ORAL SUBMISSION TO STANDING COMMITTEE ON JUSTICE & HUMAN RIGHTS ON THE CLIMATE CHANGE BILL NO 31 OF 2021
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(Please Check Against Delivery)

Honourable Chair and Hon Members of the Committee on Justice, Law and Human Rights.

Good morning. We thank you most graciously for your invitation to the National Federation Party to present some perspectives on the Bill before you, and therefore the opportunity for these perspectives to be considered.

Before I begin, I would like to bring to the Committee's attention that NFP had already made public its thoughts on two drafts of this same Bill through the Fiji Times in the years 2019 and 2020 respectively, and thus we have been following it keenly.

The Climate Change Bill No 31 of 2021

Honourable Chair and Members of the Committee, at the outset it is gratifying to finally see in this third version of the Bill that the 1.5 degree celsius limit as a global average temperature, being embedded in this third draft. Fiji, as a Pacific SID and member of the AOSIS negotiating bloc in the global climate change negotiations, this should have been captured right at the outset.

In the definition, the "Minister" as referred to in this Bill, as "the Minister responsible for climate change". It is understood that the Minister for Economy along with his other portfolios holds this responsibility, just as he is the Minister responsible for Elections. So, it becomes confusing when section 10(3)(a) compels the Minister for this Bill, to consult all Ministers including the ministers responsible for the economy -- which is himself. It just doesn't read right? Unless of course, it is forward-thinking ahead of the 2022 election outcomes where a new Minister for Economy may not necessarily be responsible for climate change.

In section 5(h) which details the principles of this Bill, there is only ONE reference to the term "loss and damage". This issue is a hotly contested one at the UNFCCC negotiations because of the confusion that it is only about insurance, but in relation to this draft before the Committee, it is disappointing that despite the lofty pledges to be guided by traditional knowledge, this draft does not even define what traditional knowledge is, yet it has gone ahead to define "talanoa"?

Apart from the lack of definition, there is nothing in the Bill as part of national concerns on Fiji specific loss and damage to record a robust inventory of

intangible or non-economic losses from all our communities who have traditions and customs when extreme weather events remove all traces to it. Such an inventory of losses should include: ancestral sites and journeys, language and dialects, soil type, traditional medicines, plants and herbs, food storage and preparation, folklore, chants, dance, song, history, genetic resources, geneaology, kinship ties, totems, burial sites, etc. The reason why I bring this up is if this is about insurance, we cannot claim for what we don't know we have – thus the need for this inventory.

The Minister for Economy in moving the motion to table this draft and refer it your Committee for the first reading, had stated the imperative for this Bill to be approved by Parliament before the climate change 26th conference of parties (COP) this coming November.

So while Part 3, beginning from sections 7 and 8 of the Bill makes reference to Fiji's commitment to the Paris Agreement by way of State party reports through nationally determined contribution (NDC) reports, Fiji should also be very aware that there are reports available from earlier in the year that synthesizes climate ambition through the global NDCs submitted so far, and global ambition on these commitments seems to have frozen up.

I bring this up to merely underscore that while we can codify "best practice", it will fall back on us to be honourable to ourselves in the first instance, and not just because of global imperatives, or global climate change financing commitments, which remain as empty pledges to this day. All the commitments made in this Bill, falls back on Fiji to uphold, to make the necessary institutional adaptations **AND** pay for, on our own accord.

Which brings me to the second point. Should this Bill be passed in the next sitting of Parliament, there are substantive inter-agency adjustments and internal changes that this Bill requires to be effected. However, in the Budget just passed, there is only about $1.2M allocated to Head 4, Programme 1, Activity 8 which is for "climate change and international cooperation" -- $1.06M of this allocation is to pay for established staff alone. There is no other allocation in any of the Heads in the budget dedicated to climate change.

The question is, are we passing this Bill just to look good for COP26, while willfully aware that we have not allocated funds to execute what this law needs to happen? It would be quite unfortunate if this Bill is used as leverage to make a "*multilateral miracle happen*", to paraphrase the Minister for Economy's own words, when he tabled this Bill.

Cabinet Committee on climate and disaster risk

At section 8, the Bill says "*All ministers must, where relevant and with the assistance of the Committee, take all reasonable steps within their portfolio to promote the achievement of any sectoral emissions reduction or limitation targets in Fiji's NDC*".

It would perhaps be more meaningful if this section is removed altogether, and the section 14 as was previously in the 2019 version of the Bill brings back a compulsory clause for a "*Cabinet Commttee on climate and disaster risk*" that is there to provide high level oversight of climate and disaster risks and national responses.

That is more necessary rather than devolving the mandate of Ministers downwards to **selected** Permanent Secretaries, as set out in section 12, through the National Climate Change Coordination Committee.

As a quick aside, I note that in the 2019 and 2020 versions of the Bill, **all** Permanent Secretaries were to be members of this Committee, but now a "*permanent secretary responsible for climate change*" which at this point in time no PS is,"*may nominate representatives from State entities*". For such a wide-reaching and multi-pronged law, this cannot be left open to personal preferences or whims. If section 19(1) states that *decision makers must promote and ensure consistency with climate objectives* and lays out 40 Acts listed in schedule 1, that should really translate to all 20 confirmed and/or Acting Permanent Secretaries as listed on the government directory via the digitalfiji platform.

At the cabinet level, such a *Cabinet Commttee on climate and disaster risk*s is pivotal if a "budget coding and tracking system" that is defined in the Bill as a system *to track and report on climate change related expenditure in Fiji* is to become a reality, as per section 87. The Minister responsible for finance cannot and should not be the sole conduit for "sustainable financing" as set out in section 87 -- these are necessary discussions for the cabinet level, otherwise, if we are to look against the 40 Acts related to this Bill as listed in Schedule 1, this law officially gives birth to a ***superEST*** Minister. Not just a super Minister.

