

APPENDICES

Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary

Table of Contents

Schedule of Submissions on the Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary	3
Submission by the Pacific Islands Forum Secretariat.....	4
.....	8
Submission by the Pacific Islands Development Forum (PIDF) Secretariat	9
Submission by the University of the South Pacific	10
Submission by the Fiji Maritime Affairs Coordination Committee	11
Submission by the Secretariat of the Pacific Community	17

Schedule of Submissions on the Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary

Oral Submissions		
Date	Time	Submitters
Tuesday, 15 th September, 2020	9.31am	Pacific Islands Forum Secretariat (PIFS)
	10.28am	Pacific Islands Development Forum
	11.16am	The University of the South Pacific
Monday, 21 st September, 2020	9.32am	Fiji Maritime Affairs Coordination Committee
	12.28pm	Secretariat of the Pacific Community (SPC)
Tuesday, 22 nd September, 2020	10.10am	Ministry of Foreign Affairs
	10.57am	Ministry of Defence, National Security and Policing
Monday, 28 th September, 2020	11.55am	Fiji Revenue and Customs Service (FRCS)
Monday, 5 th October, 2020	11.49am	Office of the Solicitor-General
Written Submissions		
There were no written submissions received for the stated treaty.		

Submission by the Pacific Islands Forum Secretariat



PACIFIC ISLANDS FORUM SECRETARIAT

**VIRTUAL SUBMISSION TO THE
STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE
PARLIAMENT OF THE REPUBLIC OF FIJI**

9.30AM, 15 SEPTEMBER 2020

INTRODUCTION

1. Hon Chairman and Hon Members of the Standing Committee on Foreign Affairs and Defence of the Parliament of the Republic of Fiji.
2. Mr Chairman, I extend the sincere apologies of the Secretary General of the Pacific Islands Forum, Dame Meg Taylor who, due to prior commitments, is regrettably unable to make this verbal presentation.
3. Thank you for the invitation for the Pacific Islands Forum Secretariat to speak about the Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary.
4. Before I do that, may I provide some context on the Pacific Islands Forum and the Secretariat it serves.
5. Fiji is a founding member of the Pacific Islands Forum, established 49 years ago the Forum now consists of 18 countries and territories – Palau and Australia to the east, the Republic of the Marshall Islands to the north, New Zealand to the south and French Polynesia.
6. Pacific Islands Forum Leaders are committed to the **vision of a region of peace, harmony, security, social inclusion, and prosperity, so that all Pacific people can lead free, healthy, and productive lives.**
7. We account for one third of the world's ocean surface. Every second breath we take is attributed to the Blue Pacific Continent that binds and nurtures us.
8. The Forum has a number of milestones, one of which is the pioneering role in the 1982 UN Convention on the Law of the Sea and the basis for today's hearing.
9. Mr Chairman, for the information of the Committee the role of the Forum Secretariat in this important area vis a vis the role of the Pacific Community (SPC) who provides dedicated technical support to all Member countries in the formalisation of maritime boundaries in accordance with the 1982 UN Law of the Sea Convention.

10. The Forum Secretariat coordinates progress on Leaders' specific commitments and decisions relating to maritime boundaries, as relevant for advancing the regional agenda for securing the Blue Pacific continent. We accordingly support the efforts of regional partners, including the SPC and a Maritime Boundaries Consortium of key partners, to support Members' efforts in this regard.

11. We understand that the SPC has also been invited to provide a submission to your Committee. SPC is therefore best placed to address and submit on technical issues on this matter.

PACIFIC ISLANDS FORUM LEADERS' DECISIONS AND COMMITMENTS

12. The Framework for a Pacific Oceanscape, endorsed by Leaders in 2010, sets out under *Strategic Priority 1 Jurisdictional Rights and Responsibilities* two key action points for ensuring that all maritime boundaries have been appropriately defined and declared under international law, thereby providing ongoing certainty over resource ownership and access for all stakeholders:

- i) formalising maritime boundaries and securing rights over their resources
- ii) fixing baselines and maritime boundaries to ensure the impact of climate change and sea-level rise does not result in reduced jurisdiction on Pacific Island countries

13. Mr Chairman, Forum Leaders in 2018, **acknowledged** the urgency and importance of securing the region's maritime boundaries as a key issue for the development and security of the region, and thereby for the security and well-being of the *Blue Pacific*. Leaders committed to progressing the resolution of outstanding maritime boundary claims and report back on progress at their next meeting last year.

14. At the 50th Pacific Islands Forum Meeting, held in Tuvalu in 2019, Leaders discussed progress made by Members to conclude negotiations on maritime boundary claims since the Leaders meeting in Nauru 2018, and encouraged Members to conclude all outstanding maritime boundaries claims and zones.

CURRENT STATUS OF MARITIME BOUNDARIES IN THE PACIFIC AND REGIONAL SUPPORT AVAILABLE

15. Mr Chairman, maritime boundaries are established through a process for declaring maritime boundaries, which involve: technical elements (mapping); legal elements (drafting and review of law); political elements (advocacy and negotiations where required, including treaty-making); and submission of maritime boundaries to the UN.

16. As alluded to, the Pacific Community leads technical advice and support to 14 PICs to formalise their maritime boundaries through treaties.

17. [Refer <http://www.pacreeo.org/static/maritimeboundaries/> for treaties, declarations and further information.]

18. There are 48 shared or overlapping boundaries (EEZs) between countries in the Pacific Islands region. To date, thirty five (35) or 73% of these boundaries have been formalised with

13 outstanding bilateral/shared boundaries, and five high seas boundaries remaining to be declared. (Of the 13 shared boundaries remaining, three relate to Fiji's shared boundaries with Solomon Islands, Tonga, and Vanuatu.)

19. This rate of progress is unprecedented elsewhere in the world, underscoring the strength of relationships between countries and partners as well as the commitment of all parties to progress this critical work.

20. However, the work is very technical in nature and requires time, effort and the important political will. There are of course a few long-standing negotiations and one overt dispute.

SIGNIFICANCE OF ESTABLISHING MARITIME BOUNDARIES

21. The first and foremost reason for the need to complete the delimitation of maritime boundaries and delineation of maritime zones is for Members to exercise their right to exert maritime claims as Parties to the 1982 UN Law of the Sea Convention.

22. The recent endorsement by Leaders of the *Blue Pacific* narrative provides urgent impetus to the need to complete this work. SPC and the consortium continue to provide this assistance to Members.

23. Compounding this issue is the region's biggest security threat – climate change – being a key driver, in particular the findings of the recent IPCC report on 1.5 degrees, which provided clear evidence on the urgency of responding to the threat of climate change. In the context of maritime boundaries, it means securing our place in the face of climate change and sea-level rise.

24. Last year, Leaders noted with concern the threat posed by sea level rise to securing the Blue Pacific, and reaffirmed their commitment to conclude negotiations on all outstanding maritime boundaries claims and zones. They further reaffirmed the importance of preserving Members' existing rights stemming from maritime zones, in the face of sea level rise, noting the existing and ongoing regional mechanisms to support maritime boundaries delimitation.

25. Leaders committed to a collective effort, including to develop international law, with the aim of ensuring that once a Forum Member's maritime zones are delineated in accordance with the 1982 *UN Convention on the Law of the Sea*, that the Members maritime zones could not be challenged or reduced as a result of sea-level rise and climate change.

26. At the 2020 *Regional Conference on Securing the Limits of the Blue Pacific: Legal Options and Institutional Responses to the Impacts of Sea-Level Rise on Maritime Zones, in the Context of International Law* (held virtually last week), Members once again emphasised the criticality of **concluding** all outstanding maritime boundaries claims and zones, and related bilateral treaties and legal frameworks.

THE DRAFT AGREEMENT

27. Mr Chairman, with respect to the draft Agreement. We offer three observations:

28. Firstly, “sovereignty rights” under Article 5 appears to be inconsistent with what UNCLOS states. Article 56 of the Convention regarding the Exclusive Economic Zone, makes specific reference to “sovereign rights”, not “sovereignty rights”.

29. “Sovereignty rights” is not found in UNCLOS. Using “sovereignty rights” has the potential to add confusion as to whether the intention is for “sovereignty” (without the word rights) or “sovereign rights”. Under UNCLOS, these are two distinctive rights.

30. Therefore, consistent alignment with the wording in UNCLOS would be highly recommended. UNCLOS exerts “sovereignty” within the internal waters, archipelagic waters and the 12 nm territorial seas. As opposed to exerting sovereign rights in the EEZ and Continental Shelf. Clarity is otherwise vital to avoid any dispute regarding the interpretation and application of the Agreement.

31. The second observation relates to Article 6 “Adjustments to Maritime Boundary”. While we note that Article 6 is a standard clause in most MB Treaties, it could be read as and supporting the argument that maritime boundary is “ambulatory”. This interpretation does not support regional views and appears contrary to Leaders’ commitment in their Annual Meetings as well as under the Framework for a Pacific Oceanscape to secure maritime boundaries, unchallenged and unchanged despite sea-level rise and climate change.

32. Although the Law of the Sea Convention is silent on these issues, Forum Leaders have taken a proactive approach by committing “to a collective effort, including to develop international law, with the aim of ensuring that once a Forum Member’s maritime zones are delineated in accordance with the 1982 *UN Convention on the Law of the Sea*, that the Members maritime zones could not be challenged or reduced as a result of sea-level rise and climate change”.

33. A body of state practice is therefore emerging in the region to develop consistent evidence of non-ambulatory maritime boundaries, which is fundamental in the development of customary international law. We want our maritime boundaries to be final and permanent, once deposited, regardless of any changes imposed by sea-level rise and climate change. Clause 6, as it currently stands, offers room for inconsistency in our practice, therefore, could undermine regional efforts.

34. Our third and final observation relates to and further supports our second point by proposing that a “finality clause” be incorporated in the Agreement to clearly articulate that once the maritime boundary is delineated in accordance with the Convention, that it is final and permanent, and therefore cannot be challenged or reduced as a result of sea-level rise and climate change.

CONCLUSION

35. In conclusion Mr Chairman, we close our submission by commending the Republic of Fiji and the Solomon Islands Government for the active efforts to conclude one of the 13 remaining shared boundaries in our region.

36. This is a very important and tangible step forward that supports a collective commitment by all 18 Forum Leaders to conclude outstanding maritime boundary claims and zones, in view of the urgency and importance of securing the region’s maritime boundaries as

a key issue for the development and security of the region, and thereby for the security and well-being of our *Blue Pacific* continent.

37. On the basis of this submission, Mr Chairman, the Pacific Islands Forum Secretariat supports the completion and signing of the Agreement between the Republic of Fiji and Solomon Islands concerning their shared maritime boundary, and hopes that this submission is of assistance to your Committee.

38. I thank you Mr Chairman and Hon Committee Members.

Submission by the Pacific Islands Development Forum (PIDF) Secretariat

PIDF'S WRITTEN SUBMISSION

1. The Chairperson of the Republic of Fiji Parliamentary Standing Committee (*'Committee'*) on Foreign affairs and defence, Hon. Alexander O'Connor, and distinguished members of the Committee.
2. The PIDF Secretariat (*'Secretariat'*) has noted *Section 109 2(e)* of the Standing Orders of the Parliament of Fiji which mandates the Committee to look into matters that relates to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.
3. The Secretariat acknowledges the Committee's request for the opportunity to forward its submission on a Treaty before the Committee on the Agreement (*'Agreement'*) between the Republic of Fiji Islands (*'Fiji'*) and the Solomon Islands concerning their Maritime Boundary and whether Fiji should sign the Agreement or otherwise.
4. The Secretariat further notes that this agreement focuses on resolving Fiji's overlapping EEZ boundaries with the Solomon Islands.
5. The Secretariat recognizes and appreciates the Governments of Fiji and the Solomon Islands for their continuous support as an active member of the organization in helping our Pacific Island transition towards a sustainable Green-Blue Economy.
6. The Secretariat has reviewed and taken into consideration the final Agreement and Written Analysis of the Agreement provided by the Committee and is of the view that such agreement should be endorsed provided that:
 - 6.1. Adequate due diligence has been carried out with other relevant stakeholders;
 - 6.2. *Article 2* of the Agreement (Purpose) should be amended by inserting (UNCLOS) after the word 'international law.' Although the agreement is referring to UNCLOS it must be precise in the narrative of the agreement, particularly on the various Articles.
7. The Secretariat supports this agreement because it demonstrates the global commitments of our member states towards UNCLOS, SDG14 and the UN Oceans Conference.
8. This is important for both conservation and security. A defined maritime boundary allows for efficient monitoring and enforcement. An unresolved maritime boundary invites illegal [IUU] fishing, provides routes for illicit trafficking of illegal substances etc.
9. The Secretariat would like to acknowledge the Committee for its consideration in seeking the Secretariat's submission on this very important agreement and looks forward to receiving its final recommendation to Parliament.

-Ends-



AGREEMENT - FIJI & SOLOMON ISLANDS MARITIME BOUNDARY

Mr Esaroma Ledua
Assistant Lecturer, Ocean Resources Management
The University of the South Pacific
15 September 2020



AGREEMENT - FIJI & SOLOMON ISLANDS MARITIME BOUNDARIES

- **Paragraph 1.4** of your **Written Analysis** may need to be adjusted a bit – Fiji's EEZ boundary is already defined under the **Marine Spaces Act of 1978**.
- Coordinates specified under **Article 3 of the Agreement** is consistent with **Section 6** of the Marine Spaces Act (1978) & coordinates in Second Schedule, Para 3.
- Fiji appears to gain a bit of area – new coordinates
- Marine Spaces Act Chapter 158 needs to be amended to be consistent with new coordinates specified in Article 3 of the Agreement.
- Last line of **Article 9** of the Agreement may need to be amended-it should read **coordinates in Article 3** (not Article 1).
- **Written Analysis 4.0-Impact of Execution of Agreement** – is minimal and only will affect coordinates specified in the Marine Spaces Act.
- **We support the recommendation for Parliament to endorse the agreement – rich tuna fishing ground & hydrothermal deposits.**

Submission by the Fiji Maritime Affairs Coordination Committee



SUBMISSION BY THE MARINE AFFAIRS COORDINATING COMMITTEE
TO THE
STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE
FIJI AND SOLOMON ISLANDS MARITIME BOUNDARY AGREEMENT

21 SEPTEMBER 2020

1.0 **INTRODUCTION**

- 1.1 The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is the international legal regime that sets parameters for maritime boundary delimitation. It is through UNCLOS that coastal States are able to claim maritime boundaries and enjoy rights and benefits derived within.
- 1.2 Maritime Boundaries are a critical tool allowing States to effectively manage sovereign territories. Governance, security, immigration and customs enforcement, and resource management within maritime zones are the jurisdiction of the coastal State.
- 1.3 The successful conclusion of the Fiji and Solomon Islands Maritime Boundary will bring the remaining boundary negotiations down to three (3) – Tonga, Vanuatu, and the North Fiji Basin High Sea pocket. This is a positive indication that Fiji is on track to meet its commitments under UNCLOS to finalise all its outstanding maritime boundaries.
- 1.4 Pursuant to Fiji's obligations to SDG 14 – *Life Below Water*, Fiji has made an international commitment to complete its outstanding maritime boundary negotiations by 2025. This commitment aligns with regional aspirations towards a *Blue Pacific Continent* and the overall Agenda 2030 on sustainable development.

BACKGROUND

- 1.1 Contingent on Parliamentary approval, signing of the maritime boundary agreement between Solomon Islands and Fiji was scheduled to take place during the Forum Leaders meeting. However, in light of the Coronavirus pandemic alternative arrangements will be made with the government of Solomon Islands through its representatives in Sava.

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1.2 Working through the Fiji's Permanent Representative to the United Nations in New York, the Ministry of Foreign Affairs will coordinate the deposit of the signed treaty with the Division on Ocean Affairs and Law of the Sea (DOALOS) at the United Nations.

1.3 Both Parties agree that at the completion of national processes there will be formal

ii. Territorial Sea - twelve (12) nautical miles (NM) from baselines established in accordance with the Convention;

iii. Contiguous Zone - twelve (12) NM adjacent to Territorial Sea; or twenty four (24) from baseline; and

iv. Exclusive Economic Zone (EEZ) - two hundred (200) NM from baseline.

4.2 Under UNCLOS, States are obligated to define maritime boundaries. Fiji is on track to meeting this obligation with only two (2) maritime boundary negotiations pending.

5.0 **AGREEMENT**

5.1 The Agreement between Fiji and the Solomon Islands focuses on the overlap between the EEZ's of both States.

5.2 Through a series of negotiations at the technical level the overlapping boundaries have been settled through the equidistance principle (a median line equal distance from both countries EEZ).

6.0 **FIJI'S STATUS ON MARITIME BOUNDARY AGREEMENTS**

Fiji successfully concluded negotiations with Solomon Islands counterparts and is ready to finalise the Agreement and proceed with deposit and enforcement.

Completed

Fiji-Tuvalu

Maritime boundary negotiations between Fiji and Tuvalu have been completed.

Fiji-Wallis and Futuna (France)

Maritime boundary negotiation between Fiji and France concerning Wallis and Futuna have been completed.

Fiji-New Caledonia (France)

Maritime boundary negotiations between Fiji and France concerning New Caledonia have been completed.

Ongoing

Fiji-Tonga

Maritime boundary negotiations between Fiji and Tonga are ongoing.

Fiji-Vanuatu

Maritime boundary negotiations between Fiji and Vanuatu are ongoing.

7.0 **RECOMMENDATION**

It is recommended that Fiji executes the Treaty without reservations.

8.0 **CONCLUSION**

The Standing Committee on Foreign Affairs and Defence is invited to:

- i. Note the contents of this brief; and
- ii. Support the recommendation to execute the Fiji and Solomon Islands Maritime Boundary Agreement.

SUPPLEMENTARY QUESTIONS

1. Elaborate more on the "Base Point" stated in the Agreement.

- Article 5 on UNCLOS states that *'except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State'*.
- The 'base point' stated in the Agreement refers to a series of points that, together, constitute Fiji's baseline. Basepoints are generated from geodetic surveys whereby each point is computed and is measured from the breadth of the territorial sea seaward low-water line of the reef and other features.
- Fiji uses a combination of both where applicable to delineate its baseline and all base points were identified and positioned physically.
- The national agencies that undertake this survey include: MLMR; Hydrographic Services of the Fiji Navy with technical support from SPC as the Regional Technical Agency overseeing maritime boundary issues.
- The importance of establishing our basepoints is to delineate (to measure) our 200 nautical mile as prescribed under UNCLOS.

2. What are the implications of climate change on high water mark?

- UNCLOS does not have provisions for the changes in sea level increase but in the last 10 years the mean Sea level for Fiji has increased by 20cm or 0.2m this could result in:
 - i. Decrease in land area;
 - ii. Water inundation of existing base points which would then need to be resurveyed and repositioned and will lead to a decrease in the area of Fiji's maritime boundaries;
 - iii. It could also affect islands which we have used under Article 121 to delineate our EEZ.
- There are ongoing discussions within the region to advance the issue at the various multilateral forums. In 2019 Forum Member countries submitted a joint submission to the International Law Commission (ILC) on the issue of sea-level rise and its recognition under international law.
- Last week the region concluded its first maritime boundaries and sea-level rise Conference to discuss this lacuna in international law.
- Although Article 6 of the Agreement talks about adjustment of the basepoint, this can be reviewed to consider the implications of sea level rise on the security of maritime zones to align with the regions position and efforts currently being pursued for international recognition of the impact of sea-level rise on maritime boundaries.

3. What implications would the Agreement have on our relations with Vanuatu?

- The treaty between Fiji and Solomon Island has no direct impact on Fiji-Vanuatu maritime boundary issues and relations.
- Fiji will continue its negotiations with Vanuatu to come to a similar conclusion.

4. What are the laws that come under those jurisdictions that would require amendment?

- No laws needs to be amended for this agreement to come into force. The current laws cater for EEZ boundaries however we need to review the laws for other issues such as the broader provisions of UNCLOS and the recognition of specific boundaries such as contiguous zone.

5. How will the Agreement come into force?

Signing

- Contingent on Parliamentary approval, signing of the maritime boundary agreement between Solomon Islands and Fiji was scheduled to take place during the Forum Leaders meeting. However, in light of the Coronavirus pandemic alternative arrangements will be made with the government of Solomon Islands through its representatives in Suva.

Deposit

- Working through the Fiji's Permanent Representative to the United Nations in New York, the Ministry of Foreign Affairs will coordinate the deposit of the signed treaty with the Division on Ocean Affairs and Law of the Sea (DOALOS) at the United Nations.

Entry into Force of the Agreement

- Both Parties agree that at the completion of national processes there will be formal notification through an *exchange of notes*. The Agreement will hereby enter into force.

6. The enforcement in the EEZ is one of the most difficult and weakest capacity - despite having monitoring systems in place, this requires extensive resources. The international system cannot enforce or punish overseas illegal fishing within our EEZ.

- Fiji Navy and Ministry of Fisheries are responsible for surveillance of our EEZ.
- The Ministry of Fisheries monitors aspects of IUU fishing and monitoring of fishing vessels (foreign and local). The Ministry of Fisheries activities are regulated under the Fisheries Management Act and technical support is provided from the Forum Fisheries Agency (FFA) through Vessels Monitoring System (VMS) and Ariel Surveillance to protect IUU fishing. Fiji is also signatory to Port States Measures Agreement which allows us to undertake the relevant protection measures for foreign fishing vessels.
- Fiji Navy undertakes monitoring and surveillance of our maritime border. Under the maritime partnership with Australia, Fiji Navy has been provided with new naval

vessels to assist with surveillance of our maritime borders. Other development partners from Korea, Malaysia have also provided technical support.

7. The Secretariat of Maritime Affairs Coordinating Committee (MACC) to kindly email the Committee an e-copy of UN Convention on the Law of the Sea (UNCLOS) and a summarized version of UNCLOS as used by the IMO

- A copy is attached.

8. Definition and interpretation of the High Seas- these covers an area external or internal to the EEZ?

- Part 7, Article 86-115: The open ocean, not part of the Exclusive Economic Zone (EEZ), territorial sea or internal waters of any State. Beyond our national jurisdiction and hence rights and freedoms and responsibilities governed under UNCLOS and not by any States.

9. What is the Law of the Sovereignty of Nations?

- As prescribed by UNCLOS, the sovereignty of any State extends to the land, sea and air space.
- Article 2 of UNCLOS states that the sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea, (Article 76) Continental Shelf and Extended Continental Shelf.
- This sovereignty extends to the air space over the territorial sea as well as to its bed (seabed) and subsoil. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

10. What is the Law of the Freedom of the High Seas?

- Article 87 of UNCLOS, the high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines;
 - (d) freedom to construct artificial islands and other installations permitted under international law;
 - (e) freedom of fishing; and
 - (f) freedom of scientific research.
- Freedoms under the high seas are subject to provisions under the Convention that may restrict its application in certain areas.
- These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

SUBMISSION BY THE MARINE AFFAIRS COORDINATING COMMITTEE
TO THE
STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE
AGREEMENT BETWEEN THE REPUBLIC OF FIJI AND SOLOMON ISLANDS CONCERNING
THEIR MARITIME BOUNDARY

The Maritime Affairs Coordinating Committee ('MACC') has the honour of once again addressing the Standing Committee on Foreign Affairs and Defence ('**Standing Committee**') by way of a written submission to clarify the following—

1.0 PIFS submission to introduce a “finality clause” in the Agreement in relation to sea level rise and climate change:

1.1 Foremost, MACC would like to emphasise that the Agreement between the Republic of Fiji and the Solomon Islands concerning their Maritime Boundary ('**Agreement**') is a heavily negotiated text between the two countries and has been finalised for Parliament's consideration after years of meticulous negotiations between the two countries.

