

APPENDICES

Optional Protocol to the Convention on the Rights of the Child on the Rights on the Sale of Children, Child Prostitution and Child Pornography

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Schedule of Submissions on the Optional Protocol to the Convention on the Rights of the Child on the Rights on the Sale of Children, Child Prostitution and Child Pornography

Oral Submissions		
Date	Time	Submitters
Monday, 15th June, 2020	11.16am	University of the South Pacific (USP)
Tuesday, 22nd September, 2020	10.10am	Ministry of Foreign Affairs
	10.57am	Ministry of Defence, National Security and Policing
Monday, 28th September, 2020	10.49am	Ministry of Women, Children and Poverty Alleviation
	11.55am	Fiji Revenue and Customs Service (FRCS)
Tuesday, 29th September, 2020	9.32am	Save the Children Fiji
Monday, 5th October, 2020	10.22am	Ministry of Education, Heritage & Arts
	11.49am	Office of the Solicitor-General
	12.19pm	Office of the United Nations High Commissioner for Human Rights
	1.42pm	United Nations Children's Fund (UNICEF)
Tuesday, 6th October, 2020	9.30am	Pacific Conference of Churches (PCC)
	10.25am	Fiji Police Force (FPF)
Written Submissions		
Monday 21 st September 2020		Pacific Islands Development Forum
Tuesday, 6th October, 2020		Fiji Women's Rights Movement
Thursday, 8 th October, 2020		The University of Fiji
		The Human Rights and Anti-Discrimination Commission
Friday, 23 rd October, 2020		Pacific Islands Development Forum



OPTIONAL PROTOCOL TO THE CRC ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

DR NATASHA KHAN
The University of the South Pacific
15 September 2020

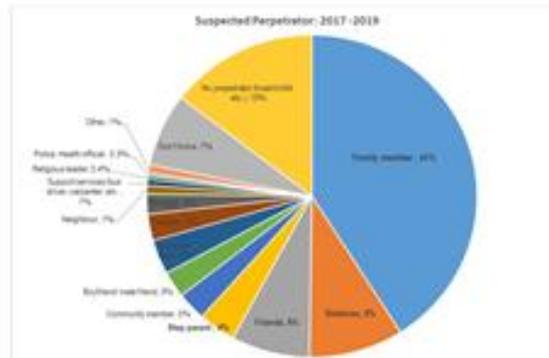
RATIFICATION OF THE OP-CRC-SC



- Of the 14 independent countries in the Pacific
 - only four countries have ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC) - Kiribati, RMI, Samoa and Vanuatu
 - only three countries in the PICs have signed this Optional Protocol - Fiji, Nauru and Solomon Islands
- Fiji ratified CRC in 1993 and signed the Optional Protocol in 2005.
- Ratification of the OP-CRC-SC will strengthen Fiji's commitments and obligations under CRC and will promote cooperation and strengthen relations with other countries, internationally as well as within the region
- Fiji's ratification of this Optional Protocol may also encourage other Pacific Islands Countries that have yet to sign and/or ratify this Optional Protocol to do so



Source: IOM/FAO/UNU, 2017-2018, Suva



Source: IOM/FAO/UNU, 2017-2018, Suva

SOME RESEARCH FINDINGS

- The 2018 ILO Report on Worst Forms of Child Labour states that the commercial sexual exploitation of children was rife. The main perpetrators of these crimes were **“family members, taxi drivers, foreign tourists, businessmen and crew on foreign fishing vessels”**.
- In a Master of Arts Thesis by Marie Fatiaki (2019), titled ‘A Study of the Trafficking of Children in Fiji for Sexual Exploitation’, she argued that **“socio-economic conditions of the family are the major causes of vulnerability and risk”**. In particular, it was found that children were forced into the sex trade by parents who neglected or abandoned them and families who could not provide for their well-being.
- The vulnerability of children in these situations would be exacerbated by the current effects of the COVID-19 pandemic in Fiji.

EXISTING FIJI LAWS

- The government has established laws and regulations related to worst forms of child labour but **enforcement continues to be sporadic and weak.**
- Three specific laws that link with this Optional Protocol are:

Prohibition of Child Trafficking	<ul style="list-style-type: none"> • Article 91 of the Employment Relations Promulgation • Article 20 of the Immigration Act • Articles 111–121 of the Crimes Decree (20,23,24)
Prohibition of Commercial Sexual Exploitation of Children	<ul style="list-style-type: none"> • Article 91 of the Employment Relations Promulgation • Articles 225–227 of the Crimes Decree • Article 62A of the Juveniles (Amendment) Act (20,23,24)
Prohibition of Using Children in Illicit Activities	<ul style="list-style-type: none"> • Article 91 of the Employment Relations Promulgation • Article 58 of the Juveniles Act (20,26)

MORE FINDINGS

- In a recent scoping study on Child Abuse in Fiji, the two key drivers of child abuse were identified:
 - **Opportunity**, in terms of close access/relationship by the perpetrator to children provided by home-setting and even community and village.
 - **Security**, in terms of the perpetrator's perception that the abuse may neither be found, nor reported due to being covered under the secure blanket of tradition and family values and even if reported, it would most likely be withdrawn from legal prosecution.

RECENT DEVELOPMENTS



- In 2018, it was reported that the **Fiji Police Force and the Department of Immigration** began meeting quarterly to discuss human trafficking issues involving foreign nationals.
- During this period, Fiji Police Force formalized the **Human Trafficking Unit (HTU)** to improve police anti-trafficking efforts within the country.
- **Fiji government** has insufficient social programs available to address the particular needs of child victims of human trafficking and commercial sexual exploitation, especially for boys and for children in remote areas.
- **NGOs** provide limited support services, but these are concentrated in the capital city of Suva.

HOW USP CAN ASSIST



- There is no specific obligations in the CRC and the Optional Protocols on non-state actors such as universities.
- States are the duty bearers in relation to human rights i.e. to respect, protect and fulfil all human rights.
- USP has worked in many aspects to promote human rights as it has expertise in human rights training and has been involved in strengthening human rights and governance across the Pacific government ministries, departments and various NGOs over many years.

SOME SPECIFIC USP INVOLVEMENT IN HUMAN RIGHTS



- The offering of governance courses at post-graduate level from the School of Government, Development and International Affairs for the last 18 years
- USP's School of Law has worked on the Disability Law and Policy in Fiji
- Significant hours of human rights skills trainings of law graduates which is covered in the Professional Legal Practice Diploma
- Development of courses on legislative drafting
- Judicial training development by the various departmental staff at USP
- Diploma in Leadership, Governance and Human Rights since 2013, which is the first programme in the Pacific region that focuses on human rights education exclusively
- The Bachelors in Pacific Policing
- Training for key stakeholders such as Ombudspersons, Police, Correctional Officers, Judiciary, AGs offices, inter-governmental agencies etc. by staff of different Schools of USP;
- Facilitation of human rights conferences, seminars etc.
- Research on Child Abuse in collaboration with Ministry of Women, Children and Poverty Alleviation;
- Publication of human rights materials
- Presence and participation at major international and regional human rights forums.

WAY FORWARD



- **Strongly endorse the ratification of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC)**
- Ratification will strengthen Fiji's commitments and obligations under CRC and promote cooperation and strengthen relations with other countries, internationally as well as within the region
- Ratification will indicate to the world that Fiji is serious about committing itself to human rights standards
- Fiji has respect in the Pacific as a leader in many different areas and the ratification of this Optional Protocol makes Fiji a country to emulate in the Pacific region

USPs ROLE IN ADDRESSING CHALLENGES TO OP-CRC-SC



- **One of the challenges** in monitoring and enforcement of sale of children, child prostitution and child pornography is the lack of synchronised data.
- USP, with experts in different areas of research would collaborate with the key agencies such as the MWCPA, Police, Immigration Department and DPP's Office to consider a series of workshops with a view to synchronize the categorization of sexually related offences.
- This will strengthen the links between agencies and make it easier to produce statistical analysis and targeted policies for enforcement of various forms of child abuse data in a coherent way.



THANK YOU
Questions & Discussion

Submission by the Ministry of Foreign Affairs



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

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

22 September 2020

1.0 INTRODUCTION

1.1 The purpose of this Submission is to provide an analysis to the Parliamentary Standing Committee on Foreign Affairs and Defence, on Fiji's proposed ratification of the abovementioned Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

2.0 BACKGROUND

2.1 Fiji ratified the Convention on the Rights of the Child ('**CRC**') in 1993 and signed the Optional Protocol on 16 September 2005, but has yet to ratify it. As at August 2020, 176 States are party to the Optional Protocol.

2.2 The Optional Protocol is an extension of measures from the Convention on the Rights of the Child that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography.

3.0 WHAT ARE WE COMMITTING TO?

3.1 The Optional Protocol is a commitment to increase the protection of children with the promise that as a State Party we will:

- a) Prohibit the sale of children, child prostitution and child pornography;
- b) Understand the definition of sale of children, child prostitution and child pornography;
- c) Ensure that, at a minimum, the acts and activities 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;

- d) Adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process.
- e) 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.
- f) 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.

