age, either forcibly or voluntarily, and from using them in hostilities. To ensure this in practice, article 4(2) imposes a duty on States parties to prohibit and criminalize the recruitment and use of children under 18 years under its domestic legislation.

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<sup>1</sup> Joint statement issued on 13 January 2000. In practice, the distinctions between voluntary and compulsory recruitment may be difficult to implement. For example, volunteers may be coerced by lack of food, the need for physical protection, poverty or revenge. It may also be difficult to verify age where reliable birth registration systems are not in place. If a State with limited birth records allows voluntary recruitment at 16 years of age, it is possible that a child 15 years or younger could slip through the safeguards and volunteer for military service.

## 2. Why the Government Fiji is advised to ratify the Optional Protocol

Fiji has fulfilled its pledge made in 2010 in its first report for the Universal Periodic Review to ratify all core international human rights treaties by 2020, with the two last remaining treaties ratified in August 2019.<sup>2</sup> Following the latest Universal Periodic Review in November 2019, Fiji further committed to ratifying all of the Optional Protocols to the Convention on the Rights of the Child.<sup>3</sup> As a standing member of the Human Rights Council until January 2021, Fiji would continue to demonstrate its commendable leadership by ratifying not only the nine international human rights treaties, but also the optional protocols. It will also send a strong message to the international community regarding Fiji's commitment to protect children from harm, including recruitment and use in hostilities. Moreover, it would signal Fiji's commitment to protecting and promoting human rights in general, and provides an exemplary model for other Pacific Island Countries to follow.

Ratification of the Optional Protocol would also be timely given that **Fiji's combined fifth and sixth periodic report to the Committee on the Rights of the Child is due on 11 September 2020**. In its previous concluding observations of 13 October 2014 on the combined second to fourth periodic report of Fiji, the Committee on the Rights of the Child recommended that Fiji ratify the three Optional Protocols to the Convention on the Rights of the Child (CRC/C/FJI/CO/2-4, para.73). Ratifying the Optional Protocol would thus enable the government to report back to the Committee on the progress made to implement its recommendation, both in the State party report and during the constructive dialogue with the Committee.

Moreover, Fiji has already ratified, in April 2002, **Convention No. 182 of the International Labour Organization concerning the Prohibition and Immediate action for the Elimination of Worst Forms of Child Labour**, which defines and prohibits the forced or compulsory recruitment of children for use in armed conflict as "the worst forms of child labour" (article 3).

Similarly, Fiji has also ratified, in November 1999, the **Rome Statute of the International Criminal Court**, which prohibits as war crimes "conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities" in an international armed conflict and "conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities" in a non-international armed conflict.

With respect to domestic legislation, the **Republic of Fiji Military Forces Act 1949** ("RFMF Act") stipulates that "no person shall be enlisted in the Forces who is under the age of 18 years, provided that the Commander may permit the enlistment of such number of persons of or above the age of 16 years and under the age of 18 years as he or she may from time to time determine" (Section 7(3)).

There is no compulsory recruitment by the military forces in Fiji, and recruitments or participation are currently voluntary. However, under the RFMF Act, children between the age of 16 and 18 years of age can be recruited into the armed forces, and the RFMF Act does not

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<sup>2</sup> Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families were both ratified on 19 August 2019.

<sup>3</sup> Recommendations 140.9 and 140.10 (see A/HRC/43/8 and A/HRC/43/8/Add.1).

provide any distinction between the roles of soldiers under 18 years of age and those above the age of 18. The government of Fiji may thus need to take measures to adopt adequate safeguards as set out in article 3(3), and clarify the role of soldiers between 16 and 18 years of age, who should not take a direct part in hostilities. Direct participation may be interpreted to encompass not only active participation in combat but also military activities and direct support functions. These functions might include scouting, spying, sabotage and acting as decoys, couriers, porters, cooks or assistants at military checkpoints.

Ratification of the Optional Protocol will enable the government of Fiji to receive further guidance from the Committee on the Rights of the Child to further align its domestic legislation and policies with the provisions of the Optional Protocol.

The Optional Protocol also allows for the possibility that States parties bind themselves to standards on the recruitment and the use of children in hostilities that surpass those outlined in the Optional Protocol, or that provide greater protection for children's rights, whether through national legislation or other international treaties (article 5). OHCHR therefore recommends that the government of Fiji consider adopting a "straight 18" policy prohibiting both compulsory and voluntary recruitment of children into the armed forces. This policy would go beyond the minimum terms of the Optional Protocol, but would be consistent with other laws in Fiji, as well as the Constitution.

This includes the **Employment Relations Act 2007**, which prohibits forced labour of children under the age of 18 years. The Act defines "forced labour" as including "any work or service extracted in accordance with compulsory military service laws for work of a purely military character". The Family Law Act 2003, Child Welfare Act 2010 and the Domestic Violence Act 2009 also define children as individuals under the age of 18 years.

Additionally, the **Constitution of the Republic of Fiji** guarantees the right of every child "to be protected from abuse, neglect, harmful cultural practice, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour".

### 3. Impact of ratification

#### *Declaration upon ratification*

In accordance with article 3 of the Optional Protocol, Fiji shall deposit a binding declaration upon ratification of the Optional Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

OHCHR recommends that the government of Fiji consider adopting a "straight 18" policy prohibiting both compulsory and voluntary recruitment of children under 18 in the armed forces.

#### *Reporting*

As set out in article 8 of the Optional Protocol, Fiji would be required to submit, within two years following the entry into force of the Protocol for Fiji (one month after the date of the deposit of its instrument of ratification), a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

### *National Mechanism on Reporting and Follow-up (NMRF)*

Having ratified all core human rights treaties, Fiji has expressed its commitment to comply with its reporting obligations. To this end, Fiji has committed to the establishment of a National Mechanism for Reporting and Follow-up (NMRF), recognizing that such a mechanism will ensure precise and timely reporting to the treaty bodies.<sup>4</sup> OHCHR, through its Treaty Body Capacity Building Programme and its UPR Trust Fund on Implementation, stands ready to continue providing support to the Government of Fiji, including on reporting to treaty bodies, establishment and/or strengthening of NMRFs, and sharing of best practices to enhance reporting and follow-up.

## **4. Conclusion**

**OHCHR recommends that the Government of Fiji ratify the Optional Protocol for the reasons outlined in the submission.**

It also recommends that the government of Fiji:

- Consider prohibiting both compulsory and voluntary recruitment of children – defined as those under 18 years of age – into the armed forces, and indicate this policy in its bidding declaration to be submitted upon ratification of the Optional Protocol;
- Take further steps to establish a National Mechanism on Reporting and Follow-up within the government to ensure efficient, effective and systematic engagement with all international human rights mechanisms, including the treaty bodies, the Universal Periodic Review, and the Special Procedures of the Human Rights Council;
- Ratify the other two Optional Protocols to the Convention on the Rights of the Child, as pledged during the third cycle of the Universal Periodic Review;
- Consider ratifying the remaining Optional Protocols to the core international human rights treaties, including the second Optional Protocol to the International Covenant on Civil and Political Rights, as pledged during the third cycle of the Universal Periodic Review.

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<sup>4</sup>Fiji's third national report for the Universal Periodic Review, October 2019, A/HRC/WG.6/34/FJI/1, para.38.

## **Ministry of Defence, National Security & Policing**

### **Presentation to the 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**

## **Scope**

- Fiji's Status
- Implications of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on Security and Defence perspective
- Why Fiji should ratify
- Question

## Fiji's Status

- Fiji signed the Convention on the Rights of the Child ('CRC') 2<sup>nd</sup> July 1993 and ratification on the same on the 13<sup>th</sup> August 1993.
- Fiji's Constitution – section 41 'Rights of a Child'
- Fiji signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict on 16<sup>th</sup> September 2005.

## Implications of the Convention on Security & Defence

- **Juvenile Act 1973** – definition of a child –  
*'those under the age 14, young persons – between the age's of 14 years and 18 years, juvenile – those under the age of 18 years which includes child and a young person.'*
- **Employment Relations Act 2007 S 91**  
Prohibits the following forms of child labour;  
*'all forms of labour slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict'*
- **Republic of Fiji Military Act 1949 S 7(3)** –  
*'No person shall be enlisted in the Forces who is under the age of 18 years, provided that the Commander may permit the enlistment of such number of persons of or above the age of 16 years and under the age of 18 years as he or she may from time to time determine.'*

## Implications on Security & Defence

### 1. State Parties;

- a. shall ensure that persons who have not attained the age of 18 years are not to be recruited into their armed forces, take part in hostilities and or be part of the armed groups that are distinct from the armed force.
- b. upon ratification or accession, a binding declaration is to be deposited that highlights the minimum age of voluntary recruitment into the military force and the requirements adopted to ensure that such recruitments are not forced or coerced.
- c. who permit voluntary recruitment under the age of 18 into their military force shall maintain safeguards that;
  - i. *recruitment was voluntary with informed consent of parents or legal guardians,*
  - ii. *fully informed of the duties and*
  - iii. *provision of proof of age prior to acceptance into the military force.*

## Implications on Security & Defence

- d. may strengthen its declaration by notifying the Secretary General of the United Nations of its effect.
- e. Shall take all measures including adopting legal measures to prevent, prohibit and criminalize such practice.
- f. Shall take all necessary and effective measures to implement, enforce, promote and prevent activities that are contrary to the provisions of this protocol.

## Implications on Security& Defence

- g. Shall undertake measures to demobilise or release from service persons within their jurisdiction that are recruited or used as hostile and accord them with all appropriate assistance such as technical cooperation or financial assistance for their physical, psychological recovery and their social re-intergration.
- h. Shall submit a report to the Committee on Rights of a Child and the protocol within two years upon its entry into force. Report must provide information on measures implemented in relation to the provisions, this report must also detail further information in respect of the protocol.

## Why Fiji should ratify

- Strengthen Fiji's commitment and obligations under the Convention on Rights of a Child.
- Compliments our existing laws
- Promotes and strengthens international relations and cooperation between State Parties.
- Strengthen Fiji's commitment and obligations to other international conventions



Interested individuals have expressed their interest in joining the RFMF. However the RFMF will not be undertaking further recruitment for the rest of the year 2016.

However, it is imperative to enlighten the RFMF recruitment eligibility. An individual may be eligible to apply if he or she has the required citizenry, age group, background, entry-level education and sound health. Interested individuals are encouraged to carry out their personal health and physical fitness assessments prior to future recruitment drives. The following requirements must be met:

1. You must be a citizen of Fiji and you have lived in Fiji for the past 10 years consecutively.
2. Your age group is between 18 years to 25 years old.
3. Present your latest Police Clearance.
4. A year 12 graduate is the minimum entry-level for education requirement.
5. You must have a sound health.

## Way Forward

- Amendments to laws;
  - a. Arms and Ammunition Act – issuance of license must have an age preference; those under the age of 18 must not be issued the license, possess or use the firearm.

**Ministry for Women, Children and Poverty Alleviation**

**Brief to Standing Committee on Foreign Affairs and Defence on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict**

**1. What is the position of the Ministry of Women, Children and Poverty Alleviation on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict?**

The Ministry for Women, Children and Poverty Alleviation fully recommends that Fiji ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. We base our recommendation on the fact that the Fijian Government is committed to ensuring that all children grow up in a safe and loving family and are supported to reach their full potential. Through pronouncements in the Fijian Constitution and our commitments under the Convention on the Rights of the Child (CRC) we, as a nation, remain dedicated to protecting children from all forms of violence, abuse, neglect and exploitation. Fiji ratified the CRC in 1993, which sets out standards and protocols to safeguard rights and welfare of our children. As a signatory to the CRC, Fiji is obligated to submit state reports to the Committee on the Rights of the Child. These reports map out how Government is faring in meeting obligations under the CRC.

**2. Should Fiji accede to the above Treaty with or without reservation?**

Yes.

Fiji is good to accede to the Treaty because it will strengthen the implementation of the CRC and increase the protection of children during armed conflicts because the Optional Protocol, also known as the child soldier treaty, is a multilateral treaty whereby States agree to:

- a) prohibit the conscription into the military of children under the age of 18;
- b) ensure that military recruits are no younger than 16; and
- c) prevent recruits aged 16 or 17 from taking a direct part in hostilities.

**3. What is the level of child protection laws and policies in Fiji bearing in mind the political crisis of 1987, 2000 and 2006, whereby children were exposed to varying degrees of conflict in different parts of the country?**

The Constitution of the Republic of Fiji 2013, Chapter 2, Bill of Rights, section 41 emphasises the right of every child being protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous and exploitative labour. The introduction of the Child Welfare Act was in 2010 which makes reporting on cases of child abuse and neglect intercepted by any other line agency mandatory to the PSMWCPA - and The Ministry is currently finalising the National Child Protection Policy, whilst line Ministries and CSO's have their own Child Protection Policy. The legal framework for the Protection of Children rests with the Ministry, under the Department of Social Welfare. Juveniles Act clearly outlines the duties and powers of the Director Social Welfare and his/her welfare officers. For Fiji, following the ratification of the CRC, government has been strengthened by laws and we currently have a structure in place to care for children.

We wish to address that the political crisis situations in the past may not have had direct implications on children, but they would have been faced with indirect implications with families losing livelihoods, undergoing trauma due to civil unrest and spending time away from school while a state of emergency was declared. Services provided to children must be aligned to the needs of the children in times of crisis as such. We can also confirm that during these situations, no child was reported to be a part of armed

groups. The ratification of the Optional Protocol will be a proactive measure in ensuring that this never actually happens in Fiji and strengthen the current legal framework.

**4. How does these impact current laws, policies on the Convention on Rights of the Child (CRC) and work undertaken currently by the Ministry on the ground?**

The Child Welfare Act was enacted in 2010 and makes reporting on cases of child abuse and neglect intercepted by any other line agency mandatory to the PSMWCPA. The added advantage to the laws is the reporting or referral pathways that those on the ground are fully aware of. There are guidelines or SOP in place that adds to the structure and this has allowed collaborative multi-sectorial approach when implementing cases.

**5. How does this impact current partnership on CRC work with UNICEF and other agencies on the ground i.e. Save the Children (Fiji), Oxfam, Dilkusha Home Nausori and Saint Christophers Home Naulu?**

It will actually make the partnership stronger as the ratification shows Fiji's continuous support to further promoting, protecting and fulfilling the rights of children in the country. While this may mean additional reporting for the country, good progress is already happening through laws that protect children. Anything that requires countries to work towards protecting children is key for UNICEF.

**6. What are the lessons learnt?**

An integrated approach is a must in dealing with issues of child protection and this is the key strategy that the Ministry uses. It is also the main reason why we have in place the national coordinating body (the NCCC), inter-agency networks at district levels and a referral network has been established for the administration of the Child Helpline 1325 to ensure the right agency deals with relevant issues in a timely manner. The Ministry remains committed to taking an integrated approach on such matters in the future as well as this has been found to be the most effective method.

**7. What rehabilitation programs, CSOs and NGOs in place to assist the Ministry for future events moving forward?**

The National Coordinating Committee on Children (NCCC) is an existing body including CSOs, NGOs and UN Organizations coordinated by the Ministry and brings to the table key stakeholders in the area of child protection. NCCC can lead the way forward for the implementation of the requirements under the watch of the PSMWCPA who chairs this committee.

**8. Final thoughts on the subject matter.**

The Optional Protocol forbids non-state armed groups from recruiting anyone under the age of 18 for any purpose. The Optional Protocol came into force on 12 February 2002 and as at March 2020, 170 States are party to the Optional Protocol. Article 3 of the Optional Protocol provides that the State Parties must raise the minimum age for the voluntary recruitment of persons into their national armed forces and recognise that persons under 18 are entitled to special protection. It also provides that each State Party shall deposit a binding declaration upon ratification or accession to the Optional Protocol that outlines the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced. Article 3 also provides that States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

- a) Such recruitment is genuinely voluntary;
- b) Such recruitment is done with the informed consent of the person's parents or legal guardians;
- c) Such persons are fully informed of the duties involved in such military service; and;
- d) Such persons provide reliable proof of age prior to acceptance into national military service.