1.2 Therefore any further major amendments such as introducing new clauses to the text of the Agreement must be addressed first, by way of further bilateral negotiations between the two countries. Additionally, introducing a new clause at the final stages of the process has the ability to adversely affect the progress of the negotiations and also hinder the signing of the Agreement itself.

1.3 We note that PIFS has made the submission regarding the inclusion of a “finality clause” off the cusp of the Regional Conference on Securing the Limits of the Blue Pacific: Legal Options and Institutional Responses to the Impacts of Sea-Level Rise on Maritime Zones, in the Context of International Law (“**PIFS Regional Conference**”) that which was hosted by PIFS from 9 through to 17 September 2020.

1.4 Having participated in the PIFS Regional Conference ourselves we note that the issue of a “finality clause” was one that was raised by a participant of the PIFS Regional Conference and has over the years, become one of a number of options discussed as a way to address the issue of maritime boundaries and sea level. The idea of a “finality clause” is new and remains to be tested and further distilled by experts in this area.

1.5 Noting the above, we advise that the introducing a “finality clause” in the Agreement is not advisable at this point due to the following –

(a) Firstly, in including a “finality clause”, we cannot assume that this is an option that the Solomon Islands are agreeable to and given that this is an issue that will need a decision from the national or political level we are in no position to also assume that including a “finality clause” in relation to sea level rise and climate change is the preferred option that will be agreed to by Solomon Islands on this issue.

(b) Secondly, as highlighted above, the issue of a “finality clause” is one of a number of options discussed by participants in the PIFS Regional Conference as a way to address the issue of maritime boundaries and level rise. However apart from a wide range of international and regional actions or options, there are number of options also at the national level which include the following—

National options for action

- 1) Countries place greater importance on completing their maritime boundaries and delimitations as soon as possible.
- 2) These should be based on coordinates and charts rather than physical characteristics.
- 3) These should be deposited with the United Nations Secretariat;
- 4) The coordinates etc. should also be included in domestic legislation which makes clear that they are permanent and not subject to change.
- 5) When depositing them the accompanying Diplomatic Note should state that these coordinates etc. have been determined in accordance with the requirements of LOSC and are intended to be permanent and not subject to change. The Note should also refer to the domestic legislation that incorporates these coordinates etc. and asserts their permanence.
- 6) If these coordinates have already been deposited, a subsequent Note should be deposited making the above observations.

Thus as MACC, we are of the opinion that alternatively rather than introducing a “finality clause”, the best option moving forward are the above steps (1 through to 6) given that Fiji is also in the process of reviewing its domestic legislation in relation to maritime boundaries and is in a position to issue a note verbale/diplomatic note on the issue after further deliberation at a bilateral and national level.

(c) Thirdly, introducing a “finality clause” is not necessary in the Agreement given some of the current protections available under international law against sudden changes in circumstances i.e. climate change and sea level rise under the Vienna Convention on the Law of Treaties 1969(‘**Vienna Convention**’).

The Vienna Convention is an overarching convention that governs international agreements and treaties such as the Agreement. According to Article 62 of the Vienna Convention a fundamental change in circumstances occurring after the conclusion of a treaty will not affect the said treaty, in our case - the Agreement. In this regard a fundamental change in circumstances such as those likely to be caused by sea level rise or climate change shall not affect the Agreement.

1.6 Conclusively, most of the existing maritime boundaries do not carry “finality clauses” given that it is a recent development. Regionally there are 48 maritime boundaries with 35 maritime boundary agreements completed. These agreements are in effect in perpetuity unless the parties otherwise agree to amend the agreements. Should we include the finality provisions in this treaty between Fiji and Solomon Island’s it may bring into question the status of the other 35 maritime boundary agreements in the region that have been finalised without “finality clauses”. Does that mean that those 35 finalised maritime boundary

agreements will be automatically affected by sea level rise and climate change because they do not provide for “finality clauses”? Will it mean that we have to go back through arduous negotiations to amend each of the 35 existing maritime boundaries agreement to include a finality provision?

1.7 In retrospect the issue of the “finality clause” seems to have arisen out of the Article 6, and it must be emphasised here that Article 6 can only be invoked if both parties agree to an adjustment stemming from new surveys, resulting charts and maps. If the parties do not agree, no changes can be made. In this case for Solomon Islands and Fiji, both parties are unlikely to both agree to adjust their maritime boundaries due to sea level rise and climate change.

1.8 It is advisable therefore to leave the clauses of the Agreement as is, in order to avoid causing a discourse on the issue. Rather than introducing a “finality clause” the best and more effective option from the MACC front would be to address this issue on a national and political level by providing for it in national legislations, note verbal and political statements that assert our stance on the permanence of maritime boundaries regardless of sea level rise and climate change.

2.0 “Sovereignty rights” under Article 5 of the Agreement.

2.1 Sovereignty is the absolute ownership of an independent state over its territory. Sovereignty of a coastal state is the ultimate right which is exercised within the limit of its internal waters and territorial sea.

2.2 Article 2 of UNCLOS states that the sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea, (Article 76) Continental Shelf and Extended Continental Shelf.

2.3 This sovereignty extends to the air space over the territorial sea as well as to its bed (seabed) and subsoil. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

2.4 On the other hand, “sovereign rights” as provided for under Article 56 of UNCLOS, pertain to the entitlements or privileges of a state to a defined area of a sea called the exclusive economic zone. In other words, UNCLOS merely used this term to collectively represent the limited rights of a state over its exclusive economic zone.

2.5 Coastal States maintain sovereign rights to explore and exploit, conserve and manage natural resources – living or non-living. Coastal States also exercise sovereign rights over the Exclusive Economic Zone and all activities that are conducted within the zone. In exercising its rights in the Exclusive Economic Zone, the coastal State shall have due regard to the rights of other States.

2.6 We note the comments of the Standing Committee in relation to Article 5 and concur with the suggestion to substitute “sovereignty” with “sovereign” for the purposes of clarity.

2.7 As MACC, we advise that the intention of Article 5 of the Agreement was to specifically reflect and confer sovereign rights within the respective Exclusive Economic Zones of both Fiji and Solomon Islands and Article 5 of the Agreement was indeed drafted in that way despite the stylistic anomaly that has been identified. Therefore for the purposes of clarity we suggest the substitution of the word “sovereignty” with “sovereign” in Article 5 of the Agreement.

3.0 Article 2 of the Agreement (Purpose) should be amended by inserting (UNCLOS) after the word 'international law.'

3.1 We note the comments of the Committee in relation to Article 2 and intended amendment. However, we advise that the wording "international law" in Article 2 is intended to cover not only UNCLOS but also other major instruments of international law such as the Statutes of the International Court of Justice which plays a major role in dispute resolution and is referred to in the Preamble of the Agreement, the Vienna Convention on the Law of Treaties 1969 which was alluded to above and covers the principles of interpretation of international agreements and treaties and the Charter of the UN (The Preamble to UNCLOS itself establishes a connection between UNCLOS and the UN Charter).

3.2 To further elaborate, UNCLOS is a member of the broader family of public international law. Therefore, when interpreting and applying the provisions of UNCLOS, reference could be made to (1) the general principles of international law and (2) the provisions in a network of other treaties, especially when the provisions of UNCLOS are inadequate to address the modern day challenges to the governance of the seas and oceans. This approach would be consistent with the spirit of the rules of interpretation of treaties embodied in Article 31 of the Vienna Convention on the Law of Treaties of 1969, a treaty which has attracted near universal acceptance.

3.3 The Preamble to the UNCLOS itself makes it clear that matters not regulated by it "continue to be governed by the rules and principles of general international law." Therefore restricting Article 2 of the Agreement to UNCLOS goes against the principles of UNCLOS itself and restricts the application of international law to the Agreement.

3.4 Therefore we recommend that no further changes be made to Article 2 of the Agreement in this regard.

4.0 CONCLUSION

4.1 The Standing Committee is invited to note the contents of this submission by MACC and we thank you for the opportunity to provide clarity on the above-mentioned issues.

Submission by the Secretariat of the Pacific Community



Pacific
Community
Communauté
du Pacifique

VIRTUAL SUBMISSION TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE PARLIAMENT OF THE REPUBLIC OF FIJI

11.00AM, 21 SEPTEMBER 2020

THE REGIONAL PACIFIC MARITIME BOUNDARIES PROJECT

1. Since 2001, SOPAC and now SPC, has been the home of the *Pacific Regional Maritime Boundaries Project*, a decades long initiative, originally established to assist Pacific countries to obtain greater certainty in the limits of their EEZs to support fisheries management and enforcement.
2. The Project has supported the successful declaration of 19 shared boundaries between countries since 2001. This rate of progress is unprecedented elsewhere in the world. It underscores the strength of relationships between countries and partners as well as the commitment of all parties to progress this critical work.
3. The overall objective is aligned with priority one of the *Framework for a Pacific Oceanscape*, which is to secure maritime jurisdictional rights and responsibilities.
4. The Project supports and builds the capacity of 14 Pacific island countries and territories in all aspects of maritime boundaries work, from field surveys to map basepoints on fringing reefs and remote islands, to mapping and delimitation using specialised software, to supporting and advising countries on the legal and political steps necessary to conclude their boundaries and, if necessary, negotiate and finalise their shared boundaries with neighbouring states.
5. The Project is supported by a Consortium of partners including the Pacific Island Forum Secretariat, Office of the Pacific Ocean Commissioner, Forum Fisheries Agency, Department of Foreign Affairs and Trade (DFAT) - Australia, Geoscience Australia, the Attorney Generals Department - Australia, University of Sydney, Ministry of Foreign Affairs and Trade (MFAT) - New Zealand, GRID-Arendal, the European Union, and Sweden.
6. As the Project lead, SPC, coordinates and supports a range of activities including monthly Consortium meetings, regional working sessions, workplace attachments, in-country workshops and placements, legal drafting, political advocacy, negotiations, technical assessments and field surveys.
7. Mr Chairman, for the information of the Committee, in moving from technical to legal and political realms, SPC works closely with and the Pacific Islands Forum Secretariat and the Office of the Pacific Ocean Commissioner to achieve these milestones and secure the

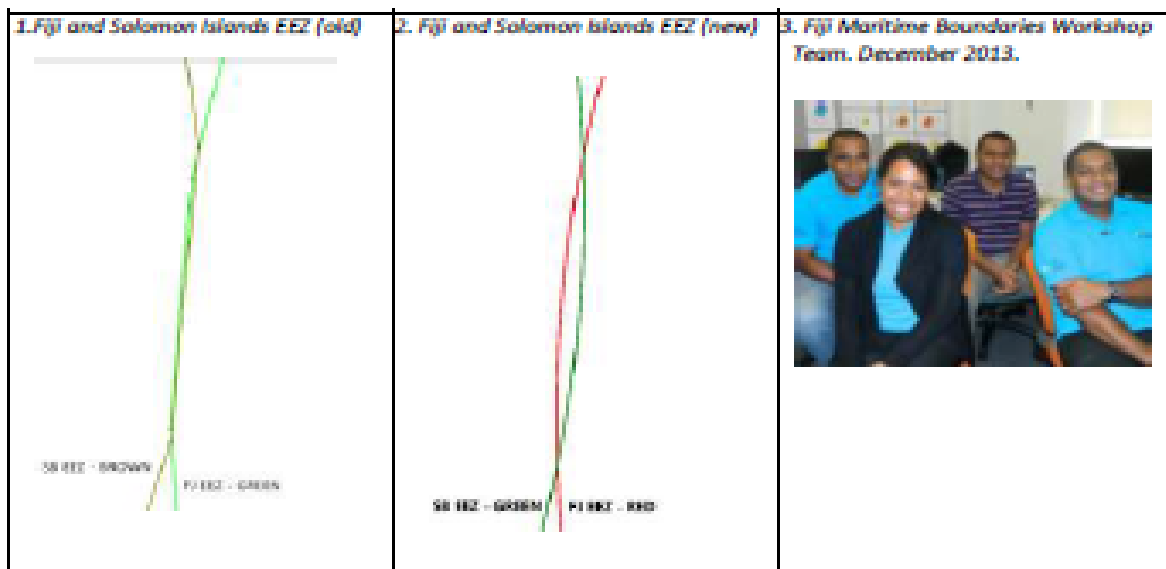
maritime jurisdictional rights and responsibilities of all Member countries in accordance with the 1982 UN Law of the Sea Convention.

8. We understand that the Pacific Islands Forum Secretariat has also been invited to provide a submission to your Committee and advise you that they have shared with us their submission and analysis of the Draft Agreement.
9. In this regard, we stand by and reiterate the comments made by our Forum colleagues, reinforcing the urgency and importance of securing the region's maritime boundaries as a key issue for the development and security of the region, and thereby for the security and well-being of the *Blue Pacific*.
10. The remainder of this submission will feature SPC's comments on technical elements and legal considerations in the draft text, as well as the procedural steps remaining to bring the treaty into force.
11. Mr Chairman, please also kindly allow me to take this opportunity to clarify SPC's advisory input. As representatives of a regional organisation, it is our duty and privilege to serve all member countries with the advice and technical support they require.
12. When it comes to specific queries regarding the current or future status of boundaries with neighbouring states, however, we must defer such questions to the Maritime Affairs Coordination Committee (MAOC) and our counterparts in Fiji's Foreign Affairs, Navy, Hydrographic, and Lands and Mineral Resources teams, as they will be best placed to consider Fiji's national interests.

TECHNICAL INFORMATION AND REVIEW

13. With that, Mr Chairman, we are pleased to provide a summary of our technical comments for the committee's review.
14. The UN Convention on the Law of the Sea (UNCLOS) is the international agreement that establishes all coastal States' rights to a marine jurisdiction. Under UNCLOS, all coastal States are entitled to territorial sea (Article 3), extending 12 nautical miles (~22 km) from the baseline, which is defined as the low water line along the coast.
15. States are also entitled to a contiguous zone (Article 33), extending to 24 nautical miles (~45 km) from the baseline, an EEZ extending to 200 nautical miles (~370 km) from the baseline.
16. For the information of the Committee, Mr Chairman, the high seas are those areas beyond or external to the EEZ. As per Article 86 of UNCLOS, the high seas refers to all parts of the sea that are not included in the exclusive economic zone of a state.
17. Where countries' entitlements to maritime zones overlap, they are encouraged to negotiate a shared boundary.

18. We understand that the overall status of regional maritime boundaries progress has already been highlighted to the Committee, but we take this opportunity to note that of the 48 total overlapping or shared boundaries in our region, 13 remain to be concluded. Of the 13 shared boundaries remaining, three relate to Fiji's shared boundaries with Solomon Islands, Tonga, and Vanuatu.
19. As the MACC will have advised the committee, Fiji's exclusive economic zone was deposited to United Nations Division for Ocean Affairs and the Law of the Sea (UN-DOALOS) in 1982 and the Solomon Islands maritime boundaries was declared under Delimitation of Marine Waters Act 1979, Chapter 95, given that Fiji's and Solomon Island's exclusive economic zone overlapped by 400m with a total area of approximately 36 sq. km. The positional reference system was based on obsolete World Geodetic System 1972.
20. With the availability of latest geospatial data and information for Fiji (Rotuma) in 2010 and Solomon Islands (Fatutaka) in 2007, Fiji's and Solomon Island's exclusive economic zone overlaps by 4.3 km with a total area of approximately 232 sq. km. The positional reference system is based on internationally recognised World Geodetic System 1984.
21. The Country teams had met during the margins of the Maritime Boundaries Workshop in Sydney from 2010 to 2012. During this negotiation process, the two states exchanged the maritime boundaries related territorial seas baseline data and information. The positional data of the critical islands (Rotuma and Fatutaka) was verified and validated by both the adjacent states. The baseline for Rotuma is defined as an archipelagic baseline system (archipelago) as per rules of Article 47 under UNCLOS and Fatutaka as normal baseline as per Article 5 of UNCLOS.



22. During the Maritime Boundaries and Ocean Governance Workshop from 25th November to 6th December in 2013, the Maritime Boundaries Teams from Fiji and Solomon Islands finalised

LEGAL CONSIDERATIONS AND COMMENTS

28. Before sharing our legal comments, Mr Chairman, please allow me to restate the first and foremost reason for the need to complete the delimitation of maritime boundaries and delineation of maritime zones is for Members to exercise their right to exert maritime claims as Parties to the 1982 UN Law of the Sea Convention.
29. Compounding this issue is the region's biggest security threat— climate change. The findings of the recent IPCC report on 1.5 degrees provide clear evidence of the urgency of responding to the threat of climate change.
30. In the context of maritime boundaries, it means securing our place in the face of sea-level rise, ocean acidification, and the potential erosion or submersion of the basepoints on reefs and small islands that generate and define our maritime zones.
31. At the 2020 *Regional Conference on Securing the Limits of the Blue Pacific: Legal Options and Institutional Responses to the Impacts of Sea-Level Rise on Maritime Zones, in the Context of International Law* (held virtually last week), Members once again emphasized the criticality of concluding all outstanding maritime boundaries claims and zones, and related bilateral treaties and legal frameworks.
32. Regarding legal considerations, Mr Chairman, SPC relies upon the advice of our consortium partners, including the Australian Attorney General's office, the Australian Department of Foreign Affairs and Trade, the Pacific Island Forum Secretariat, and the Office of the Pacific Ocean Commissioner.
33. With respect to the Draft Agreement, we have conferred with our colleagues and support the comments made by Dr Filimon Manoni of the Pacific Islands Forum to this committee last week regarding the draft agreement.
34. Of particular note, we highlight the Forum's observation relating to Article 6 "Adjustments to Maritime Boundary". While Article 6 is a standard clause in most MB Treaties, it could be read as and supporting the argument that maritime boundary is "ambulatory". Indeed, our legal Consortium colleagues concluded that once it enters into force this provision would require Fiji and Solomon Islands to revise the treaty line set out in Article 3 if there is a sufficiently significant physical change to the coastline that affects the relevant basepoints (on Fatutaka in the Solomon Islands or Rotuma in Fiji).
35. As our Forum colleagues noted, this interpretation does not support regional views and Leaders' commitment to secure maritime boundaries, unchallenged and unchanged despite sea-level rise and climate change.
36. In summary, Mr Chairman, SPC recommends to review Article 6 of the Draft Agreement.

boundary be concluded and the coordinates be available for use by marine users, such as fisheries management and navigational purposes.

40. Another key consideration will be the harmonisation of these new and finalised boundaries with Fiji's national legislation, linking it to relevant and dependent acts and policies, for example, the Marine Spaces Act 1977 and the Continental Shelf Act 1970, as well as those acts governing fisheries and resource use.
41. Mr Chairman, the MACC can best advise the Government on these steps and SPC stands ready to assist them with advice or technical support as required.

CONCLUSION

42. In conclusion, Mr Chairman, we close our submission by commending the Republic of Fiji and the Solomon Islands Government for the active efforts to conclude one of the 13 remaining shared boundaries in our region.
43. This is a very important and tangible step forward that supports a collective commitment to conclude outstanding maritime boundaries and limits, in view of the urgency and importance of securing the region's maritime boundaries for the development and security of the region.
44. On the basis of this submission, Mr Chairman, the Pacific Community (SPC) supports the completion and signing of the Agreement between the Republic of Fiji and Solomon Islands concerning their shared maritime boundary, and hopes that this submission is of assistance to your Committee.

PROCEDURAL STEPS TO CONCLUDE MARITIME BOUNDARIES

- 37. Mr Chairman, SPC welcomes this submission as an opportunity to applaud the Fiji Maritime Boundaries team on their collaborative technical and legal efforts with the Solomon Islands thus far, and further encourage the conclusion of this boundary.
- 38. Please allow me, Mr Chairman, to draw your attention to the flow charts provided, which outline the steps to establish Maritime Zones (Fig 5) and Maritime Boundary Treaties (Fig 6), as defined under UNCLOS and endorsed by the UN Division for Ocean Affairs and Law of the Sea (UN-DOALOS) below.



- 39. Once this maritime boundary treaty is signed, the Government of the Republic of Fiji may consider, with advice from the MACC, what legislative steps will be necessary to bring it into force. As noted, this may include an exchange of diplomatic notes. Following these steps, the treaty can be deposited with the UN Treaty Section, and the treaty schedule of coordinates and charts deposited with UN-DOALOS for official publication. Only at this point will the

Fiji – Solomon Islands Maritime Boundary Treaty

Ministry of Defence, National Security and Policing

Fiji's Positions

- From a security perspective, our maritime space plays a vital role in our economic progress through the sustainability of our resources.
- Confirmation of the above Treaty ensures the clear demarcation of our maritime boundary.
- Ensures the protection of our Maritime Domain Awareness (MDA) through the detection of illegal activities that impact on maritime safety, security, economy and environment.

- The Ministry is consulting to draft a Maritime Security Strategy (MSS) that encompasses challenges, threats, opportunities and mitigation.
- The National Security Council in its meeting held on Thursday 17th September approved the reactivation of the Maritime Security Committee (MSC) to oversee the security affairs of the Maritime Boundary in the absence of the MSS.
- Enhances our Search and Rescue Region by working collaboratively with the Solomon Island's.
- Facilitates the extradition of those that commit an offence i.e trafficking of Drugs, Illegal, Unregulated and Unreported Fishing (IUU), arms smuggling and prostitution in the high seas within their respective territories.
- Enhances our joint patrol of our EEZ.

Way Forward

- The Ministry of Defence, National Security and Policing supports the finalizing of the Fiji and Solomon Maritime Boundary Treaty.

[VERBATIM REPORT]

STANDING COMMITTEE ON FOREIGN AFFAIRS & DEFENCE

TREATIES/PROTOCOLS/CONVENTIONS

1. **Republic of Fiji and the Solomon Islands Maritime Boundary – Delimitation Agreement.**
2. **Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance.**
3. **Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.**

INSTITUTIONS: (1) **Ministry of Education, Heritage & Arts**

- **Solicitor-General’s Office**
- **Office of the United Nations High Commissioner for Human Rights**
- **United Nations Children’s Fund (UNICEF)**

DATE: **Monday, 5th October, 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 5TH OCTOBER, 2020 AT 10.22 A.M.

Online Interviewee/Submittee:

Ministry of Education, Heritage and Arts (MEHA)

In Attendance:

- Mr. Timoci Bure - Head of National Education Service Delivery
- Mr. Metuisela Gauna - Senior Education Officer for Policy and Child Protection

MR. CHAIRMAN.-A very warm welcome to Mr. Timoci Bure and the Team from the Ministry of Education, Heritage and Arts (MEHA). A warm welcome to members of the general public who are probably listening in to this telecast recording this morning and also the members of the media who are in the Parliament precincts.