Now that a carbon budgeting process, as a mechanism of long-term emissions reductions target is also a requirement that is extensively set out from sections 38(2) right through to section 42, it makes even more sense that a cabinet committee is there providing high level oversight.

Those discussions and negotiations need to happen at the cabinet level, to ensure cross-portfolio buy-in, ownership and complementarity. The worse thing that could happen is if all the essential institutional requirements across the 40 Acts listed in Schedule 1, are haphazard and helter-skelter.

For example, in the Bill the requirement for a carbon budget as per section 39, commits Fiji to a cap on the maximum level of the net Fiji carbon account and it should be a gradual phase-down of the cumulative amount of carbon dioxide (CO_2) emissions permitted, for 5 year periods.

The UK as the host nation for the COP26 scheduled for Glasgow in November, announced its 6th carbon budget in April this year, which for the first time incorporates the UK's share of international aviation and shipping emissions. Our Bill specifically excludes emissions from international aviation or shipping in section 3(3), however this could be over-turned in sections 43(1) and 111(a), where the Minister is allowed to make regulations on it, in order to give effect to the Bill.

In the UK for the budgetary periods 2008–2012, the carbon budget was 3,018 million tonnes of carbon dioxide equivalent.

For 2013–2017, the carbon budget was 2,782 million tonnes of carbon dioxide equivalent, and for 2018–2022 the carbon budget was 2,544 million tonnes of carbon dioxide equivalent.

For Fiji, it is conceivable that 5-year carbon budgets as such, and once set, could then allocated to every Government Department, that will in time dribble down to everyday individuals. It could be the difference between driving to your corner store to buy fresh bread in the morning OR walking, in order to ensure compliance with a carbon budget that Fiji will commit to. It is noteworthy that the reference year for which carbon budgets must be reduced in relation to, was the year 2019 in the 2020 draft of the Bill, and it is now the year 2013, in this current Bill before the Committee. There is nothing in the explanatory notes to explain this change.

Carbon budget commitments could mean that government capital expenditure for upgrades or new developments that generate greenhouse gas emissions, across the government's social services sector, the infrastructure sector, the economic services or primary industry sector or the general administration sector --- are more controlled.

Now that a carbon budget is also required to be tabled in Parliament within 10 days of its determination as set out in section 39(8), it is odd that there are no requirements for a debate or a process for Parliament to scrutinize these specifics, even for amended carbon budgets as set out in section 42. Carbon budgeting has wide ramifications for national development and money bills and as such, should require more rigorous parliamentary scrutiny.

If we overlay the annual budget process, with a new carbon budget approach, there is a need for synchronicity. This again justifies why a cabinet committee is essential.

Authorised Officers

The compliance mechanism of this Bill falls on Inspectors as "authorised officers" and perhaps the Committee may want to clean up how it is laid out right now.

Section 14 details that inspectors appointed as per section 18 of the Environment Management Act 2005 are also inspectors and authorised officers.

Yet, section 9(2) allows the Minister to also appoint a person or class of persons to be authorised officers. In section 9(3) it further allows the Minister to appoint suitably skilled officers or inspectors appointed under the Local Government Act to also become authorised officers.

It might be neater and seamless if all matters related to Inspectors or authorised officers, their required skills, appointments and powers under this Bill, are all in one place.

Carbon Sequestration Property Rights

It is noteworthy that Part 10 containing sections 45 right through to section 64, has had a major rewrite from the previous 2020 version of the Bill.

Section 45(2)a details that the registrar of Carbon Sequestration Property Rights is the Registrar of Titles. Whereas in the 2020 version of the Bill, a carbon sequestration property right is granted by the Registrar of Titles with the consent of the Conservator of Forests.

There appears to be a gap in the treatment of carbon sequestration property rights throughout Part 10, if blue carbon emissions reduction projects, for which mangroves, seagrasses and salt water marshes are valuable carbon stores, that for the most part can be found within customary fishing grounds in Fiji, is unable to be recorded.

Right now as it is written in the Bill, there is no avenue for the Registrar of Titles to align with registering these manner of blue carbon sequestration property rights, unless the iTaukei Fisheries Commission mandated in section 14 of the Fisheries Act is directly involved because this Commission already has a register of iTaukei Customary Fishing Rights, just as it has powers to conduct inquiries where ownership of customary fishing ground boundaries are contested. While the Fisheries Act is specific to fishing in customary fishing grounds, those same areas which may have mangroves, seagrasses and salt water marshes, are currently registered and protected.

Blue carbon is referenced throughout the Bill, yet there appears to be no specific mechanism to register these blue carbon sequestration rights. It is pointless if section 48(c) states that policies, procedures and safeguards for REDD+ are to be developed in accordance with the UN Declaration on the Rights of Indigenous Peoples, but the Bill does not permit an interface between blue carbon sequestration rights and customary fishing ground

owners, to register their exclusive and distinct legal rights to blue carbon sequestration and blue carbon stocks.

Part 14 at section 88 provides for incentives for the promotion of climate change initiatives. We can only caution that these provisions must not give rise to perverse incentives that undermine the intention of the Bill.

In the 2019 version of the bill that had at section 93 a 10-year moratorium on deep sea mining. It is disappointing that this was removed in the 2020 and the current version of the Bill. If we are serious about oceans protection in relation to climate change, this 10-year moratorium on deep sea mining must be bought back as per to the precautionary principle laid out in section 5(d).

Honourable Chair and Honourable Members of the Committee, that brings to a close some of the glaring aspects of the text of the Bill that NFP thought to share light on. We Thank You again for the opportunity and I'm happy to take any questions.

Vinaka.