Article 4 of the Optional Protocol recognises that armed groups are distinct from the armed forces of a State and should not under any circumstances recruit or use in

hostilities persons under the age of 18 years. States Parties must also take all feasible measure necessary to prevent such recruitment and use including the adoption of legal measures necessary to prohibit and criminalise such practices. Article 6 of the Optional Protocol provides that each State Party must take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Optional Protocol within its jurisdiction. It must also take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the Optional Protocol are demobilised or otherwise released from services and when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7 of the Optional Protocol provides that State Parties shall cooperate in the implementation of the present Optional Protocol, including in the prevention of any activity contrary to the Optional Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to the Optional Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned State Parties and relevant international organisations. Further, States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8 of the Optional Protocol provides that each State Party shall submit, within two years following the entry into force of the Optional Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol, including the measures taken to implement the provisions on participation and recruitment. Thereafter, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

Finally, Articles 9 to 13 of the Optional Protocol outline administrative matters including procedures for ratification or accession, entry into force, denunciation and amendments to the Optional Protocol.

## **Submission by the International Labour Organization (ILO)**

### **ILO Office for Pacific Island Countries**

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**Parliament of the Republic  
of Fiji** Standing Committee  
of Foreign Affairs and  
Defence

**SUVA**

**22 June 2020**

### **RE: Submission to the Standing Committee on Foreign Affairs and Defence on the Treaty on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

As per ILO 2017 Global Estimates of Child Labour, 250 million children live in areas affected by armed conflict. Many of 168 million children engaged in child labour live 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 (under revision); as well as the Convention on the Rights of the Child and SCR 1612 on children and armed conflict.

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 convention, 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 that 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 (1989) contains several provisions on child labour, including addressing protection of children in armed conflicts (Article 38). 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 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 key in combating child labour and for the development of prosperous societies. It is wrong for children to have to work to ensure their own survival and that of their families.

Eradicating of child labour, including its worst forms, is a global and globally-agreed priority.

Target 8.7 of the Sustainable Development Goals 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 the SDG Target 8.7 and sharing the lessons and knowledge generated among 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.

ILO welcomes that the Parliament of Fiji considers 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 supports the recommendation to ratify the Optional Protocol.

Yours sincerely

Matin

A handwritten signature in blue ink, appearing to be 'Matin', followed by a long horizontal line.

Director

## Submission by the United Nations Children's Funds (UNICEF)

**UNICEF Pacific Representative  
Mr. Sheldon Yett**

**Fiji Parliament Standing Committee on Foreign Affairs and Defence  
(Virtual Submission- Suva)  
June 22, 2020**

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Honourable Alexander O'Connor – Chairman of the Standing Committee

Honourable Members of the Committee

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 for 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 ("**Convention**").
- To help stem 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 conflicts (known as the "**OPAC**") and 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 entered force globally in 2002, and which Fiji signed on 16 September 2005.
- The OPAC is a further milestone in the campaign to strengthen the legal protection of children, helping to prevent their use in armed conflict.
- The aim of OPAC is to provide greater protection to children than is provided for 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.

*Global Commitments by Fiji:*

- UNICEF applauds the Government of Fiji for progress and commitments made at global and national level, towards progressively realizing 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 for 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 of the Rights of the Child
- As part of the constructive dialogue with the Government of Fiji on its 2nd-4th periodic report on the implementation of the Convention, the Committee on the Rights of the Child recommended that the Government ratify the Optional Protocols.

*Progress in National Laws:*

- Domestication of global child rights standards in Fiji is evident through national laws, and in the 2013 Constitution, which aligns the definition of the child to that of the Convention, recognizing a child as an individual who has not reached the age of 18 years.
- The **2013 Constitution** of Fiji explicitly recognizes the protection of the rights of children in section 41.
- Section 41(1d) 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 **2007 Employment Relations Act** also makes some positive steps in bringing labour standards in compliance with ILO Conventions 138 and 182.
- The **1949 Republic of Fiji Military Forces Act** establishes that no person shall be enlisted in the Forces who is under the age of eighteen years.
- While there undoubtedly has been progress in meeting the rights of children in the Fiji, more needs to be done.
- This will only be possible if we work together as partners in providing all children an environment that is safe and free from discrimination and harm.

*Recommendations:*

- 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 a commitment to meet the rights of all 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 force.

*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 of Government officials and key stakeholders as part of the broader national action plan than can strengthen implementation and help build partnerships between Government, civil society and development partners. We would 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 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.

*Conclusion:*

- 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 meets Fiji's compliance with international standards.
- I also want to re-iterate that the Fijian Government is a key partner for UNICEF and we look forward to continuing the good work that we have been doing together.
- Thank you again Honourable Chair, Honourable Members of the Committee and the Secretariat for making this dialogue possible.

Vinaka and Thank you

## Submission by the Ministry of Foreign Affairs (MOFA)



*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.

### **3.0 APPLICABLE NATIONAL POLICIES**

- 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 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.
- 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.
-



## Methodist Church in Fiji

Epworth House, Corner of Nina & Stewart Streets, GPO. BOX 357, Suva, Fiji. Telephone : (679) 3311477 GSM CORD 5445 or 5446 FAX : (679) 33037

### METHODIST CHURCH IN FIJI SUBMISSION TO STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENSE ON THE TREATY ON THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVMENT OF CHILDREN IN ARMED CONFLICT

#### 1. INTRODUCTION

- 1.1 The Church wishes to convey its sincere appreciation for the invitation to make a submission on this most important issue.
- 1.2 Furthermore, we pray and hope that we will be invited for further engagements on issues of mutual interest in the future.
- 1.3 Our apologies for not being able to meet the initial deadlines given to us on Thursday 16<sup>th</sup> June and appreciate this second opportunity.

#### 2. THE ISSUE FROM THE CHURCH'S CONTEXT

##### 2.1 The sanctity of Human Life

- 2.1.1 We believe 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 we will each give account to Him on decisions we make in our lives.  
*"The earth is the Lord's. . . the world and all who live in it" Psalms 24 : 1*  
*"For we will all stand before God's judgment seat. . . So then each of us will give an account of himself to God" Romans 14 : 10-12.*
- 2.1.2 Furthermore we believe that man was specially created by God Almighty in His image for a particular purpose.  
*"God created man in His own image...male and female He created them" (Genesis 1: 27).*  
As if to confirm the value our Creator has for us – His special creation, He has set a special commandment in the Ten Commandments for man's protection  
[*"Thou shall not kill" Exodus 20:13*]  
Despite our decisions to live outside of His loving intentions for us, He has continued to pursue us to enable us to experience His original intentions for us.  
*"..I have come that you may have life, and have it to the full" John 10:10.*
- 2.1.3 All these 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.

Please send all correspondence to the General Secretary at the above address quoting our reference

Email [connexion@methodistfiji.org](mailto:connexion@methodistfiji.org)

WEBSITE: <http://www.methodistfiji.org>

## 1.

### 2.2 The Child

Universally accepted and defined as "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/she** is in that child spectrum – Year 1 to Year 17; even if he or she is 17 years 11 months.

#### 2.2.1 The Scriptures says (*Psalms 127:4*) " . . . **Children are a gift from the Lord**"

- If children are **precious gifts** from God Himself, then the onus is on us to **cherish, value and appreciate** them.
- Any **denial or mistreatment** on our part must mean offending the Giver of this most precious gift and we believe there are grave consequences personally and collectively – rightly, for the abuse of these priceless gifts (all there for us to see in our nation). *"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 "Matthew 18:6.*

#### 2.2.2 We therefore should take heed of the stipulations of the 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
- Inhuman treatment and punishment and
- Hazardous and exploitive labor

We believe being in the military makes them more susceptible to most of the above.

#### 2.3 We believe children belong in the Home and Society and not the Military as:

- They are still **physically and emotionally immature** and **easily manipulated** – very significant considerations in the **context of Military service** where they are exposed to acute levels of violence – as witnesses (deaths, killings, sexual violence, etc.), direct victims and forced participants.
- With greater frequency of wars and easy to operate weapons nowadays
  - Mass killings are greater thus chance of death is far greater.
  - Significant effect for armies such as ours where it's dominated by a particular ethnic group.
- They are at the most productive age – we are placing more importance on endangered animal species (e.g. turtles, kawakawa) than our young.

#### 2.4 We also believe that the use of children is a discrimination against them

- Their death/loss is a lighter burden compared to the married – lesser of 2 evils?
- This discriminates against them as they would miss out on experience of marriage and life as a whole with the future before them.

### 3. OUR CONCERN ON SELECTED ARTICLES OF THE OPTIONAL PROTOCOL

#### 3.1 That it still acknowledges/accepts continued presence of children in the Military

Article 1 " . . . members of the armed forces who have **not attained the age of 18**"

Article 2 "...persons who have **not attained the age of 18**".

- A contradiction of its stated/expressed objective to prevent recruitment of children.

## 2.

- We ask, what is the desperate need to enlist/recruit children? Is it because
  1. they are cheaper to have (food, income, etc.)?
  2. they are readily available?
  3. they are more convenient (i.e. teachable/vulnerable)?
  4. weapons are easy to use given advance in technology?
  5. they are easily manipulated
- By starting with this, you're defeated from the start e.g. 300,000 Child soldiers in the world in 2007; in Chad alone there were 7,000 – 10,000 child soldiers in the same year.

Note: It is easier to open fully a slightly opened tap/door than to close it.

### 3.2 The acceptance of voluntary recruitment

Article 2 "... **not compulsorily recruited**"

Article 3 (1) "... shall raise the minimum age for the **voluntarily recruitment**".

Article 3 (2) "... permit **voluntary recruitment**"

Article 3 (3) "... permit **voluntarily recruitment**"

Here we question the **voluntary issue** as the children/parents/legal guardians may have pressing issues influencing their 'voluntary' decisions e.g.s

- Escape poverty (income, food), displaced from families, limited access to education, need of security, need to do something/follow a cause, etc.
- Very **little clear understanding of the implications** of what they are getting into.

### 3.3 Assuming that somehow they would be prevented from taking part in hostilities

Article 1 "... age of 18 years **do not take part in hostilities used as:**

Other than participating in the usual military fields as engineers, sappers, etc. and in other capacities e.g. Cooks, porters, messengers etc. its common knowledge that they have been also used in the areas mentioned because of their lack of education, vulnerability and gullibility

- Suicide bombers, human shields
- Sexual purpose (girls 10 – 30% of recruit)

In war, it's difficult to monitor age as other priorities dictate decision on the ground at any time.

## 4. CONSIDERATION OF MILITARY PRESENCE/INFLUENCE IN SCHOOLS

### 4.1 Child Soldier Intervention (CSI) report on British Army

- a) While not allowed to recruit in school, "the presence of representations is a kind of recruitment"
- b) While a rep may be tasked to recruit only 2 out of 1000 students, they "also want to recruit the whole school to the ideas of military.
- c) Though presence is to instill self-discipline, loyalty/respect, strong leadership, teamwork, resilience etc. it at the same time discourages free thinking, criticism of authority, etc.
- d) Under 18 has historically been an important source of recruitment – the only country in Europe recruiting under 18 (25% of its recruitment) and taking more of 16 years compared to 17.

- e) "We think that just as you can't advertise smoking and alcohol to children, you should not be able to advertise a job where there is a good chance you can be killed, maimed or disabled for the rest of your life.

### 3.

#### 4.2 Military/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 difference in school discipline/performance. It should be of concern though that some very serious indiscipline – bordering on violence have frequently cropped up from 1 or 2 of these institutions.

## 5. EFFECT OF VIOLENT VIDEO GAMES

5.1 It would be interesting for a study on the effect of the lack of control on these games that our children are exposed to, now readily available in our homes and internet shops.

5.2 Dare we equate the rise of bullying and sexual crimes in our country to this home invasions by these so-called 'harmless entertainment' which have taken over 'baby sitting' in our country.

## 6. STATE SUPPORT FOR THE FAMILY'S ROLE

6.1 The Methodist 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 stewards, 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 on children and family life, which includes its commitment to the articles of the 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 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 2013 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 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.

6.2 It is important 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 a child. This must not be 'spared' when regulatory authorities exercise their discretion about education, law enforcement and security services, online safety, etc. 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 virtues. Without spiritual knowledge our children, which includes our young adults, will be worthless, even dangerous for society.


6.3 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.

## 7. RECOMMENDATIONS

In light of the issues raised above, we wish to humbly recommend the following:

- 7.1 That we include the Spiritual/Christian dimension to our conversation on the matter as the issue in question involves a being who is spiritual no matter how other world views might want to deny it.
- 7.2 That leaders/governments acknowledge that they are accountable not only to us the people, but more so to God Almighty and we don't want to be paying the price for your costly mistakes.
- 7.3 That all needed structures important to the basic unit, the family, 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 it will fail and will be more costly in the end.
- 7.4 That we make a stand on putting a stop to any recruitment of any children for military service/armed conflicts – we stop it from source, making it an international crime.
- 7.5 That we carry out a study on the possible correlation between the effect of violent/demonic video games and sexually explicit shows our citizens, especially our children, are exposed to with the rise in violent behavior and sexual crimes.
- 7.6 That we relook at the present militarization of our nation including Cadet Training in schools.

With our prayers and best wishes.

  
Rev. Dr. Epineri Vakadewavosa  
President.

## WRITTEN SUBMISSIONS

### Submission by the Fiji Police Force



#### FIJI POLICE FORCE OFFICE OF THE COMMISSIONER OF POLICE

Vinod Patel Building, 4½ Miles, Nasinu, P O Box 239, Suva, Fiji Islands  
Telephone: (679)3343 777 Fax: (679)3343 818 email: [fjcompol@gmail.com](mailto:fjcompol@gmail.com)

Ref: A/11/15

Your Ref: Parl 6/16

4 June 2020

The Chairman  
Standing Committee on Foreign Affairs & Defence  
P O Box 2353  
Government Building  
SUVA

Hon. Alexander O'Connor

**Re: FPF Submission on the Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict**

- 1.0 Reference is made to your correspondence dated 3 June, 2020 on the above subject.
- 2.0 The Fiji Police appreciates the committee's invitation to make relevant submissions regarding the above mentioned subject.
- 3.0 The Fiji Police Force's response is appended herewith.
- 4.0 Please do not hesitate to communicate with the Directorate of Strategic Planning, Policy, Research & Development, **SSP Aporosa Lutunauga** on mobile number 9905813 or email [lutunauga@gmail.com.fj](mailto:lutunauga@gmail.com.fj) for any further clarification on the above subject matter.

Vinaka vakalevu.

A blue ink signature of Sitiveni T. Qiliho, written in a cursive style, with a horizontal line underneath.

Sitiveni.T.Qiliho  
**Brigadier General**  
**Commissioner of Police**

05 June 2020



## FIJI POLICE SUBMISSION

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

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- 1.0 The Fiji Police Force fully supports the proposed Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.
- 2.0 First and foremost, pursuant to Article 2, that '*State Parties must ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces*', the FPF's Force Standing Order (FSO) outlines that the age eligibility for recruitment is between 21 to 35 years of age. However, organisational review has assented to the recruitment of individuals between the ages of 18 to 25 years.
- 3.0 In addition, the FPF is sanctioned under the United Nations (UN) on Assessment of Individual Police Officers (IPOs) for Peace Operations into the mission areas to be between the ages of 25 to 60 years, however, the UN recommends IPOs below 55 years of age.
- 4.0 Therefore, in alignment to 2.0 above, the FPF's criteria of selection ensures that IPOs have passed the Constable's Qualifying Course (CQC) and have served in the Fiji Police for five years. This warrants the appointment of IPOs well above the age of 18 years for mission services.
- 5.0 Also, the FPF is mandated to conduct Pre-Deployment Training (PDT) for officers earmarked for mission services. A strand on **Child Protection** in mission areas is part of the training module and other cross cutting issues on Sexual Violence and Sexual Exploitation and Abuse of Children are incorporated in the lesson. These lessons prepare IPOs on the protection of children in mission areas in all facets of the UN operations.
- 6.0 Thus, the FPF fully adheres to, and under no circumstance would recruit nor use anyone below the age of 18 years in hostile situations.
- 7.0 **Concluding Remarks**

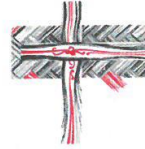
The FPF fully supports the commendation that Fiji endorses the above treaty without reservations.