By way of introduction, Mr. Bure, if I could ask the Members of the Committee just to raise their right hand on the call on their names.

(Introduction of Committee Members by Mr. Chairman)

As alluded earlier, members of the public and media, MEHA will be submitting on the Treaty – Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

With that word of introduction, Mr. Bure, the floor is yours. Thank you.

MR. T. BURE.- Thank you, Mr. Chairman and Honourable Members. If I could take this time to introduce the Team from MEHA, with me is the Senior Education Officer for Policy and Child Protection, Mr. Metuisela Gauna, and I am Mr. Timoci Bure, holding the position of Head of National Education Service Delivery. Thank you, Mr. Chairman.

The MEHA supports the Optional Protocol as it protects the children from this form of abuse and from the physical and mental harm of violence associated with the sale of children, child prostitution and child pornography. This is tantamount to sexual exploitation.

Secondly, Mr. Chairman, the sale of children for sexual or other purposes are an extreme form of violence against children and child abuse and exploitation. It takes away their dignity, freedom and human rights and is an abuse of humanity.

We, at the MEHA, have already have in place laws and legislations to protect children against such abuse. The protection of fundamental freedoms and rights of all persons in Fiji is already enshrined in our 2013 Constitution of the Republic of Fiji which includes, Rights of Children in Section 41(1) (d), and I quote:

“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 provisions prohibiting the sale of children, child prostitution and child pornography are also in the Crimes Act 2009, which prohibits the trafficking of children for sexual services or other forms of exploitation. “Sexual service” is defined in the Crimes Act 2009 to mean the use or display of the body of a person, providing the services for sexual gratification of others. “Use or display” broadly covers both, prostitution and pornography.

Honourable Members, also prohibited in Part 10 of the Employment Relations Act 2009, the following forms of child labour are prohibited:

- 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;
- the use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in relevant international treaties; or
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, and a person who engages a child in such prohibited form of child labour commits an offence.

The Juveniles Act of the country also has provisions that states, and I quote:

“... or who makes, participates in, uses, observes, publishes, solicits, advertises, distributes, traffics in, lets on hire, buys, sells, offers to sell, media or records of pornographic activity directly or indirectly involving juveniles, or persons who look like juveniles whether they are or not, commits a felony and is liable on conviction.”

Fiji also has the Mutual Legal Assistance in Criminal Matters Act 1997 which can be applied where requests are made under bilateral treaties or Exchange of Notes, multilateral conventions, and other special international arrangements. For example, a resident of Australia and New Zealand who is charged with a serious offence in Fiji can be prosecuted in his or her home country of residence. This could help address issues of child trafficking and sex tourism.

Mr. Chairman and Honourable Members, other provisions in the Optional Protocol are reinforced by paragraph 1 of Article 10, which recognises a general obligation of States Parties, “to take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.”

So, Mr. Chairman and Honourable Members, there are many other international treaties Fiji is a party to and has adopted the provisions of those treaties into its domestic laws, and I would not go into the details to that.

Now, I would like with the Team, to very quickly go through our Child Protection Policy at the Ministry of Education, Heritage and Arts, which is the framework that governs our managing of students' behaviour in school and also in the Ministry as a whole.

The Child Protection Policy has zero tolerance on child abuse. It states that, and I quote: "All suspicions and allegations of child abuse, child labour, trafficking, neglect and exploitation MUST be reported promptly to the Child Protection Officer (CPO) in the school who shall investigate and direct all the findings to the school head who then shall inform the School Management and the CPO in the Education Offices within 2-3 days of the incident."

We also have in place Guidelines for Volunteers in Schools. These are people who wish to work in school as volunteers, we have guidelines for them. It provides procedures for any organisation who wishes to engage with/in schools. These procedures are in place so that we can do a thorough background check of all applicants and all the people coming into the schools who are just volunteers.

We also have in place Interim Visitors to School Procedures. It regulates all visitors to schools. This is to protect the school, students and MEHA from risks and litigation.

We also have in place what is called the Parental Engagement Framework. Through this parental engagement initiative, it increases active participation, communication and collaboration between parents, schools and communities with the goal of ensuring student achievement and success in education. This will lead to prevention of such incidences identified earlier.

With the Ministry of Education Curriculum Development Unit, we also have in place a Values Education, Virtues Programme, Morning Talks, Religious Education Programmes, Form Time and School Assemblies are some of the strategies engaged in MEHA where students are reminded on proper behaviour and in dealing with social issues.

That is, in brief, Mr. Chairman and Honourable Members, our contribution this morning.

MR. CHAIRMAN.- Thank you, Mr. Bure, for that brief but very informative submission. On behalf of the Committee, I now open the floor for any questions from Committee Members.

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

HON. DR. S.R. GOVIND.- Thank you, Mr. Chairman, and thank you, Mr. Bure, for your very enlightening presentation. I would like to ask whether the Ministry has some monitoring mechanisms to know the extent of the problem that currently exists. Do you have some statistics from the school children on this particular problem?

MR. T. BURE.- Thank you, Mr. Chairman, and thank you Honourable Member. In our various school systems, we have in place monitoring mechanisms through the Office of the Head of Schools and the Child Protection Officer, to monitor and observe any indication of abuse that has happened within the school or also from the home of a child. Those are the mechanisms that we have in place.

We also have in our District Offices, school counsellors who work consistently with our School Heads in monitoring and observing students' behaviour while they are in the school. We also work closely with the Substance Abuse Advisory Council (SAAC) who provide counselling to students who may have been affected by such abuse from home or from the school.

With regard to your request to give you some data information, I request, Mr. Chairman and Honourable Members, if we can come back to you on that later on.

MR. CHAIRMAN.- Thank you, Mr. Bure, we appreciate that. Are there any other questions?

HON. A. JALE.- *Vinaka vakalevu.* Good morning, Mr. Bure, and your Team. Thank you for the presentation.

I have taken note of your Child Protection Policy and the wordings of it. If you look at the Optional Protocol, there is an addition to what has been specified in your Policy and I wonder whether you need to change or amend your Policy to also include in full the Acts that address the Optional Protocol.

So the thing is and what the Committee has mentioned, is the need for co-operation between stakeholders in terms of statistics and data in the administration or enforcement of the laws, and the obligation of the Government of Fiji to observe in full the child protection and also the Optional Protocol. I hope I am clear on the question that I have raised with you, Mr. Bure.

MR. T. BURE.- That will do. Thank you so much, Honourable Member. Mr. Chairman, through you, we are currently reviewing our Child Protection Policy. We are also considering and including what we have presented on this morning. The Child Protection Policy is currently under review by the officers responsible for the review and we will be consulting further with the stakeholders.

With your second question, I am not quite clear, Honourable Member, if it is possible for you to clarify.

HON. A. JALE.- The second question is related to what Honourable Dr. Govind raised with you. The importance of cooperation between stakeholders in sharing data and statistics about how you are administering the laws that administer or observe this Convention on Child Protection and also this Optional Protocol. It appears that in some cases the police does not correspond or talk to the Department of Social Welfare or share information with them. I am wondering whether your Ministry is also sharing the data and statistics that you have, with police and the Department of Social Welfare about these issues.

MR. T. BURE.- Thank you, Honourable Member. We work closely with the Department of Social Welfare because they are the custodian of the Child Welfare Decree, and there is a National Coordinating Committee on Children. The members of this Committee include; the Ministry of Education, the Police and the Department of Social Welfare.

What actually happens is, when a case is reported in the school, the other stakeholders that I have mentioned - the Police and the Department of Social Welfare are also informed. During this meeting, as you have mentioned, data and information regarding cases of abuse are also presented and discussed in detail, with strategies and ways by which we, as stakeholders, can address those issues.

HON. A. JALE.- *Vinaka*.

MR. CHAIRMAN.- Thank you, Mr. Bure. On that same subject matter, if you will oblige forwarding to the Secretariat the Committee name. I certainly would like to be in touch with them because I have a case before my own Ministry at present, with regards to an injury that took place in school and whereby the school tried to sweep it under the carpet. I would definitely like to get the details of the Committee, whom I can make contact with.

HON. DR. S.R. GOVIND.- Mr. Chairman, I cannot hear you, there is no sound. MR.

CHAIRMAN.- Can you hear me, Honourable Tikoduadua?

HON. LT. COL. P. TIKODUADUA.- Yes, I can hear you loud and clear. It is just Honourable Dr. Govind is also speaking at the same time, I do not know if you are hearing him.

MR. CHAIRMAN.- Go ahead, Honourable Tikoduadua.

HON. LT. COL. P. TIKODUADUA.- Thank you. Mr. Bure, *bula vinaka*. I recognise a while ago you were talking about your Child Protection Policies and much on what I am hearing is trying to include in relation to this Protocol or this Convention that this Optional Protocol that we are looking at is making certain emphasis on protecting the child from people outside the school, or when the child is under the protection of the school during school hours, or after school hours in a boarding school.

I want to refer you as well, particularly to boarding school environment. Why I am saying this is because many of the harassment cases captured on video, it may not be part of that, and perhaps other situations of bullying in boarding schools ... particularly the Ministry...(inaudible)to do some graffiti in school, sexually explicit graffiti.

I do not know if you can hear me. I may be side-tracking a bit here in terms of the use of child pornography but I would like to raise here while we are talking about child and pornographic material, to find out what is the Ministry doing to actually monitor the child actions to pornographic material and pornographic activities, particularly in boarding schools because we know there have been cases in the past historical where other harassment cases have been recorded by students themselves. I am looking and referring in particular to the students involved in sexual activities in schools.

What is the Ministry trying to do or is doing at the moment to try and monitor these? I am referring specifically here to the sexually explicit materials, like drawing and everything that is on school pamphlet? I have witnessed that in major schools, particularly for boys' schools. Can you just tell me what the Ministry is doing? In regards to that because I believe some of those can lead to ... (inaudible)....

MR. T. BURE.- Thank you, Honourable Member. Mr. Chairman, through you, the Ministry of Education also have a policy on the use of mobile by children. They are restricted from bringing mobile phones to school. We are also begging on parents to ensure that their children who are coming to boarding institutions are not bringing with them mobile phones.

With your concern regarding graffiti in schools, especially the restroom, toilets of schools, that is the supervisory role of the school heads and the administrators of the school. They are obligated to move around, to be mobile and inspecting those facilities daily and ensure that they are up to the standard, it is clean for children to be able to use them. And also, we have spoken to heads of schools and teachers on the importance of understanding the fact that all places in schools are classrooms, once you enter any facility in the school, it has to be treated as a classroom by the school management and the teachers who are teaching in those schools.

So, with that in mind, we hope that the schools will be able to address those graffiti issues with their children during class time and during school assembly. I understand that few schools might have those what you have highlighted this morning but it is the role of the school heads and teachers to work closely with the school management, to ensure that those graffiti are removed through proper painting of toilets and washrooms. The issue on graffiti is addressed with the students in various platform of addressing them in the school system.

That is all that I can share with regards to your question, Honourable Member, this morning. MR.

CHAIRMAN.- Thank you. Honourable Dr. Govind?

HON. DR. S.R. GOVIND.- Mr. Chairman, the social media can play a very negative role on this subject matter, especially amongst school children. So I would just like to know from Mr. Bure whether there are certain policies in schools for the use of mobile phones and other social media, and also some educational programmes for children on this issue?

MR. T. BURE.- Thank you, Honourable Member. Mr. Chairman, through you, I think I have raised this earlier, that we have a policy in the Ministry of Education on the use of mobile phones by children, or any devices that children want to use in the school, whether it is boarding school or where children travel daily, there are some restrictions on the use of mobile phones by children at school.

Nevertheless, they are able to use the internet services provided during school computer classes. I think the challenge is for us, as we have always been doing with our schools, with our teachers and our students, to address the need for children and teachers to understand that the equipment and facilities that is available to them through the technology that is given in the school is for learning and it is to be used for the appropriate purpose it was brought into the school for.

It is unfortunate that children are children and always try out things with the school teachers or with the school system, but once we are able to find children who have breached the school rules governing these areas, they are taken in for counselling and their parents are also brought into the school to be made aware of the incidents involving their children. Thank you, Honourable Member, I hope I have answered your question.

MR. CHAIRMAN.- Honourable Members, since there are no further questions, I would like to thank Mr. Bure and your team for your presentation this morning. Also, at this juncture, I wish to thank the members of the public who may be listening into this livestream and for taking an interest in your Parliament, and also to the members of the media who are listening in to this telecast this morning.

With those few words, Mr. Bure, I thank you all once again and your very departing comments, the floor is yours, thank you.

MR. T. BURE.- Thank you, Mr. Chairman, and thank you, Honourable Members. On behalf of the Permanent Secretary for Education, Heritage and Arts and the Senior Education Officer on Child Protection, I wish to take this time to thank you most sincerely for the opportunity given to the Ministry of Education to share, through our discussion, our stand on the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Thank you so much.

MR. CHAIRMAN.- *Vinaka vakalevu*, Sir.

Honourable Members, we will adjourn and we will await Jacob to dial us in back again in a couple of minutes.

The Committee adjourned at 10.51 a.m.

The Committee resumed at 11.49 a.m.

Online Interviewee/Submittee:

Office of the Solicitor-General

In Attendance:

- | | | |
|----------------------------|---|-------------------------|
| • Ms. Seema Chand | - | Principal Legal Officer |
| • Ms. Sophina Ali | - | Principal Legal Officer |
| • Ms. Timaima Vakadewabuka | - | Principal Legal Officer |
| • Ms. Nazia Ali | - | Legal Officer |

MR. CHAIRMAN.- A very warm welcome to Ms. Vakadewabuka and the Team from the Office of the Solicitor-General. Probably, there need not be an introduction from the Committee Members but for the benefit of the general public, who may be listening in or watching this live stream this morning, a very warm welcome and I wish to introduce my Committee.

(Introduction of Committee Members by Mr. Chairman)

Also, a warm welcome to members of the media who are watching this live stream or listening in. Before I introduce your team, Ms. Tima Vakadewabuka, for the benefit of the general public, the submissions this morning from the Office of the Solicitor-General will be on the three Treaties, namely the:

4. Agreement between the Republic of Fiji and the Solomon Islands concerning their Maritime Boundary;
5. Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th, November, 2015; and
6. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

With those few words, Ms. Vakadewabuka, I give you the floor to introduce your team and continue with your submission, and I thank you.

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. It is a pleasure to appear before you this morning. A very good morning to you and a very good morning to the Honourable Members.

By way of introduction, my name is Tima Vakadewabuka from the Office of the Solicitor- General. Also with me in the room is Ms. Sophina Ali and Ms. Nazia Ali, who will be speaking on the second amendment to the Framework Agreement of the Paris Declaration on the International Solar Alliance; and toward the end of the room is Ms. Seema Chand, our Principal Legal Officer and she will be speaking on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

In terms of the presentations this morning, we are aware that we have 30 minutes. We will each take 10 minutes on the Treaties but we remain to be guided by you in terms of how the presentation will

go but moving forward, I am ready to assist in terms of presenting on the Agreement between the Republic of Fiji and the Solomon Islands concerning their Maritime Boundary. *Vinaka!*

MR. CHAIRMAN.- The floor is yours, Tima.

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. To discuss the Maritime Boundary Agreement this morning, I have a presentation for the Honourable Members of the Committee. Please, kindly confirm if you can see that on your screen also.

MR. CHAIRMAN.- Yes, thank you.

MS. T. VAKADEWABUKA.- Mr. Chairman, given that I have a 10-minute slot, my apologies as my presentation will be very slow but I trust you have been informed by presentations that have been happening on the Maritime Boundaries by the Maritime Affairs Coordinating Committee (MACC). We will proceed with this presentation.

The presentation is basically to facilitate the agreement between the Republic of Fiji and the Solomon Islands on their maritime boundaries. The intention of the Agreement is to resolve the overlap in terms of their Exclusive Economic Zones (EEZs). In general, the EEZs under the United Nations Convention on the Law of the Sea (UNCLOS) are measured at 200 nautical miles and what happens is that in some cases, there is an overlap in maritime boundaries, especially in EEZs when it comes to neighbouring coastal States.

As you are well aware, Honourable Members, Fiji is the hub in the region, so we have a lot of neighbouring countries with which our EEZs overlap and under UNCLOS, in order to delineate these maritime boundaries, countries need to come into agreement about the exact points where the lines lie.

Moving on to the next slide, Fiji shares its EEZ boundaries with six neighbouring States namely; Vanuatu, Tonga, Tuvalu, Wallis & Futuna, New Caledonia and Solomon Islands. To date, we only have to finalise our maritime boundaries with Tonga, Vanuatu and the Solomon Islands.

The Solomon Islands Agreement is now before the Standing Committee. So, basically, in terms of an illustration of what this Maritime Boundary is trying to resolve, it is this section of Fiji's EEZ. So, you will see there is a pink line there that is basically the line that the Agreement will close off. So, there is an overlap that exists at that juncture between Fiji and the Solomon Islands and with the approval of Parliament, this Agreement will be signed and deposited with the UN Secretary-General to close off this particular line. This Agreement is done in accordance with international law and the provisions of UNCLOS.

Just very briefly on the Agreement by way of a background, the Agreement, like we have mentioned earlier, closes off an overlap with Fiji's EEZ. The overlap of a boundary is settled through an equidistance principle. So, this principle also basically sets up under UNCLOS in terms of how the EEZ is calculated when it comes to the median line between the countries.

From my end I cannot provide a technical sort of breakdown into how these lines are calculated but we can make a presentation later on through the MACC and to get our technical people in the room who can further delve into this. Negotiations in terms of maritime boundaries are done at the technical

level and this is the political level that we are going through so basically, we have had a lot of negotiations through the years with Solomon Islands in terms of setting the exact point for the line between Fiji and the Solomon Islands.

Right now at this point, there is no dispute concerning the demarcation of the line, unlike the earlier Treaty with Fiji and Tuvalu where there was a huge overlap in their boundaries and that was negotiated preferably in Fiji's favour. With Fiji and the Solomon Islands, you will see there that the overlap is not such a sort of huge indentation, if I can say that. So, basically right now, there is no dispute as to where the line is and there is no dispute over basically what the current Agreement has in terms of the median line between Fiji and the Solomon Islands.

In terms of the Agreement, the Maritime Boundary Agreements are done in terms of a template of Agreements regionally and also globally for maritime boundary. The Agreements are very short. As earlier stated in our other presentation, they do not look like your general contracts, they are very succinct, and what they try to do is just to establish the lines for the boundaries between coastal States.

There are 11 Clauses in the Agreement and the Clauses are established or set out in accordance with international law. There is a lot of other instruments of international law that play a huge part in the maritime boundaries. Also in Article 74 of UNCLOS, if you have a read, it is in relation to setting maritime boundaries and the finalisation of those maritime boundaries in accordance with the international law.

So, we have also set out some pointers there in terms of what the Maritime Agreement delves into and the particular provisions but we also understand that we have submitted a Written Analysis that has a breakdown of the Agreement Clause by Clause and that Honourable Members of the Committee are well informed in terms of the contents of the Agreement.

Thank you, Mr. Chairman, that concludes my presentation this morning. If there are any questions. I look forward to facilitating the Standing Committee, Sir. Thank you.

MR. CHAIRMAN.- Thank you, Ms. Vakadewabuka, for your brief and concise submission or presentation. Honourable Members, do you have any questions for Ms. Vakadewabuka?

Honourable Members, since there are no questions, Ms. Vakadewabuka, we will move on to the next Treaty presentation.

MR. T. VAKADEWABUKA.- Thank you Mr. Chairman and Honourable Members. Kindly excuse me, as we just have to reshuffle here for the next presenters. I thank you for your time this morning.

MS. S. ALI.- Good morning, Mr. Chairman and Honourable Members. The submission I am going to present today is on the Framework Agreement on the Establishment of the International Solar Alliance (ISA).

By way of introduction, the International Solar Alliance was conceived as a coalition of countries rich in solar resources to address special energy needs and to provide a platform to collaborate in addressing the gaps in energy consumption through a common agreed approach.

The Members of the ISA are guided by the terms and conditions of the ISA Treaty known as the Framework Agreement on the Establishment of the ISA, also known as the Framework Agreement in short. There are currently 121 members to the ISA.

Fiji deposited its Instrument of Ratification on the Framework Agreement during the 5th meeting of the International Steering Committee (ISC) of the International Solar Alliance in New Delhi in September 2017. Because the submissions relate to the Amendment of the Framework Agreement, by way of background, we will give a very brief summary of the Articles of the Framework Agreement.

The Framework Agreement consists of 14 Articles and a brief summary is as follows:

- (1) Article 1 establishes the ISA and states that its objective is to address key common challenges faced by the member countries to use solar energy.
- (2) Article 2 provides the guiding principles and explains the ways in which members can take actions to meet the objective of the ISA.
- (3) Article 3 sets out the programme and other activities that can be undertaken by the members to meet the objectives of the ISA.

Article 3 further provides details on how programme proposals may be made by members or by the Secretariat. Programme proposals are set to be formally endorsed by the members willing to join through a joint declaration.

- (4) Article 4 establishes the ISA Assembly on which each member is represented, to make decisions concerning the implementation of the ISA.

Article 4 sets out the provisions on holding the Assembly as well.

- (5) Article 5 establishes the ISA Secretariat to assist the members in their work and states that the Secretariat comprises of the Director General, who is the Chief Executive Officer and other staff as required.

Article 5 also states that the Director General is responsible for the appointment of staff and for the organisation and functioning of the Secretariat.

Article 5 also sets out the role of the Secretariat.

- (6) Article 6 provides guidance on the budget and financial resources of the Secretariat and Assembly, while Article 7 provides information on which countries may join the ISA.
- (7) Article 8 explains how partner organisation status may be granted by the Assembly to organisations that have the potential to achieve the ISA objectives.
- (8) Article 9 makes provision for the Assembly to grant observer status to the applicants.
- (9) Article 10 explains the status, privileges and immunities of the ISA Secretariat that are provided under the host country Agreements, subject to the national laws of the member countries.

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- (10) Article 11 provides to make amendments to the Framework Agreement and for withdrawal from the ISA.
 - (11) Article 12 states that the seat of the ISA is India, while Article 13 sets out the procedures on how members may ratify, accept or approve the Framework Agreement. And it also explains when the Framework enters into force for each member, after deposit of the Instrument of Ratification, acceptance or approval.
 - (12) Article 14 prescribes that the depositor of the Framework Agreement is India and also states that the Framework Agreement is registered by the depository pursuant to Article 102 of the Charter of the United Nations.

The amended Framework Agreement serves to expand the membership of the ISA Framework Agreement. Currently, the ISA membership has been limited to countries located fully or partially between the Tropic of Cancer and the Tropic of Capricorn.

However, for a more inclusive durable solar co-operation in 2018, the first Assembly of the ISA approved an amendment to the Framework Agreement to expand membership to all United Nations member countries. As of 30th September, 2019, 12 ISA member countries have ratified this amended Framework Agreement of the ISA. Ratifying the Amended Framework will provide furtherance to Fiji to continuing establishing networks, and to develop synergies with ISA member countries and partners to help achieve Fiji's efforts towards a sustainable and targeted manner for the energy sector.