4.0 WHY SHOULD FIJI RATIFY THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY?

- 4.1 Fiji is party to the CRC and signed the Optional Protocol on 16 September 2005. Ratification of the Optional Protocol will further strengthen Fiji's commitments and obligations under the CRC and complement relevant existing national laws and policies.
- 4.2 Given the Fijian Constitution and other relevant national laws, Fiji is in compliance with the minimum requirements of the Optional Protocol and therefore faces no legal impediment to its ratification.
- 4.3 Furthermore, ratification of the Optional Protocol will also promote co-operation and strengthen international relations with other State Parties who have acceded to or ratified the Optional Protocol.

5.0 RECOMMENDATION

- 5.1 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.
-

OPTIONAL PROTOCOL TO THE CONVENTION OF THE RIGHTS OF A CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Ministry of Defence, National Security and Policing

Scope

- Fiji's Position
- Summary of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Why Fiji should Ratify
- Way Forward

Fiji's Status

- Fiji signed the Convention on the Rights of the Child ('CRC') on 2 July 1993 and ratified the CRC on 13 August 1993.
 - Fiji signed the Optional Protocol on 16 September 2005 and has yet to ratify the above named Optional Protocol.
 - Constitution of the Republic of Fiji 2013 s163 – Interpretation
 - Crimes Act 2009 s111 – s121: Trafficking in Persons and Children
 - Crimes Act s226 – Prohibition of the Sale of a Child
 - Crimes Act s230 – Persons living on earnings of prostitution or persistently soliciting
 - Crimes Act s377 – Trafficking of Obscene Publication
-
- Employment Relations Act 2007 s 91 – Prohibition of worst forms of child labour
 - Immigration Act 2003 - Part 5 Trafficking and Smuggling of Persons: s17 – s 37)
 - Juvenile Act 1973 – Definition of a child
 - Juvenile Act s 62 A – Pornography activity involving juveniles
 - Online Safety Act 2018 s25 – Posting an intimate visual recording
 - Draft Human Trafficking Strategy and the Review of the National Action Plan

Pacific Island Countries – Signatory, Ratified or Acceded

Pacific Countries	Signatories	Ratification/Accession
Australia	18 Dec 2001	8 Jan 2007
Fiji	16 Sep 2005	
Kiribati		16 Sep 2015 a
Marshall Island		29 Jan 2019 a
Micronesia (FSM)	8 May 2002	8 May 2002
Nauru	8 Sep 2000	
New Zealand	7 Sep 2000	7 Sep 2000
Samoa		29 Apr 2016 a
Solomon Island	24 Sep 2009	
Vanuatu	16 Sep 2005	16 Sep 2005

Summary of Optional Protocol

- **Article 1** – prohibit the sale of children, child prostitution and child pornography
- **Article 2**- Provides definition for Sale of children, Child prostitution and child pornography.
- **Article 3**- State Parties shall ensure that Acts and activities are fully covered under its criminal or penal law whether these offenses are intentional or attempted to commit domestically or transnationally on an individual or organised. Appropriate penalties must be taken into account due to the nature of the offense. Furthermore State parties shall take appropriate legal and administrative measures in the adoption of a child.
- **Article 4**- State shall take appropriate measures to establish its jurisdiction over the offenses when it is committed in its territory, on board a ship or aircraft registered in the state. These measures shall be exercised or when the alleged offender is present in its territory and does not extradite him or her to another party on the ground that the offence has been committed by one of its nationals.
- **Article 5** – State parties that has existing or will have extradition treaties shall include offences that are highlighted in this protocol. However those state parties that do not have any extradition treaty may use this protocol as a legal basis for extraditing offenders subject to the existing legislation of the requested party. Moreover, if an extradition request is put forth and the requested State Party do not or will not extradite on the basis of the nationality of the offender, the State Party shall take suitable measure to submit the case to its competent authorities for prosecution.
- **Article 6** – State Parties shall assist one another in accordance with any treaty or other arrangements on existing mutual legal assistance or in accordance with its domestic law with investigation, criminal extradition proceedings and or obtaining evidence necessary for the proceedings.

Continue

- **Article 7** – State Parties shall in accordance with their national laws take measures to provide for the seizure and confiscation of proceeds or material goods acquired from the commission of the offence and the closing on a temporary or definitive basis premises used to commit the offence. Furthermore execute requests from other State Parties regarding the seizing or confiscation of proceeds and materials.
- **Article 8** – highlights the measures that are to be undertaken by State Parties in protecting the rights and interest of child victims. Furthermore, State Parties shall despite the age of the victim shall not prevent the initiation of criminal investigations with the inclusion to investigate and establish the age of the victim.
- **Article 9** – focuses on creating awareness to the public including children regarding the offences referred to in this Protocol. State Parties shall take feasible measures with the aim to ensure that appropriate assistance is provided to victims of such offence, full social re-integration and their full physical and psychological recovery.
- **Article 10** – State Parties shall promote and strengthen international cooperation for the prevention, detection, investigation, prosecution and punishment of those responsible for offences and the assistance provided to its victims.
- **Article 12** – the obligation of the State Party to provide a report to the Committee on the Rights of the Child detailing measures taken to implement this protocol.
- **Article 13 – 17** – entails the administration for State Parties to follow when acceding or ratifying the protocol.

Why Fiji should ratify?

- Strengthen Fiji's commitment and obligations under the Convention on Rights of a Child and its Optional Protocol to the Convention on the Rights of the Child the Sale of Children, Child Prostitution and Child Pornography;
- Promote victim support and awareness;
- Compliments our existing laws;
- Promotes and strengthens international relations and cooperation between State Parties; and
- Strengthen Fiji's commitment and obligations to other international conventions.

Way Forward

- We support the ratification of the Optional Protocol to the convention of the rights of a child on the sale of children, child prostitution and child pornography.



**FIJI REVENUE AND
CUSTOMS SERVICE**

FRCS Submission - Optional Protocol on the Convention on the Rights of the Child, the Sale of Children, Child Prostitution and Child Pornography

**Name of Presenter: ACEO FRCS
Date: 28 September 2020**

OVERVIEW

- **FRCS Vision & Mission**
- **Roles of Police & Customs;**
- **FRCS Stance;**
- **Role at the Border;**
- **Risk & Vulnerabilities at the Border; and**
- **Border Control Measures;**
- **Challengers.**
- **Questions**



**FIJI REVENUE AND
CUSTOMS SERVICE**

Vision

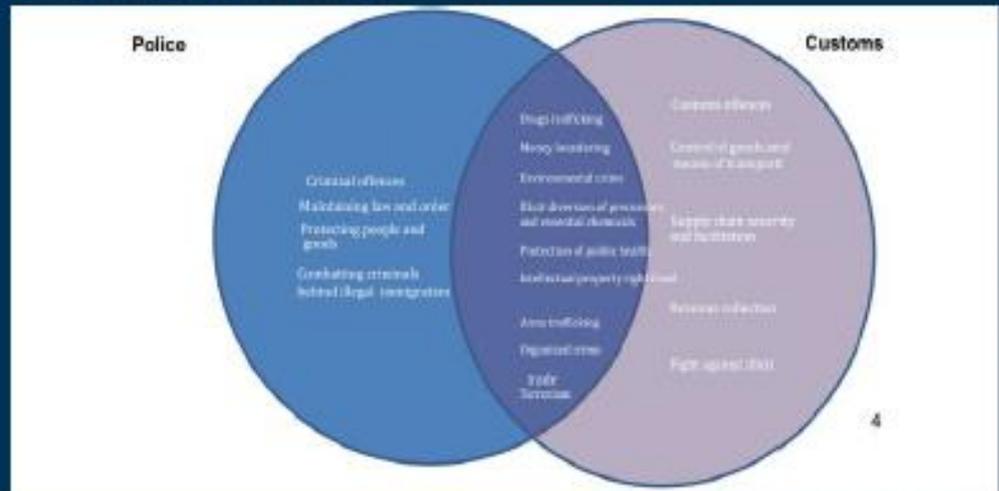
- A World Class Revenue Service Delivering Excellence in Revenue Collection, Border Security, Trade and Travel Facilitation.

Mission

- Helping Fiji grow as a leading contributor and funder of sustainable economic, security and social initiatives



FIJI REVENUE AND CUSTOMS SERVICE



FRCS STANCE

- Supports Fiji's ratification of the **Optional Protocol on the Convention on the Rights of the Child, the Sale of Children, Child Prostitution and Child Pornography.**
 - Child trafficking is a form of modern slavery that is rapidly growing;
 - Fiji's strategic and influential position in the region; and
 - Mitigate the potential exploitation of our communities and major industry – Tourism.