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## Submission by the Primate and Archbishop of the Anglican Church in Aotearoa New Zealand and Polynesia Bishop of Polynesia



### PRIMATE AND ARCHBISHOP OF THE ANGLICAN CHURCH IN AOTEAROA NEW ZEALAND AND POLYNESIA BISHOP OF POLYNESIA



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16 June 2020

Honourable Alexander O'Connor  
Chairman  
Standing Committee on Foreign Affairs & Defence  
Parliament of the Republic of Fiji  
P O Box 2352, Government Buildings  
SUVA

Dear Sir

#### **Submission on the Treaty on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

Vinaka vakalevu for the invitation to the Right Reverend Fereimi Cama and Sister K Tuineau of the St Christopher's Home to present their views regarding the above Treaty.

We regret that we were unable to meet yesterday's deadline.

Enclosed is the submission from Archbishop Cama in his capacity as Bishop of the Anglican Church in Fiji and also as the chair of the St Christopher's Home.

Our prayerful good wishes for the work you are engaged in for the betterment of Fiji.

Yours in Christ's service

The Reverend Sepiuta Hala'api'api  
**Diocesan Secretary & Registrar**



**Submission from the Anglican Church in Fiji on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

1. This submission by the Archbishop Fereimi Cama, on behalf of the Anglican Church in Fiji addresses the issue, whether Fiji should ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.
2. First of all, the Anglican Church thanks the Fiji Parliament, in particular, - The Standing Committee on Foreign Affairs and Defence (FAD) - for providing the opportunity to present this submission.
3. The Anglican Church in Fiji in its conviction that human beings are made in the image of God, firmly believes in the sanctity and sacredness of human life. The child is therefore a sacred human being whose vulnerability and dependence on the adult community and society as a whole, require that States provide measures, policies and programmes which ensure the best interests and special needs of the child are recognised, respected and protected.
4. In this regard, the Anglican Church upholds a human rights based approach that is child sensitive when addressing concerns involving the interests and needs of children. Such an approach must take care to include the voice and opinions of the child, as well as the obstacles, challenges and other factors which may disadvantage, discriminate, dehumanise, exploit or abuse the child.
5. Children in armed conflict suffer a tragic and ruthless exploitation, with no regard for their rights and the sanctity of their lives and humanity. Their sufferings as child combatants or child civilians, challenge our conscience, our religious convictions and sense of moral decency.
6. While we in Fiji are blessed, that we are not engaged in armed conflict internally or with another State, however, thanks to the wonders of technology, we can see or hear in an instant, through the television, radio, mobile or the internet, the use of children as child soldiers in countries such as Nigeria, Syria, Iraq, Afghanistan and Myanmar. Indeed, Child Soldiers World Index, the world authority on the recruitment and use of children by state armed forces and non-state armed groups, states that 46 nations currently still recruit children into their armed forces and that 18 conflict situations have used children directly as participants in their conflicts, since 2016.



7. Then there is the spill-over effects that harm children living in conflict situations. The UNICEF Executive Director Henrietta H. Fore at a UN discussion on children in armed conflict, in New York, US on the 26 June 2018, revealed that children in conflict situations, have increased in the last decade by 74%. They face forced displacement, family separation, child trafficking, sexual abuse and exploitation. Add to these harsh realities, child neglect, hunger, no or lack of water, health, education, hygiene, sanitation, and shelter, and you have a highly dangerous situation which exposes the already-at-risk children to more exploitation, risk and abuse.

8. As a responsible member of the international community, we must speak out and lend our support to international, regional and local efforts for the eradication of such heinous crimes against children. Not to do so make us a collaborator to these evil acts, whether we like it or not.

9. Fiji ratified the Convention on the Rights of the Child in 1993 (CRC), expressing a positive commitment to the international community to act and fulfil its obligations under this Convention. Following this, it established a National Co-ordinating Committee on Children to implement its obligations under the CRC.

10. In its combined 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> reporting on the progress of its obligations under the CRC to the UN Committee on the Rights of the Child, in Geneva, in September 2014, Fiji's representatives stated Fiji's continuing commitment as follows: -

"Fiji is committed to realising the objectives of the Convention on the Rights of the Child and is working to strengthen the networking amongst the members of the National Coordinating Committee on Children (NCCC)."

11. On articles 38 and 39 of the CRC, which focuses on - children in armed conflicts, including physical and psychological recovery and social integration, Fiji's representatives reported –"There is no incidence of children in armed conflict in Fiji. Furthermore, legislation prohibits the admission of a child below 18 years into the military or discipline force such as police and prison wardens."

12. Fiji's signing of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on the 16 September 2005 is a logical on-flow of its ratification of the CRC, and harmonises with the international efforts to remove this particular evil exploitation of children.

13 This is also consistent with Fiji's early action in ratifying the Geneva Convention 1949 on the 9 August 1971 and its two additional protocols on the 30 July 2008.



The Geneva Convention and its protocols provide that in armed conflicts all civilians are entitled to humane treatment and children must be provided special protection.

14. While it is true there “is no incidence of children in armed conflict in Fiji”, however, Fiji is engaged in UN peacekeeping missions, in which the protection of children in conflict situations is a core mandate of their peacekeeping operations. In fact, UN peacekeeping missions have assisted in the release of thousands of child soldiers as well as bring about the necessary legislative changes, where possible. In this sense, Fiji through its peacekeeping missions, is directly involved with children in external theatres of conflict.
15. The Anglican Church supports the principle of the primacy of the best interest of the child. It is committed to the protection, safe and healthy development of the child, and towards this end, runs educational programmes, institutes and orphanages such as the Holy Trinity and St Christopher’s Home.
16. Given the above, the Anglican Church strongly recommends that Fiji ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The ratification will add to the urgency to pursue and implement measures to stop current armed conflicts, prevent future conflicts and help the victims, with special measures directed at helping the child soldiers and children civilians who suffer the adverse effects of armed conflict.
17. Lastly the Anglican Church stands ready to help Fiji fulfil its obligations as a state party, under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. and the CRC.

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## Submission by the House of Sarah



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17 June 2020

Honourable Alexander O'Connor  
Chairman  
Standing Committee on Foreign Affairs & Defence  
Parliament of the Republic of Fiji  
P O Box 2352, Government Buildings  
SUVA

Dear Sir

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

We take this opportunity to bring to the attention of the Standing Committee our views regarding the above Treaty.

The House of Sarah is an Anglican faith-based civil society organisation committed to the elimination of violence against women and children in our homes, schools, church and communities.

Our prayers are with you all as you deliberate on this very important matter.

Peace and blessings

(The Reverend Sereima Lomaloma)  
**Chair & Trustee, House of Sarah**

Providing a listening ear, a warm heart and a helping hand.



**Submission from the House of Sarah on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

1. We, the House of Sarah of the Anglican Diocese of Polynesia, express our sincere appreciation, to Parliament for allowing us through its Standing Committee on Foreign Affairs and Defence (FAD) to submit this submission on the need for Fiji to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC).
2. As women of faith, we share the belief that every man, woman and child being made in the image of God are created equal and endowed by God with inherent dignity and certain inalienable rights, such as the right to a life that is free from all forms of violence.
3. The involvement of children in armed conflict directly violates the rules of international humanitarian law as stipulated in articles 38 and 39 of the Convention of the Rights of the Child (CRC) which Fiji ratified in 1993.
4. However, article 38 provides that – *“States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.”* – and - *“... shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.”*
5. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict rectifies the age of fifteen years in article 38 of the CRC, to the age of 18 years in its articles 1 and 2 as follows – *“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.”* – and - *“... shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.”* This is a significant change since it allows children the gift of time to develop into mature adults, free from any injury likely to harm them if they were to be recruited before 18 years old.
6. We are gratified to know that Fiji’s recruitment to the police, the navy and the military begin from the age of 18 years.
7. We would also like to state that while Fiji is not currently caught in an armed conflict with another state, we cannot afford to be complacent, because armed conflict can arise within a state, through domestic acts of terrorism or protests and the South Pacific is no exception, as witnessed the events in the protracted Bougainville civil war (1988 –1998), the Solomon ethnic war (1998 – 2003), the pro-democracy riots in Tonga (2006), and right here in our own backyard, the military coups of 1987 and 2006.
8. Studies show and which is also declared in the - Declaration on the Protection of Women and Children in Emergency and Armed Conflict - that women and children are the most vulnerable groups who suffer incalculable suffering in an armed conflict situation. The fatal



and non –fatal effects on children increases tremendously, where if children do not die from the violence of the conflict itself, they die from or suffer the other consequences such as living among the ruins of a destroyed infrastructure or community with no access to food, water, medicine, education and sanitation, including their own places and temples of worship.

9. The great tragedy is that children do not start a war or a conflict, but they are unjustly condemned to suffer its severe and heavy consequences, and as if that's not enough, they are mercilessly exploited as weapons of war to feed the ruthless ambitions of warring adults who should know better.

10. UNICEF alarmed at the rapid increase of children living in armed conflict, declared 2014 a devastating year for children, as statistics showed that worldwide 230 million children lived in conditions affected by armed conflict, with about 15 million children trapped in violent conflicts in the Central African Republic, Iraq, South Sudan, the State of Palestine, Syria and Ukraine. Anthony Lake, UNICEF Executive Director at the time said – *“Children have been killed while studying in the classroom and while sleeping in their beds; they have been orphaned, kidnapped, tortured, recruited, raped and even sold as slaves. Never in recent memory have so many children been subjected to such unspeakable brutality.”*

11. Unfortunately, the situation has worsened since 2014. The UN Office of the High Commissioner for Human Rights in its report - Input from a child rights perspective to the United Nations High-level Political Forum on Sustainable Development, - in July 2019, stated that – *“Today the number of countries in conflict is at its highest rate in 30 years.”* The report quoted figures by UNICEF that - *“one in four children live in countries affected by conflict or disaster, and since early 2018 close to 31 million children have been forcibly displaced by violence and conflict.”* The report also referred to the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, which provided the information that *“the recruitment and use of children by armed groups or groups designated as terrorist has been increasing rapidly, reportedly doubling or even quadrupling in some countries.”*

12. The report of the UN Secretary General to the Security Council on – *“Children and armed conflict”* – looking at the period from January to December 2019, while expressing concern on *“the continued high level of verified grave violations committed against children”*, recommended that – *“Member States to respect the rights of the child, including through accession to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, if they have not yet done so...”*

13. This year is the 20<sup>th</sup> anniversary of OPAC, with 170 countries ratifying it as of May 2020. Its adoption has had a significant impact in that States have stopped the recruitment of children in armed conflict and conducted initiatives to address the harmful effects conflict has on children.

14. The Special Representative of the United Nations Secretary-General for Children and Armed Conflict, Ms. Virginia Gamba in urging all outstanding Member States to sign and ratify the OPAC emphasised that its adoption “was a milestone” which in the past 20 years



*“contributed to releasing more than 145,000 boys and girls from armed forces and armed groups and preventing the recruitment and use of more millions of children.”*

15. Clearly the solution to the crisis of children in armed conflicts demand the collective responsibility and concerted efforts of the international community, a key responsibility being that States who have not signed or ratified OPAC, to do so.

16. We, the House of Sarah, stand in solidarity with women and children who live and suffer in situations of armed conflict. Our calling as women of faith, does not allow us to watch idly by as women and children in armed conflict crisis, continue to die and suffer violence.

17. We therefore strongly urge that Fiji ratify the OPAC as soon as is practically possible. We believe it is the right thing to do on behalf of the children of Fiji, adds weight to international actions towards the eradication of the recruitment and exploitation of children caught in armed conflict, and contributes towards the fostering of peace, security and sustainable development.

18. We also express our full support for Archbishop Fereimi Cama’s submission on this issue, and would like to say as well, that the House of Sarah is willing to work with Parliament or Government, to help Fiji fulfil its obligations as a State Party to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. and the CRC.

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## **Submission by the Human Rights and Anti-Discrimination Commission**

### **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

#### **Submission to the Parliamentary Standing Committee on Foreign Affairs and Defence**

Ashwin Raj, Director HRADC

29 June, 2020

The Human Rights and Anti-Discrimination Commission commends the State for considering the ratification of 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 on 2 July 1993 and ratified the Convention on 13 August 1993. Fiji subsequently signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 16 September 2005 and has yet to ratify the Optional Protocol.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which entered into force on 12 February 2002, serves to strengthen the legal safeguards against the exposure of children to protracted violence and, in particular, the manipulation and recruitment of children below the age of eighteen as soldiers in situations of hostility and armed conflicts either by state or non-state armed forces. The Optional Protocol raises the minimum age for direct participation in hostilities to 18 years from the initial minimum age of 15 specified in the Convention on the Rights of the Child and other legal instruments and serves as a deterrent to the compulsory recruitment of anyone under the age of 18 by government forces or non-state armed forces. It implores on State Parties to take all possible measures to prohibit and criminalize the recruitment of children below the age of eighteen in armed conflict or hostilities as well places an obligation on the State Parties to facilitate demobilization and reintegration including the provision of psychosocial support. State Parties must act in the best interests of the child not only during conflicts but well after situations of hostility. The treaty equally prohibits all recruitment, both voluntary and compulsory, by non-state armed groups of anyone under the age of eighteen.

The deleterious impact of the involvement of children in situations of hostility and armed conflict is well documented and constitutes an egregious interdiction of the fundamental rights and freedoms that all children should invariably enjoy. The protracted exposure to violence in situations of hostility and armed conflict deprives children of the right to family and private life, the right to be free from violence, displacement, trauma and stigmatization, safety, health including sexual and reproductive health rights, education and freedom from discrimination on prohibited grounds. The girl child is often disproportionately affected because of sexual and gender based violence. They often languish under the weight of rape, sexually transmitted infections, pregnancies and the challenges of dignified reintegration into society.

In recognition of this, the UN Security Council since 1999 has adopted four resolutions on children and armed conflict. These are resolutions 1261 (1999), 1314 (2000), 1379 (2001) and 1460 (2003). Resolution 1314 called on Member States to “sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict” and resolution 1379 introduced measures in the monitoring of the recruitment and use of children in hostilities and resolution 1460 called for the reporting of the progress made by parties listed in the previous report in stopping the use of child soldiers. In May 2002, The UN General Assembly Special Session on Children committed to “end the recruitment and use of children in armed conflict contrary to international law, ensure their demobilization and effective disarmament and implement effective measures for their rehabilitation, physical and psychological recovery and reintegration into society”.

Other international legal instruments that has deplored the recruitment of children in situations of hostility including the African Charter on the Rights and Welfare of the Child, which was the first regional treaty to establish 18 as the minimum age for all recruitment and participation in hostilities. The ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour which defines children as below 18 years and refers to forced and compulsory recruitment of children in armed conflict as one of the worst forms of child labour. The Rome Statute that established the International Criminal Court defined “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” as war crimes.

## **Core elements of the Optional Protocol**

### ***Article 1***

*States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.*

Article one raises the minimum age of direct participation in hostilities from fifteen years to eighteen years. It expressly prohibits the involvement of children in hostilities and sets the compulsory recruitment by governments to the age of eighteen. It equally outlaws all recruitment below the age of eighteen for non-state actors. Direct participation encompasses both active participation in combat as well as military activities and support functions such as spying and sabotage and use of girls for sexual purposes. The article draws on the definition of “child soldier” from Cape Town Principles as the guiding premise for the prevention of the use of child soldiers as well as for disarmament, demobilization and reintegration. A ‘child soldier’ is defined as “any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups other than family members. The definition includes girls recruited for sexual purposes and forced marriage”. It is imperative to note that this is an expansive definition of child soldier that is not limited to the act of child carrying a weapon only giving children the broadest possible protection under international human rights and humanitarian law.