Through these amendments, the Framework Agreement removes all references to partner countries. Partner countries were those States that fell outside of the Tropic of Cancer and Tropic of Capricorn, who could contribute to the objectives of the ISA.

There are a total of seven amendments as follows. The first amendment is in the second paragraph of the preamble. This amendment recognises that solar energy provides, not only solar resource-rich countries lying fully or partially in the Tropic of Cancer and Tropic of Capricorn, but to all countries the opportunity to bring energy and sustainable development. Therefore, this amendment removes the restriction of membership only to those countries lying between the Tropic of Cancer and Tropic of Capricorn, and allows all countries the ability to become a member to ISA.

The next amendment is under Article 6(1)(a), and this amendment removes the words, 'partner countries' from this provision.

The next amendment is to the title of Article 7. This amendment removes the reference to partner countries and, therefore, there are further amendments made to the rest of Article 7 to reflect this amendment. As such, Article 7(1) is amended to open up membership to all States which are members of the United Nations, have signed the Framework Agreement and have deposited the necessary Instrument of Ratification, acceptance and approval.

Thereafter, Article 7(2) amends the Clause by entirely deleting Clause 2, and thereby removes 'partner countries' from the Framework Agreement altogether. Article 7 (3) is deleted as the phrase, 'partner countries' is being removed from the Framework Agreement, therefore, the provision is not required any further.

The final amendment is under Article 9, which removes the reference to partnership and states that, "Observer status will now be granted by the Assembly to applicants for membership whose application is pending, or to any other organisation which can further the interest and objectives of the ISA."

Mr. Chairman and Honourable Members, given this, it is noted that there are no legal implications arising from the amendments to Fiji and, therefore, it is recommended that Fiji should approve the amended Framework Agreement.

MR. CHAIRMAN.- Thank you, Ms. Ali for your presentation. Honourable Members, do you have any questions for Ms. Ali, with regards to this Treaty?

Since there are no questions, we will now ask Ms. Seema Chand for her presentation on the third Treaty which is the Optional Protocol to the Convention on the Rights of the Child.

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

MS. S. CHAND.- Good morning, Mr. Chairman and Honourable Members. This morning I will be presenting on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Just a brief introduction, Fiji ratified the Convention on the Rights of the Child (CRC) in 1993 which sets up standards and protocols to safeguard the rights and welfare of our children. As a Party, the Fijian Government is mandated to implement child protection laws and initiatives aligned to the CRC.

The Optional Protocol and the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is an international instrument to the CRC and was adopted on 25th May, 2000. The Optional Protocol entered into force on 18th January, 2002, and as at September 2020, there are 176 State Parties to the Optional Protocol.

The Optional Protocol requires State Parties at a minimum to ensure that the offences related to the sale of children, child prostitution and child pornography are fully covered under its criminal law or penal laws, and to establish jurisdiction over such offences where offences are committed in its territory or jurisdiction.

It also provides that offences under Article 3 of the Optional Protocol are deemed extraditable offences in any extradition Treaty existing between State Parties. It further provides that the Optional Protocol to be the legal basis for extradition in cases where no extradition treaty exists.

The Optional Protocol also requires State Parties to adopt appropriate measures to protect the right and interests of child victims at all stages of the criminal justice process.

Honourable Members, my presentation this morning will also focus on our existing legislation and how our legislations are in compliance with the Optional Protocol. So, I will start off with the Constitution. The Fijian Constitution in Section 10 and in Section 11, guarantees all Fijians freedom

from slavery, servitude, forced labour and human trafficking, and also freedom from cruel and degrading treatment.

Section 41 of the Fijian Constitution recognises the right of every child to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment and hazardous or exploited labour.

It further states that the best interest of the child are the primary consideration in every matter concerning the child. The sale of children, child prostitution and child pornography are in clear violation of Section 41 of the Fijian Constitution.

Moreover, Sections 226 and 227 of the Crimes Act 2009 provide that the selling and buying of minors under the age of 18 years old for prostitution, or illicit sexual intercourse, or for any unlawful or immoral purpose are criminal offences.

The Crimes Act 2009 also provides that slavery, sexual servitude and deceptive recruiting for sexual services are criminal offences which have extended jurisdiction, whether or not the conduct constituting to the alleged offence occurs in Fiji, and whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

The Crimes Act 2009 also provides that the offence of trafficking in persons and children also has extended jurisdiction.

Further, the Online Safety Act 2018 renders it an offence to post an intimate visual recording of an individual unless that individual concerned consent to the specific post.

The Act, however, specifically states that consent does not include the consent of a child, and defines 'a child' as an individual who has not reached 18 years of age.

The definition of 'intimate visual recording' is vast and rather robust, as it includes photographs, video or digital images where the individual is naked, engaged in sexual activity, sharing or any other activity which involves a state of undress.

As a result, Honourable Members, the 2013 Constitution of the Republic of Fiji, the Crimes Act 2009 and the Online Safety Act 2018 clearly represent Fiji's position against the sale of children, child prostitution and child pornography. The relevant offences under the Crimes Act 2009 and the Online Safety Act 2018 are extraditable pursuant to Section 31(b) of the Extradition Act 2003, and given that they have prescribed penalties well above the 12 months imprisonment term.

And in light of my presentation, Honourable Members, we strongly recommend that Fiji accede to the Optional Protocol, given that we have already signed it and should we accede or ratify the Optional Protocol, Fiji is obliged to submit a report to the Committee on the Rights of the Child within two years, providing comprehensive information on the measures Fiji has taken to implement the provisions of the Protocol.

That concludes my presentation this morning. If there are any questions from Honourable Members, I am happy to answer them now.

MR. CHAIRMAN.- Thank you, Ms. Chand, for your presentation. Honourable Jale?

HON. A. JALE.- Thank you, Ms. Chand. We signed the Optional Protocol in 2005. The question that I would like to ask is, why was the delay because this is a very important Convention which Fiji should have ratified years ago? Why did it take 15 years for your Office to bring it up?

MS. S. CHAND.- Thank you for the question, Honourable Member. As you would be aware, since 2006, our first parliamentary session was in 2014 and in 2014 to 2019, our focus really was on ratifying the core nine Human Rights Instruments and Conventions. So, thereafter, given that we have ratified the core nine which also includes the Convention on the Rights of the Child (CRC), and the CRC is a Convention that came into effect in January 2002. Since 2002, it was never brought before Parliament and as such, given that we have now ratified the four nine International Human Rights Treaties and Conventions, it was then moved that Parliament decide on whether or not we should accede to this Treaty or not and it was tabled before, I understand, the September session of Parliament.

MR. CHAIRMAN.- Honourable Members, any other question for Ms. Chand?

Since there are no other questions, Ms. Chand and the rest of your team - Ms. Ali and Ms. Vakadewabuka, if you would oblige, if we have any other pressing questions between now and writing our reports, that you will be able to submit to the Secretariat.

With those few words, I thank you once again and particularly, members of the public who are viewing or listening in to this telecast, thank you for taking an interest in your Parliament. On that note, I thank you again, Ms. Chand and your Team.

MS. S. CHAND.- Thank you, Mr .Chairman and Honourable Members. The

Committee adjourned at 12.16 p.m.

The Committee resumed at 12.19 p.m.

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

In Attendance:

- | | | |
|-----|----------------------|------------------------|
| (1) | Ms. Momoko Nomura - | Human Rights Officer |
| (2) | Ms. Releshni Karan - | National Legal Officer |
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MR. CHAIRMAN.- A very warm welcome to Ms. Nomura and Ms. Karan. A warm welcome also to members of the media who are watching or listening in and members of the public. By way of introduction, if I may ask my Members to raise their right hand.

(Introduction of Committee Members by Mr. Chairman)

A very warm welcome and a brief introduction of your good selves, Ms. Nomura, and the floor is yours. Thank you.

MS. M. NOMURA.- Thank you, Mr. Chairman and good morning to everyone. My name, as introduced, is Momoko Nomura. I am the Human Rights Officer at the Office of the High Commissioner for Human Rights. Our regional office is based here in Suva, Fiji. I give the floor also to my colleague, Releshni, to introduce herself.

MS. R. KARAN.- Honourable Members of the Committee and Mr. Chairman, Sir, my name is Releshni Karan and I am the National Legal Officer. I am happy to be here and to participate in this forum.

MR. CHAIRMAN.- I was just going to say, I think there might be some interference probably coming from your Office, Ms. Nomura. Hopefully, it stays that way for now, you may continue. Thank you.

MR. J. ABRAHAM.- Mr. Chairman, it is a tsunami siren, Sir, but we can continue.

MR. CHAIRMAN.- Do not worry, I am looking out, I can see the passage here and there is definitely no tsunami, so the floor is yours, Ms. Nomura.

MS. M. NOMURA.- My apologies, Mr. Chairman, can you hear me now? Thank you so much.

Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence, it is a pleasure and honour for us to engage with you again today as you deliberate on Fiji's ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Today, I would like to highlight some of the key points based on our written submission that we have filed with you, and to provide a brief overview of the Optional Protocol, why Fiji is advised to

ratify the Optional Protocol and the importance of this Optional Protocol, and the consequences of ratifying this Optional Protocol. Then I would like to give the floor to Releshni, following which we will be happy to respond to any questions that you might have.

The Convention on the Rights of the Child which was adopted by the General Assembly in 1989 and ratified by Fiji in 1993, provides a comprehensive legal framework for the promotion and protection of the rights of children, including protection of children from all forms of exploitation. However, it became increasingly clear that additional efforts were needed to address the true extent of sexual exploitation of children, including the impact of globalisation and the increase movement of people across national boundaries on the protection of children's rights.

So, 11 years later after the Convention was adopted, the General Assembly then adopted this Optional Protocol which focusses specifically on the sale of children and the sexual exploitation and sexual abuse of children. So the Optional Protocol draws special attention to the necessity of criminalising these serious violations of children's rights and emphasises the importance of increased public awareness and international cooperation in efforts to combat them.

In the Pacific region, seven States have already ratified the Optional Protocol, so in addition to Australia and New Zealand, the Federated States of Micronesia (FSM), Kiribati, Samoa, Marshall Islands and Vanuatu. In addition to Fiji, two States have signed the Optional Protocol, namely; Nauru and the Solomon Islands.

The main focus of the Optional Protocol are that:

- (13) all children must be protected from sexual exploitation or sexual abuse,
- (14) such acts are criminal in nature, including attempting in complicity in such acts,
- (15) the perpetrators must be identified and punished, and
- (16) children who are victims of these grave crimes seek comprehensive support for psychological and psychosocial physical recovery, as well as compensation for the damages that they have suffered on those who are legally responsible.

The Optional Protocol also recognises the need for a holistic approach to combat these forms of exploitation and the contributing factors for the sale, sexual exploitation and sexual abuse of children which include poverty, economic disparities, inequitable socio-economic structure, dysfunctional families, lack of education, migration from rural to urban area, gender discrimination, irresponsible adult sexual behaviour and harmful traditional practices.

With regard to the context of Fiji, we note that Fiji had ratified the Convention on the Rights of the Child in 1993, the situation of children in Fiji has been reviewed twice in 1998 and 2014 by the UN Committee on the Rights of the Child. This is a Committee that is composed of 18 independent experts from around the world that monitor the implementation of the Convention, as well as the Optional Protocols by the Governments that have modified the Convention.

We would also like to recall that in addition to the Convention, there are three Optional Protocols and these Optional Protocols that we are discussing today is one of those three Optional Protocols.

In the last concluding observations by the Committee in 2014, the Committee expressed a deep concern that in Fiji, sexual exploitation and abuse of children is prevalent, including through organised child prostitution networks and brothels.

The sexual exploitation of children is closely linked to poverty, with pressure placed on children to earn money, that both boys and girls in street situations are exploited in prostitution, pornography and sex trafficking, and that Fiji is a source country for children subjected to sex trafficking and forced labour, with child victims of trafficking being exploited in illegal brothels, local hotels and private homes.

The Committee on the Rights of the Child also noted with concern that specialised services that take into account special and particular needs of children are not readily available in Fiji, with services for boys almost non-existent. According to the latest UN Socio-Economic Impact Assessment of COVID-19 in Fiji which was published in July 2020, refers to the possibility of an increase in online sexual exploitation of children due to restrictions in movement.

Additionally, the poverty rate is expected to increase, according to the study, between 1.3 percent in the best case scenario and 7.1 percent in the worst case scenario, children may be at an increased risk of sexual exploitation and abuse, given that poverty is one of the key factors of these crimes.

So, in this context, we strongly believe that it will be a very timely moment to send a clear message nationally, regionally and internationally that Fiji is fully committed to protecting its children from the most serious types of harm, namely the sale, sexual exploitation and sexual abuse of children.

With 15 years having passed since Fiji had signed the Optional Protocol, we also recommend that Fiji ratify this Optional Protocol without any further delay.

We would also like to note that Fiji is already a party to the Convention on the Rights of the Child which protects children from all forms of sexual exploitation and sexual abuse which is protected under Article 34 – The abduction of sale of/or trafficking in children and in Article 35 of the Convention, and all other forms of exploitation which is prejudicial to the child’s welfare, that is in Article 36.

So, the types of acts that are prohibited under the Optional Protocol are already covered under the Convention which Fiji is already bound by, and the ratification of the Optional Protocol will enable Fiji to continue strengthening national responses to preventing and effectively combating the sale and sexual exploitation of children, in line with international standards.

In this regard, we would like to highlight that one of the key benefits of ratification is to receive expert advice from the Committee on the Rights of the Child, which I mentioned are the 18 experts in the field of child protection, and who are able to provide guidance on the latest good practices on how to effectively combat the sale and sexual exploitation of children.

Additionally, the ratification of the Optional Protocol will enable Fiji to report back to the Committee on the Rights of the Child on the progress that it has made to implement the recommendations that the Committee made in 2014, that Fiji ratified all of the three Optional Protocols to the Convention.

Given that Fiji's combined 5th and 6th Periodic Reports to the Committee was due last month on 11th September, 2020, Fiji will be able to include any progress in the Report in implementing the recommendations by ratifying this Optional Protocol. In the Report as well, the constructive dialogue with the Committee that will be coming up.

Fiji has also demonstrated the commitment to creating an environment where children can be free from exploitation and abuse by integrating the Sustainable Development Goals (SDGs) in its the National Development Plans and National Budget and Strategic Plans. And the relevant SDG targets in this regard, include:

- (17) those related to the elimination of violence against women and girls - Target 5.2;
- (18) elimination of the worst forms of child labour - Target 8.7; and
- (19) to end the abuse, exploitation, trafficking and all forms of violence against and torture of children - Target 16.2.

So the effective implementation of the Optional Protocol, which covers these SDG targets can also contribute to the achievement of the SDGs.

Finally, following the third Universal Periodic Review (UPR) on 12th November, 2019, the UPR, as you may know, is a sort of Inter-Governmental way of assessing the human rights situation in every country of the UN Member States. Following this review ...

MR. CHAIRMAN.- Ms. Nomura, we will pause for a while, until that siren goes off but it should not take a few seconds.

MS. M. NOMURA.- Sure, thank you. I will proceed with your permission.

So as I was recalling, Fiji has also been reviewed by the UPR process in November last year, during which Fiji had committed to ratifying all the three Optional Protocols to the Convention.

Fiji will be a member of the Human Rights Council until January next year, so by ratifying the Optional Protocol, Fiji will continue to demonstrate its leadership at the regional and international levels by ratifying, not just the nine core International Human Rights Treaties in which we congratulate Fiji for having done so in August last year, but also taking the leadership and ratifying the Optional Protocols to the Human Right Treaties.

Now, I will turn to the implication of ratification of the Optional Protocol, once Fiji deposits its Instrument of Ratification to the UN Secretary-General, Fiji will become bound by the provisions of the Optional Protocol after one month. And as the State Party to the Optional Protocol, Fiji will then need to submit an initial report to the Committee on the Rights of the Child within two years, providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol.

Following the submission of the initial report, Fiji will be required to include further information on the implementation of the Optional Protocol in the periodic report it submits to the Committee on the Rights of the Child which is usually in every five years. This regular submission of reports is a key

obligation of States Parties under all of these nine International Human Rights Treaties that I referred to. And for each Treaty, States are required to submit a report in every four or five years.

As Fiji has ratified nine Human Rights Treaties now, we acknowledge that this can be seen as a burden to report to so many treaties and at such frequency. So to facilitate the timely reporting, the Treaty Bodies which is really a key way to ensure that the national standards and what is happening at the national level is in line with the international standards, States have started establishing a permanent coordination mechanism within Government, which is known as the National Mechanism for Reporting and Follow-up (NMRF).

Fiji has been supportive of such initiatives to establish these NMRFs at the international level, and it also indicated its commitment to establish one domestically in Fiji in October last year. So we also encourage Fiji to proceed with concrete steps towards the establishment of the NMRF, to facilitate its engagement with the Treaty Bodies and to meet its international obligations under these Treaties. We would also like to reiterate that OHCHR in this regard stands ready to provide any technical assistance, if needed in this regard.

In addition to the obligation of submitting regular reports to the Committee on the Rights of the Child, once Fiji ratifies the Optional Protocol, it will be required to ensure that the provisions of the Optional Protocol give an effect under national law.

My colleague, Rileshni Karan, can elaborate further on this, including the process of the review that should ensure that participation of children in accordance with the guidelines adopted by the Committee on the Rights of the Child, and ensuring that the domestic legislations and policies utilise correct terminology which is extremely important because how we define these crimes are incredibly important to know what it is the word 'prohibiting', and to ensure that the laws have sufficient dissuasive effect on the potential offenders under the penalties are sufficiently harsh to reflect the seriousness of the crime, and to ensure that children are protected throughout this process and receive appropriate support. I now would like to give the floor to Rileshni. Thank you very much.

MR. CHAIRMAN.- Thank you, Ms. Nomura. You may continue, Ms. Karan.

MS. R. KARAN.- Thank you, Mr. Chairman and Honourable Members. I just want to start by saying that we have submitted with our submission, two additional documents and one of them is the guidelines on the implementation of the Optional Protocol and the second document is the terminology guidelines for the protection of children from sexual exploitation and sexual abuse, which is also known as Luxembourg Guidelines. These are very comprehensive guidelines that give a lot of guidance on the terminology that should be used when it comes to children involved in sexual exploitation.

Perhaps, while I am on this topic, this process of implementing this Optional Protocol will begin after ratification of the Optional Protocol. Fiji will assume a legal obligation under international law to ensure that the provisions of the Optional Protocol are given effect in the domestic legislation.

A thorough review of the legislation would need to be undertaken to assess its compliance with the Optional Protocol, including the prohibition, under the criminal law, of all acts mentioned in Article 3 of the Optional Protocol, which includes attempt and complicity. In particular, the Crimes Act has to

be reviewed, the Child Welfare Act, the Juveniles Act, the Employment Relations Act 2007, as well as the Online Safety Act.

There is a new Bill that is undergoing debate which is the Cyber Crime Bill and that Bill will also have to be harmonised with the rest of the Acts, if it is to do with online children, and the implications that would arise there will also have bearing on the other provisions of all these Acts that I have just mentioned.

Some of these Acts are already criminalising the use, procuring and offering of a child for prostitution and they are using the terminology but this terminology that is being used will all have to be harmonised so that there is consistency across the board when it comes to terminology. For example, internationally, the accepted term is not 'child prostitution', it is 'exploitation in prostitution' or 'exploitation for prostitution' which is the more preferred term because that, sort of, implies that the child is not consenting to sex or is not participating in that regard.

We usually avoid terms such as, child prostitute or child sex worker or a young person selling sex. We generally have to avoid those and the proper terminology is explained in the guidelines that we have emailed, accompanying this submission. We have to be extremely careful with the terminologies that are used.

In the Crimes Act, there are several provisions that are already there when it comes to the Optional Protocol Implementation. However, section 230 of the Crimes Act imposes the sentences of six months imprisonment for persons living wholly or on part of the earnings of prostitution. This section does not say whether the offence applies to children, who are exploited in prostitution, or other sections of the Act speak to the criminal liability of children.

Section 26 states that a person under 10 years of age for example cannot be held criminally responsible for an offence. That is alright, but then section 27 states that a child over 10 years old but under 14 years old may be held criminally liable, if the child knows that his/her conduct is wrong. And then the question arises whether the child knows that his/her conduct is wrong.

With the burden of proving this on the prosecution, this leaves the child victims of prostitution over 10 years open to criminal prosecution and that should not be the case. Children are those under the age of 18 years old they should be given rehabilitative measures rather than criminal penalties when it comes to these sorts of offences.

Children aged 16 years and 17 years at this point under our Crimes Act are more vulnerable to sexual exploitation. There is an Act that prohibits defilement and prohibits permitting defilement of a child under age 16 years old and it is deemed sufficient defence if the child charged has reasonable cause to believe.

If a person who is charged has cause to believe that the person was above the age of 16 years old, if that person looks above the age of 16 years old and has characteristics above the age of 16 years old, that is a valid defense. But then that opens this whole scope of the persons between the ages of 16 years to 18 years old vulnerable to sexual exploitation. So, those provisions will have to undergo review, Sirs and Madam.

There is also a few sections under the Employment Relations Act that criminalises sexual exploitation of children but it does not forbid the use procuring and offering of a child for production pornography or for pornography performances. There are certain provisions that are very unclear but then it encompasses say, audio and audio-visual exploitation of children.

There is an Online Safety Act that we try to fill this gap, but the Online Safety Act makes it a crime to post an intimate visual recording of an individual without consent. This qualifies that the requirement of the consent does not include the consent of the child, but this also clarifies that posting an intimate visual recording of a child is prohibited, and that is visual recording and not audio recording.

So those demarcations, and the audio recordings leave a significant loophole in the protection of children when it comes to the Online Safety Act. The Act does not address the production, procurement, possessing, and knowingly obtaining child sexual material online. It does not criminalise grooming for the purpose of producing child sexual exploitation material, or causing children to view the sexual abuse or sexual activities online. Those are a few loopholes that are existing.

A major loophole that I would like to highlight to this Committee is also the sexual exploitation of children in travel and tourism. There is not one single legislation that covers that, which is extremely important given that tourism is one of the largest GDP contributors for Fiji and children represent more than a quarter of Fiji's population. It is extremely important to get this legislation up and running, which is to do with travel and tourism.

Fiji lacks a legal framework protecting children from sexual exploitation in travel and tourism. Fiji has neither criminalised any person visiting the country with the intention of sexually exploiting a child, or travelling to another country with the intention of sexually exploiting a child.

There are several laws around this phenomena, but none that hits on that - the hotel needs to do this, tour guides need to do this - the checks and balances that need to be in place when it comes to travel and tourism. That is something that we wish to highlight to this Committee.

The other is the legislation that would deal with early enforced marriages. Since most of us are Fijians, we all know that there are several customary practices that also are prevalent in our society. Some of them, for example, the persons who are of Indian descent, they have this practice of early marriages, providing dowry and some sort of gifts and things for the other party, and those are the parts that we will have to look at in detail when it comes to that.