FIJI REVENUE AND
CUSTOMS SERVICE

BORDER CONTROL MEASURES

- **International cooperation**
 - Establishment of Transnational Crime Unit in Fiji - 2 cases in 2019 involving a NZ national and a US national who were convicted sex offenders and known pedophiles.
- **Domestic coordination**
 - INTERPOL alerts on IBMS
- **Advanced Passenger Profiling** – identifying high risk travelers prior to arrival.



FIJI REVENUE AND
CUSTOMS SERVICE

RISK & VULNERABILITIES AT THE BORDER

- High risk travelers coming to Fiji to exploit our communities.
 - Child sex tourism.
- Trafficking of our children out of Fiji and exploited in other countries.



FIJI REVENUE AND
CUSTOMS SERVICE

ROLE AT THE BORDER

- To ensure the facilitation of legitimate trade, travel and vessel movement through Fiji's borders.
- To prevent unscrupulous elements from infiltrating our local communities.



FIJI REVENUE AND
CUSTOMS SERVICE

CHALLENGERS

- Information sharing between agencies (international and domestic) - timely
- Information security
- Awareness and Training to Frontline Officers e.g. what are some indicators associated with **such perpetrators**-
- Legislation strengthening
- Access to databases relevant in assisting law enforcement with what it is we do in profiling and targeting at our borders



FIJI REVENUE AND
CUSTOMS SERVICE



FIJI REVENUE AND
CUSTOMS SERVICE

Questions?

THANK YOU

Submission from the Ministry of Women, Children and Poverty Alleviation
**Ministry for Women, Children and Poverty
Alleviation**

**Brief to Standing Committee on Foreign Affairs and
Defence on the Optional Protocol to the Convention on the
Rights of the Child on the Sale of Children, Child
Prostitution and Child Pornography**

1. BACKGROUND:

- 1.1 Children represent approximately 34% of the Fijian population.
- 1.2 The Government of Fiji is committed to ensuring that all children grow up in a safe and loving family and are supported to reach their full potential. Through pronouncements in our Constitution and our commitments under the Convention on the Rights of the Child (CRC) we remain as a nation dedicated to protecting children from all forms of violence, abuse, neglect and exploitation.
- 1.3 Fiji ratified the CRC in 1993, which sets out standards and protocols to safeguard rights and welfare of our children. As a signatory, Government is mandated to implement Child Protection laws and initiatives aligned to the CRC. The Ministry of Women, Children and Poverty Alleviation is the agency responsible for reporting on the CRC on a periodical basis. The next State Report is due in September, 2020.
- 1.4 In terms of Child Sexual Abuse, Fiji recorded 231 cases in 2019 under the mandatory reporting provisions of the Child Welfare Act (CWA). There have

been no reports of Commercial Sexual Exploitation of children on record since the implementation of the CWA.

- 1.5 A report by End Child Prostitution and Trafficking International (ECPAT International) and Save the Children Fiji suggests that children in street situations resulting from urbanization, the majority of whom are boys, are particularly vulnerable to multiple forms of labour and sexual exploitation, including through prostitution and trafficking. The report also states that Fiji's vulnerability to natural disasters also contribute to children's vulnerability to sexual exploitation as it tends to disrupt the social order to such an extent that local capacity to cope is highly stretched – and in these situations, children are the most vulnerable to neglect, abuse and exploitation.

2. THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY:

- 2.1 Fiji signed the Optional Protocol on 16 September 2005 but has yet to ratify it.
- 2.2 If Fiji ratifies the Optional Protocol, it must submit a report to the Committee on the Rights of the Child within 2 years providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
- 2.3 The purpose of the Optional Protocol is to prohibit the sale of children, child prostitution and child pornography.
- 2.4 The Optional Protocol also requires State Parties to adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process.
- 2.5 The Optional Protocol requires State Parties to:

- i) at a minimum, ensure that offences related to the sale of children, child prostitution, and child pornography are fully covered under its criminal law and to establish jurisdiction over such offences when the offences are committed in its territory or on board a ship or aircraft registered in that State;
- ii) make such offences extraditable within its existing extradition treaties and in any subsequent extradition treaties entered into.

3. ANALYSIS ON FIJI'S PROPOSED RATIFICATION:

3.1 The Office of our Permanent Representative to the United Nations in Geneva (PRUNOG) has made an analysis of the Optional Protocol vis a vis our laws and has concluded that ratification will not add any further obligation as our current laws already cover the legal obligations under the Optional Protocol.

3.2 The Fijian Constitution 2013, Crimes Act 2009, and 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 3(1)(b) of the Extradition Act 2003 as they prescribe penalties well above 12 months imprisonment.

- i) The Fijian Constitution 2013 guarantees all Fijians freedom from slavery, servitude, forced labour and human trafficking and freedom from cruel and degrading treatment. Section 41 of the Fijian Constitution 2013 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 exploitative labour. It further states that the best interests of a 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 2013.

- ii) Sections 226 and 227 of the Crimes Act 2009 provide that the selling and buying of minors under the age of 18 years for prostitution, to 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 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.

- iii) Also, the Online Safety Act 2018 renders it an offence to post an 'intimate visual recording' of an individual unless that individual concerned consents to the specific post. However, the Act provides that this 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 an 'intimate visual recording' includes a photograph, video or digital image where the individual is: (a) naked or has genitals, pubic area, buttocks, chest or breasts exposed or clad solely in undergarments; (b) engaged in sexual activity; or (c) showering, toileting or other activity which involves undressing.

3.3 PRUNOG has recommended that Fiji ratify the Optional Protocol.

3.4 Fiji's ratification of the Optional Protocol will further strengthen our commitment towards safeguarding Fijian children and will also be a fulfilment of one of the recommendations of the UPR.

4. CONCLUSION:

- 4.1 In light of the above and considering that Fiji is already a signatory to the CRC, Fiji's ratification of the Optional Protocol will further strengthen the commitment towards safeguarding Fijian children. Therefore, the Ministry for Women, Children and Poverty Alleviation supports that ratification of the Optional Protocol.

- 4.2 The Ministry for Women, Children and Poverty Alleviation confirms that we are willing to provide the necessary services mandated by this ratification.



29 September 2020

Honorable Alexander O'Conner

CHAIRPERSON

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted by the General Assembly on 25 May 2000 and enforced on 18 January 2002. The Optional Protocol was adopted to mobilize nations to act responsibly and be accountable for child rights abuses and exploitation of children.

Fiji is a signatory to the Optional Protocol from 16 September 2005 however, has not ratified the Optional Protocol to date. The Optional Protocol comprises of 17 Articles that require Nations to prohibit the sale of children, child prostitution and child pornography.

The definitions for each prohibition is as follows:

- **Sale of children** – Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.
- **Child prostitution** – Use of a child in sexual activities for remuneration or any other form of consideration.
- **Child pornography** – Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

The Convention generally defines a child as any human being under the age of 18 years. The Articles contained within the optional Protocol are relevant and appropriate to ensure that the Conventions on the Rights of the Children (CRC) and its provisions are fully implemented and achieved and to provide for better protection of children from being sold, engaged in child prostitution and pornography.

3. Save the Children Fiji's Position on the Ratification of the Optional Protocol

The Honorable Attorney-General, Mr Aiyaz Saiyed Kaiyum, in his motion dated 31st August 2020, has recommended that Fiji ratify the Optional Protocol. Save the Children Fiji affirms the recommendation of the Honorable Attorney-General to ratify the Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

3.1 Fiji has an obligation to abide by the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and

Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

3.2 Fiji has an obligation to the Conventions on the Rights of the Child (CRC) to ensure that Children in Fiji are protected and that their rights are not compromised neither violated at any time.

3.3 Fiji is well-placed to ratify the Optional Protocol and report to international authorities regarding key actions as Fiji has clearly defined laws and policies in place to provide the highest protection to all children from abuse and exploitation. For example, Chapter 2, Bill of Rights, section 41 of the 2013 Constitution of the Republic of Fiji emphasizes the rights of children. The 2010 Child Welfare Act is an important law that designates the Ministry of Women, Children and Poverty Alleviation (MOWCPA) as the line ministry responsible for ensuring that child rights violations are addressed swiftly.

3.4 Save the Children Fiji's 2018 Child Rights Situation Analysis (CRSA) report highlights concerning cases of sexual exploitation of children mostly affecting girls aged 13-17 years of age. In terms of Child Rights Governance, consultations with children around Fiji revealed that Child Rights is often a misunderstood concept seen as conflicting with traditional, social and cultural norms. An overwhelming number of children reported little understanding of their rights and explained that the best protection from abuse was to listen to parents and do as they were told.