## **Article 2**

*States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.*

## **Article 3**

- 1) *States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.*
- 2) *Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.*
- 3) *States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:*
  - (a) *Such recruitment is genuinely voluntary;*

*(b) Such recruitment is done with the informed consent of the person=s parents or legal guardians;*

*(c) Such persons are fully informed of the duties involved in such military service;*

*(d) Such persons provide reliable proof of age prior to acceptance into national military service.*

- 4) Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.*
- 5) The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.*

While raising the minimum age for voluntary recruitment in armed forces beyond 15 years, Article 3 also draws an important distinction between voluntary and compulsory recruitment. Voluntary recruitment connotes that children are under no compulsion to join armed forces. Article 3(3) places adequate safeguards to ensure that voluntary recruitments are genuinely voluntary because children can be coerced because of abject poverty. Article 3 also requires that at the time of the ratification or accession, state parties must also submit a binding declaration specifying the safeguards in place and the minimum age at which the state will permit voluntary recruitment into national armed forces. Article 3(5) also places an exception to schools operated by or under the control of armed forces and State Parties are not required to raise the age of voluntary recruitment.

#### **Article 4**

- 1) Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.*
- 2) States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.*
- 3) The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.*

Taking cognizance of the internal nature of armed conflicts between warring factions within a nation state, Article 4(1) expressly prohibits armed groups (distinct from armed forces of the State) from recruiting children under the age of eighteen years of age either voluntarily or by force in situations of

hostilities. It is imperative to note that Article 4 does not extend any legal status to armed groups. Article 4(2) in particular, confers upon State Parties an important obligation to regulate the behavior of armed groups by ensuring that it prohibits and criminalizes the recruitment of children below the age of eighteen. The Optional Protocol does allow State Parties to voluntarily recruit those below eighteen years but expressly prohibits non-state armed groups from recruiting those below the age of eighteen.

### **Article 5**

*Nothing in the present Protocol shall be construed as precluding provisions in the law*

*of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.*

If there is a dissonance between two or more legal obligations held by a State, the general principle under international law is that States should observe the obligations that afford the greatest human rights protections and is in the best interests of the child. Therefore, Article 5 enables State Parties to adopt a 'straight 18' policy in its declaration deposited together with the instrument of ratification or accession that expressly prohibits compulsory and voluntary recruitment of children under eighteen in armed forces. This policy exceeds the minimum terms stipulated under the Optional Protocol.

### **Article 6**

- 1) *Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.*
- 2) *States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.*
- 3) *States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.*

Article 6 of the Optional Protocol obligates State Parties to take all necessary measures in ensuring that its domestic legislation is consistent with its obligations under the Optional Protocol including reform and enforcement of domestic laws and procedures. It equally obligates State Parties to promote and advocate about the rights and obligations under the Optional Protocol through training of government, military and law enforcement agencies including the development of a national plan of action. Article 6 underscores the importance of ensuring demobilization and reintegration of children who have been

recruited or used in armed conflict or hostilities. It is premised on the principle that children must be transferred to civilian care at the earliest and afforded health care, counseling and ensuring that girls who have been sexually exploited are not stigmatized, as well as reunification with families. The Article places an important obligation on State Parties to take responsibility for children including those that may have been recruited by any party including by another State but who are now within the jurisdiction of the State Party.

#### **Article 7**

- 1) States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.*
- 2) States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.*

Article 7 outlines the specific steps State Parties should take to support the reintegration of children who have been recruited or used in hostilities including the provision of technical and financial support and assistance, education and psychosocial support to ensure rehabilitation and reintegration of children. The Optional Protocol equally recommends that State Parties with sufficient resources support children's demobilization in war torn countries through technical and financial assistance.

#### **Article 8**

- 1) Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.*
- 2) Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.*
- 3) The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.*

Article 8 outlines the reporting obligations of State Parties to the Optional Protocol to the Committee on the Rights of the child on the measures it has taken to ensure monitoring and compliance of its domestic procedures and practices with the requirements of the Optional Protocol. Thus, ensuring that State Parties are held fully accountable for human rights violations. State Parties must report on the measures it has taken to implement the Optional Protocol and the difficulties it faces in the implementation of the Optional Protocol.

Articles 9 to 13 outline the procedures for ratification or accession, reservations and declarations, denunciation and amendments to the Optional Protocol

#### **Article 9**

- 1) *The present Protocol is open for signature by any State that is a party to the Convention or has signed it.*
- 2) *The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.*
- 3) *The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.*

#### **Article 10**

- 1) *The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.*
- 2) *For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.*

#### **Article 11**

- 1) *Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary General. If, however,*

*on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.*

- 2) *Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in anyway the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.*

#### **Article 12**

- 1) *Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.*
- 2) *An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.*
- 3) *When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.*

#### **Article 13**

- 1) *The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.*
- 2) *The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.*

#### **Domestic Procedures**

Not only is Fiji a party to the Convention on the Rights of the Child and a signatory to the Optional Protocol, Fiji also has adequate legal safeguards and framework that are in consonance with the minimum requirements of the Optional Protocol that prohibit the recruitment of children below the age

of eighteen in armed forces or in situations of hostilities. These include the Fijian Constitution, the Employment Relations Act of 2007 and the Republic of Fiji Military Forces Act of 1949.

- Section 41(d) of the Fijian Constitution expressly provides that every child has the right “to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment and hazardous or exploitative labour”.
- The Employment Relations Act 2007 prohibits forced labour of children in Fiji. 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”.
- The Republic of Fiji Military Forces Act 1949 (‘RFMF Act’) establishes recruitment qualifications and does not provide for compulsory military service. Section 7(3) of the RFMF Act provides that “no person shall be enlisted in the Forces who is under the age of 18 years, provided that the Commander may permit the enlistment of such number of persons of or above the age of 16 years and under the age of 18 years as he or she may from time to time determine”.

## **Recommendations**

- It is recommended that Fiji ratify the Optional Protocol without reservations.
- Review to strengthen existing national legislation and recruitment practices to ensure consistency with the Optional Protocol including the criminalization of voluntary and forcible recruitment of children below eighteen by state and non-state armed groups.
- Promote education and advocacy on the rights and obligations under the Optional Protocol by the state, civil society and national human rights institution including awareness in schools through human rights education.
- It is imperative that the State and national human rights institution develops its capacity in this area to enable effecting monitoring and reporting.

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

5. Madrid Agreement Concerning the International Registration of Marks 1981
6. Madrid Protocol Relating to the Madrid Agreement
7. Paris Convention for the Protection of Industrial Property
8. 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                        |

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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:

- (1) Education Act 1978;
- (2) Ministry of Education, Heritage and Arts' Policies on Child Protection and Behaviour Management;
- (3) Child Welfare Act 2010; and
- (4) 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:

- (1) 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?
- (2) 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 Submitters:**      **Office of the Solicitor-General**  
**Office of the Fiji Intellectual Property**

**In Attendance:**

- |    |                     |   |                         |
|----|---------------------|---|-------------------------|
| 1. | Mr. David Solvalu   | - | Principal Legal Officer |
| 2. | Ms. Seema Chand     | - | Principal Legal Officer |
| 3. | Ms. Sophina Ali     | - | Principal Legal Officer |
| 4. | Ms. Priscilla Singh | - | Senior Legal Officer    |
| 5. | Ms. Nazia Ali       | - | Legal Officer           |
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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:

- (1) 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.

- (2) 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.
- (3) 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. So<sub>2</sub> 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**

### **PROTOCOL/CONVENTION**

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

**INSTITUTIONS:** (1) International Committee of the Red  
Cross

(ICRC)

9. Republic of the Fiji Military Forces  
(RFMF)
10. Office of the United Nations High  
Commissioner for Human  
Rights (OHCHR)
11. Ministry of Defence, National Security  
and Policing
12. Ministry of Women, Children and  
Poverty Alleviation.

**VENUE:** Big Committee Room (East

**Wing) DATE:** Tuesday, 16th June, 2020

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**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 16TH JUNE, 2020 AT 9.30 A.M.**

**Online Interviewee/Submittee:      International Committee of the Red Cross (ICRC)**

In Attendance:

Ms. Georgia Hinds - Regional Legal Adviser

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MR. CHAIRMAN.- Honourable Members, a very warm welcome to the members of the public who are listening to this recording of the Parliamentary Committee for Foreign Affairs and Defence on 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 3th 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. 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.

Honourable Members, I have the pleasure of welcoming Ms. Georgia Hinds, who has tuned in to this submission this morning, I believe, from Canberra in Australia.

Welcome Ms. Hinds, and if you would just like to give us a brief introduction of your good self, and then you may proceed with your submission. Thank you.

MS. G. HINDS.- *Bula vinaka*, Honourable Chairman and Honourable Members. Thank you for having me here this morning. As you have said, I am tuning in from Canberra, which is little bit colder than Suva and I cannot be there in person.

My name is Georgia Hinds and I am the Regional Legal Adviser for the International Committee of the Red Cross (ICRC), which is the regional delegation in the Pacific based in Suva, actually. So, on behalf of ICRC, I would like to thank the Honourable Members of this Committee for inviting our submission, and to also commend Parliament of the Republic of Fiji for referring the Optional Protocol to this Committee for consideration.

First of all, I will say a little bit about the ICRC. So, our mandate which is found in the universally ratified Geneva Conventions of 1949, is to assist and protect the lives and the dignity of people, including children, affected by armed conflict and other situations of violence. As part of this mandate, we work with Governments, including the Government of the Republic of Fiji, to promote and strengthen international humanitarian law and universal humanitarian principles.

I will move now to the substance of our submission this morning and I will use my time to cover two main points. The first one is around why we are recommending that Fiji ratify the Optional Protocol without reservation, and then secondly, I will talk about some of the areas where it encourages Fiji in legislation and in policy, to take some additional action protection of children in

armed conflict and I can also highlight how we can assist in this regard. And I am very happy to take questions from the Honourable Chairman and the Honourable Members at any time during my submission as well.

Firstly, on our recommendation that Fiji ratify the Optional Protocol without reservation, I am sure you are aware that sadly, the risk to children in armed conflict comes not only from their exposure to attacks, but also as a result of them actually taking part in the fighting. So around the world, the ICRC continues to see children being recruited and used in various capacities in armed conflict both, by States and armed groups. So in many cases, we will see children are carrying weapons and actively taking part as child soldiers, but they can also be used in supporting roles that are just as dangerous. So, what I am talking about here is things like, spies, being used as messengers and even as sex slaves.

The ICRC has been extremely concerned by the growing number of children carrying explosive devices in armed conflicts, and the UN's Special Representative on Children in Armed Conflict has also reported children increasingly being used as suicide bombers. So, whatever role they play, these children are obviously exposed to very high levels of violence, and as witnesses, direct victims and force participants. If they do survive, they will carry the scars of that physical and psychological trauma for the rest of their lives.

Unfortunately, children also face unique challenges when you try to demobilise and integrate them back into society. These vulnerabilities can manifest differently, depending on their gender, their ethnicity, disability, and other factors. For example, girls have specific vulnerabilities and they suffer particular consequences including, rape, sexual violence, pregnancy and pregnancy-related complications, and even stigma and rejection by their families and their communities.

So I think it is worth noting here the very important wording that is in the preamble of the Optional Protocol. It calls for a continuous improvement of the situation of children without distinction, and those words of 'without distinction' mean that these children are entitled to special protection, and that is regardless of their ethnicity and gender, regardless of any crime they may have committed, or any association with any armed group.

Turning now to look at Fiji's existing international law obligations relating to children in armed conflict, we would really like to commend the Republic of Fiji because it has already signed up to the 1949 Geneva Conventions and their 1977 Additional Protocols, and as Honourable Chairman rightly acknowledged, the UN Convention on the Rights of the Child. So those Instruments already contain some protection for children against being targeted, and they also contain special protection for care and education. And again, I would like to really congratulate the Republic of Fiji for its statement to the UN Human Rights Council last year when it noted that education is an essential protection mechanism for children living in armed conflict.

In terms of children actually taking part in the hostilities, the Additional Protocols to the Geneva Conventions prohibit the recruitment and the participation in hostilities of children under the age of 15 years. Now, the Optional Protocol under consideration today was a significant improvement because in particular, it lifted the protections by lifting the prohibited age for compulsory recruitment and for direct participation in hostilities from 15 years to 18 years, and it also included a direct reference to armed groups. So it calls on States to criminalise the recruitment or use by such groups of children under 18 years.

The ratification of this Optional Protocol by the Republic of Fiji would send a very strong message that has already been endorsed by more than two-thirds of all Governments worldwide, and

that is that it is never acceptable to involve children in armed conflict. Here in the Pacific, the ICRC often observes that Fiji plays an important leadership role on issues of international human rights and humanitarian law, and so we would really encourage it to continue to do so by joining the quite small number of Pacific Island nations that have already ratified the Optional Protocol.

I should also note that, I think, Fiji's ratification would have a particularly significant real world effect because Fiji is a very large contributor to peacekeeping missions in places where these standards would be applied in practice in operations to actually protect children under 18 years.

As I have said earlier our recommendation is that, Fiji ratify the Optional Protocol without reservations and looking at that issue of reservations, only two States out of 170, have entered reservations to the Optional Protocol, and both of those reservations relate to reservations that they had already made under the Convention on the Rights of the Child. And since Fiji did not make any reservations when it ratified the CRC, we would encourage that it take a similar approach to the Optional Protocol.

So moving now to discuss briefly some of the areas for implementation of the Optional Protocol in Fiji, as I have said the Optional Protocol was definitely a very clear step forward in raising the age limit to 18 years for certain prohibitions. However, there are a number of areas in that Protocol in which the ICRC considers if prohibitions could have been stronger. And so we have consistently encouraged States to take certain additional action when implementing the Protocol to strengthen those protections and I would like to highlight two in particular.

The first one relates to the age limit for voluntary recruitment. So Article 2 of the Optional Protocol clearly prohibits. It prohibits forced recruitment of people under 18 years, but it does leave open the possibility for States to permit these people to voluntarily join their armed forces. And so we would really strongly encourage Fiji to set a strict age limit of 18 years on both, forced recruitment but also the voluntary recruitment to its armed forces.

The second point relates to the prohibition on participating in hostilities. Again, looking at Article 1 of the Optional Protocol, it requires States to prevent people under 18 years from taking a direct part in hostilities. This is slightly different to the 1977 Additional Protocol to which Fiji is a party of as I have said, and that arguably cut its all participation, whether it is direct or indirect. And again, what I mean by indirect participation are those supporting roles, like intelligence gathering or acting as messengers or cooks. That involvement can be just as dangerous and produces just as many terrible psychological consequences, so we really, really urge Fiji in its implementation to remove the word 'direct', so it just speaks sense to "prohibit any participation by children under the age of 18."

As I have set out in our written notes accompanying this submission, the Republic of Fiji should really be congratulated because arguably, it already implements the minimum requirements of the Optional Protocol through its legislation and through its practice, in particular section 7(3) of the Royal Fiji Military Forces Act. It prohibits enlistment of people under 18 years into the Republic of the Fiji Military Forces (RFMF).

And to strengthen that protection and set a very clear standard of 18 years, we recommend removing the current wording in that provision that allows the Commander to approve enlistment of people between 16 years and 18 years. We also recommend that prohibition be extended to cover not only enlistment but also recruitment and conscription in line with the Optional Protocol, even though we do recognise, of course, that Fiji does not currently have a policy of conscription.

In section 91(a) of Fiji's Employment Relations Act is a really excellent example of prohibiting the force and the compulsory recruitment of children under 18 years in armed conflict. But, again, to ensure very clear and broad protection and inline also with Article 4(2) of the Optional Protocol.

We recommend Parliament also criminalise voluntary recruitment, as well as any youth even voluntary in armed conflict.

Finally, in terms of how the ICRC might be able to assist the Honourable Committee and the Government of Fiji to implement these recommendations, I have annexed to our written submission three ICRC documents, including some model laws and some guiding principles that set out best practices and preventative measures. Also, through our regional delegation there in Suva and through myself in Canberra as Regional Legal Advisor, we remain available and very pleased to assist the Republic of Fiji in relation to any of these recommendations or any related queries. So I will leave our opening submission there.

Thank you again, Mr. Chairman and Honourable Members, for inviting me to speak and I will welcome any questions on any other topics.