The legal age of marriage was increased to 18 years and there has been certain provisions added that criminalise, inducing or endeavouring to induce a marriage officer or individual to solemnise a marriage involving a minor. It has those sentences that it carries, but there are certain practices.

I also would like to raise the practice of the shortcomings of the '*bulubulu*' practice and raise awareness on how the practice further victimises the child victims of sexual exploitation. There is a lot of consultation that will need to take place, if there has to be laws that will review these customary practices of asking for forgiveness or providing gifts in that regard, because that also leaves a lot of child victims open to exploitation.

Basically in crux, I would like to say that we need to expand the scope of the existing legislation to criminalise online grooming and audio child sexual abuse materials. We need to make it consistent that a child be given the same treatment and a child being persons under the age of 18 years should be rehabilitated, they should be given a different treatment, a less harsher treatment than you would do to adult and it does not matter whether you are physically present or you are on an online space, the dimensions should be the same.

There is a lot of guidance on this from UNODC, Save the Children, there is a lot of materials from UNICEF, UNOCHR and we are happy to provide guidance if it is needed.

Legislation is one part, the part of it is the national response to eradicating things, like trafficking in persons and child trafficking. There has to be a monitoring system in place. There has to be guidelines and training that is provided to key enforcement agencies, the Fiji Police is there, but there has to be Immigration, Ministry of Education, there has to be tour guides, hoteliers.

There is a lot of key agencies that will need this sort of training on how to identify child victims and what to do after they identify. After their report, what happens? Where do these children go? What are the services that are available for their counselling? Do they have a home to go to?

While the Department of Social Welfare operate about nine-plus homes for victims, I think there are not much avenues for boy victims of sexual exploitation. Where do they go? What are their avenues for protection? So while we are doing a lot in the sense for girl victims, we are not doing much when it comes to boy victims, so there has to be a bit of that as well.

There is an Access to Justice Project that is currently ongoing in Fiji that includes an investigation of child victims' access to justice, but a lot has to be done in this regard. One of those is the customary practice, such as *bulubulu* that plays a part in this. So there has to be some strategies to address these issues. That is basically what I have to say.

In terms of terminologies, Sir, there is a 114-page terminology guideline, I would like the Committee to have a look at that and perhaps, forward that to the drafters of this legislation when they are reviewing the legislation for some more additional advice on that. We are happy to get in and provide a comprehensive review of laws, if the Committee so seeks but at this stage, we leave it to this. This is generally what would happen if there is ratification in that regard.

Thank you, Mr. Chairman and Honourable Members for listening. MR. CHAIRMAN.- Thank you, Ms. Karan, for a very informative presentation. I was taken aback with a couple of topics you mentioned there and I was just going to say, where to from here for your good selves. But like you rounded it off, was for us as the Committee to make those recommendations and I think yes, we will do that.

Honourable Members, since we do not have any questions for either Ms. Nomura or Ms. Karan, with that, thank you again. It is nice to meet you again after being so long down the coast. I think it was last year when we last met but thank you again. If there are any pressing questions, if you would oblige in replying to our Secretariat. With those few words if you have any departing comments, the floor is yours. Thank you, Madam.

MS. M. NOMURA.- Thank you very much. On behalf of OHCHR, we would really like to express our appreciation for your time and for listening to us. Thank you. *Vinaka vakalevu.*

MR. CHAIRMAN.- Thank you.

The Committee adjourned at 12.52 p.m.

The Committee resumed at 11.42 a.m.

Interviewee/Submittee: **United Nations Children’s Fund (UNICEF)**

In Attendance:

Mr. Sheldon Yett - Representative for the United Nations Children’s Fund (UNICEF)

MR. CHAIRMAN.- A very warm welcome to you, Mr. Sheldon Yett. Thank you for obliging and coming before the Standing Committee on Foreign Affairs and Defence.

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

Also a very warm welcome to members of the public who may be listening or watching this livestream. Thank you for taking an interest in your Parliament, and also to the media who I understand are in the parliamentary complex. With those words of introduction, Mr. Yett, I give you the floor.

MR. S. YETT.- Thank you very much. The Chairman of the Standing Committee and Honourable Members of the Committee, secretariat and colleagues; let me begin by congratulating your Committee on the recommendation made to Parliament for the ratification of the Optional Protocol to the Convention on the Rights of the Child and the Involvement of children in Armed Conflict. We think that is a very good thing.

I would like to thank you for this opportunity, however, to support the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography by Parliament.

My name is 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 and its Optional Protocols.

The Convention on the Rights of the Child and the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography are comprehensive legal instruments that promote and safeguard the rights of the child and protect children from sale, exploitation and abuse.

As UNICEF, we have been advocating for the ratification of all three Optional Protocols to the Convention on the Rights of the Child, through our engagement with the Government and through the treaty body and parallel human rights processes.

For today’s purpose, our focus is on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (known as OPSC), which entered into force globally in 2002, and which Fiji signed on 16th September, 2005. The objective of the OPSC is to set out requirements to end the sale of children, child prostitution and child pornography. The OPSC does not amend the Convention on the Rights of the Child, but it complements several Articles including Article 1, Article 11, Article

21, Article 32, Article 34, Article 35 and Article 36 by creating very specific, defined offences against children's rights

The adoption by UN Member States of the OPSC is a further milestone in the campaign to strengthen the legal and other measures for the special protection of children. Although the Government of Fiji became a signatory 15 years ago, the Optional Protocol has not yet been ratified, yet its relevance remains critical. 12. While positive progress has been made by the Government, the ratification of the OPSC would further strengthen the benefits and accountabilities of the Government to the children of Fiji.

Ratification shows commitment to children's rights, and stronger protection for children from offences covered. In addition, the Government would also benefit from the guidance, advice and recommendations of the expert Committee on the Rights of the Child through constructive dialogue and concluding observations and recommendations that would stem through the periodic constructive dialogue. Ratification also increases accountability to aligning policies, legislation and programmes with the OPSC.

With internet access expanding at unprecedented levels, the risk of children being sexually exploited or bought and sold as a commodity is becoming even greater. This makes ratification even more important. In our globalized and increasingly mobile world, the sale and exploitation of children in the context of travel and tourism represents a growing threat.

The current COVID-19 pandemic also poses a serious threat of exploitation of our children due the economic and social implications of the impact of the pandemic. Ratification of the OPSC will strengthen processes already in place on the proper consideration of child victims at all stages in a criminal justice process, measures for rehabilitation and relevant international actions.

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 Convention on the Minimum Age for Employment and the Elimination of the Worst Forms of Child Labour.

Moreover, Fiji also ratified the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. This ratification was done some two years ago.

Fiji has also regularly been 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 in 2014 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.

Domestication of global child rights standards in Fiji is evident through national laws, and in the 2013 Fijian 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.

In 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; and that the best interests of the child are the primary consideration in every matter concerning the child.

I would like to extend my congratulations to the Fijian Government for recently passing the Adoption Act 2020, which provides additional protection against abuses and illegal practices that children are particularly vulnerable to in the process of adoption, in conformity with the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

The Crimes Act 2009 outlines a comprehensive set of sexual offences against children with corresponding sanctions. It penalises the sale and trafficking of children, both domestic and inter-country, consistent with international protocol definitions. The Crimes Act includes offences in relation to child stealing and abduction of young persons. It also prohibits buying and selling children for “immoral purposes”, including prostitution.

Child pornography is penalised under the Juveniles Act. A Child Care and Protection Bill provides updated offences on child pornography in line with the OPSC, as well as new offences on ‘sexual communication with a child’ and ‘luring a child’ to protect children from online exploitation, grooming of children and other risks associated with ICT. Special procedural protection for child victims and witnesses are provided under the Criminal Procedure Act 2009, including provisions to assist children to give their testimony in court.

The Juveniles Act 1974 and the Child Welfare Act 2010 serve as the legal framework for Fiji’s child and family welfare services for children in need of care and protection, with limited provisions to protect children from child protection risks.

A more comprehensive Child Care and Protection Bill is underway that addresses the full continuum of services from prevention, early intervention and response services, targeting both the child and the family and establishes a Child Welfare Department to lead and coordinate such services.

While there has, undoubtedly, been progress in meeting the rights of children in Fiji, more could be done. This will only be possible if we work together as partners in providing all the children an environment that is safe and free from discrimination and harm.

We recommend that the Government of Fiji ratify the Option Protocol to the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The ratification of this Treaty would be another step, demonstrating a commitment to meet the rights of all children.

UNICEF encourages the following:

- (20) That the ongoing review of national legislation be used as an opportunity to review the compatibility of domestic legislation with international standards.
- (21) In particular, we recommend that the Child Care and Protection Bill be passed.

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- (22) We also recommend that measures be taken, such as the development of regulations and training of officials to ensure the full implementation of the new Adoption law.
- (23) We would also recommend that consideration be given to 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 also ask you to consider ratifying the third Optional Protocol to the Convention on the Communications Procedure.
- (24) 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.

In 2021, Fiji will engage with the Committee on the Rights of the Child on its next periodic report this September, and we call on the Fijian Government to continue the timely engagement with the Committee.

In closing, I would like to congratulate the Government for this critical proposal to ratify the OPSC. The ratification would result in further strengthening protection for the rights of all children and meets Fiji's compliance with international standards. I also want to reiterate that the Fijian Government is a critical partner for UNICEF and we look forward to continuing the good work that we have been doing together for the last 40 years.

Thank you again, Mr. Chairman, Honourable Members of the Committee and the Secretariat for making this dialogue possible. *Vinaka*.

MR. CHAIRMAN.- Thank you, Mr. Yett, for your concise submission this morning. Honourable Members, do you have any questions for Mr. Yett?

For any pressing questions, Mr. Yett, from the Committee you will be obliged by providing the Secretariat with the feedback. Again, on behalf of the Honourable Members of the Standing Committee on Foreign Affairs and Defence, I take this opportunity to say 'thank you' again for the time.

With those few words, are there any departing comments from you? The floor is yours, Sir. MR. S.

YETT.- Thank you, Mr. Chairman, Honourable Members of the Committee and the Secretariat for the privilege of engaging with you this morning. We look forward to continuing to work with your Committee, with Parliament and the Government of Fiji in the months and the years to come on meeting all rights of children in this country. Thank you for your commitment.

The Committee adjourned at 11.59 a.m.

[VERBATIM REPORT]

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

AGREEMENT/PROTOCOL/CONVENTIONS

7. **Amendments to the Framework Agreement of the Paris Declaration on ISA.**
8. **Republic of Fiji-Solomon Islands Maritime Delimitation Agreement.**

**INSTITUTIONS: (1) Fiji Maritime Affairs
Coordination Committee (MACC)**

- **Department of Energy**
- **Pacific Community (SPC)**

VENUE: Big Committee Room (East Wing)

DATE: Monday, 21st September, 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 21ST SEPTEMBER, 2020 AT 9.32 A.M.

Online Interviewee/Submittee:

Fiji Maritime Affairs Coordination Committee

In Attendance:

- Mr. Peter Emberson - Director Multilateral
 - Ms. Tima Vakadewabuka - Principal Legal Officer
 - Mr. Semi Bolalailai - Senior Scientific Officer
 - Mr. Gerard Rokoua - Director Hydrographic Services
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MR. CHAIRMAN.- On behalf of the Honourable Members, a very warm welcome to members of the public who may be listening or watching this live stream this morning. Before us is the Fiji Maritime Affairs Coordination Committee ably led by Mr. Peter Emberson. Also in attendance is Ms. Tima Vakadewabuka, Mr. Semi Bolalailai and Mr. Gerard Rokosuka, Director Hydrographic Services. For the benefit of the public, Honourable Members, just show of your right hand.

(Introduction of Committee Members by Mr. Chairman)

Ladies and gentlemen, the Committee will be submitting on the Agreement between the Republic of Fiji and the Solomon Islands concerning their maritime boundaries. And also with us is Mr. Jacob Abraham and our Secretariat Team. Without further ado, I give the floor now to Mr. Peter Emberson and his team to take us through their PowerPoint Presentation which Jacob can now put up on the screen. Thank you, Mr. Emberson.

MR. P. EMBERSON.- Thank you, Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence. Our presentation this morning is going to be facilitated by three of the presenters. I will take the first five slides, Mr. Chairman, and so did follow by Mr. Gerard Rokoua from the Fijian Hydrographic Services and following that Mr. Semi Bolalailai from the Ministry of Lands and Mineral Resources, and this will be completed by Ms. Tima Vakadewabuka from the Office of the Solicitor-General Office before I will wrap up the concluding slides, Mr. Chairman.

Mr. Chairman and Honourable Members, to begin, the United Nations Convention on the Law of the Sea (UNCLOS) was opened for signature in December, 1982 and entered into force in November 1994. Fiji was given the privilege and honour to become the first party to ratify the Convention, the reason being that Fiji's diplomat then was ably leading the charge in negotiating a very controversial set of laws to govern maritime jurisdictions and because of the hard yard put in by Fiji back then, sooner after Fiji gained independence, Fiji was given the honour to be the first ratifying country. Since then the Maritime Affairs Coordination Committee (MACC) was established by Cabinet Decision in 1995, to ensure the oversight of Fiji's work within the parameters of the United Nations Convention on the Laws of the Sea (UNCLOS) and the Committee is chaired by the Ministry of Foreign Affairs.

In line with international commitments, the issue of maritime boundaries has been an ongoing one under UNCLOS, but more recently under SDG 14 - Life Under Water. Fiji also submitted a commitment to resolve all of its maritime boundaries by 2025 and the reason for this is well known,

Mr. Chairman, so long as we have our maritime boundary delimited or marked out, we can truly police and secure the jurisdiction or sovereign rights over our marine territories. So, two years ago, we resolved to try to work on securing our maritime boundaries and this was submitted as a voluntary commitment to the Ocean's Conference that opened in New York two years ago.

Also, the Pacific Islands Forum Secretariat (PIFS) Leaders last year, also made similar commitments. They committed to a collective effort, including to develop international law with the aim of ensuring that once a foreign member maritime zones are marked out in accordance with the 1982 UNCLOS, that the member's maritime boundaries or zones could not be challenged or reduced as a result of sea level rise and climate change.

Mr. Chairman, the 1982 UNCLOS did not foresee the impacts of climate change sea-level rise as impacting maritime boundaries so the Leaders in their wisdom last year, decided to make a collective effort or regional effort to inform the lacuna in international law to ensure that once our maritime zones were deposited with the Division on Ocean Affairs and Law of the Sea (DOALOS) in New York, that it becomes permanent. So, this is a new emergence under the discourse of international law to ensure that our maritime jurisdictions, once the base points on the bearings were deposited formally, that they could be challenged.

The mandate of MACC, Mr. Chairman, is to coordinate marine-related work distributed across Government agencies and also to obtain, discuss and evaluate issues under UNCLOS that were relevant to Fiji. The mandate of MACC is also to draft policy and information papers for Ministers, Cabinet and Parliament, and to review progress on the implementation of such policies. Also part of the mandate of MACC is to identify and recommend specialised training needs for personnel handling marine affairs across the line Ministries.

The membership of MACC, Mr. Chairman, includes the:

- Ministry of Defence, National Security and Policing;
- Ministry of Waterways and Environment (Department of Environment);
- Ministry of Fisheries;
- Ministry of Lands and Mineral Resources;
- Ministry of Economy (Climate Change and International Cooperation Division)
- Ministry of Commerce, Trade, Tourism and Transport;
- Office of the Solicitor-General; and
- Fiji Navy, in particular the Hydrographics Division.

Mr. Chairman, if I can now invite my colleague, Mr. Rokoua, from the Fiji Hydrographic Services to take on the next couple of slides in this presentation. Thank you, Mr. Chairman.

MR. G. ROKOUA.- *Vinaka*, Director, Good morning, Mr. Chairman. The next slide is making sense of maritime boundaries.

We have diagrammatic representation of the maritime boundaries that we are and will be talking about. We look at the internal waters are inside the baseline, then you have the 12 nautical mile line or the contiguous zone. Then 200 nautical mile line or the EEZ, after which comes the high seas.

The maritime boundaries as written, include:

- Internal waters covering all waters and waterways on the landward side of the baseline. This includes lagoons, lakes and rivers.
- Territorial Sea definition, the zone seaward of the baseline measured outwards to 12 nautical miles.
- Contiguous Zone lies 12 nautical miles beyond the Territorial Sea or 24 nautical miles seaward from the baseline.
- Exclusive Economic Zone (EEZ) is beyond the Territorial Sea to an extent of 200 nautical miles measured seaward from the baseline. And it is also subject to delimitation with any neighbouring State in cases of overlapping boundaries.

Continental Shelf - this refers to an area of seabed and subsoil territory, but not the water column, beyond the Territorial Sea. The outer limits of the Continental Shelf is little bit more complex to work out and is, at least, 200 nautical miles seaward from the baseline. In some circumstances, it could extend to 350 nautical miles.

The next slide is a diagrammatic representation of Fiji's EEZ. Fiji is a Small Island Developing State (SIDS) but is considered a large Ocean State. Our EEZ is about 1.29 million square kilometres and as written there, it is nearly 70 times larger than the land mass, and consists of more than 300 islands and approximately 500 little islands.

Why is it important to set maritime boundaries by way of an agreement? As you can see that diagrammatic representation, Mr. Chairman, there is an overlap between the two boundaries and the diagrammatic notes - the boundary that we will have to negotiate with our neighbouring country or neighbouring State to find out or to delimit the median line between the two countries.

Mr. Chairman, this is Fiji's EEZ and all the countries that we share our boundaries with. They include Vanuatu, Tonga, Tuvalu, Wallis and Futuna, New Caledonia and the Solomon Islands. I will now hand you over to Ms. Tima Vakadewabuka, who will cover the rest of the slides.

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. Good morning again to, Mr. Chairman and Honourable Members. I basically will not labour too long in terms of the presentation on the Agreement between Fiji and the Solomon Islands on their maritime boundary. We have provided a Written Analysis to the Honourable Members of the Standing Committee on the breakdown of each Articles of the Agreement. We have also provided a copy of the Agreement, so I trust that the Honourable Members are well versed with the Agreement itself. I will basically just summarise key points in terms of what the Agreement envisages to cover and also to resolve.

Looking at the previous slide presented by Mr. Rokoua, once you measure you EEZ from 200 nautical miles out, there is bound to be an overlap, especially when we have coastal neighbouring States. So there are ... (inaudible)... island and as you go out 200 nautical miles, overlaps are bound to exist, and this is the current state we are in with the Solomon Islands. There is a little overlap in terms of our maritime boundary where our EEZ extends and where Solomon Islands EEZ extends. So this is what the Agreement wishes to cover and also to resolve.

There has already been negotiations at the technical level. So the technical level between Fiji and Solomon Islands has been an ongoing issue that has been negotiated and also resolved in terms of the exact points where the boundary will sit. Basically, there is no dispute *per se* in terms of the

demarcation of the boundary. What is left now is perhaps, through the Standing Committee to get the approval of Parliament for Fiji and Solomon Islands to sign the Agreement.

The Agreement may be different from other contracts that you see, it may be longer to those of you who are looking at the maritime boundary agreement for the first time, but this is the standard template for maritime boundary agreements.

In all, there are 48 shared maritime boundaries in the region and 35 have been resolved. So there are existing maritime boundary agreements and we tag from these existing maritime boundary agreements in terms of the provisions that are now in our maritime boundary agreement. So those provisions in the agreement are not new *per se*.

Additionally, there are 10 Articles of the Agreement. The Articles are quite succinct and clear but if there are any questions, please kindly let us know, we will be happy to facilitate. Although we cannot answer the questions now, we would be happy to provide written submissions.

So, that concludes our brief summary on the Agreement between Fiji and the Solomon Islands on their maritime boundaries. I will now pass the presentation back to the Director, Mr. Emberson, for his concluding remarks. Thank you, Honourable Members.

MR. P. EMBERSON.- I thank you. Mr. Chairman, the slide that is before us now is the agreed base points that has been negotiated and cleared by the Technical Team and the one following this, that is on the next slide is how Fiji through its EEZ boundary with the Solomon Islands, will be recognised under international law. So, this is how it is looking.

Technically, it is not a chart, it is just a map of what the boundary coordinates now look like after the principle of equidistance. Equidistance specifically means because of the overlap, they have taken the median of that overlap, negotiated it between the two countries, both countries have agreed to the equidistance of the overlap, hence this is the new recognised boundaries. Should Parliament of Fiji agree to it, it will then be also recognised internationally. So this is what it is going to be looking like, following our Parliament endorsement.

The way forward, Mr. Chairman, in light of COVID-19, the High Commissioner of the Solomon Islands to Fiji, His Excellency William Soaki, has been instructed by his capital to sign the Agreement on behalf of his Government, so he has been informed a couple of months ago that he should stand ready to sign and so will Fiji. The Permanent Secretary for the Office of the Prime Minister because of the equivalence of seniority, there is really no need for an Honourable Minister to sign because William Soaki is at the permanent secretary level, so a permanent secretary can sign on Fiji's behalf.

Following this, the deposit with the DOALOS based out in New York, the Instruments will be sent across for depositing by Fiji's Ambassador based in New York, and shall enter into force when parties Exchange Notes - formal diplomatic notes indicating that they have completed their national processes and this is then informed to DOALAS as well with evidence of this letter exchange sent across to New York for their noting.

Mr. Chairman, that concludes the part of our presentation and we are also mindful that you had given us 10 questions, specific to the task that brings us before you this morning, Sir, and should you wish for us to elaborate further on those questions that you had sent to us last week, we stand ready to also respond to that should you need clarification.

Mr. Chairman, thank you very much for the privilege of coming before you and Honourable Members of the Committee, and we stand ready to respond to any questions you might have for us. Thank you, Sir.

MR. CHAIRMAN.- Thank you Mr. Emberson and thank you to the other presenters; Mr. Rokoua and Ms. Vakadewabuka from the Solicitor-General's Office. I think it is getting much, much clearer now what it all entails, with that brief explanation from the team, Mr. Emberson. So I will just ask the Honourable Members if they have any questions, in particular for the Committee? Thank you.

HON. A. JALE.- Thank you very much, Mr. Emberson and Team for the presentation this morning. You really clarified a lot of issues that were not very clear to us. When we met with the team from the Pacific Islands Forum last week, they raised the issue about a finality clause should be included in the agreement with the Solomon Islands. The finality clause, in their view, should cater for the incidence of climate change, which is a concern by the regional countries that would interfere with the agreed boundaries and agreements. I just want clarification from the Team as to what is their reaction to this view expressed by the Forum?

MR. CHAIRMAN.- I think, perhaps Ms. Vakadewabuka should be able to answer that question.

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. Through you, this discussion from PIFS is also a discussion that is happening regionally, which is because of sea level rise. So basically, our maritime boundaries are measured from low water mark and extends 200 nautical miles out. Now, in terms of climate change, sometimes that can affect the low water mark and also the feature of the island.

Under UNCLOS, I apologise, I am going to get a bit technical now, but maybe I should just come back to the point. Under UNCLOS, basically, if it is a rock, you can only mention 12 nautical miles out, if it is an island, you measure 200 nautical miles up, so it is a big difference in terms of the way that we measure the boundaries. Also, because of climate change, as the land features start to change, we sort of get worried about whether we will still be measuring 200 nautical miles out or 12 nautical miles out.