3.5 Despite having legal prohibition against prostitution, data has shown that this is a primary form of exploitation in children who are victims of sexual exploitation. Previous studies in Fiji indicate that many young girls are exploited in prostitution as a means of providing income for their families' survival. Lack of education and employment opportunities, parental neglect and lack of a support system are all factors contributing to children's vulnerability. The United Nations Pacific Socio-economic Impact Assessment of Covid-19 in Fiji report has indicated that commercial sexual exploitation of children continues to occur with the most common forms being prostitution, pornography and sex trafficking. The main drivers of such abuse are poverty, homelessness and living away from parents and due to the economic impact of Covid-19. The report further states

4.1.3 Together with ratifying the Optional Protocol, Fiji must carefully review its current legislations to address potential loopholes. For example, Article 91 of the Employment Relations Promulgation (2007) criminalizes the sexual exploitation of children however, it does not address the current reality of the online nature of exploitation. The Online Safety Act does not contain any provisions criminalizing grooming for the purpose of producing child sexual abuse/exploitation materials or causing children to view sexual abuse or sexual activities. These laws need to be revisited to align with international standards and to provide better protection to children to address threats that children face in the current context.

4.1.4 Review the draft Child Protection Policy to ensure that it provides for child friendly and child responsive services especially to child victims and that adequate training is provided to relevant authorities for improved protection of children's rights.

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P.O.Box 2249
Government Buildings
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Fiji Islands

Ph : (679) 3313178
Fax : (679) 3302214
Email : info@save-the-children.org.fj

Member
Save the Children International

that restrictions on movement might change the forms of abuse, with a possible increase in online sexual exploitation of minors.

3.6 Improved access to internet and social media by both adults and children in Fiji exposes them to online predators and puts them at risk of being exposed to pornography including child pornography. SC Fiji is currently designing a child focused digital safety project and in our consultations with children and communities, we noted that children's use of internet and social media is not supervised by parents and guardians and parents lack awareness on how to effectively monitor their children's activities online.

3.7 Save the Children Fiji has noted that Fiji is identified as a source, destination and transit country for children subjected to trafficking for sexual purposes.¹ Within the country and of increasing concerns despite legislations, some children may be actively engaging in their own exploitation through their personal networks or with the assistance of facilitators and demand for such activities is high especially in the tourist locations.

4. Recommendations

4.1 We strongly recommend that Fiji ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. We recommend the following action points for the consideration of the Respected Standing Committee to expedite the ratification process:

4.1.1 After the 2019 Universal Periodic Review, Fiji committed to ratify all the Optional Protocols to the Convention on the Rights of the Child. By ratifying these protocols as well as abiding by all the human rights treaties, Fiji will be able to demonstrate to other nations that it is responsible and accountable for child protection and demonstrate to its citizens that children's well-being is a core component of the government's agenda and plan of action.

4.1.2 The ratification of the Optional Protocol is timely as Fiji is currently preparing for the CRC reporting to the Committee on the Rights of the Child. Save the Children Fiji is preparing for a shadow report of the CRC and therefore, a ratification of the optional protocols signals good progress made by Fiji to implement previous recommendations of the CRC Committee.

¹ United States Department of State. (2018). 2018 Trafficking in Persons Report. 187.

Submission from the Ministry of Education, Heritage and Arts

PRESENTATION TO STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY ['OPTIONAL PROTOCOL']

SUBMISSION BY MINISTRY OF EDUCATION, HERITAGE & ARTS

What Is The Position Of The Ministry Of Education On The Optional Protocol To The CRC On The Sale of Children, Child Prostitution and Child Pornography?

1. The Ministry of Education, Heritage and Arts [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 sale of children, child prostitution and child pornography. This is tantamount to sexual exploitation.
2. The sale of children for sexual or other purposes is 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.
3. We already have our laws and legislations in place to protect children against such abuse;
 - a) The protection of fundamental freedoms and rights of all persons in Fiji is already enshrined in our 2013 Constitution of Fiji, which includes Children's Rights: Section 41(1) *Every child has the right: (1)(d) To be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labor....*
 - b) The provisions prohibiting the sale of children, child prostitution and child pornography are 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 to mean the *use or display of the body of the person providing the service for the sexual gratification of others. Use or display* broadly covers both prostitution and pornography.
 - c) Also prohibited in the Employment Relations Act 2009- Part 10 (91). The following forms of child labour are prohibited— *(a) all forms of labour*

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

- d) The Juveniles Act of the country also has provisions that states; *..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*
- e) 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, multi-lateral 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/her own country of residence. This could help address issues of child trafficking and sex tourism.
- f) Other provisions in the Optional Protocol are reinforced by paragraph 1 of article 10, which recognizes 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”*
- g) There are many other international treaties Fiji is a party to and has adopted the provisions of those treaties into its domestic laws. This is summarized in the table below;

<u>RATIFICATION STATUS FOR FIJI</u>	<u>Treaty Description</u>	<u>Treaty Name</u>	<u>Signature Date</u>	<u>Ratification Date, Accession(a), Succession(d) Date</u>
	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	CAT	01 Mar 2016	14 Mar 2016
	Optional Protocol of the Convention against Torture	CAT-OP		
	International Covenant on Civil and Political Rights	CCPR		16 Aug 2018 (a)
	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	CCPR-OP2-DP		
	Convention for the Protection of All Persons from Enforced Disappearance	CED		19 Aug 2019 (a)

What Are Some Plans, Policies And Proposed Legislations In Place at the MEHA to deal with Sale of Children, Child Prostitution and Child Pornography.

1. Policies

- a) Child Protection Policy – MEHA has zero tolerance on Child Abuse. It states that “ *All suspicions and allegations of Child abuse, child labour, trafficking, neglect and exploitation MUST be reported promptly to the Child Protection Officer (CPO) 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.*”
 - b) Guidelines for Volunteers in schools – provide procedures for any organizations who wish to engage with/in schools. These procedures are in place so that we can do a thorough background check of all applicants
 - c) Interim Visitors to School Procedures – regulates all visitors to schools. This is to protect the school, students and MEHA from risks and litigation.
 - d) Parental Engagement Framework – parental engagement 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.
2. Curriculum – Values Education, Virtues Program, Morning Talks, Religious Education Programs in schools, Form Time and School Assemblies are some of the strategies engaged in MEHA where students are reminded on proper behavior and in dealing with social issues.

Should Fiji ratify the treaty with or without reservation?

Fiji should ratify without reservations –

- We have our Fiji laws and legislations that are agreeing to the articles in the Optional Protocol. We have been working on that for 15 years since signing the Protocol.
- We must ratify to protect children from potential risks.
- It will complement the work done on Fiji’s implementation of the UNCRC
- The support system (Donors and Partners) will come into play if we ratify.
- At the end of the day, we want students to stay in school and avoid being exploited by others (child labour, trafficking, sexual, etc.). We want them to complete their education and fulfill their dreams...

Submission from the Office of the United Nations High Commissioner for Human Rights

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS REGIONAL OFFICE FOR THE
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Written submission by the Office of the United Nations High Commissioner for Human Rights, Regional Office for the Pacific to the Standing Committee on Foreign Affairs and Defence on 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 1 October 2020

a) Introduction to Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereafter the “Optional Protocol”) was adopted by the United Nations General Assembly in 2000 and entered into force on 18 January 2002. As at September 2020, 176 States are party to the protocol.
- Fiji signed the Optional Protocol on 16 September 2005, together with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
- The Convention on the Rights of the Child (hereafter the “Convention”), together with the three Optional Protocols,¹ are the most comprehensive international legal instruments that promote and safeguard the rights of the child. The Optional Protocol strengthens the obligations of Fiji under articles 34, 35 and 36 the Convention to protect children from sale, sexual exploitation and sexual abuse.
- In the Pacific region, seven States have ratified or acceded to the Optional Protocol (Australia, Federated States of Micronesia, Kiribati, New Zealand, Samoa, Republic of Marshall Islands, and Vanuatu). Nauru and the Solomon Islands have signed the Optional Protocol.
- The Optional Protocol, containing ten substantive articles, criminalizes specific acts relating to the sale of children, child prostitution and child pornography, including attempt and complicity (articles 1 and 3). It establishes minimum standards for protecting child victims in criminal justice processes (article 8) and recognizes the right of child victims to seek compensation for damages from those legally responsible (article 9).

¹Optional Protocol on the involvement of children in armed conflict; Optional Protocol on the sale of children, child prostitution and child pornography; and the Optional Protocol on a communications procedure.