MR. CHAIRMAN.- Thank you, Ms. Hinds, for that brief and a very informative on the ICRC's views. I just have one question, you mentioned reservations, Ms. Hinds, of two countries. You do not mind me asking, which are those two countries and if you have any idea what were the reservations?

MS. G. HINDS.- So the two reservations, I believe, are from Amman and I think the other is the UAE, I can check this for you.

MR. CHAIRMAN.- UAE?

MS. G. HINDS.- One of them is certainly Amman and Turkey, apologies, Mr. Chairman.

Those reservations do not actually relate to the participation in armed conflict, but they basically preserve the rights of those States to operate also in accordance with some of their religious laws, that is, if there may be a conflict with the Convention on the Rights of the Child. So, it is sort of a saving, of course, if you like.

MR. CHAIRMAN.- Thank you, Ms. Hinds.

Honourable Members, do you have any questions for Ms. Hinds?

HON. LT. COL. P. TIKODUADUA.- Thank you, Madam, for your presentation, a very quick question just by way of clarification.

I just want to understand you better when you say Fiji is a lead advocate, particularly on matters on the rights of the child, the ICRC believes that it would be better for Fiji to eliminate those powers of the Commander which currently allows him under the RFMF Act to recruit soldiers between the ages of 16 years to 18 years on a need to basis, so you reckon that should be removed at all?

MS. G. HINDS.- That is right, Honourable Member. Thank you for your question. So that is our recommendation in line with what is advocated and it is called the, 'straight 18 approach.' So it

is an approach that has a very clear limit of 18 years, so you do not have a confusion, and I do believe it is in line with practise in the Republic of Fiji. I do not believe that members of the RFMF generally enlist before the age of 18 years, but having that allowance there or that possibility creates a level of confusion that arguably could be a lot clearer and could send a very clear message, not only to the region but to the international community that the Republic of Fiji considers anyone below the age of 18 years as a child and they should not be participating or recruited into armed forces.

MR. CHAIRMAN.- Thank you. Honourable Dr. Govind.

HON. DR. S.R. GOVIND.- Thank you, Mr. Chairman. I would like to thank the presenter for the comprehensive presentation from ICRC. I have one question, I just wanted to know whether there are some figures from the Pacific, other than Fiji, to show the current extent of the children being recruited into the military as soldiers? Are there any figures? Which countries have ratified their protocol and made changes to that less than 18 years old, and whether the countries in the Pacific have made changes to their laws not to recruit children below 18 years?

MS. G. HINDS.- Thank you, Honourable Member. The countries in the Pacific that have ratified this Optional Protocol are Kiribati, FSM, Samoa and Vanuatu. Of course, the difficulty there is that, these countries do not have armed forces. It is a bit easier for them to comply because they do not have to change any legislation regarding their armed forces.

This is also why I think it is very important that Fiji, as one of the few countries with an active military and active defence force in the region, ratify the Optional Protocol and I would also say that those countries, I mean, there are other obligations in the Optional Protocol, criminalising for instance the recruitment into armed groups not just the State armed forces but if there are any groups operating.

Again, as we know and we are very fortunate that we do not really have a problem with armed groups but the purposes of international law on the meaning of armed groups. In the Pacific, we do not have any armed conflict in the Pacific currently which, again, we are very fortunate and so we have an absence of figures in that regard, which is a very good thing. We do not have children from the Pacific recruited into armed conflict.

That is not to say that I might not travel to other locations but unfortunately, we do not have those figures easily to hand. So, I think it brings me back to that point, that it is very important that Fiji, as one of the few active military countries in the Pacific region, ratify and make these changes to its legislation to really strengthen those protection and it already has a very good baseline. It has some leading legislative provisions. I do not think you will see anything else in the region that necessarily right at a certain level that Fiji already has in its Employment Relations Act and in its Military Forces Act. Does that answer your question, Honourable Member?

HON. DR. S.R. GOVIND.- Thank you, you have answered it really well. I just wanted to know in Bougainville, Papua New Guinea, were there some children involved in the armed conflict there a couple of years back?

MS. G. HINDS.- Thank you, Honourable Member. It is a very good question and I think this reminds us that, yes, although our region is currently free from armed conflicts, we cannot say that it will always be the case. As recently as the Bougainville crisis, we have experienced armed conflict, and I must admit that we do not have very comprehensive figures. We, at the ICRC, we are not a child protection agency, so we do not necessarily track child specific figures. Someone like for instance, the UN Special Representative on Children in Armed Conflict, they do try to systematically report those figures.

What I would say though is that, Papua New Guinea has not yet signed and ratified the Optional Protocol, so they do not arguably have the same international obligations. However, there are still customary international law obligations that they have to prevent, for instance, the recruitment of child soldiers. So you would hope that you would see in their legislation similar prohibitions, but I actually cannot comment on whether they have implemented that in practise.

MR. CHAIRMAN.- Thanks, Ms. Hinds. Honourable Members, you have any other question for Ms. Hinds?

HON. LT. COL. P. TIKODUADUA.- No, I do not have any more thank you.

MR. CHAIRMAN.- Thank you.

Ms. Hinds, on behalf of the Committee before you, I failed to mention that you have Honourable Pio Tikoduadua, Honourable Selai Adimaitoga, Honourable Dr. Salik Govind and myself as the Chairman. We wish take this opportunity to thank you for availing yourself to present to us this morning on this very important Protocol and I do thank you once again and wishing you a blessed day. Thank you.

MS. G. HINDS.-Thank you, Honourable Chairman, thank you Honourable Members again, it has been a pleasure.

The Committee adjourned at 9.50 a.m.

The Committee resumed at 10.01 a.m.

## **Interviewees Submitters: Republic of the Fiji Military Forces (RFMF)**

### In Attendance:

- |   |                           |   |                           |
|---|---------------------------|---|---------------------------|
| • | Commander Viliame Naupoto | – | Rear Admiral Commander    |
| • | Colonel Pacolo Luveni     | – | Director of Peace Keeping |

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MR. CHAIRMAN.- Honourable Members, a very warm welcome to the members of the public who are listening to this recording of the Parliamentary Committee for Foreign Affairs and Defence on 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 3th 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.

Honourable Members, before us this morning is the Commander of the Republic of the Fiji Military Forces (RFMF), Commander Viliame Naupoto. A very warm welcome to you, Sir, to the Committee.

(Introduction of Members of the Committee by Mr. Chairman)

Sir, with those few words, I now invite you to submit on behalf of your organisation, and I thank you.

COMMANDER V. NAUPOTO.- *Vinaka vakalevu.* Mr. Chairman and Honourable Members of the Standing Committee, thank you for this opportunity to present to you and share my views on behalf of the Republic of Fiji Military Forces on the Treaty on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, and I will refer to it as the Optional Protocol

I have with me this morning the Director of our Peace Keeping, Colonel Pacolo Luveni, and I will be making the presentation on both our behalf.

Mr. Chairman and Honourable Members of the Standing Committee, I note that in the Written Analysis on the Optional Protocol provided by the Standing Committee Secretariat, the recommendation is that Fiji ratifies the Optional Protocol.

Let me then state upfront that the RFMF supports this recommendation for Fiji to ratify the Optional Protocol and that there is no further action required from the RFMF's side, either to amend or change existing roles and/or regulations, as RFMF currently operates within the parameters of the Optional Protocol.

In essence, Fiji and the RFMF has the framework in place, and relevant and applicable laws to ensure the Optional Protocols are covered and perhaps, more importantly, enforced domestically

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within our domestic legislation framework.

Honourable Chairman and Honourable Members of the Committee, the RFMF recruits on a voluntary platform and we, as a nation, do not have compulsory military or national service as a requirement by law.

The minimum recruitment age for RFMF is 18 years and this also dovetails nicely with our general minimum benchmark qualification standard, which is Form 7 or pass in Year 13. The minimum age of a Year 13 student is 18 years, unless the student is up classed for some reason.

According to institutional regulations and in this case our RFMF internal Administration Instruction No. 29 on recruiting, Paragraph 8(a) reads, and I quote: "Applicants should be no younger than they attain the age of 18 years..."

Under the National Regulation in this case, the Republic of Fiji Military Forces Act (Cap 81), section 7(3) on qualification as officer or soldier of the Forces, it reads and I quote:

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

Even though, Article 3 of the Optional Protocol allows voluntary recruitment into the Armed Forces of those under 18 years, with safeguards, as laid out in Article 3 Part 3(a),(b),(c) and (d), there is no reason for RFMF to recruit anyone under 18 years because of the benchmark qualification and the year that I have mentioned before, those who are in Form 7 or Year 13, the minimum age is usually 18 years. Child soldiers or children associated with armed forces and groups as the United Nations defines it, must be eliminated. It is one of the cruellest forms of abuse, as seen mainly in volatile regions around the world.

Being a child soldier has many mental and physical effects on the children involved. First of all, they are raised in severe violence and are forced to commit horrible cruelties. This can cause chronic and traumatic stress, depression, personality changes and social isolation. All of these side effects of being a child soldier are crippling to the children they impact. They prevent the children from having normal lives, and some children will live a life of violence since that is all they have known since they were young.

Honourable Chairman and Honourable Members of the Committee, child soldiers not only affect the child, but also the families. Their sons or daughters are ripped from their arms, given a gun and told to kill. The emotional damage to a family is exponential. Often times, their children are forced to kill their own families. After the children are rescued from being soldiers, the families often do not want anything to do with the children, or the children are left as orphans because they killed their own family members. Child soldiers destroy individuals, families and communities.

I mentioned earlier the fact that child soldiers are mainly seen in volatile regions around the world. They surface when there is lawlessness within a country, and that eventually escalates into a civil war. This was the case close to home during the Bougainville crisis.

If we read the reports and write-ups on the Bougainville crisis, we see the trend. Protests led to riots and lawlessness, and riots led to insurgency and there was a civil war between the fractions within the population that lasted for 10 years. You just have to google search photos of the Bougainville crisis and you will see photos of children holding or posing with weapons as members of one of the two fighting groups.

I say what I said earlier on what soldiering does to children based on the numerous reports on child soldiers, which I read and also out of my first-hand experience in dealing with these child soldiers when we were deployed to Bougainville in November 1997, as part of the Truce Monitoring Group. We found out that some young men we worked with, started as soldiers as young as 13 years old, when they were in Class 8, and some in their 10-year period, rose to positions of command in their organisations.

In my discussions (more of a “*Talanoa* Session”) with them, I saw the dilemma that they were in, giving up the power and the prestige they had earned, and to replace it with a life that they were not familiar with and was to them, scary. These 13-year olds grew up in the volatile environment of a civil war which was to them the norm, and now that they were 23 years or 27 years old and some are married with children, they had no faith or trust in the “new life” - life in a peaceful environment that we were advocating.

Mr. Chairman, to end this short recollection on the Bougainville crisis on a positive note, one of my best memories was when we managed to convince one of these child soldiers, cum Commander, now married with a six-year old child to go back to school. There was no school in the whole 10 years of the Bougainville crisis so that was a lot of catching up to do and young men and women would start school again from where they left off or one class back from where they left school.

This gentleman did go back to school and so did his wife and their child. He was 25 years old and he was in class 8, his wife was in class 7 and their child was in class 1- all in the same makeshift primary school that we managed to re-open.

I mentioned this story to point out the fact that through Fiji’s participation in peacekeeping which has been going on for 14 years to date, Fiji is already contributing to fighting this form of child exploitation because when there is peace there are fewer chances of children being exploited as soldiers, or being involved in armed groups.

Mr. Chairman and Honourable Members of the Standing Committee, RFMF supports the recommendation for Fiji to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. Thank you for the opportunity to present to your Committee this morning and I will be glad to answer your questions, if you have any. *Vinaka Vakalevu.*

MR. CHAIRMAN.- Thank you, Commander Naupoto. Honourable Members, do you have any questions for the Commander?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, may I?

MR. CHAIRMAN.- Honourable Tikoduadua?

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. *Ni bula*, Sir.

COMMANDER V. NAUPOTO.- *Bula, bula vinaka*, Honourable Member.

HON. LT. COL. P. TIKODUADUA.- In section 7(3) of the RFMF Act, I think, prohibits the enlistment into the RFMF of any person under the age of 18 years. However, the provision allows the Commander to permit enlistment of persons of or above the age of 16 years at his discretion.

I need your opinion in terms of whether it is necessary that, that provision or for those powers to exist because I believe earlier on, you have stated that there may not be a need of anyone under 18 years because both, the RFMF Act specifically says that and also the administrative instructions. So do you believe that perhaps, to have the Optional Protocol, to give it some weight here in our laws, would it be recommended that we remove those provisions as part of section 7(3) of the RFMF Act?

COMMANDER V. NAUPOTO.- Thank you, Honourable Member.

Mr. Chairman, through you, I see no harm in that remaining because Article 3 of the Optional Protocol allows the recruitment into armed forces of those who are under 18 years but it below the safeguards. So that Clause in the Act does not violate the Protocol because the Protocol allows voluntary recruitment into armed forces but below safeguards. So, in my view, there is no need to remove it.

If you look ahead and the Honourable Tikoduadua knows very well the school that we have with the engineers, that we used to have under the Trade Training School (TTS), there is opportunity for that School to pick out those who may not reach Form 7 and put them in there and give them those skills sets that they teach in that School.

The TTS is almost as like a Technical College, and I think to gain training at that School that there is opportunity and when we get those people into that School, those who do not reach Form Seven will perhaps, be below 18 years, so we can get them into that School and not recruit them. They are not recruited into the Military but just come in and we offer that service to the country and as I have said, perhaps the Honourable Member knows that School very well.

So I am just saying that there is no harm in leaving it on because it is not in violation of the Protocol. It will be difficult to bring it back on, if we want to set up those kinds of schools, to amend it and bring it back in. Why not just leave it because it is not in violation of the Protocol, given in Article 3 of the Protocol allows for the recruitment of those that are under 18 years but with safeguards that they set in the third paragraph?

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

MR. CHAIRMAN.- Thank you. Honourable Members, do you have any other questions for the Commander?

I just have one but not so substantive Commander, but it is the school children who come out of high schools, having completed a course in cadetship, is there any criteria within RFMF for those students?

COMMANDER V. NAUPOTO.- Thank you, Mr. Chairman. Let me just state that cadet training is not for any form of recruitment for RFMF. Cadet training does not give you an advantage, if you like, over those who do not take up cadet, if they want to join the Military.

Cadet training is just an extra curricula activity that we provide for free to those schools that want to take up cadet. It is really just an activity where we try and impart in the children the virtues that are good for them now and good for them into the future, that is, discipline, having right way of life and it helps in the school.

When I go to cadet pass-out, I usually ask the teachers, what is the value of cadets that we come in and do? They usually say that it is helping in their overall discipline in their school and has a positive impact on their academic training on the academic side of their school life.

There are a lot of people who are in the Military now who never took up cadet when they were in school. Some of us did, but as I have said, it is not a pre-test training for you joining the Military. I usually tell them when I go to pass-out parades that it is not a qualifying thing for you to join the Military, but if they might want to take up that career in the future, but it is just imparting values and virtues that are good for them now and good for them in their life.

MR. CHAIRMAN.- Thank you, Sir, for that answer. Honourable Members, any other questions for the Commander?

HON. DR. S.R. GOVIND.- Yes, Mr. Chairman.

MR. CHAIRMAN.- Yes, Dr. Govind.

HON. DR. S.R. GOVIND.- Thank you, Honourable Chairman and thank you, Commander, for your very comprehensive presentation. Just for interest, I would like to ask you in the history of the RFMF, whether there has been any incident where children under 18 years have been recruited for any purpose in the Military? Do you have any figures, if so?

COMMANDER V. NAUPOTO.- Thank you for the question, Honourable Member. I have to look back at the history of RFMF, back to the early stages of the RFMF. I know of some people who joined when they were 17 years, some of them even lied about their age when they were recruiting at that time to go to Malaya and the Solomon Islands. There are lots of stories on those who would lie about their age, only because they wanted to go, but as at for now, our recruitment minimum age is 18 years.

The last recruit that we had, the minimum age of those who went through was 19 years and we had very few 19-year-olds that came in. Majority were way above the 20-year old. I am not too sure why my own analysis is that. Perhaps, in this generation, they are maturing maybe a little bit later in life compared to those of us who have grey hair and no hair like myself, may be because of the environment we grew up in where we, of course, have to stand on our own two feet very early.