This is an emerging issue, so all the maritime boundaries that exist in this phase, none of the maritime boundary agreements have the finality clause. If you see, we have standard template for the maritime boundary agreement and in this agreement, there are no termination clauses. So there is an assumption that these agreements will be in force for time to come. If we are going to include a finality clause, the State is still trying to figure out this issue about sea level rise and finality of the maritime boundaries. It is going to be a huge shift and something that we need to further research on and something that we need to think about.

Additionally, there is the United Nations Vienna Convention on the Law of Treaties. That Convention states that if there is a change in circumstances where an agreement has come into force, the change in circumstances should not affect the Treaty. So, if we have a Maritime Agreement that is signed now and our maritime boundary has been set down *per se*, any change in circumstances whether that change is arising from sea level rise or climate change, it will not affect that Treaty, so we are also covered by the United Nations Vienna Convention on the Law of Treaties.

I note that PIFS have been asking for finality agreement but it is something that we should proceed with caution on, because this is a new and developing area. I hope that answers your question, but I am happy to continue should there be any further question.

MR. CHAIRMAN.- Thank you, Madam. I now give the floor to Honourable Tikoduadua. HON. LT.

COL. P. TIKODUADUA.- (Inaudible) I was not using my microphone.

MS. T. VAKADEWABUKA.- Yes Sir, we can hear you clearly.

HON. LT. COL. P. TIKODUADUA.- In one of the Articles in the Agreement (I do not have the paper with me right now), one of the concerns that was raised also is this issue of sovereignty in one of the Articles. Now, sovereignty and sovereign, if other Members of the Committee would like to help me out on that one. It was the second issue they are worried about in case it is on sovereignty and sovereign. Is it in Article 4? I do not know.

MS. T. VAKADEWABUKA.- Sir, is this the issue of sovereignty and sovereign? I believe we have also addressed that in our responses to the questions to the Standing Committee on Question o. 9 and our answers are provided in that question.

Basically, sovereignty rights are important to state in the Agreement and it is a standard clause of maritime boundary agreements because EEZ is where States have the ability to govern any activity that happens within that State. So, it is a very important clause in maritime boundary agreement and that clause is also guided by the provision of Article 56 of UNCLOS where it talks about the rights and the kind of rights that you can exercise within your EEZ boundaries.

So, I note that there is perhaps, some things that you might need further clarity on and we are happy to take this back and offer you written submissions on the issue.

HON. LT. COL. P. TIKODUADUA.- Thank you. I think the agenda of the Forum, sort of, is a distinction between the definition of sovereign and sovereignty, so that is the reason why I asked that question. Perhaps, a written reply would be alright. Thank you.

MS. T. VAKADEWABUKA.- Yes, Sir, that is correct. Under UNCLOS, there is a differentiation between the two but we would like to ask perhaps, if we can come back to you and further distil this and set this out by way of a written submission.

HON. LT. COL. P. TIKODUADUA.- Subject to Mr. Chairman's guidance, on what day do you perhaps, reckon you should submit that by because I think we are starting to write our report very soon.

MR. CHAIRMAN.- Honourable Members, any other questions?

HON. A. JALE.- The other suggestion that came from the PIFS was the titling of Article 2 in the Draft Agreement to read, 'International Law' other than 'Purpose'. What is the view of the team or the Solicitor-General on that because we were are told that this is the format of the previous Agreements that Fiji has signed with other countries?

MS. T. VAKADEWABUKA.- Thank you, Mr. Chairman. This is Article 2 that reads, 'The Purpose of the Agreement'?

HON. A. JALE.- Yes, but they are suggesting that the heading be, ‘International Law’. They feel that it is more relevant or the title should be ‘international law’ rather than ‘purpose’. I understand from your presentation that this is a format that you follow with the other Agreements that you signed with other States but that is the suggestion from them. What is your view?

MS. T. VAKADEWABUKA.- Sir, from my understanding because if you read Article 2, I am not sure if you can see our slide, that basically is just a small interpretation of the purpose of the Agreement. I am not sure if I am hearing you correctly but, are they asking for additional clause or renaming this to international law? Article 2 is just for the purpose of the introduction of what the objective of the Agreement is.

HON. A. JALE.- They are suggesting a change from “purpose” to “international law”. I do not know, but you are saying that we are following the same format that have reached with other regional countries in the past. So I am just putting it to you for your response.

MS. T. VAKADEWABUKA.- It is noted, Sir. We note your comments but from our end, we would ask that be kept as “purpose” merely because it is just the introductory provision in the Agreement itself. Thank you.

MR. CHAIRMAN.- Honourable Dr. Salik Govind, Honourable Selai Adimaitoga? HON.

S. ADIMAITOGA.- Thank you, Sir.

HON. DR. S. GOVIND.- No, Mr. Chairman.

MR. CHAIRMAN.- To Mr. Emberson and the Team, on behalf of the Standing Committee on Foreign Affairs and Defence, I thank you again for making the time and coming before the Committee. Should we have any other pressing questions that you are oblige in answering them for us.

With those few words, I thank you all once again. As I said earlier, it is starting to paint a better picture in our minds now and this will help us to do our final report for presentation to Parliament. If you have any departing comments, Mr. Emberson, the floor is yours, thank you.

MR. P. EMBERSON.-Thank you, Mr. Chairman. I wish to reiterate our privilege and honour to come before you and we look forward to receiving any further clarification you need and we shall definitely be submitting a more elaborate breakdown on the question by the Honourable Tikoduadua on sovereign and sovereignty, and we should have that to you in the next 24 hours, Mr. Chairman. Again, thank you very much and on behalf of the team before you, thank you for the privilege.

MR. CHAIRMAN.- *Vinaka*. Thank you once again. The

Committee adjourned at 10.04 a.m.

The Committee resumed at 11.47 am.

Interviewee/Submittee: **Department of Energy**

In Attendance:

1. Mr. Deepak Chand - Acting Director of Energy
 2. Mr. Ashneel Reddy - Senior Officer
 3. Ms. Marica Ratuki - Principal Engineer
 4. Ms. Lesi Vuatalevu - Manager Policy
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MR. CHAIRMAN.- A very warm welcome to the Ministry of Infrastructure, particularly the Department of Energy. To Mr. Deepak Chand and your Team, Sir, and for the benefit of the general public who may be listening in or viewing this virtual screening this morning, may I introduce the Honourable Members of the Standing Committee on Foreign Affairs and Defence.

(Introduction of Committee Members by Mr. Chairman)

We have before us, ladies and gentlemen, the Team from the Department of Energy of the Ministry of Infrastructure, Transport and Meteorological Services, who will be presenting on the Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th November, 2015.

Mr. Chand, without further ado, Sir, I give you the floor to provide us with your submission, Sir.

MR. D. CHAND.- Good morning, Honourable Members. Before I proceed with the submission, I would like to introduce my team.

(Introduction of Department of Energy Officials)

MR. D. CHAND.- Thank you, Mr. Chairman. I will start with our submission. We have actually submitted the word document to the Committee. This submission is the virtual submission to your Standing Committee.

On the Amendments to the International Solar Alliance (ISA) Framework Agreement, I would like to give a brief introduction of ISA and the whole energy sector in Fiji.

Firstly, climate change, pollution, resource depletion and environmental concerns are the driving shifts to more sustainable forms of energy. Fiji has made a significant commitment through sustainable energy for all National Determined Contribution (NDC) and also in line with all those commitments which had made in the international arena, it has been in line with our National Development Plan.

Our NDC targets towards the energy sector was to generate 100 percent electricity through renewable energy sources by 2036. The other one is the reduction of carbon dioxide from the energy sector by 30 percent. Out of this 30 percent of the reduction of carbon dioxide, 20 percent is actually coming from renewable energy and the rest 10 percent is coming through energy efficiency programmes. The total investment which will be required to do all these work on the commitments

that have been made in the NDC requires around US\$2.97 billion and this will reduce actually 627,000 tonnes of carbon dioxide, at least, by 2030.

The potential renewable energy in Fiji, Mr. Chairman, is mostly hydro, solar, biomass and wind. Hydro builds more than 50 percent of the renewable energy in Fiji. We are slowly developing into solar but we are more into efficient energy. Also, we have biomass technologies in Fiji. We also have wind potentials, minor ones but we are slowly doing research and development in this area and we are slowly generating Butoni Wind Farm as well.

The future potential renewable energy would be the ocean energy and hydrogen energy. Just for your information and if you follow(inaudible)....., ocean energy is currently a new technology and there are three types of technologies - wave energy, tidal energy and ocean thermal energy. All these three types of energy are currently very new, perhaps these technologies are currently developed in the European market and then slowly once it has developed, it will be brought into other areas around the world.

Just for your information, ocean energy currently holds around 120 megawatts(inaudible/unclear)....this is already at the primary stage. Hydrogen energy on the other hand is also a clean technology but currently there is lot of more specific development done, so that is safe to use.

Geothermal, on the other hand, two studies have been carried out by the World Bank and the Ministry of Economy with the Department of Energy on the potential of geothermal. However, the geothermal exploration technology requires an initial capital cost which is expensive to explore.

Renewable energy generation from the past eight years is around 54 percent and the rest is being generated through the heavy fuel oil and industrial fuel oil which are(inaudible).... Solar energy plays a major part in the contribution of renewable energy due to its objectives due to clean and emissions-free energy. Fiji is rich in solar energy potential with an average irradiance of five pixels an hour. This is very good for countries which we know have rich solar potential, they should have at least an average of four to five pixels an hour, which means four to five pixels an hour will have the maximum irradiance fall into the solar panels.

The solar energy has high potential to push renewables in power mix, generally increasing energy efficiency, offsetting the use of ...(inaudible).... power generation technologies. Also, solar energy technologies takes less time in construction and can be connected through the various types of projects, like grid connect solar farms, hybrid systems, solar home systems, grid connector solar rooftops and water ponding systems. It is also easy to install in rural areas.

There are some development partners in renewable energy. Currently for Fiji, the Government takes a major role which is through our Ministry of Infrastructure and Meteorological Services. EFL is also doing the implementation of the power system and also the Ministry of Economy because they are the agency that is doing the funding and also arranging the international partners to come in.

We would also like to acknowledge our private companies. These private companies are the contractors who are actually doing the ground work for us in all the aspects of the power system, plus the transmission and distribution.

We would like to acknowledge our suppliers and not forgetting the Independent Power Producers (IPPs) that we have in our country, for example, Tropik Woods and others, who are around the country.

We would like to acknowledge academic institutions, both our local institutions plus overseas institutions, for their offer through capacity building.

We would also like to acknowledge our community contribution. Without the community, we actually cannot do our projects well. The reason being they are the main partners to do or to move things on the ground and also to commit relationship and the end-users are our communities, so we really acknowledge them.

Our international partners are also one of the major contributors to all the energy sector in Fiji. To name a few, the following are the contributors:

- (25) International Renewable Energy Agency (IRENA);
- (26) We also have the Japan International Cooperation Agency (JICA) involved. As you might have been aware through the Budget announcement, you would have seen that \$3.5 million has been allocated for capacity-building through JICA.
- (27) We also have the Korea International Cooperation Agency (KOICA) coming in, who has assisted many projects previously and currently there will be one major project which is coming up. This is in Mua, Taveuni, where we will be building a 1.5 megawatts solar pump there, so that Taveuni Island will have 100 percent electrification.
- (28) We have the SPC onboard.
- (29) We have the World Bank programme. Currently we have Sustainable Energy Finance Programme which is in-house with us, which is currently assisting in the soft loan processes from providing the 50 percent bank guarantee.
- (30) We also have the Asian Development Bank (ADB).
- (31) We also have UNDP with us.
- (32) We have Global Green Growth Institute (GGGI).
- (33) We have the GIZ.
- (34) We have the European Union with us.
- (35) We have the new one which is going to make submission here which is the International Solar Alliance.

Just before we move ahead, I would like to mention something called solar application in Fiji. Since this submission relates to solar and presenting something on solar, just for background information, Mr. Chairman, for our solar systems, we have more than 13,000 systems at the moment as we speak. This solar system has been given to the rural, remote and isolated areas where our grid extension programme cannot reach there or it will take a lot of time to reach there.

In Taveuni, we have assisted 13,000 households already. We have solar water pumps now currently which was carried out by the Mineral Resources Department (MRD) through our consultation.

We also have solar hybrid system. Recently, I believe you can see in the media from the last two weeks, that there are many energy issues going out on the papers, on the Government website, even *Facebook*, mainly I have seen one out of five posts are coming are on energy-based issues.

Recently, our Honourable Prime Minister has just commissioned the Nakoro Solar Hybrid Project which was on *Twitter*. Also, our Honourable Minister has commissioned one of the solar hybrid systems at Yasawa High School.

The total cost of solar hybrid systems was around \$1.7 million which was funded through the European Union and GIZ was the implementing agency.

We are also working on the the on-grid solar supply. Currently, we have around 3 megawatts which has been fed-in with the tariff system. We have some industrial customers, the commercial customers also through EFL and we have also some domestic customers coming in slowly. So currently, there will soon be a workshop which will address all those solar applications in Fiji.

On our NDC implementation, Mr. Chairman, a total of more than 120 megawatts is expected to be generated from solar alone, to allow Fiji to achieve its renewable energy target.

I would like to show some photos here. This is the Nakoro Project you have seen that the Honourable Prime Minister had commissioned this project. This is a recent project with new technologies.

Nakoro is actually based in the central part of Viti Levu which is really remote and transmitting or pulling grid extension from them or grid extension line would be very expensive, so this is one of the technologies by having their hybrid system and micro-grid assist to achieve our renewable energy target, plus the energy access. I would like now to go directly on the International Solar Alliance (ISA) for the submission.

I would now like to go directly to the submission and would like to just give a background on ISA. So basically ISA, which you can see from the trademark or it is at the bottom of the slide, was launched in Paris which has been declared by the Indian Prime Minister, Honourable Narendra Modi and the French President, Francois Hollande, at COP 21.

The Honourable Prime Minister signed the Framework Agreement in COP22 in Marrakech, Morocco. On September, 2017, Fiji deposited the Instrument of Ratification, the framework (inaudible)..... A total of 70 UN members have already signed the initial framework and out of these, 44 have (inaudible) ...with the ratification process. This was the original agreement, Mr. Chairman.

The ISA is the coalition of solar resource rich countries to address special energy needs and provide the platform to collaborate on addressing the identified gaps through a common, agreed approach. The ISA has a dedicated platform for cooperation among solar resource rich countries where the global community, including bilateral organisations, industry and other stakeholders, can make a positive contribution to assist and help achieve the common goals of increasing the use of solar energy in meeting the energy needs of prospective international solar alliance members

countries in a safe, convenient, affordable, equitable and sustainable manner. This was the original introduction or international brief on the Solar Alliance Agreement.

Mr. Chairman, the main proposed amendment which is made on this Framework is that the membership of this Agreement was limited to solar resource rich countries partially between the Tropic of Cancer and also Tropic of Capricorn. So along the Tropic of Cancer and Tropic of Capricorn, they were mostly developing countries along this region. So what the ISA need was that they need to actually have the developed countries and rich countries to come in so that they can have the funding and they can recall some projects along that line.

What they have done now, the proposed amendment will now have membership to all States and are members to the United Nations, so they have opened this category now. It is for all the countries and our nation and they are subject to the UN. So, all ISA Members will require to sign the Agreement and they proceed the necessary Instruments of Ratification acceptable and approved through the ratification process. So, that is the major change in the new amendment and the rest of the seven amendments that are there, they are all linked to that major amendment. So, the major change is, they have opened the regions, from the Tropic of Cancer and Tropic of Capricorn to all members around the globe.

Mr. Chairman, the benefits of Fiji accepting the Amendments, this will actually be beneficial to our country, which will develop network, the members to achieve renewable energy targets. Fiji will be able to access the ISA technical programmes which include solar application for agriculture, scaling solar mini-grids, scaling rooftop solar and scaling solar e-mobility and storage. It will also cross-cut, if you have cross-cutting programmes which will include the affordable finance, online information/communication platform. The major thing is that, we will be able to have capacity-building, standardization and research which will all be part of the benefits of the new amendments.

The reinforcement of Fiji's commitment towards the climate change and reiterate Fiji's demonstration of global climate change leadership, I believe that our Honourable Prime Minister is championing climate change issues around the world. So, this will really assist our country in moving ahead and championing the climate change issues.

There will be also, if this thing moves on, there will be plenty solar programmes coming into the country and this will have direct benefits, for example, there will be employment opportunities, increase in agriculture activities, increase in rural electrification, better education, better health and many social benefits which will be beneficial when accepting this Agreement.

That was our submission, Mr. Chairman, on the Amendments of the Framework.

MR. CHAIRMAN.- Thank you, Mr. Chand. I now give the floor to the Honourable Do you have any questions for Mr. Chand and his Team?

HON. A. JALE.- Mr. Chairman, we want to ask questions. Can I start? MR.

CHAIRMAN.- Yes, Honourable Jale you may start.

HON. A. JALE.- Thank you for the very informative presentation and we are so glad that we have you this morning. You have a goal - renewable energy goal that you will have 100 percent renewable energy in Fiji in 2036 which is only about 16 years away. I would ask you to give us a brief on whether you are on track or not, to be able to achieve your goal?

The second bit of it, this Framework has already been ratified by Fiji. Our understanding is that, this is an Amendment to the Framework. In order for Fiji to accept this Amendment, it just have to exchange a Verbal Note with the Ministry of Foreign Affairs in India. That is our understanding of the process that needs to be done. We need clarification from you on those. Thank you.

MR. D. CHAND.- Thank you for the question, Honourable Member. On the renewable energy target, Mr. Chairman, at the moment Fiji is actually doing renewable energy generation and is 60 percent at the moment and most of it is coming from the hydro systems. We also have the Rural Electrification Programme and 2 percent of the contribution is coming from our solar energy at the moment. I totally agree that the target is really near to Fiji at the moment which is few years from us.

Just for information, Mr. Chairman, currently Fiji has the Power Development Plan. I believe certain projects have been located which has been planned which includes the generation power from the new hydro dams. It includes the power generation from the biomass technologies, other renewal technologies which are currently taking place slowly and developing, which will actually enable us as a country to reach the 100 percent renewable energy target.

The question was, are we on track? To answer that question Mr. Chairman, I believe, yes, we are on track to reach that goal to achieving 100 percent. I believe as you can see in the National Development Plan (NDP), the NDP programmes are located for Renewable Energy Development Programmes which will enable Fiji reach that target.

Also, Mr. Chairman, the Framework Agreement for the ISA, this is the kind of programme that Fiji would like to have on board. This kind of programme actually assists Fiji communicate abroad, get the investors in, go for capacity building, have the advice through policy documents, we are able to share our knowledge and gain our international knowledge, bring it back to Fiji and they are able to implement this project.

So, this is where the ISA Framework comes in. We have similar types of arrangement also with IRENA. We have seen, Sir, that from last year, Fiji was a member of the IRENA, which has really assisted Fiji in renewal energy in the country. Through all these (inaudible)..... we are able to increase our(inaudible)..... contribution. Just for the first question, yes, I have to get in line to achieve that 100 percent renewable energy in 2036.

The other question, Mr. Chairman, was on the submission through the ratification. I believe the International Solar Alliance(inaudible).... this Agreement to be signed and also to go through the ratification process so that there is a commitment that Fiji is ready to work with ISA. Thank you.

MR. CHAIRMAN.- Thank you, Mr. Chand, for your explanation. Honourable Dr. Govind?

HON. DR. S. GOVIND.- Thank you, Mr. Chairman, through you, what I have learnt was that, you need at least five peak sun-hours to actually generate solar. What I have noticed is that in the Central Division....

MR. D. CHAND.- Mr. Chairman, we are having a bit of problem with the sound and we are not able to hear your comments on the last part of the question, Sir.

HON. DR. S.GOVIND.- Yes, I have not completed. So what I was saying is that, ideally you need five peak sun-hours to generate solar. What I have noticed is that in the Central Division, it is

very different from the Western Division and Northern Division because in the Central Division, even though you have a solar powered hot water systems and all, you always have to boost with the electricity to heat the water system. So I wanted to know whether the Central Division has this five peak sun-hours or there is a difference between Northern Division and Western Division? The other thing is that, if there is difference, whether you need different technologies to generate solar power in these Divisions within Fiji? That is my first question.

My second question, is there any subsidy from Government for domestic use if they want to generate solar power for their water and electricity use? Thank you.

MR. D. CHAND.- Thank you. The Honourable Member's questions are very valid questions. Regarding the solar energy potential in Fiji, the Honourable Member is true, there is a big difference between the solar potentials around the country. Just for the Committee's information, the Department has conducted the solar resource potentials in the country. What we have done, the funding actually came through ...(inaudible)... funding and it was around one hundred thousand something, I am not actually sure about the amount.

We actually did a satellite monitoring which is called mesoscale and microscan. We have done the modelling with the mesoscale technology and microscan technology, we have done a modelling across the country to actually document the solar needs potential areas in Fiji. So including that determination, we have also based ...(inaudible)... some places around Viti Levu where we also have that one with our services. But our Department has also carried out the measurement through the parameters to determine the solar installation around the country. And what we have found from those two studies was that the Western part of Viti Levu has the higher solar potential and also the Northern part of the country has the highest potential. I totally agree with the Honourable Member's question, actually the recommendation that we could have less solar installation in this part of Viti Levu. That is why we can see most of our solar installations are done in the Western, plus the Northern part of the country.

To overcome, Sir, the lack of solar installation, the best technology practice would be to have the solar batteries installed with our solar systems so that we are able to capture energy which is produced during daytime and use it during night time. In that way, we will be able to maximise our solar capture and with that, we will be able to actually use efficiently through the off-sun hours.

There are many projects actually in solar installation, one of them is what the Honourable Member was saying, which is about the solar heating system. I believe it will directly affect the solar installation falling on the modules. I believe there is no other installation technology to actually meet the deficient installation falling on that solar heating system and then we have to use our electrical system to boost the solar water heating system.

For the other technology which is the electrical generation, that is the fuel penetration, actually there would be no one support the ...(inaudible)... The reason being there will be some capacitor dense and they are invertors now that we need to modify the invertors which has the capacitor inbuilt in it and if there is not enough solar installation, it is able to internally connect itself and then provide the certain voltage and penetrate through the distribution line.

Also the transformer capacitor which is ...(inaudible).....system and which has a number of transformers which are able to hold those type of scenarios. However, if the general usage and in case there is a less installation, then less power is pumped into ...(inaudible).....and then if there is more installation then there will more power pumped into...(inaudible)...

In talking about our battery system, we have batteries installed in our systems because batteries do the same thing which I have explained earlier, like they capture energy during the day time and they can use it when there is no energy.

So, for all our electrification systems, Mr. Chairman, we use the battery technologies so that we are able to overcome when there is no sunshine. But the average peaking, like before when we consider the total average sunshine it comes to 5 peak sun-hours consideration the high installation, the good day and the next day, the average comes to four to five peak sun-hours.