- Given that acts prohibited under the Optional Protocol are often transnational in nature, the Optional Protocol encourages strengthening of international cooperation and assistance for the prevention, detection, investigation, prosecution and punishment of those responsible; to assist child victims in their physical and psychosocial recovery, social integration and repatriation; and to address the root causes, such as poverty and underdevelopment (article 10).
- The Optional Protocol also recognizes the need for a holistic approach to address the contributing factors, including poverty, economic disparities, inequitable socio-economic structure, dysfunctional families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, and harmful traditional practices (preambular paragraph 7). It also stresses the need to raise public awareness to reduce consumer demand for the sale of children, sexual exploitation of children in prostitution and child sexual exploitation material, as well as the need for strengthened global partnership among all actors and the importance of law enforcement at the national level (preambular paragraph 8).
- It should be noted that the Convention on the Rights of the Child and the Optional Protocol were adopted at a time when information and communications technology (ICT) and social media were much less developed and less widespread, and when sexual offences against children did not have the close linkage to the digital environment that is often present today.
- While the rapid spread of ICTs provides great opportunities to accelerate human progress and reduce inequalities, this development has also exposed more children to the risk of sale and sexual exploitation. It has opened up new ways for sexual offenders to connect with and solicit children for sexual purposes (“grooming”), to view and participate in online child sexual abuse via live video streaming, to distribute child sexual abuse material, including self-generated content produced out of “sexting”, and to commit the sexual extortion of children. In addition, such technology provides new opportunities for offenders to connect and share encrypted information with one another, and the use of the darknet for committing or facilitating offences covered by the Optional Protocol is presenting new challenges for law enforcement. In a world where Internet access is expanding at unprecedented levels, the risk of children being sexually exploited or bought and sold as a commodity is becoming ever greater. In a globalized and increasingly mobile world, the sale and sexual exploitation of children in the context of travel and tourism represents a growing threat. Travelling child sex offenders, whether they travel across borders or within their own countries, find easier access to children in vulnerable situations, often through the use of networks of anonymous contacts on the darknet.
- Accordingly, while the Convention and the Optional Protocol are fully relevant and applicable also in the digital environment, their provisions require an interpretation adapted to today’s realities. To facilitate the application of the Optional Protocol in the current context and to assist States to effectively address sexual exploitation and sexual abuse of children, the Committee on the Rights of the Child, a body of 18 independent experts that monitor States parties’ compliance with the Convention and its Optional Protocols, adopted in May 2019 the Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children,

child prostitution and child pornography (Annex I).² The Guidelines are also supplemented by an explanatory report to the guidelines,³ which provide detailed guidance on the measures that States parties to the Optional Protocol are required to take.

b) National context

- Following the ratification of the Convention on the Rights of the Child in 1993, Fiji submitted its initial report in 1998 to the Committee on the Rights of the Child, which was reviewed by the Committee in 1998.⁴ Fiji submitted its combined second and fourth periodic report in 2011, and was reviewed by the Committee in October 2014.⁵ Its combined fifth and sixth periodic report was due on 11 September 2020.
- In its concluding observations of 2014, the Committee expressed “deepest concern” that sexual exploitation and abuse of children is prevalent in Fiji, including through organized child prostitution networks and brothels.⁶ The Committee also expressed concern that sexual exploitation of children is closely linked to poverty, with pressure placed on children to earn money⁷; that both boys and girls in street situations are exploited in prostitution, pornography and sex trafficking;⁸ 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, private homes and other rural and urban locations.⁹ It also noted with concern that specialized services that take into consideration the needs of children are not readily available, with services for boys almost non-existent.¹⁰
- According to the Socioeconomic Impact Assessment of COVID-19 in Fiji undertaken by the United Nations and published in July 2020, the impacts of the COVID-19 lockdown are disproportionate on children from marginalized minority groups, street-connected and homeless, who are already more vulnerable to the worst forms of child labour.¹¹ Restrictions on movement might change the forms of abuse, with possible increase in online sexual exploitation of children.¹² Moreover, the poverty rate is expected to increase by between 1.3 percent (in the best case scenario) and 7.1% (in the most severe

² Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), May 2019. Available at:

https://www.ohchr.org/Documents/HRBodies/CRC/CRC.C.156_OPSC%20Guidelines.pdf.

³ Available at: <https://www.ohchr.org/Documents/HRBodies/CRC/OPSC-Guidelines-Explanatory-Report-ECPAT-International-2019.pdf>.

⁴ See CRC/C/15/Add.89.

⁵ See CRC/C/FJI/CO/2-4.

⁶ CRC Concluding Observations on Fiji, CRC/C/FJI/CO/2-4, para.32.

⁷ CRC Concluding Observations on Fiji, CRC/C/FJI/CO/2-4, para.32(f).

⁸ CRC Concluding Observations on Fiji, CRC/C/FJI/CO/2-4, para.67.

⁹ CRC Concluding Observations on Fiji, CRC/C/FJI/CO/2-4, para.69(b).

¹⁰ CRC Concluding Observations on Fiji, CRC/C/FJI/CO/2-4, para.32(b).

¹¹ United Nations Socioeconomic Impact Assessment of COVID-19 in Fiji, p.49, July 2020, Available at: <https://www.pacific.undp.org/content/pacific/en/home/library/socio-economic-impact-assessment-of-covid-19-in-fiji.html>

¹² ILO, “COVID-19 impact on child labour and forced labour: The response of the IPEC+ Flagship Program”, 2020.

scenario) due to COVID-19 restrictions.¹³ Given that poverty is one of the key factors for sale and sexual exploitation of children, there may be an increased risk for children in this regard.

c) Why Fiji should ratify the Optional Protocol

- Ratification of the Optional Protocol will also send a strong message nationally, regionally and internationally regarding Fiji's commitment to protect children from the most egregious types of harm, namely sexual exploitation and sexual abuse. With fifteen years having elapsed since Fiji signed the Optional Protocol, OHCHR recommends that Fiji ratify the Optional Protocol without further delay.
- Fiji is already a party to the Convention on the Rights of the Child,¹⁴ which protects children from all forms of sexual exploitation and sexual abuse (article 34); abduction of, sale of or traffic in children for any purpose or in any form (article 35); and all other forms of exploitation prejudicial to any aspects of the child's welfare (article 36). The types of acts prohibited under the Optional Protocol are thus already covered under the Convention, and the ratification of the Optional Protocol will enable Fiji to continue strengthening national responses to preventing and combating the sale and sexual exploitation of children, in line with international standards.
- Moreover, Fiji has already ratified other international legal instruments which prohibit the acts covered under the Optional Protocol, including the exploitation of children for purposes such as prostitution and pornography¹⁵ and the sale of children.¹⁶ While the sale of children is not identical to that of trafficking, there are situations where children are sold during the stage of the trafficking process, in which case the international treaty ratified by Fiji to combat trafficking,¹⁷ is applicable.
- Through the integration of the Sustainable Development Goals (SDGs) in its National Development Plans and National Budget and Strategic Plans, Fiji has demonstrated its commitment to creating an environment where children can live free from exploitation and abuse. Relevant SDG targets include the elimination of all forms of violence against women and girls (target 5.2); prohibition and elimination of the worst forms of child labour in all its forms (target 8.7); and to end the abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2). Effective implementation of the Optional Protocol, which covers these targets, can also contribute to achieving the SDGs by 2025.

¹³ UN, Socioeconomic Impact Assessment of COVID-19 in Fiji, p.37 and 38, July 2020, Available at: <https://www.pacific.undp.org/content/pacific/en/home/library/socio-economic-impact-assessment-of-covid-19-in-fiji.html>

¹⁴ Ratified on 13 August 1993.

¹⁵ Including ILO "Worst Forms of Child Labour Convention" No. 182; ILO "Abolition of Forced Labour Convention" No. 138; ILO "Minimum Age Convention" No. 138.

¹⁶ The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the Hague Convention on the Civil Aspects of International Child Abduction; the Hague Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the "Palermo Protocol")

- Fiji has fulfilled its pledge made in 2010 in its first report for the Universal Periodic Review to ratify all core international human rights treaties by 2020, with the two last remaining treaties ratified in August 2019.¹⁸ Following the latest Universal Periodic Review in November 2019, Fiji further committed to ratifying all of the Optional Protocols to the Convention on the Rights of the Child.¹⁹ As a member of the Human Rights Council until January 2021, Fiji would continue to demonstrate its leadership at regional and international levels by ratifying not only the nine international human rights treaties, but also the optional protocols.
- Another benefit of ratification is to receive expert advice from the Committee on the Rights of the Child on good practices to effectively combat the sale and sexual exploitation of children.
- Ratification of the Optional Protocol would also be timely given that Fiji's combined fifth and sixth periodic report to the Committee on the Rights of the Child was due on 11 September 2020. In its previous concluding observations of 13 October 2014 on the combined second to fourth periodic reports of Fiji, the Committee recommended that Fiji ratify the three Optional Protocols to the Convention on the Rights of the Child.²⁰ Ratifying the Optional Protocol would thus enable the government to report back to the Committee on the progress made to implement its recommendation, both in the State party report and during the constructive dialogue with the Committee.

d) Implications of ratification

Reporting

- As set out in article 12 of the Optional Protocol, Fiji would be required to submit, within two years following the entry into force of the Protocol for Fiji (one month after the date of the deposit of its instrument of ratification), an initial 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. Following the submission of the initial report, Fiji shall include in the periodic reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Optional Protocol.

National Mechanism on Reporting and Follow-up (NMRF)

- Having ratified all core human rights treaties, Fiji has expressed its commitment to comply with its reporting obligations to the treaty bodies that monitor States parties' compliance with the respective treaties. To this end, Fiji has committed to the establishment of a National Mechanism for Reporting and Follow-up (NMRF), recognizing that such a mechanism will ensure precise and timely reporting to the treaty bodies.²¹ OHCHR, through its Treaty Body Capacity Building Programme and its UPR

¹⁸ Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families were both ratified on 19 August 2019.