However, we find a lot more over 20 years who come in and very few under 20 years and the minimum age in the latest recruit was 19 years. We were looking for some in that age group - 19 years and 20 years because we wanted to send them across to the academies in Australia because that is the age that they wanted.

Honourable Member, I know stories of those who lied about their age way back. They only did it because they wanted to join the Military and go across to Malaya.

HON. DR. S.R. GOVIND.- Thank you, Commander. Mr. Chairman, can I just ask a supplementary question to the Commander. I just wanted to know whether there is capacity in the RFMF now to provide counselling and to deal with post-traumatic disorders (PTD) after soldiers return from serving in peacekeeping duties, or otherwise?

COMMANDER V. NAUPOTO.- Thank you, Honourable Member, for the question. Within RFMF, we do not have qualified psychologists to do that but we have the services of other qualified personnel whom we call upon to come and provide that service. I remember in 2014 or 2015, those

who were captured, we enlisted the services of some psychologists to come and talk to their families at that time. But to answer your question, Honourable Member, we do not have that in the RFMF for now, but we enlist the services of qualified psychologists when we require their services.

HON. DR. S.R. GOVIND.- Yes, I feel that themselves are very important position in the military, given your size and the nature of service you are providing. I think it is very important that you have, at least, one position in your military. This is my view, I do not know.

COMMANDER V. NAUPOTO.- No, I agree with you Honourable Member. We have a position for a psychologist within RFMF that is yet to be filled.

HON. LT. COL. P. TIKODUADUA.- Sir, if I may, just the last one for the Commander.

MR. CHAIRMAN.- Thank you.

HON. LT. COL. P. TIKODUADUA.- Yesterday we had a representative from the Ministry of Education and I asked him about the use of arms in drills in secondary schools. You and I know that it is used at QVS, sometimes at RKS and maybe in Natabua Secondary School. You made references to and answered an earlier query by the Chairperson with regards to cadet training so I thought I might bring this up.

As we go along in this Optional Protocol where we deal with the involvement of the child in armed conflict and I am just talking about arms drill here. We removed the bolts and everything, but the symbolism is there.

In your view right now in terms of the value of that, I can understand barrack week, the use of other forms of drill without arms. But the question is about arms, the value it adds to discipline. Would you think that it would still be relevant today, or do you think it would have to be reviewed in light children becoming violent, if there is any relevance at all to the involvement of how the children think with regards to the use of arms in their future life? So, that is really my question.

COMMANDER V. NAUPOTO.- Thank you, Honourable Member. Mr. Chairman, I see the use of weapons in the drills for cadets, as a prop. The weapon is a prop for the parade and that is the way it is used. It just provides those students an extra few other drills in addition to the usual marching and turning.

When I go to cadet pass-outs that is the feeling, because they have that extra movement that they do with the weapons. They feel so proud being able to do that. To me, I do not see there is an indoctrination for the use of arms but it is just an extra prop for that parade where they are doing those drills by using it. That is the way I see it, I see it as just a prop that gives the children an opportunity to do those extra duties in addition to just the usual marching and turning, if there were no weapons.

I have seen it in QVS and in Natabua, as you correctly mentioned, they use arms all the time and we can see their parades, they are perfect. I have also seen schools with no arms and their parade is just as good. So, in my view, it is just an extra prop for the parade and those that have been used using it from QVS from way, way back when it started, they have always used arms and in both ways, they are all right, in my view.

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

MR. CHAIRMAN.- Thank you, Commander Naupoto. Honourable Members any other questions?

HON. LT. COL. P. TIKODUADUA.- I do not have any more. Thank you.

MR. CHAIRMAN.- Commander Naupoto and Colonel Luveni, thank you very much for your submission this morning and if you have any departing words, the floor is yours, Sir.

COMMANDER V. NAUPOTO.- Mr. Chairman and Honourable Members of the Committee, I have no other comments. I thank you for the opportunity to, again, present to you this morning. *Vinaka vakalevu.*

MR. CHAIRMAN.- *Vinaka saka vakalevu. Vinaka* Colonel Pacolo.

The Committee adjourned at 10.31 a.m.

The Committee resumed at 10.38 a.m.

**Online Interviewee/Submittee:      Office of the United Nations High  
Commissioner  
for Human Rights (OHCHR)**

In Attendance:

- Ms. Momoko Nomura - Human Rights Officer
  - Ms. Releshni Karan - National Legal Officer
  - Mr. Thomas Hunecke - Deputy Regional Representative
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MR. CHAIRMAN.- Honourable Members, a warm welcome to the members of the public who are listening to this delayed coverage of the Parliamentary Standing Committee on Foreign Affairs and Defence and make submissions on 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 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.

Honourable Members, I take this opportunity of welcoming Ms. Momoko Nomura, Mr. Thomas Hunecke and Ms. Releshni Karan from the Office of the United Nations High Commissioner for Human Rights (OHCHR). A very warm welcome to you all.

(Introduction of Committee Members by Mr. Chairman)

A very brief introduction of your goodselves and you may proceed thereafter with your submission. I thank you.

With those words of introduction, a very brief introduction of your good selves and you may proceed thereafter with your submission. The floor is yours Ms. Momoko.

MS. M. NOMURA.- Thank you, Honourable Chairman. I would also first like to give the floor to Mr. Thomas Hunecke, the Regional Representative of our Office, if that will be all right. Mr. Hunecke, you have the floor.

MR. T. HUNECKE.- Thank you, very much Ms. Nomura.

*Bula vinaka, Kia ora*, Honourable Chairman and Honourable Members of the Committee. Let me first say that we are very honoured that we have been given the opportunity to interact with you in a dialogue on the submission made by the OHCHR. I sincerely hope that my greetings finds you and your families well in these challenging times.

Let me first say, before I hand over to Ms. Nomura, who is our Regional treaty body expert

and Ms. Karan, who is our Regional Legal Officer, I would like to highlight the leadership role that

the Government of Fiji has been playing in the Pacific when it comes to promotion and protection of human rights as regards to ratification of the nine core international rights treaties.

I would also like to highlight the important role the Government of Fiji plays as a member of the Human Rights Council, the highest level to discuss the promotion and protection of human rights within the United Nations (UN). Fiji is currently assuming the role of Vice-Presidency at the Council.

As happened before, we will aim to our very best, advise on the implementation of the international rights and norms at domestic level, and the impact the ratification of the Optional Protocol may have in Fiji. As such, I would like to hand over to my esteemed colleagues but, again, we feel deeply very honoured to have the possibility to speak to you today. Thank you very much, *vinaka*.

MS. M. NOMURA.- Thank you very much, Mr. Hunecke. If I may continue, I would also like to say that it is our pleasure and honour to be engaged with you today, as we deliberate on Fiji's ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. As already introduced by Mr. Hunecke, my name is Momoko Nomura, and I am also accompanied this morning by my colleague, Ms. Releshni Karan, who is the National Legal Advisor.

Today, we would like highlight some key points from our five-page written submission, to provide a brief overview of the Optional Protocol and why we would advise Fiji to ratify the Optional Protocol and the consequences of ratification.

First, is the background or context, as it was already explained by the Honourable Chairman, the Convention on the Rights of the Child was adopted by the General Assembly in 1989, to set out international standards on the rights of children. Fiji ratified this Convention in 1993, three years after the Convention had entered into force.

While the Convention defines a child as every human being below the age of 18 years in Article 1, the minimum age for recruitment into the national armed forces under direct participation in hostilities is like, 15 years of age, and this is in Article 38, Paragraph 2, of the Convention.

For many years, child rights advocates sought to raise the standard from 15 years to 18 years of age, by creating a new international Treaty to that effect. But given the strong support for the Convention on the Rights of the Child, the idea arose to draft an Optional Protocol to the Convention, which focuses specifically on the involvement of children in armed conflict.

The drafting process for the Optional Protocol started already back in 1994, and six years later in 2000, the text of the Optional Protocol was formally adopted by the United Nations General Assembly. It entered into force in 2002, after the first 10 States became parties of the Optional Protocol. As of today, there are 170 States parties to the Optional Protocol, which is approximately 90 percent of UN Member States.

In the Pacific Region, in addition to Australia and New Zealand, Kiribati, the Federated States of Micronesia, Samoa and Vanuatu, have ratified the Optional Protocol, while Nauru and the Solomon Islands have signed the Optional Protocol. As Mr. Chairman had already mentioned Fiji, has already signed the Optional Protocol back in September 2005, together with the other Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

I turn briefly now to the content of the Optional Protocol. The Optional Protocol has 13 Articles in total and its main objective is to protect children, defined as persons below the age of 18 years, from recruitment and use in hostilities. However, there are distinctions in relation to recruitment by the national armed forces and non-state armed groups.

So when we go to national armed forces, the Optional Protocol requires States Parties to ensure that persons under 18 years of age do not take a direct part in hostilities or recruited into the armed forces.

In relation to voluntary recruitment by the national armed forces, the Optional Protocol raises the standard from 15 years of age in the Convention on the Rights of Child, to 16 years and above in Article 3, Paragraph 1, of the Optional Protocol.

Moreover, if a State party allows voluntary recruitment of children between 16 years and 18 years, it is required to establish safeguards to ensure that voluntary recruitment is generally voluntary and that is not coerced or forced. This includes, as a minimum, the informed consent of the person's parents or legal guardians, the provision of information on the duties that are involved in military service, and reliable proof of age, such as birth certificates.

In relation to recruitment by non-state armed groups, the Optional Protocol prohibits non-state armed groups from recruiting children under 18 years of age, either forcibly or voluntarily. So it is a straight 18 years (down). To ensure this in practice, the Optional Protocol imposes a duty on States parties to prohibit and criminalise the recruitment and use of children under 18 years in its domestic legislation.

I turn you now to why we believe that the Government of Fiji will be beneficial if it ratifies the Optional Protocol. As already mentioned by Mr. Hunecke, Fiji has already fulfilled this pledge in May 2010 to ratify all core international human rights treaties by 2020.

We congratulate the fact that Fiji has even passed its law by ratifying the two last remaining Treaties before 2020 in August 2019, and those were the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance. This is truly a remarkable achievement and it really demonstrates Fiji's commitment at the international level to promote and protect all human rights without cherry-picking certain rights over others. Now, we really congratulate Fiji for this.

We also congratulate Fiji for being the first Pacific nation to be elected by the General Assembly to be a member of the Human Rights Council for three years between January 2019 and 2021 which, again, is indicative of Fiji's standing in the international community, as Human Rights Council membership comes with the responsibility to uphold high human rights terrorism.

By ratifying the Optional Protocol, we believe that Fiji will continue to demonstrate this commendable leadership by not only ratifying the core treaties, but also their Optional Protocols. And in this regard, we also welcome the commitment made by Fiji to ratify all three Optional Protocols to the Convention on the Rights of the Child, following its third Universal Periodic Review in Geneva in November 2019.

The ratification of the Optional Protocol, we believe will also send a strong message to the international community regarding Fiji's commitment to protect children from harm, including recruitment and use in hostilities in particular. And in this regard, we would also like to pay tribute

to the important contribution made by the Fiji Armed Forces and the Fiji Police for the United Nations Peacekeeping Operations around the world. Those peacekeepers' very crucial role in protecting children who are often disproportionately affected by conflict help break the cycle of violence.

By modifying the Optional Protocol, Fiji will reaffirm its commitment to promote and protect the rights of children, including in worst conflict situations in the context of the UN Peacekeeping Operations. I would also like to point out that ratification of the Optional Protocol will also be timely because Fiji is combined fifth and sixth Periodic Report to the Committee on the Rights of the Child is due in September 2020.

In its previous concluding observations of October 2014, the Committee on the Rights of the Child recommended that Fiji ratify the three Optional Protocols to the Convention on the Rights of the Child because this Optional Protocol that we are deliberating today is one, amongst the three Optional Protocols, that supplement the Convention on the Rights of the Child. So ratifying one of those three Optional Protocols will enable the Government to report back to the Committee on the progress it has made to implement the recommendation, and both the State Party Report to be submitted to the Committee and also a jointly constructed dialogue with the Committee.

Additionally, Fiji has already ratified other relevant international treaties, such as the ILO Convention No. 182, or the worst forms of child labour Convention, which defines and prohibits the worst and compulsory recruitment of children for use in armed conflict as the worst forms of child labour.

Fiji is also a party or has ratified the Rome Statue of the International Criminal Court which prohibits as war crimes conscripting or enlisting children under 15 years into the national armed forces or using them to participate in hostilities.

With regard to domestic legislation, we note that the Republic of the Fiji Military Forces Act or the RFMF Act, stipulates that, 'no person shall be enlisted into the Force who is under the age of 18 years, provided that the Commander may permit the enlistment of such number of persons of/above the age of 16 years and under the age of 18 years as he/she may from time to time determine. So there is no compulsory recruitment by the Fiji Military Forces on recruitment or participation, it is currently voluntary.

However, we note that under the RFMF Act, children between the ages of 16 years and 18 years can be recruited into the Armed Forces, and the Act does not provide any distinction between the roles of soldiers under 18 years and those above the age 18 years. So the Government of Fiji may need to make measures to adopt adequate safeguards as set out in the Optional Protocol, and clarify the role of soldiers between 16 years and 18 years of age, who should not be taking a direct participation in hostilities.

In any case, the ratification of the Optional Protocol will enable the Government of Fiji to receive further guidance from the Committee on the Rights of the Child, to further align its domestic legislation and policies with the provisions of the Optional Protocol.

Finally, once the Government of Fiji decides to ratify the Optional Protocol, firstly, the Government of Fiji will be required to deposit a binding declaration upon ratification, which sets forth the minimum age which it will permit as voluntary recruitment in its Armed Forces, and a description of the safeguard it has taken to ensure that such voluntary recruitment is not forced or coerced.

We would like to highlight that the Optional Protocol also allows for the possibility that States Parties bind themselves as standards on the recruitment and the use of children in hostilities that surpass those outlined in the Optional Protocol, whether through a national legislation or other international treaties. And majority of States Parties to the Optional Protocol have, indeed, established 18 years as the minimum age for voluntary recruitment in their declarations submitted upon ratification.

The OHCHR, therefore, recommends that the Government of Fiji considers adopting a 'straight 18 policy', prohibiting both compulsory and voluntary recruitment of children into the Armed Forces, and indicate this in the declaration upon ratification. This policy will go beyond the minimum terms of the Optional Protocol but it will be consistent with the domestic legislation, including those, such as the Employment Relations Act 2007, as well as the 2013 Constitution of the Republic of Fiji.

Secondly, once Fiji becomes a State Party to the Optional Protocol, the Government will be required to submit a report within two years following the entry into force of the Optional Protocol for Fiji, and provide a comprehensive information on the measures taken by the Government to implement the provisions of the Optional Protocol. In this regard, OHCHR also welcomes the commitment made by Fiji to comply with this report and obligations to the treaty bodies.

We acknowledge the fact that for Government such as Fiji that have ratified all the international human rights treaties, it also comes with responsibility to continuously submit reports to these different Human Rights Treaty Bodies, which could be quite burdensome, but we acknowledge that Fiji has committed to establishing what is known as a national mechanism of reporting and follow-up within the Government.

We would like to reiterate that OHCHR stands ready to continue providing support to the Government, including the establishment or the strengthening of such a mechanism, as well as how it should report to the treaty bodies, and sharing the best practices to enhance reporting, not only to treaty bodies but also following up to their recommendations.

In conclusion, OHCHR recommends that the Government ratify the Optional Protocol. We also encourage the Government to take further steps to establish this national mechanism on reporting or follow up, to ensure an efficient, effective or systematic engagement with all the international human rights mechanisms, including not only the treaty bodies but also the Universal Periodic Review on the Special Procedures of the Human Rights Council.

We also encourage the Government to ratify the other two Optional Protocols, the Convention on the Rights of the Child which Fiji pledged to do so during the third cycle of the Universal Periodic Review.