Considering the subsidy, actually we would like to develop a solar panel. Currently we are starting with solar rooftop grid system which is being(inaudible).... Once we will be able to get the data and the benefits, the advantages and the disadvantages, then we will develop a solar ... (inaudible)... whereby our recommendation we will also give subsidy to customers who are having solar rooftop panels or having solar parts or any solar application difficulties. Those are the information, Mr. Chairman.

Fiji has actually given tax free holiday to whoever imports or bring in solar technology to Fiji. We do not charge any tax on them, so it is an incentive to people who bring solar technologies into Fiji. I believe, Mr. Chairman, I have answered the Honourable Member's questions.

HON. DR. S.R. GOVIND.- Thank you.

MR. CHAIRMAN.- Honourable Members, are there any other questions.

I have one, Mr. Chand. You mentioned in one of your slides geothermal being too expensive and you are aware, Savusavu has geothermal energy there and also in Tabia, Labasa. I guess it would be wise says that you will not know the potential until you do a survey. Have you been able to do a survey on that? I mean, those two thermal energy sources have been around for years. I remember in Savusavu way back in the 1960s.

MR. D. CHAND.- Mr. Chairman, I acknowledge your question. Just for Honourable Members's information, there was a study done, I think, it completed last year. It was through the World Bank funding and also, the Department was working with the Ministry of Economy. Actually they have done some study on the two sites which you have mentioned, Sir, and from that study, they have found out that it is a costly exercise to actually drill, to actually go and measure the actual potential of the geothermal potential.

However, since we have already focused on that, et cetera, what we decided is to shelve that programme at the moment which will cost around \$5 million just to drill. Also, at the moment, we are looking at other potential investors to come in and go and drill, it would be a risk to whoever is going to drill those sites. The reason being, it might be feasible and it might not be feasible. If it is not feasible and the potential is not that much, it will only generate around 2 megawatts to 4 megawatts. So there is not that much operation from those site. Whoever is investing in that project will need to take that risk. If the potential is not there, they have to take that risk.

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

Since there are no other questions, we would like to thank Mr. Chand and your Team for coming before the Standing Committee on Foreign Affairs and Defence this morning. If you have any departing comments, the floor is yours, Sir.

MR. D. CHAND.- Thank you, Mr. Chairman, for your time. The

Committee adjourned at 11.00 a.m.

The Committee resumed at 12.28 p.m. **Interviewee/Submittee: The**

Pacific Community (SPC) In Attendance:

- | | | | |
|-----|-------------------------|---|---------------------------------|
| (3) | Ms. Molly Powers-Tora | - | Team Leader, Ocean Intelligence |
| (4) | Mr. Malakai Vakautawale | - | Maritime Boundaries Advisor |
| (5) | Mr. Andrick Lal | - | Senior Geodetic Surveyor |
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MR. CHAIRMAN.- A very warm welcome to Ms. Molly Powers-Tora and the Team from SPC GeoScience Commission (SOPAC). For the benefit of the general public who may be listening in or viewing this telecast this morning, a very warm welcome to you all and just by way of introduction, if I could introduce my Committee Members.

(Introduction of Committee Members by Mr. Chairman)

A very warm welcome to you, Ms. Tora and the Team. A brief introduction from your good selves and then the floor is yours, Madam, for your presentation.

MS. M. POWERS-TORA.- Thank you. Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence of the Parliament of the Republic of Fiji. As the acting team leader for Ocean Affairs, I am honoured to address the Committee on behalf of the Pacific Community's Ocean and Maritime Programme today. May I extend the sincere apologies of our Acting Deputy Director Oceans and Maritime, Mr. Jens Kruger, who due to prior commitment, is regrettably unable to be with us to make this submission.

I would also like to acknowledge the presence of my team members, Mr. Malakai Vakautawale and Mr. Andrick Lal, who helped prepare this presentation. They are also the technical leads on the Pacific Regional Maritime Boundaries Project and stand ready to provide any additional technical details should questions arise following this presentation.

Thank you, Mr. Chairman and Honourable Members for the invitation extended to the Pacific Community's Geoscience, Energy and Maritime Division which was formally known as SOPAC, to speak about the Agreement between the Republic of Fiji and Solomon Islands concerning their maritime boundary.

Before I do that, would you allow me, Mr. Chairman, to share some slides with you and also provide some context on the Pacific Community, specifically the role we play in supporting Pacific Member countries to delimit their maritime boundaries.

MR. CHAIRMAN.- Yes, Madam, thank you.

MS. M. POWERS-TORA.- Thank you, Mr. Chairman. The Pacific Community is the principal scientific and technical organisation in the Pacific region working for the wellbeing of Pacific people through the effective and innovative application of science and knowledge, guided by a deep understanding of Pacific Islands' context and culture.

Originally established as the South Pacific Commission, SPC was founded under the Canberra Agreement in 1947 by the six participating Governments that then administered the

territories in the Pacific Islands Region, namely; Australia, France, New Zealand, the Netherlands, the United Kingdom and the United States of America. Now, our 26-member strong membership includes the 22 Pacific Island Countries and Territories, along with four of the original founders.

The name ‘South Pacific Commission’ was changed to ‘Pacific Community’ at the 50th Anniversary Conference in 1997 to reflect the organisation’s Pacific-wide membership and I have just shown you the other eight divisions, the various technical focuses of these divisions and, of course, we represent the oceans and maritime transport programme here in the Geoscience, Energy and Maritime Division.

In 2011, the Pacific Islands Applied Geoscience Commission known then as SOPAC merged with SPC and it is now known as the Geoscience, Energy and Maritime (GEM) Division based here in Suva and is the largest division of SPC, currently headed by the director, Dr. Andrew Jones.

With that, Mr. Chairman and Honourable Members, since 2001, SOPAC and now SPC, has been the home of the Pacific Regional Maritime Boundaries Project, so a decade’s long initiative, originally established to assist Pacific countries to obtain greater certainty in the limits of their EEZs to support fisheries management and enforcement.

The Project has supported the successful declaration of 19 shared boundaries between countries since 2001, and this rate of progress is unprecedented elsewhere in the world. It underscores the strength of relationships between countries and partners, as well as the commitment of all parties to progress this critical work. So, you can see we have a 73 percent rate of achievement, as compared with the global rate of 67 percent, we are really leading the world on this area.

As Project lead, the SPC coordinates and supports the range of activities, including the regional working sessions, workplace attachments, in-country workshops and placements, legal drafting, political advocacy, negotiations, technical assessments and field surveys.

The Project is also supported by a consortium of partners, as you can see here, including the Pacific Islands Forum Secretariat (PIFS), the Forum Fisheries Agency (FFA) and, of course, Australia, New Zealand, the European Union and others. It serves all of these countries and the overarching objective is aligned with Priority 1 of the Framework for a Pacific Oceanscape, which is to secure maritime jurisdictional rights and responsibilities of countries. It also supports achievements of SDG 14, specifically Target C which is to implement the 1982 UN Law of the Sea Convention or otherwise known as UNCLOS.

Mr. Chairman, for the information of the Committee, in moving from the technical to legal and political realms, SPC works closely with the Pacific Islands Forum Secretariat and the Office of the Pacific Ocean Commissioner to achieve these milestones, and to secure the maritime jurisdictional rights and responsibilities of all Members in accordance with the UNCLOS.

We understand that the PIFS has also provided a submission to your Committee, and advise you that they have shared with us their submission and analysis of the Draft Agreement as well.

In this regard, we stand by and reiterate the comments made by our Forum colleagues, reinforcing the urgency and importance of securing the region’s maritime boundaries as a key issue for the development and security of the region, and the security and wellbeing of the Blue Pacific which is featured here. This is the Blue Pacific Continent and represents 30 percent of the world’s EEZs. If we remove Australia and New Zealand, it is still 20 percent of the world’s EEZs. The remainder of this submission will feature SPC’s comments on technical elements and legal

considerations in the draft text, as well as the procedural steps remaining to bring a treaty between the two countries into force.

Mr. Chairman, please, also kindly allow me to take this opportunity to clarify SPC's advisory role. As representatives of a regional organisation, it is our duty and privilege to serve all Member Countries with the advice and technical support they require. When it comes to specific queries regarding the current or future status of maritime boundaries with neighboring States, however, we must defer such questions to the Maritime Affairs Coordination Committee (MACC) and our counterparts in Fiji's Ministry of Foreign Affairs, Navy - Hydrographics, and Ministry of Lands and Mineral Resources teams, as they will be best placed to consider Fiji's national interests.

With that, Mr. Chairman, we are pleased to provide a summary of our technical comments for the Committee's review. As the Committee is aware, the UNCLOS is the international agreement that establishes all coastal States' rights to a marine jurisdiction. Under UNCLOS, all coastal States are entitled to a territorial sea, under Article 3, extending 12 nautical miles or approximately 22 kilometres from the baseline, and the baseline is defined as the low waterline along the coast.

States are also entitled to a contiguous zone under Article 33, extending to 24 nautical miles or approximately 45 kilometres from the baseline, and an EEZ extending to 200 nautical miles or 370 kilometres from the baseline.

For the information of the Committee, Mr. Chairman, the high seas are those areas beyond or external to the EEZ. As per Article 86 of UNCLOS, the high seas refers to all parts of the sea that are not included in the EEZ of a State.

Where countries' entitlements to maritime zones overlap, they are encouraged to negotiate a shared boundary, and this is done by calculating an equidistant median line, which is a line every point of which, is an equal distance from the nearest points on the respective coasts as demonstrated, as I have shown in this image I have shown you. This is a representative image, no particular country is represented here.

Base points are determined to construct the equidistant line and those are often used as the starting point for maritime delimitation. As an example Mr. Chairman, this animation also demonstrates how the 12, 24 and 200 nautical mile zones are mapped and how a technical solution can be prepared for Pacific Island Countries with overlapping EEZ. With the equidistant median line drawn between the North and South intersecting points in this pink zone that you see between the two overlapping States maritime zones.

We understand that the overall status of regional maritime boundaries progress has already been highlighted to the Committee, but we will take this opportunity to also note that of the 48 overlapping or shared boundaries in our region, 13 remained to be concluded. And of the 13 shared boundaries remaining, three relate to Fiji's shared boundaries with Solomon Islands, Tonga and Vanuatu.

With regard to the Fiji and Solomon Island boundaries, Mr. Chairman, as the MACC have already advised the Committee, Fiji's EEZ was deposited to the United Nations Division for Ocean Affairs and the Law of the Sea (UNDOALOS) in 1982.

Given the information available at that time, the Solomon Islands maritime boundary was declared under Chapter 95 of the Delimitation of Marine Waters Act 1979, noting that Fiji and Solomon Island's EEZ overlapped by 400 metres with a total area of approximately 36 square

kilometres. The positional reference system that was used to determine this was based on the obsolete World Geodetic System from 1972.

More recently, with the availability of the latest geospatial data and information for Fiji, namely Rotuma in 2010 and the Solomon Islands, Fatutaka, in 2007, this calculations have been updated. So Fiji's and Solomon Island's EEZ overlaps by 4.3 kilometres with a total area of approximately 232 square kilometres. The positional reference system used in this case is based on the internationally recognised World Geodetic System from 1984.

During the Maritime Boundaries and Ocean Governance Workshop from 25th November, 2013 to 6th December, 2013, the Maritime Boundaries Teams from Fiji and the Solomon Islands finalised the equidistant median line between the two States, together with the Schedule of Coordinates and an illustrative chart which is shown in the Draft Agreement. This is aligned to Article 15 of UNCLOS – Delimitation of the territorial sea between States with opposite or adjacent coasts.

The Fiji Maritime Boundaries Team which carried out this work was comprised of Ministry of Foreign Affairs, Ministry of Lands & Mineral Resources, Fiji Hydrographic Office and the Solicitor-General's Office delegated staff. The Solomon Islands Maritime Boundaries Team was comprised of the Attorney-General's Office, Department of Geology & Mines and Ministry of Foreign Affairs Office delegated staff.

The equidistant median line was computed using maritime boundaries delimitation software recognised by UNDOALOS. The base points from Rotuma and Fatutaka drew equidistant lines to define the intersecting points on the 200 nautical mile lines on the North and South into intersecting points of the shared maritime boundary.

The SPC Maritime Boundaries Team provided the technical assistance and support to both the Pacific Island States and the technical team confirms that the Schedule of Coordinates under Article 3 of the Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary sent to SPC by the Standing Committee on Foreign Affairs and Defence of the Parliament of the Republic of Fiji on 10th September 2020, are correct as validated using a recognised geospatial software.

In summary, Mr Chairman, SPC fully supports and confirms the accuracy of the technical work undertaken by the Fiji and Solomon Islands Teams in delimiting their shared boundary.

Before sharing our legal comments, Mr. Chairman, please allow me to restate that the first and foremost reason to complete the delimitation of maritime boundaries and delineation of maritime zones is for Members to exercise their right to exert maritime claims as Parties to UNCLOS.

The compounding issue is the region's biggest security threat namely, climate change. The findings on the recent Intergovernmental Panel on Climate Change (IPCC) report on 1.5 degrees, provide clear evidence of the urgency of responding to this threat.

In the context of maritime boundaries, it means securing our place in the face of sea-level rise, ocean acidification and the potential erosion or submersion of base points on reefs and small islands that generate and define our maritime zones. As an example, allow me to point out the satellite images on the slide here, depicting a sand cay in Hawaii that was severely reduced by cyclone in 2018.

While we understand some of the sand has since returned to the cay since this event and more monitoring is likely necessary. It really does demonstrate the eminent threat that climate change, sea-level rise and extreme weather events may pose to fragile atolls and reef systems. If the same islands or reef systems serve as base points or have base points generating maritime zones, these may pose a risk to the stability of Pacific Islands EEZs as UNCLOS not provide absolute certainty over ocean space in the phase of sea-level rise.

The SPC is currently leading a project called the Resilient Boundaries for Blue Pacific Project funded by the Australian Government, which seeks to analyse the risks and identify legal and technical solutions to ensure the security of Pacific maritime zones. And we are doing this in partnership with the Maritime Boundaries consortium.

At the 2020 Regional Conference on Securing the Limits of the Blue Pacific, the Legal Options and Institutional Responses to the Impacts of Sea-Level Rise on Maritime Zones, in the context of International Law (a conference that was held virtually over the last two weeks), Pacific Island Members once again emphasised the criticality of concluding all outstanding maritime boundaries claims and zones, and related bilateral treaties and legal frameworks.

Regarding legal considerations, Mr. Chairman, SPC relies upon the advice of our consortium of partners, including the Australian Attorney-General's Office, the Australian Department of Foreign Affairs and Trade, the Pacific Islands Forum Secretariat and the Office of the Pacific Ocean Commissioner.

With respect to the Draft Agreement, we have conferred with our colleagues and support the comments made by Dr. Filimon Manoni of the Pacific Islands Forum Secretariat to this Committee last week regarding the Draft Agreement.

Of particular note, we highlight the Forum's observation relating to Article 6 - Adjustments to Maritime Boundary. While Article 6 is a standard clause in most Maritime Boundaries Treaties, it could be read as supporting the argument that a maritime boundary is ambulatory or can move. Indeed, our legal consortium colleagues concluded that once it enters into force, this provision would require Fiji and the Solomon Islands to revise the treaty line set out in Article 3, if there is a sufficiently significant physical change to the coastline that would affect the relevant base points on Fatutaka in the Solomon Islands or on Rotuma in Fiji.

As our Forum colleagues have noted, this interpretation does not support the regional views and the Leaders' commitment to secure maritime boundaries is unchallenged and unchanged, despite sea-level rise and climate change.

In summary, Mr. Chairman, SPC recommends to review Article 6 of the Draft Agreement. Mr.

Chairman, SPC welcomes this submission as an opportunity to applaud the Fiji Maritime Boundaries Team on their collaborative technical and legal efforts with the Solomon Islands thus far, and further encourage the conclusion of this boundary.

Please, allow me, Mr. Chairman, to draw your attention to the flow charts provided, which outline the steps to establish Maritime Zones and in our submission, it is Figure 5, and the Maritime Boundary Treaties in Figure 6. You will note that the versions provided to you are slightly updated from those pictures on the slide. These were, as defined under UNCLOS and endorsed by the UNDOALOS.

When both dates are prepared to progress to treaty signing, SPC, the Pacific Islands Forum and the Maritime Boundaries Consortium typically support national delegations to organise signing ceremonies often in the margins of the Annual Pacific Island Forum Leaders Meeting. Given the unusual circumstances of this year, in person treaty signing may not be possible, but if countries do not want to wait until the next in person Leaders Meeting to sign their treaties, virtual signatures ceremonies can be arranged and even with media coverage, if so desired.

Once this Maritime Boundary Treaty is signed, the Government of the Republic of Fiji may consider, with advice from the MACC, what legislative steps will be necessary to bring it into force. As noted, this may include an exchange of Diplomatic Notes. Following these steps, the treaty can be deposited with the UN Treaty Section and the treaty Schedule of Coordinates and charts deposited with UNDOALOS for official publication. Only at this point, will the boundary be concluded and the coordinates be available for use by maritime users, for example, fisheries management and for navigational purposes.

Another key consideration, particularly for Fiji will be the harmonisation of this new and finalised boundaries with Fiji's national legislation, linking them to relevant and dependent Acts and policies, for example, the Marine Spaces Act 1977 and the Continental Shelf Act 1970, as well as those Acts governing fisheries and resource use.

Mr. Chairman, the MACC can best advise the Government on these steps and SPC stands ready to assist them with advice or technical support as needed.

Finally for your information, Mr. Chairman, please note that SPC is supporting the Fiji's Ministry of Foreign Affairs to organise and lead the national maritime boundaries workshop with the MACC next week to look at all of these issues in further depth, and we are looking forward to that workshop.

In conclusion, Mr. Chairman and Honourable Members, we close our submission by commending the Republic of Fiji and the Solomon Islands Government for their active efforts to conclude one of the 13 remaining shared boundaries in our region. This is a very important and tangible step forward that supports a collective commitment to conclude outstanding maritime boundaries and limits, and in view of the urgency and importance of securing the region's maritime boundaries for the development and security of the region.

On the basis of this submission, Mr. Chairman, the SPC supports the completion and signing of the agreement between the Republic of Fiji and Solomon Islands concerning their shared maritime boundary and hopes that this submission is of assistance to your Committee.

I thank you, Mr. Chairman and Honourable Committee Members for your time and consideration, and the Team stands ready to answer any questions you may have. *Vinaka vakalevu.*

MR. CHAIRMAN.- Thank you, Ms. Tora for your very, very informative submission. Yes, it has certainly been of great assistance to the Committee and we thank you once again. You briefly mentioned about a workshop in week after next, is that right?

MS. M. POWERS-TORA.- That is correct.

MR. CHAIRMAN.- If you do not mind, Ms. Tora, if you could just forward to Jacob at the Secretariat the details of that. Maybe, if we could possibly join you in that forum as a Committee to better understand the maritime boundaries.

Honourable Members, do you have any questions for the Team? Honourable Jale, the floor is yours.

HON. A. JALE.- I think Honourable Tikoduadua is also trying to raise some questions with the Team. Yes, indeed, when we met with the team from PIFS, the issue of a finality clause came up which really interacts or is related to Clause 6 that you have raised here. I wonder whether you have looked at the Draft Agreement that this Committee is considering. You raised your reservation about the impact of climate change on agreements and this finality clause was recommended by the PIFS and, again, by you. Did you ever raise this matter with the Solicitor-General's Office and what was the reaction from them?

MS. M. POWERS-TORA.- Mr .Chairman, we note the question of the Honourable Member. If none of my team are keen to answer, please allow us to confirm and furnish you with that as via email. My understanding, however, is that the current version of the Draft Agreement was done many years ago before we had done much research into the challenges of sea-level rise in the potential threat of sea-level rise to maritime boundaries, et cetera. Hence, why that clause is included in nearly all Maritime Boundaries Treaties.

Following from some of the more recent research and actions of our leaders, it is now recommended that we do not include such clauses. But the Draft Agreement predates those discussions.

HON. A. JALE.- Mr. Chairman, can I raise the issue about their advice on the Tonga one, we got only Tonga and Vanuatu left now? How far have you gone in terms of advising Fiji about the same exercise that you have helped them in reaching this Agreement with the Solomon Islands? What about Tonga and Vanuatu, how far have you gone in terms of advising on this type of EEZ Maritime Agreement with those two countries?

MS. M.P. TORA.- Thank you, Mr. Chairman, for the question. I may defer to one of my colleagues to follow up on that, Mr. Andrick Lal, please.

MR. A. LAL.- Thank you, Mr. Chairman. May I answer this question from the Honourable Member, we have been working with the Technical Teams in Tonga and in Vanuatu as well, and providing the same technical assistance in support with the definition of their territorial sea boundaries and also doing a technical solution for the median line as well.

We have just completed a report for the territorial sea baselines for Tonga and we have submitted that to the Government of Tonga as well, and we have also defined the archipelago for Vanuatu likewise and completed that work and it is with the Government of Vanuatu. We may also be able to provide some further comments on this as to how we are providing it with other countries through e-mail. Thank you very much.

HON. A. JALE.- Thank you.

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

Since there are no further questions from Honourable Members, to you, Ms. Tora and your Team, thank you once again for coming before the Committee and if you have any departing comments, the floor is yours, Madam.

MS. M.P. TORA.- Thank you, Mr. Chairman and Honourable Members for your time and attention this morning. We really value this opportunity to share some of the work of the Team and also work with you in reaching this really important achievement for Fiji and for the region. Thank you very much.

The Committee adjourned at 11.35 am.

[VERBATIM REPORT]

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

AGREEMENT/PROTOCOL/CONVENTIONS

9. **Amendments to the Framework Agreement of the Paris Declaration on ISA.**
10. **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.**

**INSTITUTIONS: (1) Ministry of Foreign Affairs
(2) Ministry of Defence, National Security and
Policing**

VENUE: Big Committee Room (East Wing)

DATE: Tuesday, 22nd September, 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 SEPTEMBER, 2020 AT 10.10 A.M.

Online Interviewee/Submittee: Ministry of Foreign Affairs

In Attendance:

- Mr. Peter Emberson - Director Multilateral Bureau
- Ms. Keleni Seruvatu - Principal Multilateral Bureau
- Ms. Karyn Gibson - Principal Foreign Service Officer for

Multilateral Bureau

MR. CHAIRMAN.- Honourable Members, a very warm welcome to Mr. Peter Emberson, Ms. Keleni Seruvatu and Ms. Karyn Gibson. For the benefit of the general public who may be watching or listening in to this livestream this morning, I wish to introduce the Honourable Members of the Standing Committee on Foreign Affairs and Defence.

(Introduction of Committee Members by Mr. Chairman)

MR. CHAIRMAN.- A very warm welcome to you, Mr. Emberson, and Team. Perhaps, we have seen your good selves many a time in this Committee and forum. So, without further ado, Sir, I give the floor to your good selves. Please, before you do that, for the benefit of the general public, the Ministry of Foreign Affairs Team will be submitting to us on these subjects:

- Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th November, 2015; and
- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Mr. Emberson, the floor is yours, thank you.

MR. P. EMBERSON.- Thank you, Mr. Chairman. It is, indeed, our privilege and honour to come before you, again, after yesterday to address the two Conventions.