¹⁹ Recommendations 140.9 and 140.10 (see A/HRC/43/8 and A/HRC/43/8/Add.1).

²⁰ CRC/C/FJI/CO/2-4, para.73.

²¹ Fiji's third national report for the Universal Periodic Review, October 2019, A/HRC/WG.6/34/FJI/1, para.38.

Trust Fund on Implementation, stands ready to continue providing support to Fiji, including on reporting to treaty bodies, establishment and/or strengthening of the NMRF, and sharing of best practices to enhance reporting, follow-up and implementation.

Legislative measures

- Upon ratification, Fiji will assume a legal obligation under international law to ensure that the provisions of the Optional Protocol are given effect in its domestic legislation. By signing the Optional Protocol, Fiji has declared its acceptance of the content of the Optional Protocol, and its intention of working towards implementation. In this context, OHCHR would like to highlight the following priority areas for consideration by the government of Fiji.
- A thorough review of the legislation would need to be undertaken to assess its compliance with the Optional Protocol, including the prohibition under criminal law of all acts mentioned in article 3, including attempt and complicity. In particular, the Crimes Act 2009, Child Welfare Act 2010, Juveniles Act 1973, and Employment Relations Act 2007 will need to be reviewed and new provisions added.
- In this regard, the government of Fiji may also wish to solicit guidance from and extend an official country visit invitation to the United Nations Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, who is mandated by the Human Rights Council to “identify, exchange and promote best practices on measures to combat the sale and sexual exploitation of children”, and to make recommendations to governments to effectively combat these phenomenon, including by bringing national legislation into compliance with international standards.²²
- Despite the existence of legal definitions for a number of sexual crimes against children, there is still considerable confusion surrounding the use of different terminology related to the sexual exploitation and sexual abuse of children. This has created significant challenges for policy development and programming, development of legislation, and data collection, leading to flawed responses and limited and ineffective methods of measuring impact or setting targets. In the context of international or cross-border child sexual exploitation and abuse, these difficulties are magnified.
- OHCHR recommends that Fiji consult the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (also known as “Luxembourg Guidelines” – see Annex II)²³ for guidance regarding the terminology to be used in the development of legislation and policies addressing the prevention of and protection from the sexual exploitation and sexual abuse of children.
- In particular, it should be noted that the international legal definition of “sale of children” is not identical to that of “trafficking”. The sale of children always involves some form of commercial transaction, which trafficking in children does not require (for example, trafficking of a child by means of deceit, force or abduction). Moreover, while trafficking always has the intended purpose of exploiting the child, this purpose is not a required

²² See inter alia Human Rights Council resolutions 7/13 and 43/22.

²³ Available at: <http://luxembourgguidelines.org/>

constitutive element for the sale of children, although the effect of the sale can still be exploitative. This distinction can be important for ensuring that it is effectively prohibited under national law, assessment of the offence, the prosecution of perpetrators and the responses put in place for the child victim.²⁴

- Similarly, attention should be given to the prohibition of the sale of children not only for the purpose of sexual exploitation, but also for the purposes of transfer of organs, engagement in forced labour, and situations in which adoption constitutes the sale of children.²⁵
- In line with the recommendations made by the Committee on the Rights of the Child, OHCHR further recommends that Fiji:
 - Ensure the participation of children to identify gaps in national legislation, as well as in the drafting process and in the implementation of legislative and policy measures, ensuring that the views of children are considered without discrimination, and that adults consulting with them have the necessary training and resources to carry out the consultations in an age-appropriate and gender-sensitive manner.²⁶
 - Ensure that national legislation does not criminalize children exploited in acts that would constitute an offence under the Optional Protocol, but treats them as victims.²⁷
 - Take into account technological advancements when revising or adopting new legislation, to ensure that their applicability is not hampered by future developments and to avoid loopholes associated with emerging concerns, including new forms of online sale and sexual exploitation.²⁸ In a world where Internet access is expanding at unprecedented levels, there is an increasing risk of children being sexually exploited or bought and sold as a commodity.²⁹

²⁴ Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), para.15.

²⁵ Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), para.14.

²⁶ Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), para.12.

²⁷ Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), para.18.

²⁸ Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), para.19.

²⁹ Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), para.2.

e) **Conclusion**

- **OHCHR recommends that the government of Fiji ratify the Optional Protocol to provide better and more effective protection to children from sale and sexual exploitation**, as outlined in the submission.
- It also recommends that Fiji:
 - Ratify the other two optional protocols to the Convention on the Rights of the Child, which Fiji signed in September 2005;
 - Consider ratifying the remaining optional protocols to the core international human rights treaties, including the second optional protocol to the International Covenant on Civil and Political Rights, as pledged during the third cycle of the Universal Periodic Review;
 - Take further steps to establish a National Mechanism on Reporting and Follow-up within the government to ensure efficient, effective and systematic engagement with all international human rights mechanisms, including the treaty bodies, the Universal Periodic Review, and the Special Procedures of the Human Rights Council.

Annex I: Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the Committee on the Rights of the Child (CRC/C/156), May 2019

Annex II: Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (“Luxembourg Guidelines”)

Submission from the United Nations Children's Fund

UNICEF Pacific Representative
Mr. Sheldon Yett
Fiji Parliament Standing Committee on Foreign Affairs and Defence
(Virtual Submission- Suva)
October 5th, 2020

Honourable Alexander O'Connor – Chairman of the Standing Committee
Honourable Members of the Committee
Secretariat and colleagues

1. 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 on the Involvement of children in armed conflict.
2. I would like to thank you for this opportunity 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.
3. My name is Sheldon Yett, the Representative for the United Nations Children's Fund (UNICEF) to the Pacific Island Countries.
4. The work of UNICEF in Fiji, and throughout the world, is guided by the Convention on the Rights of the Child ("**Convention**") and its Optional Protocols.
5. 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, adopted in 2000 are comprehensive legal instruments that promote and safeguard the rights of the child and protect children from sale, exploitation and sexual abuse.

6. 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 treaty body and parallel human rights processes.
7. For today's purpose, our focus is on Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (known as OPSC), which entered force globally in 2002, and which Fiji signed on 16 September 2005.
8. The objective of the OPSC is to set out requirements to end sale of children, child prostitution and child pornography.
9. The OPSC does not amend the Convention on the Rights of the Child, but complements several articles including articles 1, 11, 21, 32, 34, 35 and 36 by creating very specific, defined offences against children's rights.
10. 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.
11. 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 benefits and accountabilities (national and international) of the Government to the children of Fiji.
13. Ratification not only shows commitment to children's rights, and stronger protection for children from offences covered, the Government would also benefit from the guidance, advice and recommendations of the expert Committee on the Rights of the Child through the constructive dialogue and concluding observations and recommendations that would stem through the periodic constructive dialogue.
14. Ratification also increases accountability to aligning policies, legislation and programmes with the OPSC.
15. 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.
16. This makes ratification even more important.

17. In our globalized and increasingly mobile world, the sale and exploitation of children in the context of travel and tourism represents a growing threat.
18. The current COVID-19 pandemic also poses a serious threat of exploitation of our children due to the economic and social implications of the impact of the Pandemic.
19. Ratification of the OPSC will strengthen progress already in place on the proper consideration of child victims at all stages in criminal justice process; measures for rehabilitation and relevant international actions.

3. *Global Commitments by Fiji:*

20. UNICEF applauds the Government of Fiji for progress and commitments made at global and national level, towards progressively realizing the rights of children.
21. In addition to ratifying the CRC, Fiji's commitment to child rights law is manifested through the ratification of the ILO conventions on the minimum age for employment and the elimination of the worst forms of child labour.
22. Moreover, Fiji also ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.
23. Fiji has also regularly engaged with the Committee on the Rights of the Child to provide progress on the implementation of the Convention of the Rights of the Child
24. 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.

4. *Progress in National Laws:*

25. Domestication of global child rights standards in Fiji is evident through national laws, and in the 2013 Constitution, which aligns the definition of the child to that of the Convention, recognizing a child as an individual who has not reached the age of 18 years.
26. The **2013 Constitution** of Fiji explicitly recognizes the protection of the rights of children in section 41.
27. Section 41(1d) provides for the protection of children from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment and hazardous or exploitative labour; and that the best

interests of the child are the primary consideration in every matter concerning the child (section 41(2)).

28. I would like to extend my congratulations to the Fiji Government for recently passing the Adoption Act 2020 which provides additional protections against abuses and illegal practices that children are particularly vulnerable to in the process of adoption, in conformity with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.
29. The **Crimes Act 2009** outlines a comprehensive set of sexual offences against children with corresponding sanctions.
30. It penalizes the sale of and trafficking in children, both domestic and inter-country, consistent with international protocol definitions.
31. The Crimes Act includes offences in relation to child stealing and abduction of young persons. It also prohibits buying and selling children

5. for “immoral purposes” including prostitution and illicit sexual intercourse (although not fully in line with the OPSC)

32. Child pornography is penalized under the Juveniles Act.

33. 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.