We would also encourage the Government to consider ratifying the remaining Optional Protocols to the core international human rights treaties, including the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, which was also pledged by the Government during the third cycle of the Universal Periodic Review.

I thank you very much for your attention. We are now happy to take any questions that you might have, and thank you once again for giving us this opportunity to engage with your Honourable Committee.

MR. CHAIRMAN.- Thank you, Ms. Nomura, for that very conclusive presentation. Honourable Members, do you have any questions for Ms. Nomura?

MR. CHAIRMAN.- Honourable Tikoduadua?

HON. LT. COL. P. TIKODUADUA.- Ms. Nomura, *bula vinaka* and thank you for that very informative brief. You mentioned in part of your presentation that after Fiji ratifies this Optional Protocol, it may speak with the relevant UN agency dealing with it in terms of aligning our national legislations to the requirement of the Optional Protocol. And I am speaking primarily here about the RFMF Act which you had referred to earlier.

We have discussed this earlier on with the Commander RFMF and in an earlier presentation with the International Committee of the Red Cross (ICRC). But I find from your presentation that perhaps, OHCHR is stopping short of recommending that Fiji should remove those additional powers given to the Commander to recruit between the ages of 16 years and 18 years. Is that your position because you have used the word “take measures to”, what does “take measures” mean today in terms of OHCHR? Keep it and leave it there in the Act, however, specify in some places within our laws that this is what the Commander’s powers should entail when recruiting from between 16 years and 18 years? Would you rather have that, put conditions to those laws – the 16 years to 18 years, or would you rather that it be removed totally from the legislation so that there is no doubt about the rule of recruiting from under 18 years?

MS. M. NOMURA.- Thank you very much, Honourable Member, for that question. We are happy to also look at the legislation with regard to this, but as I mentioned in our presentation, we would advocate for the highest standards that can be provided to children to protect them from use in the military forces under participation and hostilities. So we would encourage the Government really to set the highest standards and we would actually advocate for compliance to the highest standards as established in the Optional Protocol, as well as the intention on the purposes of the Convention on the Rights of the Child. So, if that protection of children can be strengthened, as we are also of the view that a straight 18 years, of course, as I had mentioned in my submission, or any participation or recruitment by the Military Forces should be set at 18 years, which is definition of age of children, even as is defined under the Constitution. So we would be supportive of that.

It is the prerogative of the Government to determine that but as a human rights agency any in promotion and protection of the rights of children, we would encourage Fiji to set standards higher and to ensure that 18 years is set as the standard for protection of children, including in relation to recruitment in the Armed Forces.

I hope that clarifies. I would also give the floor to any of my colleagues, if they wish to intervene on this matter.

MS. R. KARAN.- Thank you, Ms. Nomura. Honourable Chairman and Honourable Members of the Committee, just in relation to the question raised by Honourable Tikoduadua, the provision where the Commander has discretion to recruit children between the ages of 16 years to 18 years, it is our position that there should not be a discretion in regards to age. We are advocating for a complete ban of children being recruited, either through compulsory or voluntary recruitment of children under the age of 18 years. So, we are basically saying, remove the discretion and ban recruitment of children under the age of 18 years, in direct participation in military activities or hostilities. I hope that is a bit clear.

HON. LT. COL. P. TIKODUADUA.-<sup>2</sup> Thank you very much.

MR. CHAIRMAN.- Thank you. Honourable Members any further questions for the team from OHCHR?

Since there are no other questions, Honourable Members, I take this opportunity to thank Ms. Nomura and Ms. Karan for their participation this morning. Ladies, if you have any departing comments, the floor is yours. Thank you.

MS. M. NOMURA.- Thank you very much. It has really been an honour to engage with you. We do hope, again, that Fiji would demonstrate its commendable leadership, and we look forward to the positive news about the ratification of the Optional Protocol.

We also would like to reiterate that we stand ready to provide any technical support that you may need, to ensure further discussions on aligning the domestic legislation or reporting to the treaty bodies or engagement, vis-à-vis the entire human rights treaties.

Thank you once again and we are happy to be here and stand ready for any assistance you may need. Thank you very much.

MR. CHAIRMAN.- Thank you, Ms. Nomura, and may you have a blessed day. Thank you.

The Committee adjourned at 11.03 a.m.

The Committee resumed at 11.05 a.m.

## Online Interviewee/ Submitter: Ministry of Defence, National Security and Policing

### Attendance:

(5)	Mr. Ilai Moceica	-	Deputy Secretary
(6)	Mr. Joji Dumukuro	-	Manager Police
(7)	Ms. Siuna Cama	-	Manager Defence
(8)	Ms. Kitiana Nakalevu	-	EO Security

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MR. CHAIRMAN.- Honourable Members, a warm welcome to the general public who are listening in to this recorded session of the Parliamentary Standing Committee on Foreign Affairs and Defence on the subject matter - 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.

With that, Honourable Members, a very warm welcome to the Ministry of Defence and National Security and team, led by Mr. Ilai Moceica. With those few words I now give the floor to your good selves, Mr. Moceica, and your team for your submission.

MR. I. MOCEICA.- Thank you, Sir. The Honourable Chairman and the Honourable Members of the Parliamentary Standing Committee on Foreign Affairs and Defence, on behalf of the Ministry of Defence, National Security and Policing, we bring to you greetings of good health from our senior leadership team and staff of the Ministry.

We have been inundated with news of States and Countries that have gone through decades of enormous struggles and adversities for their self-determination. I had been fortunate to have served in Southern Sudan for a year from May 2014 to May 2015, as a Military Observer under the auspicious of the United Nations with the United Nations Mission in South Sudan.

As a UN Observer working in teams of five, engaging with community leaders in our designated area of work, we were related to accounts from victims themselves - as a child, whom were drafted into the national army to protect and defend its territorial integrity post-liberation of a young State.

Those children who, unfortunately, do not make the selection exercise, were demobilised through the United Nations in-country Disarmament, Demobilisation and Reintegration (DDR) programmes, or may well find themselves another opportunity to be recruited into the opposition forces.

Sir, this story of certain members of the community who had been displaced by their parents and disappeared during such conflict situation. Moving stories of battle - hardened children who

looked to explore opportunities to support them growing up and have a greater sense of belonging, given their struggles.

Stories of tough calls and the transition made from mastering the functions of Kalashnikov rifles to sitting in a makeshift classroom with pens and books at hand, which has really been a daunting task to persevere. Sir, these children were either displaced by their families or forced to be taken away from their guardians and to be drafted as soldiers.

The Ministry, therefore, graciously extends to this Standing Committee, our appreciation for their wise counsel in bringing this addition to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict for submission.

We are hereby obligated and duty-bound to be appearing before Parliamentary Standing Committee on Foreign Affairs and Defence virtually online today. I call on my colleague to make our presentation. Thank you, Sir.

MR. J. DUMUKURO.- Thank you. The Honourable Chairman and Honourable Members, in response to the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, our presentation today will be based on the Implications on Defence and Security perspective.

Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence, a very good morning to you. May I refer you to the letter that was sent by Mr. Chairman in terms of the Ministry's records on the ratification of the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. The scope of my presentation really is on Fiji's status, the implication of the Convention on security and defence, why Fiji should ratify and, of course, we will be open for questions.

In terms of Fiji's status, the following provides 39 Conventions which Fiji is a party to and consistent with applications as we pursue the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

Firstly, is the Convention on the Rights of the Child (CRC). Fiji signed this Convention on 2nd July, 1993 and ratified the same on 13th August, 1993. The domestication of such obligations to the Convention is enshrined in the Constitution of the Republic of Fiji under the Bill of Rights.

As rightly mentioned by Mr. Chairman, Fiji signed the Optional Protocol to the Convention on 16th September, 2005, and we hope that this Convention would sail through to Parliament without reservations.

The implications, Mr. Chairman, the Ministry after carefully considering the elements surrounding the implications of the Optional Protocol as recognised under jurisdictions whereby it literally supports our application, should ratify the Optional Protocol as entailed below:

- (3) The Juveniles Act 1973 - definition of a child, is clearly articulated, and I quote: "Those  
under the age of 14, young persons between the age of 14 years and  
18 years. Juvenile - those under the age of 18 years which includes child and a  
young person."

- (4) Under section 91 of the Employment Relations Act 2007, it also prohibits the following forms of child labour, and I quote:

“All forms of labour slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict.”

- (5) However, in section 7(3) of the Republic of Fiji Military Act 1949 (Cap 81), it states, and I quote:

“No person shall be enlisted in the Force who is under the age of 18 years, provided that the Commander may permit the enlistment of such number of persons of or above the age of 16 years and under the age of 18 years as he or she may from time to time determine.”

Mr. Chairman, the provisions that are mentioned above provide discretionary powers for the Commander to recruit any persons above the age of 16 years. As we speak, the RFMF enlists person under their Trade Training School (TTS) Programme in support of the engineering cadre. These individuals are trained with block-laying skills, carpentry works and other vocational training for a period of two years.

Following this, they are absorbed into the Regular Force, should there be any vacancy. In terms of active duties under the Regular Force regime, a minimum age of 18 years is required. This is clearly illustrated in the various advertisements for the RFMF recruitment drive.

In terms of the summary on the Optional Protocol, Mr. Chairman, in ratifying the Optional Protocol, Fiji shall become a State Party and would fully subscribe to the requirements of the Optional Protocol whereby it can ensure that pertinent legislations are strengthened, reflecting persons who have not attained the age of 18 years, not to be recruited into their armed forces, take part in hostiles or be part of armed groups that are distinct from the armed force.

Upon ratification, a binding declaration is to be deposited that highlights the minimum age of voluntary recruitment into the Military Force, and the requirements adopted to ensure that such recruitment is not forced or coerced.

Under the Optional Protocol, the Ministry shall ensure that in compliance to the Optional Protocol, may, if permitted for voluntary recruitment under the age of 18 years into the Military Force shall maintain safeguards as follows:

6. Recruitment was voluntary with informed consent of parents or legal guardians;
7. Fully informed of the duties; and
8. Provision of proof of age prior to acceptance into the Military Force.

Mr. Chairman, in strengthening its declaration, Fiji as a State party shall notify the Secretary-General of the United Nations of its effect. It will probably be an obligation by the State in terms of its annual reporting to the Secretary-General of the United Nations.

As the State's obligation, Fiji shall take all measures, including adopting legal measures to prevent, prohibit and criminalise such practice or involving children as child soldiers. This is also complemented through the access in technical assistance by implementing and taking effective

measures to enforce, promote and prevent activities that are contrary to the provisions of this Protocol.

Fiji shall undertake measures to demobilise or release from service, persons within their jurisdictions that are recruited or used as hostile, and accord them with appropriate assistance, such as technical co-operation or financial assistance for their physical, psychological recovery and their social re-integration.

Fiji shall submit a report to the Committee on the Rights of a Child and the Protocol within two years upon its entry into force. The report must provide information on measures implemented, the requirement as entailed in the Convention. This report must also detail further information in respect of the Protocol itself.

Why should Fiji ratify? Mr. Chairman, Fiji being dubbed as a regional leader intends to ascribe this Optional Protocol to Parliament through the Standing Committee in support of its ratification. In doing so, we will be seen as a practitioner and consistent with our commitment towards the strengthening of Fiji's commitment and obligations under the Convention on the Rights of the Child. It also underpins and complements our existing laws.

The way forward, Mr. Chairman, once we have ratified this Protocol, we will ensure that necessary actions mentioned above will be implemented as follows:

- (4) Amend the Arms and Ammunitions Act. The issuance of licence must have an age preference. Those under the age of 18 years must not be issued with a licence, possess or use firearms.
- (5) By ratifying this Protocol, it obviously promotes and strengthens international relations and co-operations between State Party.

That is basically all, Mr. Chairman, and I thank you for this opportunity. *Vinaka vakalevu.*

MR. CHAIRMAN.- Thank you, Mr. Dumukuro and Mr. Moceica. Honourable Members, do you have any questions?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, may I?

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

HON. LT. COL. P. TIKODUADUA.- Thank you, Deputy Secretary for Defence and your Team for that very informative brief. I will ask you a question which I have related to, I think, three other attendants that have briefed the Committee earlier - the Commander RFMF, the representatives from and also the International Committee for the Red Cross (ICRC).

The OHCHR's legal position plus ICRC, insist that to fully ratify this Optional Protocol, that it is best that we remove the proviso within section 7(3) of the RFMF Act with regards to the powers of the Commander to recruit between the ages of 16 years and 18 years. I also hear what you are saying about the Trade Training School and that you will also try to perhaps, edit or amend our current legislation so that it is relevant or complies with this additional Protocol, particularly in recruiting below 18 years.

The Commander had noted earlier, I do not know if Honourable Members of the Committee read me the same, the transcript of the Commander's presentation will come out later but he alluded to the fact that there maybe, just a need to set up a technical school. I know they have that there in Nabuni but the current requirement is that, they become soldiers first before they get trained as part of the TTS. Do you see that as something that you could perhaps, amend the laws or perhaps, not recruit, but get the over 16-year olds (between 16 years and 18 years), run them through TTS but without making them soldiers? Would that be something that perhaps, you are thinking of as well, so as to be compliant with this Optional Protocol as much as possible? That is all.

MR. I. MOCEICA.- Honourable Chairman, Sir, thank you again. Through you, there is something that we are in the process of engaging in since we understand that the RFMF Act has been outdated. Given the time now, we were looking at harmonising the Act with the current legislation.

More importantly, you would have understood the concept of TTS when it was initially established to support youth, especially youth in remote areas. I understand what the Honourable Member was mentioning, that they have a concept behind the TTS, and that is something or what we practically would look at in terms of nation building, where we look at youth recruitment, employment and also those who will go back to their community as to support nation building out in the rural and maritime. Thank you Sir.

MR. CHAIRMAN.- Thank you.

HON. LT. COL. P. TIKODUADUA.- Thank you for that, Mr. Moceica. I recognise the benefits of TTS for when it was established. I think the issue with the Optional Protocol is recruiting children below the age of 18 years and I know we are not recruiting TTS to go to Lebanon and all those places, but it is the principle of recruiting below 18 years here to join the military for that matter.

What I am seeing is that, how can we be consistent with this Optional Protocol? The TTS, in my view, provides those young men and ladies who come in and are below the age of 18 years, a skill and I think, right now, it is recognised as Level 2 or Level 3 at FNU.

Now, let alone they can go back and take that to the village or their community is good and I have absolutely no problems with that. It is just that being consistent with this Optional Protocol, do we need to make soldiers out of them, or do we need to amend the law so that we do not recruit them under the age of 18 years? Do they have to take the oath? Do they have to undergo basic recruitment course? Is there some kind of other alternative that we could think about because the Commander of the RFMF alluded to earlier?

So, I am just trying to ignite some discussions on this because we want to adopt it without reservation, yes, but we are also allowing in our laws some discretionary powers to recruit below this age. So, I am just trying to ignite some discussions and I am interested in your thoughts.

MR. I. MOCEICA.- Honourable Chairman, this is a very valid contribution from the Honourable Member and to be consistent with our position in ratifying this Optional Protocol, we have to go down this path and it is only right and fair because of the consistencies of our law, the employment regulation that we do not recruit below the age of 18 years. And if there is an initiative which was mentioned by the Commander, we will take that as consideration because that will go through public consultation and the voice of the public as a nation in ratifying the Protocol that has to be inculcated in this, Sir. Thank you.

HON. LT. COL. P. TIKODUADUA.- Thank you. My last issue is not new just to Defence because I have raised this with the Commander also and the representatives from the Ministry of Education. Now, I have always thought about this in terms of instilling discipline and the issue of arms drill in our cadets at QVS, RKS, Natabua and some other schools, depending on their need, ask that the students to be introduced to arms drill.

The explanation that I have been getting from the Commander and the Ministry of Education that it is a good looking thing, because I am relating here directly to the value that it adds - the child's development and academic discipline, academic output, et cetera.

I am interested if we are looking at the value of it. I can understand foot drills, et cetera, in instilling command, respect and obedience. But I am concerned that it could well be also some thinking of introducing that (I know it is not even an active weapon but the fact that he/she uses it), whether any thought has gone into this discussion, especially to the children today. I know the Commander informed that cadet training is not a pre-requisite to joining the military and I know that very well, but it is the perception that lies behind it.