The first presentation, Mr. Chairman, on the Amendments of the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th November, 2015 will be presented by Ms. Keleni Seruvatu. That will be followed by the presentation from Ms. Karyn Whiteside Gibson, who will be addressing the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Without further ado, Mr. Chairman, through you, I wish to invite the presentation by Ms. Keleni Seruvatu. Thank you, Mr. Chairman.

MS. K. SERUVATU.- *Vinaka vakalevu. Bula vinaka*, Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence.

On the Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th November, 2015, the purpose of our submission this morning is

to propose Fiji's acceptance of the proposed Amendments to the International Solar Alliance (ISA) Framework Agreement.

We note that the Government of India and France had established the International Solar Alliance (ISA) in 2015 at the margins of the 21st Conference of the Parties (COP21) to the United Nations Framework Convention on Climate Change (UNFCCC) in Paris.

Fiji had signed the ISA Framework Agreement in 2016, becoming one of the founding members as well. In 2017, Fiji ratified the Framework Agreement.

Now, as we might have heard this morning, the ISA aims to collectively address key common challenges to scale up solar energy applications in line with the needs of its member countries.

The purpose of our submission this morning, Mr. Chairman and Honourable Members of the Committee, relates to the amendments that have been proposed on the ISA Framework Agreement. In our submission, we will be speaking on the three highlights of the Amendments, the:

- (36) expansion of membership of the International Solar Alliance (ISA) to all the UN Member Countries, as opposed to the original wording in the Framework Agreement which had restricted membership to solar-rich resource countries, which lies fully or partially between the Tropic of Cancer and the Tropic of Capricorn;
- (37) deletion of the term 'partner country' from the Agreement; as well as
- (38) opening up of observer status made available to those whose applications are pending and organisations that can support the objective of ISA.

In terms of the implications of the amendments that have been proposed for the Framework Agreement, the Ministry of Foreign Affairs wishes to submit that the amendments reflect the significance of multilateralism and collective action for enhancing energy security and sustainable development, and to improve access to energy in developing member countries.

Expanding the membership of ISA to all UN Member States also provides opportunities for rich collaboration and exchanges on best practices with solar-rich countries. The ISA can be the main vehicle for creating ideas on the implementation of SDG 7, which is on affordable and clean energy. It also has cross-cutting implications on the attainment and implementation of other various SDG targets, for example, SDG 2 on agriculture and food security, SDG 13 on climate change, as well as SDG14 on oceans, amongst other SDGs.

On SDG 7, Mr. Chairman and Honourable Members of the Committee, the fact that a standalone goal on energy has been identified collectively by the United Nations (UN) through the UN Member Countries, it really reflects the global recognition, the need for affordable and clean energy worldwide. Although access to electricity is increasing, as the population continues to grow, so will the demand for cheap energy and an economy reliant on fossil fuels will create drastic changes to our climate. Therefore, we are proposing today in our submission that clean energy has cross-cutting implications as well on the overall vision of Agenda 2030.

Now, energy, as we know is the main contributor to climate change, producing around 60 percent of greenhouse gases and the statistics on this are clear, Mr. Chairman and Honourable Members of the Committee, that more than 40 percent of the world's population rely on polluting

unhealthy fuels for cooking and other household activities.

The renewable energy sector; as of 2015, more than 20 percent of power was generated through renewable sources. So the renewable energy sector also employed a record 10.3 million people in 2017. So, we can see, Mr. Chairman and Honourable Members of the Committee, investment in renewable energy and solar wind and thermal power as well, also improves energy productivity and is vital for the achievement of SDG 7.

Alternative clean energy sources, Mr. Chairman and Honourable Members of the Committee, in terms of its relation to the achievement of the Paris Agreement and our various commitments internationally, our membership of the ISA is a big part. It contributes to the various policies that we already have in place, the various multilateral commitments under the Paris Agreement, under the Green Global Framework and under our Carbon Emission Strategies. Our membership to the ISA contributes to all those existing commitments and those national initiatives that we have that complement our international commitments.

So Honourable Members of the Committee, we are proposing this morning that the amended ISA Framework aligns with the various commitments that we have and it also contributes to the implementation of our commitment in decreasing our carbon emissions and our Nationally-Determined Contributions (NDCs) target of approaching 100 percent renewable energy come 2030.

On this note, regionally as well, we wish to highlight that Fiji, within the region, is not the only member of the ISA at the moment. We are joined by other countries in the region, including Nauru, Tuvalu, Papua New Guinea, Tonga, Vanuatu, Kiribati and Samoa. It also aligns with the establishment this year of the Regional Pacific Nationally Determined Contribution (NDC) Hub Office in Suva. So with all those measures regionally, we can say that our commitment under the ISA towards regional implementation as well as national implementation, they are all aligned with our membership of the International Solar Alliance and we, therefore, wish to support the amendments that have been proposed to the Framework Agreement in this regard. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Ms. Seruvatu, for your brief submission on that particular Treaty. I guess we will ask Honourable Members if they have any questions for Ms. Seruvatu before we move on to the next Treaty.

Since there are no questions, probably, you might have questions to ask in the next submission, so thank you, again, Ms. Seruvatu. We now hand the floor to Ms. Karen Whiteside Gibson. The floor is yours, Ma'am.

MS. K.W. GIBSON.- Thank you. Good morning, Mr. Chairman and Honourable Members of the Committee, again, by way of introduction, the purpose of this submission is to provide an analysis for you on Fiji's proposed ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Distinguished Members, allow me to provide a detailed background on Fiji's history and current status. In 1993, Fiji ratified the Convention on the Rights of the Child (CRC). Honourable Members, 12 years later, in 2005, we signed the Optional Protocol. Currently, 176 States are party to the Optional Protocol.

This Protocol is essentially an extension of measures from the CRC that States parties should

undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography.

Honourable Members, you might ask, what would mean in terms of our commitment. It is simply a commitment to increasing the protection of our children.

Should Fiji ratify the Optional Protocol? It promised, that as a State Party, that we will commit to achieve the items listed in your paper, we:

- (6) will prohibit and understand the definition of sale of children, child prostitution and child pornography;
- (7) will ensure that at a minimum, the acts and activities as described in Article 3 are fully covered under our criminal or penal law, whether these offences are committed domestically or transnationally, or on an individual or organized basis;
- (8) will adopt appropriate measures to protect the rights and interests of child victims, from the practices prohibited under the present Protocol at all stages of the criminal justice process;
- (9) will take all necessary steps to strengthen international cooperation through multilateral, regional and bilateral arrangements for the detection, prevention, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism; and finally; and also
- (10) submit, within two years following the entry into force, 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.

In terms of why Fiji should ratify the Optional Protocol, as previously mentioned Fiji is party to the CRC and signed it in 2005. Ratification will further strengthen Fiji's commitments and obligations under the CRC and complement relevant existing national laws and policies.

Fiji is in compliance with the minimum requirements of the Optional Protocol and, therefore, faces no legal impediment to its ratification, given our Constitution and other relevant national laws. Furthermore, ratification will also promote co-operation and strengthen international relations with other State Parties who have acceded to or ratified the Optional Protocol.

In closing distinguished Members, Fiji should ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. It is consistent with the laws of Fiji, it reflects our values, it protects our children and it reaffirms our commitment to global solidarity. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Ms. Gibson, for your contribution. I will now give the floor to the Honourable Members if you have any questions for the panel this morning.

HON. A. JALE.- Thank you very much for the presentation. The issue that I want to clarify and I think it is of interest to this Committee, is Fiji's position in terms of meeting fully the requirements of the Optional Protocol. This is the Optional Protocol, we have already ratified the

Convention in the past and this is the optional one. Now, you were talking about the Constitution and laws that are in place that fully meet the requirements of the Optional Protocol. Are you sure of that or there are other pieces of legislation that need to be brought in to address some of the requirements of the Optional Protocol?

MS. K. GIBSON.- Thank you, Sir. I believe the Constitution and other national laws and policies provide a wide framework for us to work within. I think certainly your question is important, that there would be most likely areas that we could also look into where legislation might be necessary.

MR. P. EMBERSON.- If I may come in, Mr. Chairman, I think the Optional Protocol is the specific part that prohibits the sale of children, child prostitution and child pornography and the need for us to strengthen this component in our legislation, to ensure that we have minimum the acts and activities described in Article 3 are fully covered under our criminal and penal law, and whether these offences are committed domestically or transnationally across our borders and to ensure that this is brought into our legislation that the trans-boundary nature of those criminals acts are able to be prosecuted domestically as well. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you. Honourable Members any further questions?

Since there are no other questions, Mr. Emberson, Ms. Seruvatu and Ms. Gibson, we take this opportunity to thank you once again for coming before us. If we do have any other pertinent questions, if you do not mind obliging to answer those by email through our Secretariat. With those few words, I thank you all once again.

If you have any departing comments, Mr. Emberson, the floor is yours, thank you.

MR. P. EMBERSON.- Thank you, Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence. Thank you for the privilege to present to you this morning and we shall be instructed if a need for further clarification comes to us, and we shall provide by way of a written submission. Thank you again, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Mr. Emberson, and the Team. The

Committee adjourned at 10.30 a.m.

The Committee resumed at 10.57 a.m.

Interviewee/Submittee: Ministry of Defence, National Security and Policing.

In Attendance:

- | | | | |
|----|----------------------|---|---------------------|
| 5. | Mr. Joji W. Dumukoro | - | Manager |
| 6. | Mr. Epi Rakatakele | - | Industrial Attachee |
| 7. | Ms. Kiti Nakalevu | - | Admin Officer |
| 8. | Ms. Lavenia Waitale | - | Executive Officer |
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MR. CHAIRMAN.-First and foremost, welcome to Mr. Dumukuro and the Team from the Ministry of Defence, National Security and Policing. For the benefit of the general public, just by way of introduction, if I can introduce the Honourable Members of the Standing Committee on Foreign Affairs and Defence.

(Introduction of Committee Members by Mr. Chairman)

Also before us, submitting on the three Treaties is the Ministry of Defence, National Security and Policing and they will be submitting on:

- (1) Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary;
- (2) Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th November, 2015; and
- (3) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

With those few words, Mr. Dumukuro, I, again, welcome you and your Team with Mr. Eroni Rokisi, Ms. Kiti Nakalevu and Ms. Lavenia Waitale. The floor is yours, Mr. Dumukoro, thank you.

MR. J.W. DUMUKORO.- Thank you, Mr. Chairman. Just by way of introducing our Team, we have Mr. Epi Ratakele, who has replaced Mr. Rokisi, who has accompanied the Permanent Secretary to the meeting this morning.

Thank you, again, for giving us the floor and in terms of responding to the Fiji and Solomon Islands Maritime Boundary Treaty I understand, we have actually sent our PowerPoint presentation. If I may run through that quickly, just for us to follow in terms of the various slides.

Mr. Chairman, in terms of Fiji's position, we do understand the ensuing consultations that have been made between our Ministry of Foreign Affairs and, of course, with the Ministry of Foreign Affairs from the Solomon Islands, in terms of the maritime boundaries and, of course, the discussions to actually have a treaty in order to bind the two States in terms of the maritime boundary.

In terms of Fiji's position from a security perspective, our maritime space plays a vital role in our economic progress through the sustainability of our resources. We do understand that given our EEZ with those still have to be agreed in terms of our resources in terms of those EEZ. So basically our position is, we do support this intention.

The confirmation of the above Treaty ensures the clear demarcation of our maritime boundary. Of course, to ensure the protection of our Maritime Domain Awareness (MDA) through the detection of illegal activities that impact our maritime safety, security, our economy and environment.

The Ministry is consulting to draft a Maritime Security Strategy (MSS) that encompasses challenges, threats, opportunities and mitigation by the agencies involved.

The National Security Council in its meeting held on Thursday, 17th September, 2020, approved the reactivation of the Maritime Security Committee (MSC), to oversee the security affairs of the Maritime Boundary in the absence of the MSS. So, basically, Mr. Chairman, the reactivation of the MSC is actually to oversee all those security affairs. So, basically we will, of course, engage a local consultant, who will be drafting this Maritime Security Strategy and, of course, work with the consultant on the various challenges, threats and, of course, the mitigation process.

It also enhances our search and rescue region by working collaboratively with the Solomon Islands. So, basically, if there is any search and rescue mission, under this Treaty, we are able to work collaboratively with the Solomon Islands.

It also facilitates the extradition of those who commit an offence, such as trafficking of drugs; Illegal, Unregulated and Unreported (IUU) fishing; arms smuggling and prostitution in the high seas within their respective territories. And, of course, it enhances the joint patrol of our EEZ.

The way forward, Mr. Chairman, the Ministry of Defence, National Security and Policing supports the finalisation of the Fiji and Solomon Maritime Boundary Treaty. That is all, Mr. Chairman, in terms of the Security and Defence indication on the Draft Treaty.

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

HON. A. JALE.- Yes, the issue of policing this agreement has been something discussed by the Committee. What has been the stand of the Ministry of Defence in terms of policing our area? You are talking about security, unlicensed and unregulated fishing that happens in our EEZ area, what have you done or what has the Authority done in terms of overseeing that, that we have effective means of enforcing this right or sovereignty or whatever of Fiji in terms of this agreement?

MR. J.W. DUMUKORO.- Thank you, Mr. Chairman. In response to the Honourable Member's question, we have in place a bilateral cooperation with the New Zealand Government. So, basically those naval vessels from New Zealand normally come to Fiji and patrol our EEZ, together with our enforcement agencies, and that is something that we always piggyback on.

Another platform is the regional platform from the Forum Fisheries Agency (FFA) which, of course, the Member States can hire aeroplanes and, of course, paid for by the FFA. Another incident now is even the COVID-19 restrictions in place, the New Zealand Government in consultation with the defence assets they are able to release one of their aircrafts to patrol the whole Pacific and, of course, negotiations are currently underway to actually have Fiji as a station/base for the
.....(inaudible)

Basically, those are the current platforms that are in place. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you for that explanation, Mr. Dumukuro. I just have a question, you mentioned in your presentation, the Ministry is consulting the Draft Maritime Security Strategy. Would this not be done at the Fiji Maritime Affairs Coordination Committee (MACC) level, Mr. Dumukuro?

MR. J.W. DUMUKORO.- Thank you, Mr. Chairman. I think that is a valid question. We have a working committee and I think the first meeting was held last month. Of course, I have actually presented the need to have this Maritime Security Strategy (MSS).

Basically, the MSS is a sub-strategy from the National Security Strategy (NSS), focusing on maritime threats and challenges. Basically it will, of course, outline some of the outputs in order for the stakeholders or agencies to mitigate to those threats.

There are four pillars under the MSS:

1. Technology – the use of technology;
2. Resource Capability - the educational modes or capabilities;
3. Gaps - threats, opportunities, vulnerabilities; and
4. Bilateral co-operation.

Basically, those are the four pillars of the MSS and we would, of course, be putting out a tender for a local consultant to actually draft this MSS.

MR. CHAIRMAN.- Thank you for your explanation, Mr. Dumukoro.

If there are no further questions, Honourable Members, we will proceed to your next presentation please, Mr. Dumukoro. Thank you.

MR. J.W. DUMUKORO.- Thank you, Mr. Chairman. Our next presentation is on the Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance (ISA). We only have three slides of the powerpoint and they form the basis of our position in terms of supporting this Framework.

In terms of Fiji's position, the amendment as outlined in the Framework would strengthen Fiji's position in accessing policy, financial, capacity building and technological assistance in terms of accessing renewable energy sources to meet national development goals. So basically, Mr. Chairman, this is quite important.

Fiji is, of course, a party to this Framework and being the former president of COP, we stand ready to support any initiative that is climate-friendly and contributes to a clean and safe environment.

You will note, Mr. Chairman that in the amendment, there has been a suggestion to remove partner country, so basically the removal of partner countries provides exclusive rights for member countries to the Paris Agreement to make informed decisions without being influenced by those partner countries. So, you will note that there are countries who actually are rich in oil, like in the Middle East and they tend to actually oppose this Paris Agreement simply because if countries move towards renewable energy, they will lose out on the oil industry. So basically, the removal of partner countries provides a good platform to make sound decisions in the executive level.

HON. LT. COL. P. TIKODUADUA.- *Vinaka.*

MR. J.W. DUMUKORO.- The second slide really is just the way forward. We do support the amendment of the Framework Agreement of the Paris Declaration on the International Solar Alliance and the amendment, of course, does not have an impact on our position and we do of course, welcome the amendment. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you again, Mr. Dumukoro. I read with interest there, the removal of partner countries and I think you hit the nail on the head there when you spoke about the oil rich or oil producing countries. I was thinking in my mind as to where exactly are the OPAC countries sitting, whether they are sitting between the Tropic of Cancer and the Tropic of Capricorn. But thank you for that enlightenment Mr. Dumukuro.

Honourable Members, do you have any questions?

Since there are no questions, thank you, Mr. Dumukuro. If you could go up to your third submission now, please.

MR. J.W. DUMUKURO.- Thank you Mr. Chairman.

Mr. Chairman, in response to the submission on the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, my presentation really outlines the scope that would provide our position in terms of responding to the consultation on this particular Optional Protocol. The inclusion in there is the summary of the Pacific Islands that have signed and ratified this particular Protocol, apart from the scope that I have highlighted in my slide.

Mr. Chairman, in terms of Fiji's status, I have virtually highlighted some of the various laws in place that would, of course, support the intricacy of this particular Protocol. We should understand that Fiji actually signed the Convention on the Rights of the Child (CRC) on 2nd July, 1993, and ratified the same on 13th August, 1993. However, in terms of Optional Protocol, Fiji signed this on 16th September, 2005 and I am glad, Mr. Chairman, that we are in the process of ratifying this particular Protocol in order for Fiji to have full access to the technical assistance and funding under this particular instrument.

We note that under our supreme law - the Constitution, there is reference in terms of the definition of a child, as an individual who has not reached the age of 18 years. Basically, the Constitution overrides any other definition of our existing laws.

In terms of section 111 and section 121 of the Crimes Act, they criminalise the trafficking in persons and children into Fiji or the(inaudible) into Fiji of other persons or children. Basically, that is of course the provision in the Crimes Act.

We have also noted that section 226 also criminalises the sale of a child with the intention to expose the child to employment or be used for unlawful immoral purposes, such as prostitution and illicit sexual intercourse with any person. Basically, we are actually covering those two areas in terms of child prostitution and child pornography.

In terms of section 230 of the Crimes Act, it also criminalises the living on earnings of prostitution or solicit in person for immoral purposes in the public place. In addition, it criminalises trading and abating prostitution, so basically, it also cover in terms of prostitution.

Section 377 of the Crimes Act - trafficking of obscene publications. This criminalises the distribution and public exhibition of obscene publications, whether in writing, drawings, prints, paintings, printed matter, pictures, posters, albums and photographs, including films. Basically, this is the circulation of pornographic pictures, Mr. Chairman.

In terms of section 91 of the Employment Relations Act 2007, it criminalises the use, procuring or offering of a child for prostitution. So, there is an element of prostitution covered under section 91 of the Employment Relations Act 2007.

Part 5 of the Immigration Act 2003– Trafficking and Smuggling of Persons, section 17 to section 37 criminalises the recruitment, transportation, transfer, harbouring or receiving of a person for the purpose of exploitation and this includes any forms of sexual exploitation. So, basically, Mr. Chairman, the Immigration Act generalises whether it is committed by a child or adult, it spells out the general offences under this particular condition.

Under the Juveniles Act 1973, it highlights the definition of a child and you will note that those under the ages of 14 years are called young persons, between the ages of 14 years to 18 years are called juvenile and those under the age of 18 years are referred to as a child or a young person. As I have alluded to earlier, the Constitution, of course, overrides that definition. We will, of course, use all those who have not reached the age of 18 years to be referred to as a child in this instance.

Section 62(a) of the Juveniles Act 1973, criminalises the participation, observation, publication, solicitation, reproduction, viewing of excessive form of media or records of pornographic activity whether directly or indirectly involving a juvenile. This is, of course, an important amendment which complements the provisions under the Crimes Act.

Under section 25 of the Online Safety Act 2018, it criminalises the posting of intimate visual recording of an individual without consent. Furthermore, the requirement of consent does not include the consent of a child, so basically that is under the Online Safety Act 2018.

You will note that given the chairmanship of the committee to work on the review of the National Action Plan, we are actually proposing for a draft Human Trafficking Strategy which we have completed. So, Mr. Chairman, the Draft Human Trafficking Strategy and the National Action Plan, we have aligned those to the Palermo Convention which is for prevention, protection, prosecution and partnership.

It is a whole of government approach to eradicate all forms of trafficking for the purpose of providing sexual servitude, prostitution or any other forms of worst or forced labour, whether domestically or internationally. So, basically, Mr. Chairman that provides a summary of all those laws that have provisions in relation to or are pertinent to the Optional Protocol.

This slide provides us with a summary of those countries in the Pacific that have actually signed or ratified the Optional Protocol. You will note that Australia actually signed and ratified this in 2001 and 2007 respectively. Fiji signed this in 2005 but is in the process of ratification. In Kiribati, you will note that they have actually acceded to this in 2015, likewise the Marshall Islands in 2019, Micronesia in 2002, Nauru, of course, in 2000, New Zealand both signed and ratified in 2000, Samoa in 29th April, 2016, Solomon Islands is in the same position as Fiji and you will note that Vanuatu signed and ratified this in 2005. So, basically, that is the summary of those Pacific Islands in terms of the Optional Protocol.

Mr. Chairman, the next slide provides you with the summary of the Optional Protocol from Articles 1 to 17 basically those are some of the key elements. This provides a basis of assessing our position and align it to our domestic law. So what I said, we have domesticated the intricacy of the Protocol under those laws that I have mentioned. Again, like I said, in the absence of the extradition treaty for any two member States, this Optional Protocol can be used to actually extradite a person. So, basically, it provides us with a legal basis of extraditing a person from one country to another in terms of this Protocol.

Why Fiji should ratify? Mr. Chairman, it strengthens Fiji's commitment and obligations under the Convention on the Rights of the Child and its Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Basically, it strengthens our commitment and obligations.

It also promotes victim support and awareness. Basically, once we ratify this, we can access those (inaudible)....actually provide victim support and, of course, creating awareness to the general public. It complements our existing laws and it also promotes and strengthens international relations and cooperation between State Parties. Lastly, it strengthens Fiji's commitment and obligations to other international conventions.

Mr. Chairman, the way forward, we support the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography. I thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Mr. Dumukoro, for that very informative presentation on that particular Convention. Honourable Members, are there any questions for Mr. Dumukoro and the team?

Since there are no questions, thank you again, Mr. Dumukoro. If the Committee does have any pertinent questions, if you will oblige by answering them through email to our Secretariat. We thank you for the opportunity to come before us and to the general public listening in to this telecast, thank you for taking interest in your Parliament.

With those few words, I thank you again, Mr. Dumukoro and the Team. *Vinaka*.

MR. J.W. DUMUKORO.- I thank you too, Mr. Chairman, and I also thank the Honourable Members for your indulgence. Thank you so much.

The Committee adjourned at 11.27 a.m.