34. 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.

35. The **Juveniles Act 1974** and **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.

36. 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.

37. While there undoubtedly has been progress in meeting the rights of children in Fiji, more needs to be done.

38. This will only be possible if we work together as partners in providing all children an environment that is safe and free from discrimination and harm.

6. *Recommendations:*

39. 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.

7. *UNICEF encourages the following:*

40. That the ongoing review of national legislation be used as an opportunity to review compatibility of domestic legislation with international standards.

41. In particular, we recommend that the Child Care and Protection Bill be passed.

42. 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.

43. 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 that can strengthen implementation and help build partnerships between Government, civil society and development partners.

44. We would be pleased to support any efforts to this effect.

45. We ask that you also consider ratifying the third Optional Protocol to the Convention on Communications Procedure.

46. 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.

47. 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.

8. *Conclusion:*

48. In closing, I want 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.

49. I also want to re-iterate that the Fijian Government is a critical partner for UNICEF, and look forward to continuing the good work that we have been doing together for the last 40 years

50. Thank you again Honourable Chair, Honourable Members of the Committee and the Secretariat for making this dialogue possible.

9. Vinaka and Thank you

Pacific Conference of Churches

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Pacific Conference of Churches Submission to the Standing Committee on Foreign Affairs and Defense of the Parliament of Fiji in support of Fiji's Ratification of the Optional Protocol to the Convention of the Rights of the Child the Sale of Children, Child Prostitution, and Child Pornography

29th September, 2020

Introduction

(Rev. James Bhagwan PCC, General Secretary)

Honourable members of the Standing Committee:

I bring you warm Christian greetings from the member churches of the Pacific Conference of Churches which is the peak ecumenical body representing 31 mainline churches, as well as 9 national councils of churches, West Papua in the West, Marshall Islands in the North, Aotearoa New Zealand in the South and Maohi Nui in the East, and which accounts for about 80% of the Pacific Population, arguably the largest civil society network in the region. For the last 6 decades of its existence, the PCC has been at the forefront of social, economic and political issues – from independence movements, addressing nuclear testing, structural inequality, Pacific regionalism, climate change, rethinking development issues.

In Fiji, our membership includes the Methodist Church in Fiji, the Roman Catholic Archdiocese of Suva, the Anglican Diocese of Polynesia and the Presbyterian Church in Fiji, as well as the Fiji Council of Churches.

In its 11th General Assembly in 2018 the member churches and national councils of churches which make up the Pacific Conference of Churches reaffirmed their condemnation all forms of violence against women and children as a sin and called on the Christian community in the Pacific to ensure that the dignity of our women and children is protected at all times.

I acknowledge Fiji-based church leaders have been part of campaigns to name violence against women and children as “A Sin” and that all our faiths, “Says No to Rape and Violence Against Women and Children.”

The Pacific Conference of Churches welcomes Fiji's intention to ratify this important optional protocol which will strengthen the protection of our children by committing to the prohibition of the Sale of Children, Child Prostitution and Child Pornography.

The issues this optional protocol addresses are key issues of concern by Pacific Churches. The ratification of these protocols is also a commitment to addressing social justice issues that place children

in vulnerable situations open to exploitation through prostitution and pornography. This means addressing structures of inequality and poverty. As a minister serving in the circuit or parish, I often found myself struggling with the issue of child marriage in Fiji, when the age of marriage, with permission of parents, was 16. In that sense I am grateful to the Fijian government for changing this legislation to 18yrs. Yet we still have issues of teenage pregnancy, young girls becoming mothers while still children themselves. There is much that religious communities need to do to ensure that our daughters have the opportunity to flourish – by access to education, the right information about their bodies, equal opportunities and voice in matters that affect them and to issue with which they are concerned.

In the Pacific, which is almost 90 percent Christian, Churches have not only an influential role, but also obligation to ensure that the wellbeing of Pacific Islanders is holistic and for all. In the context of care for the heart, the mind, the body and the soul of all Pacific people – faith communities, government, civil society and international agencies must work in partnership.

For churches, this means demystifying and understanding secular terms like Sexual Reproductive Health Rights and others that, when unpacked, connect to the issue of abundant or flourishing of life for all, in particular those who are marginalised. Our important role in preventing violence within families, and mobilizing communities to use available health services, cannot be ignored, as many people seek religious leaders — and not only medical experts — for advice on social, medical and psychological issues.

This call remains a challenge to Pacific churches and faith communities today and we accept that challenge, as difficult as it may be for some of us – to ensure that as communities of faith, committed to justice, peace and abundant life for all, we will commit to defying those practices that harm our children.

I now hand over to our Ecumenical Enabler for Child Protection, Adi Mariana Waqa to present the PCC's submission to this committee.

Key Points of the Submission:

(Adi Mariana Waqa - PCC Ecumenical Enabler for Child Protection)

Honourable members of the Standing Committee:

Some of the highest prevalence of violence and abuse against children exist in the Pacific region. Cases of sexual violence against children in Fiji have increased considerably this year with 309 reported cases between February and April alone,¹ compared to 130 cases in 2018 as reported by the Social and Child Services Department.² Churches and religious institutions are in many instances engaged already in the work of child protection and have significantly greater potential to do more in ending violence and abuse due to their pervasive presence in the country and at all levels of society. Churches in Fiji have the influence to re-orient some traditional and more recent attitudes and behaviours contributing to social norms that reinforce violence both within church structures and communities.

The Pacific Conference of Churches supports the ratification of the Optional Protocol to the Convention of the Rights of the Child the Sale of Children, Child Prostitution, and Child Pornography and we affirm the value of children in a Fiji where they are protected, nurtured, and empowered, because our faith teaches and believes that they are precious gifts from God (Psalm 127:3). To achieve this, churches in Fiji are committed to address the prevalence of abuse, violence, and exploitation of children.

In a time where our children and adolescents are exposed and impacted by excessive and unfiltered information, advancing technologies, globalization, economic lack, climate change, drugs, and an ongoing global pandemic which has created a “new norm” in need of much guidance and hope, the churches are crucial now more than ever for a prophetic response to the safety, wellbeing, and future of our children.

We call upon the government of Fiji to strengthen its work with faith communities due to the worrying statistics around the abuse and violation of minors. The prevalence of sexual violence and exploitation against young and vulnerable Fijians are a dilapidation of the duty of care that every child in this country should grow securely and safely under.

PCC’s work on child protection has been mandated under the five-year Strategic Plan named “Singing the Lord’s Prayer in Strange Lands and Times.” Outcome 23 of this plan states for “Pacific Churches to advocate for child protection and safe spaces for children.”

PCC’s child protection and safeguarding work has been supported through collaborations with UNFPA, UN Women, and more specifically UNICEF, whose partnership with PCC was mandated as a resolution of the 11th General Assembly and formally began in March this year through scoping missions in Fiji, the Solomon Islands, and the Marshall Islands. As part of the objective, information derived from visitations to our member churches were used to develop a framework through which strategies and resource materials based on Christian scripture and teachings would engage Churches and member stakeholders in gender equitable, child friendly, and violence free practices.

PCC’s commitment to child protection and safeguarding of children is emphasised in the Framework’s spirituality statement which highlights the responsibility churches have in protecting children from all forms of harm and abuse. Jesus’ preferential Christian role to welcome, acknowledge, and reassure children as valuable gifts from God.

As Christians we must acknowledge that there have been times when we failed to follow the example of Jesus. We sometimes have silenced and pushed aside the wellbeing and needs of our children and in turn became stumbling blocks causing them to fall.

Pacific holistic spirituality protects the physical, mental, emotional, and spiritual wellbeing of children to develop safely under the guidance and love of their family, church, and community. We understand that it takes the community of faith to protect children from violence and empower them in the process to love God, neighbour, and creation with all their heart, soul, strength, and mind (Luke 10:27).

The PCC Child Protection and Safeguarding Framework draft has now been completed and will undergo review by the Fiji Council of Churches later this week. This framework is underlined by a number of principles which include:

1. Our belief in God, the ministry of Jesus Christ and the learnings from the Bible are the foundations of faith from which child safeguarding and eliminating violence against women is done.
2. Churches and all related institutions are to covenant around a zero tolerance of violence and abuse within their own structures and mission. This serves to position churches as credible advocates in the work to protect children against violence and exploitation.
3. Child protection and safeguarding is to be applied beyond the walls of the church to families, local communities, nationally, and regionally – particularly in the ministries of churches and ecumenical networks

4. Child safeguarding and Ending Violence Against Children (EVAC) activities and resources shall uphold and help inform and strengthen child protection systems of Pacific countries. While being in compliance with the legal frameworks and working in collaboration with their child protection-related departments, churches are called to go beyond these to meet the needs of children to be safe and protected. In other words, churches should not see themselves as limited by legal norms but have the freedom and God's grace to exceed them, consistent with national law and policy, in protecting children.
5. As churches we align children's special rights with the responsibility of parents, institutions and young people to ensure an overall conceptualization of child wellbeing. This centres on God's will for the abundance of life involving spiritual, physical, mental, and emotional wellbeing.
6. Pacific peoples and churches take ownership in the resources and processes developed in this framework and shall resist approaches and messages that are ineffective for Pacific societies and cannot be sustained. Every opportunity shall be taken to contextualize approaches to Pacific cultures and churches
7. Resources produced shall be integrated into existing structures and processes of churches and other child protection stakeholders, building on strengths rather than replacing them with new structures and interventions with less likelihood of sustainability.