If it does add value at all, I would be interested to know but if not, then what is the thinking behind it right now? Is it a relevant thing that the Ministry is considering, or not at all? I know it is a really long winding question but I know what I am asking. Thank you.

MR. I. MOCEICA.- Mr. Chairman, Sir, with the question posed by the Honourable Member, he has rightly mentioned and we are susceptible to contribution which validates our position in the focus of giving the right perception to the general public, especially children, and more importantly, Sir, you as well as the other Honourable Members do understand because of the changing times, if that is something that we have rendered irrelevant to the thinking at this day and age, then obviously we will have to change and that is most welcomed.

I understand like what you had mentioned and we fully subscribe to it in instilling discipline to cadets in schools, that continues to be one of the major focus but in terms of carrying arms, there are other forms of drills that can be used without using weapon. Thank you, Sir.

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

MR. CHAIRMAN.- Honourable members, any further questions?

Since there are no other questions, on behalf of the Committee, Mr. Moceica, we thank you and your Team for acceding to our request to come before us this morning. If you have any departing comments, the floor is yours, and I thank you.

MR. I. MOCEICA.- Honourable Chairman and Honourable Members, with all modesty, we would like to, again, thank you for the wise counsel in bringing this to the fore, because we have seen the scars of war in war-torn countries, inter and globally, and this is a contribution that we can reach out as a member of the global community in reaching out to the young children, giving them hope and a future in the kinds of advisories that we give, especially now with the uncertainty that we are facing ourselves globally with.

With those words, we thank you, again, and thank you for the opportunity that you have allowed us to be updating the Standing Committee this morning. Vinaka.

MR. CHAIRMAN.- Thank you, again, Honourable Members, and the Team from the Ministry of Defence, National Security and Policing.

The Committee adjourned at 10.31 a.m.

The Committee resumed at 12.02 p.m.

## **Online Interviewee/ Submitter: Ministry of Women, Children and Poverty Alleviation**

In Attendance:

Ms. Jennifer Poole	-	Permanent Secretary
Mr. Rupeni Fatiaki	-	Director for Social Welfare Division
Ela Tukutukulevu	-	Assistance Director Child Services
Ms. Anushka Arti	-	SAD

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MR. CHAIRMAN.- Thank you, Honourable Members. I welcome the members of the public who are listening to this recording of the Parliamentary Standing Committee on Foreign Affairs and Defence Meeting on the subject of 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 (Optional Protocol), is an international instrument that States parties to the CRC may ratify.

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

Honourable Members, I have the pleasure of welcoming the team from the Ministry of Women, Children and Poverty Alleviation. Welcome Ms. Poole and your team. I now give you the floor to present your submission. Thank you.

MS. J. POOLE.- Thank you, Honourable Chairman. Our greetings to you and the Honourable Members today. We are honoured to be able to respond to your inquiries on the Optional Protocol. So first, I should introduce my team.

(Introduction of Ministry of Women, Children and Poverty Alleviation Team by Permanent Secretary).

MR. CHAIRMAN.- Madam, PS, I think the Honourable Members cannot hear you well. Would you like to try again please, Madam Permanent Secretary?

MS. J. POOLE.- Thank you. Can you hear me now?

MR. CHAIRMAN.- Yes, it is very clear, we can hear you now.

MS. J. POOLE.- Mr. Chairman, we will try and proceed to the first question.

Question No. 1: What is the position of the Ministry of Women, Children and Poverty Alleviation on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict?

Honourable Members, are you able to hear?

MR. CHAIRMAN.- Honourable Members, can you hear that? HON. S. ADIMAITOGA.- No, it is a bit difficult.

HON. DR. S.R. GOVIND.- No, it is still breaking too much, Mr. Chairman. It is not very clear.

MR. CHAIRMAN.- Honourable Adimaitoga?

HON. S. ADIMAITOGA.- It is not clear, Mr. Chairman. MR. CHAIRMAN.- Honourable Tikoduadua?

MS. J. POOLE.- I will try and read the first paragraph. Mr. Chairman, should I proceed? MR.

CHAIRMAN.- Honourable Tikoduadua, can you hear?

MR. J. POOLE.- I will try and restart with the first question and just see if the recording is clear.

The Ministry of Women, Children and Poverty Alleviation fully recommends that Fiji ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. We base our recommendation on the fact that the Fijian Government is committed to ensuring that all children grow up in a safe and loving family, and are supported to reach their full potential.

Through pronouncements in the Fijian Constitution and our commitments under the Convention on the Rights of the Child (CRC) we, as a nation, remain dedicated to protecting children from all forms of violence, abuse, neglect and exploitation.

Fiji ratified the CRC in 1993, which sets out the standards and protocols to safeguard rights and welfare of our children.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I do not know are you guys hearing it the same way as I am because it is really distorted from my end. I can barely make out the audio.

MR. CHAIRMAN.- Thank you. Jacob, are you still there with the team? MR. J. ABRAHAM.- Yes, we are still here, Sir.

MR. CHAIRMAN.- We can well and clearly hear you, Jacob, but the audio from Madam Permanent Secretary is very distorted.

HON. LT. COL. P. TIKODUADUA.- Yes.

MR. J. ABRAHAM.- (Inaudible)

MR. CHAIRMAN.- We can hear you. Perhaps, you might just ask Madam Permanent Secretary to continue.

MR. J. ABRAHAM.- All right, we will do that, Sir.

MS. J. POOLE.- Would you like me to repeat the section?

MR. CHAIRMAN.- Can you hear that now, Honourable Members?

HON. LT. COL. P. TIKODUADUA.- Yes, slightly better in a way but I am not quite there yet but slightly better than the last time.

MS. J. POOLE.- So, I will just repeat the introduction.

The Ministry of Women, Children and Poverty Alleviation fully recommends that Fiji ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. We base our recommendation on the fact that the Fijian Government is committed to ensuring that all children grow up in a safe and loving family and are supported to reach their full potential.

Through pronouncements in the Fijian Constitution and our commitments under the Convention on the Rights of the Child (CRC) we, as a nation, remain dedicated to protecting children from all forms of violence, abuse, neglect and exploitation.

Fiji ratified the CRC in 1993, which sets out standards and protocols to safeguard rights and welfare of our children. As a signatory to the CRC, Fiji is obligated to submit state reports to the Committee on the Rights of the Child. These reports map out how the Government is faring in meeting obligations under the CRC.

Were you able to hear that, Mr. Chairman?

MR. CHAIRMAN.- Yes, Honourable Members, did you hear that? Honourable Tikoduadua, did you hear the answer?

HON. LT. COL. P. TIKODUADUA.- Yes, most of it I did hear, but I am concentrating more to try and make out the words which are distorted. That is my problem.

HON. DR. S.R. GOVIND.- To much echoing and very painful to the ear. I think there is some problem with the microphone there.

HON. LT. COL. P. TIKODUADUA.- Yes.

HON. DR. S.R. GOVIND.- We can hear but little. The sound is too sharp and we are not technically looking at that.

MS. J. POOLE.- Mr. Chairman, can we proceed with Question No. 2?

MR. CHAIRMAN.- Honourable Members, I will ask Madam PS to continue with her submission in answering those questions. We should have a copy with ourselves as we speak and then perhaps, we take a rebut. We just allow Madam PS to continue with the answering of the questions that had already been forwarded to her. You may continue, Madam PS.

MS. J. POOLE.- I thank you, Mr. Chairman.

Question No. 2: Should Fiji accede to the above Treaty with or without reservation?

We say, yes, Fiji is good to accede to the Treaty because it will strengthen the implementation of the CRC and increase the protection of children during armed conflicts because the Optional Protocol, also known as the 'child soldier treaty', is a multilateral treaty whereby States agree to:

prohibit the conscription into the military of children under the age of 18 years;  
ensure that military recruits are no younger than 16 years; and  
prevent recruits aged 16 years or 17 years from taking part in any direct hostilities.

Were you able to hear Question 2?

MR. CHAIRMAN.- That is much better now, Madam PS, thank you.

MS. J. POOLE.- So for Question No. 3, I am going to handover to the Acting Director of Child Services, Ms. Ela Tukutukulevu.

MS. E. TUKUTUKULEVU.- Good morning Mr. Chairman and Honourable Members.

Question No. 3: What is the level of child protection laws and policies in Fiji, bearing in mind the political crisis of 1987, 2000 and 2006, whereby children were exposed to varying degrees of conflict in different parts of the country?

From the Ministry, we are grateful that Section 41 of the 2013 Constitution of the Republic of Fiji on the Bill of Rights emphasises the right of every child being protected from abuse, neglect, harmful cultural practises, any form of violence, inhumane treatment and punishment, and hazardous and exploitative labour.

In 2010 was the introduction of the Child Welfare Act which makes reporting on cases of child abuse and neglect more organised and it has to do with mandatory reporting of all child cases to the Permanent Secretary of the Ministry of Women, Children and Poverty Alleviation.

The Ministry is currently finalising the National Child Protection Policy, and we also understand that line Ministries and CSOs have their own Child Protection Policy. So the legal framework for the protection of children rests with the Ministry and under the Department of Social Welfare.

When we look at the Juveniles Act, it clearly outlines the duties and powers of the Director of Social Welfare and his/her welfare officers. And so for Fiji, following the ratification of the Convention on the Rights of the Child (CRC), Government has been strengthened by laws and we currently have a structure in place to care for our children.

We wish to also address that the political crisis situations in the past may not have had direct implications on children, but they would have been faced with indirect implications with families losing livelihoods, undergoing trauma due to civil unrest and spending time away from school while the state of emergency was declared. Therefore, the services provided at that time to children would have been aligned to the needs of the children. We can also confirm that during these situations, no child was reported to be a part of armed groups.

The ratification of the Optional Protocol will be a proactive measure in ensuring that this never actually happened in Fiji, and also strengthened the current legal framework.

Question No. 4: How does these impact the current laws and policies on the Convention on the Rights of the Child and work undertaken currently by the Ministry on the ground?

The added advantage to the laws is the reporting or referral pathways that those on the ground are fully aware of. Our officers in the field are fully aware of the reporting mechanism that has already been in place and this has been strengthened by the laws which had been recently passed. There are guidelines or Standard of Procedures (SOPs) in place that add to the structure and this has allowed collaborative multi-sectoral approach when implementing cases.

Shall we continue?

MR. CHAIRMAN.- Yes, carry on.

MS. E. TUKUTUKULEVU.- Thank you.

Question No. 5: How does this impact current partnership on CRC work with UNICEF and other agencies on the ground, that is, Save the Children (FIJI), Oxfam, Dilkusha Home in Nausori and St. Christopher's Home in Naulu?

For us at the Ministry, we feel that it will make partnership stronger as the ratification shows Fiji's continuous support to further promoting, protecting and fulfilling the rights of children in the country. While this may mean additional reporting for the country, good progress is already happening through laws that protect children. So, anything requiring countries to work towards protecting children is key for our development partners, like UNICEF.

Question No. 6: What are the lessons learnt?

An integrated approach is a must in dealing with issues of child protection and this is the key strategy that the Ministry uses. It is also the main reason why we have a coordinating body which is called the National Coordinating Committee on Children (NCCC) at national level, and at our divisional and district level, we also have inter-agency networks and that was established at that time.

Also in 2015, we had established the National Child Helpline No. 1325, to ensure that the right agency deals with relevant issues in a timely manner. The Ministry remains committed to taking an integrated approach on such matters in the future, as well as this has been found to be the most effective method.

Question No. 7: What rehabilitation programmes, CSOs and NGOs have in place to assist the Ministry for future events moving forward?

The NCCC is an existing body, including CSOs, NGOs and UN Organisations coordinated by the Ministry and brings to the table key stakeholders in the area of child protection. NCCC can lead the way forward for the implementation of the requirements under the watch of the Permanent Secretary for the Ministry of Women, Children and Poverty Alleviation, who chairs this Committee.

Question No. 8: Our final thoughts on the subject matter:

Perhaps, I will hand this over to the Director Social Welfare to take us through.

MR. R. FATIAKI.- Thank you, Honourable Chairman. Our final thoughts on the subject matter; the Optional Protocol forbids non-state armed groups from recruiting anyone under the age of 18 years for any purpose. The Optional Protocol came into force on 12th February, 2002 and as at March 2020, 170 States became party to the Optional Protocol.

Article 3 of the Optional Protocol provides that State Parties must raise the minimum age for the voluntary recruitment of persons into their national armed forces, and recognise that persons under 18 years are entitled to special protection. It also provides that each State party shall deposit a binding declaration upon ratification or accession to the Optional Protocol that outlines the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

Article 3 also provides that States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that such:

- (a) recruitment is genuinely voluntary;
- (b) recruitment is done with the informed consent of the person's parents or legal guardians;
- (c) persons are fully informed of the duties involved in such military service; and
- (d) persons provide reliable proof of age prior to acceptance into national military service.

Article 4 of the Optional Protocol recognises that armed groups are distinct from the armed forces of a State and should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. States Parties must also take all feasible measure necessary to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices.

Article 6 of the Optional Protocol provides that each State Party must take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Optional Protocol within its jurisdiction. It must also take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the Optional Protocol are demobilised or otherwise released from services and when necessary, accord to those persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7 of the Optional Protocol provides that State parties shall cooperate in the implementation of the present Optional Protocol, including in the prevention of any activity contrary to the Optional Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to the Optional Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned State Parties and relevant international organisations.

Further, States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8 of the Optional Protocol provides that each State party shall submit, within two years following the entry into force of the Optional Protocol for that State party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol, including the measures taken to implement the provisions on participation and recruitment. Thereafter, each State Party shall include in the reports

they submit to the Committee on the Rights of the Child, in accordance with Article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States parties to the Protocol shall submit a report every five years.

Finally, Articles 9 to 13 of the Optional Protocol outline administrative matters including procedures for ratification or accession, entry into force, denunciation and amendments to the Optional Protocol.

Mr. Chairman, this is the presentation from the Ministry and I now hand over to our Permanent Secretary for the final presentation.

MS. J. POOLE.- Thank you, Mr. Chairman and Honourable Members. The Ministry through the NCCC is willing and support the Optional Protocol and the obligation that the ratification brings. Thank you.

MR. CHAIRMAN.- Thank you, Madam PS, Director of Social Welfare and

Team. Honourable Members do you have any questions for the Ministry?

Honourable Members, since there are no questions, I take this opportunity to thank Madam PS and her Team. I guess because of the degree of the reception, if we do have any pertinent questions we will send by email to your good selves.

I take this opportunity to thank you, again, and if you have any departing words, the floor is yours.

MS. J. POOLE.- Thank you, Mr. Chairman and Honourable Members. I thank my Team for responding to the questions. I would like to add that the Ministry is more than willing to support the ratification and the work, of course, on the Optional Protocol. Thank you.

MR. CHAIRMAN.- Thank you again to

your team. The Committee adjourned at

12.26 p.m.

**[VERBATIM REPORT]**  
**STANDING COMMITTEE ON**  
**FOREIGN AFFAIRS AND**  
**DEFENCE**

**TREATY/PROTOCOL/CONVENTION**

13. **Madrid Agreement Concerning the International Registration of Marks 1981 (Madrid Agreement)**
14. **Protocol Relating to the Madrid Agreement (Madrid Protocol)**
15. **Paris Convention for the Protection of Industrial Property**
16. **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

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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

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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

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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:

- (6) Patents;
- (7) Trademarks;
- (8) Trade Names;
- (9) Industrial Designs;
- (10) Utility Models;
- (11) Surface Marks;
- (12) Geographical Indications; and to
- (13) 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:

1. Trade Marks Bill 2020;
2. Patents Bill 2020; and
3. 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:

- (a) Patents;
- (b) Trademarks;
- (c) Trade Names;
- (d) Industrial Designs;
- (e) Utility Models;
- (f) Surface Marks;
- (g) Geographical Indication; and to
- (h) 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:

- (e) WIPO Convention 1971;
- (f) Berne Convention 1971;
- (g) Rome Convention 1972;
- (h) Phonograms Convention 1972; and
- (i) 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. FPRA 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.