This framework and the principles on which it is founded serves to provide an avenue for PCC to begin its child protection work by piloting resources and training programmes here in Fiji, as well as the Marshall Islands, and the Solomon Islands.

Child protection systems and Safe Church Policies that extend into Pacific homes, churches and communities will serve the next generation who can continue to work for the elimination of violence against children and women.

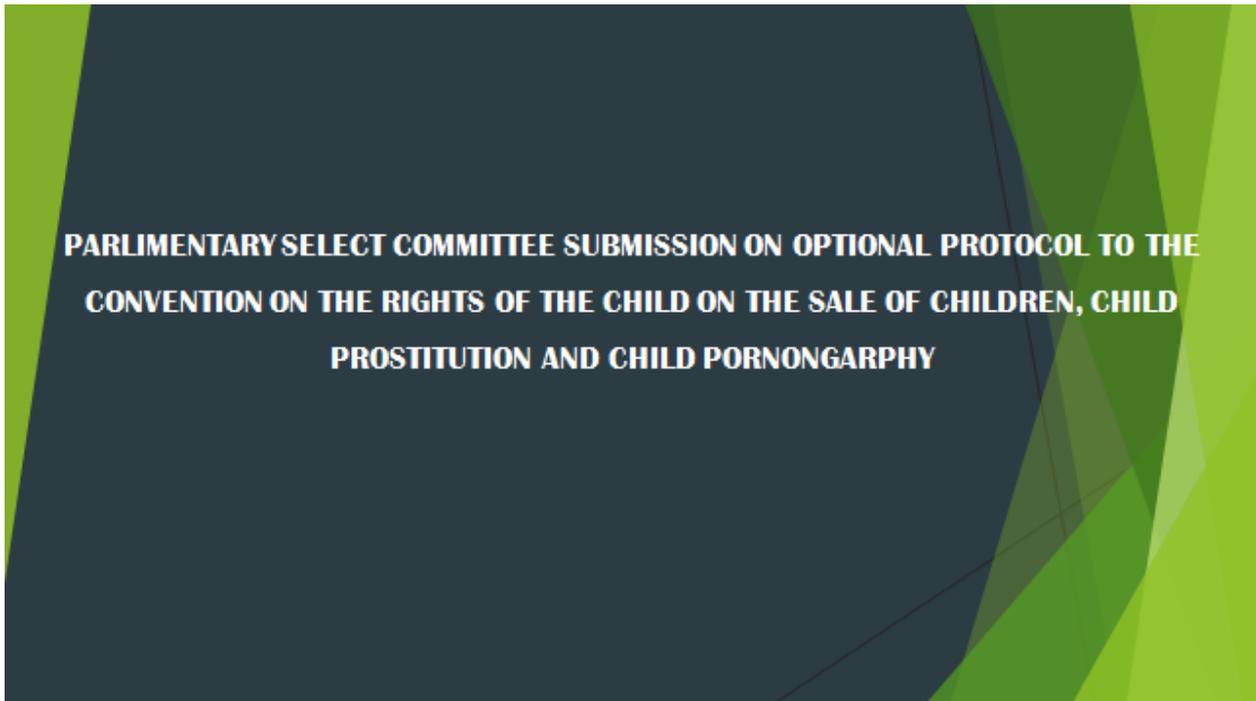
The Bible is clear: if children are trained up in the way they should go, then they will not depart from it when they are older (Proverbs 22:6). When a child grows up in a safe and non-violent environment conducive to healthy and proper development, there are much higher prospects that will hold and strengthen through the next generations.

The Fiji Government's move to ratify the Optional Protocol to the Convention of the Rights of the Child the Sale of Children, Child Prostitution, and Child Pornography has the full support of the Pacific Conference of Churches. Our commitment towards protecting the lives of Fiji's youngest and most vulnerable citizens is a duty that stands to serve generations of precious children from the traumatic impacts of violence which include the heinous crimes of child trafficking, child prostitution, and child pornography.

According to the teachings of Jesus Christ who likened the wellbeing of children to the manifestation of the Kingdom of God, PCC vows to do our part in ensuring this work transitions from legislation through to awareness and practise in our churches and into our homes and communities.

Honourable members of the Committee, I thank you for this opportunity. Vinaka and may God bless you and Fiji in this its 50th year of Independence.

Submission from the Fiji Police Force



INSTRUMENT	LEGISLATION	POLICY/PROCEDURE/CASES
	<p>Crimes Act 2009</p> <ul style="list-style-type: none"> ☐ Criminalize Offences Sec 114 - Trafficking in Children Sec 117 - Domestic Trafficking in Children Sec 226 - Selling of Minors Sec 227 - Buying of Minors Sec 230 - Living on Earnings of Pros Sec 231 - Loiter/Solicit for purpose of Prostitution Sec 279 - Kidnapping Sec 284 - Child Stealing Sec 285 - Abduction of a young person 	<p>NCCC - National Coordinating Committee for Children - formed in 2009 To promote and safe guard the well being of children in Fiji</p> <p>SOP - For Handling Children - 2012</p> <p>SOP - For Investigation of Sexual Offences - 2012</p> <p>CID Directive 6/2016 - Investigation of Juvenile Cases</p> <p>CID Directive 1/19 - Handling of Child Sexual Abuse Cases and Other Crimes Against Children</p>

INSTRUMENT	LEGISLATION	POLICY/PROCEDURE/CASES
<p>CONVENTION ON THE RIGHTS OF CHILD Ratified - 1993</p> <p>Optional CRC Protocol on Sale/Prostitution/Pornography of Child Adopted - 25/5/2000 Signed - 16/9/2005 - yet to ratify</p>	<p>Constitution of the Republic of Fiji 2013</p> <ul style="list-style-type: none"> ❑ Supreme Law of Fiji ❑ Sec 41 - Administers the rights and the best interest of the child. <p>Juvenile Act 1973 (amendment 1997)</p> <ul style="list-style-type: none"> ❑ Defines a Juvenile ❑ Protection of Juveniles in Criminal Proceedings - Sec 3 - 7 ❑ Juveniles need for Care, Protection, Control - Sec 39 - 48 ❑ Criminalizes offences Sec 57 - 62 (Sec 62(A) - Pornography Activities ❑ Outline Procedures of Handling of Juvenile 	<p>Interagency Guidelines on Child Abuse and Neglect - 2015</p> <p>Enhancement of Individuals, organizations understanding and knowledge of legislation and policies associated with child abuse. Endorsed by five agencies, DSW, FPF, MoE, MoEPIR, MoH</p> <p>Fiji Nationals Delivery Protocol for Responding to Cases on Gender Based Violence - 2018</p> <p>SOP for Interagency Response to addressing and eliminating the scourge of gender based violence</p>

INSTRUMENT	LEGISLATION	POLICY/PROCEDURE/CASES
		<p><u>Trainings</u> Child Protection Training Manual - 2012 To provide Police Officers with knowledge and understanding of the legislative, policy and procedure requirements on Child Protection</p> <p><u>Awareness</u> REACH Program - FPF is partner in this with UNDP and other Domestic Stakeholders in reaching out to the communities at large Pacific Dialogue Program - FPF is also stakeholders in this reaching out to the communities at large</p>

▶ **State vs Inoke Raikadroka (HAC 80/2013)**

Charged with Domestic Trafficking in Children and Aggravated Sexual Servitude and was sentenced to 14yrs

▶ **State vs Filipe K. Tuisawau (HAC 172/2015)**

Charged with the offences of Rape, Sexual Servitude and Pornographic Activities Involving Children and was sentenced to 12yrs

▶ **State vs Josevata Werelagi (HAC 425/2018)**

Charged with the offences of Aggravated Sexual Servitude and Domestic Trafficking in Children and was sentenced to 14yrs



FWRM SUBMISSION ON 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

INTRODUCTION

The Fiji Women's Rights Movement (FWRM), established in 1986, is a multi-ethnic and multicultural non-governmental organisation committed to removing all forms of discrimination against women through institutional reform and attitudinal change, through targeted research and advocacy¹. Being a feminist organisation, FWRM uses feminist analysis as a basis for this submission with particular focus on the girl child.

Global developments in Information and Communication Technologies (ICTs) has meant an increasing number of online users and sharing of personal information online such as content related to minors including the girl child. Easier access means that there is an unprecedented level of unregulated online content generated by minors, and shared on multiple platforms, some of which have the capacity to store this content. In the hands of people with sinister intent, this content is readily shared, sold and distributed online, such as child pornography. Children, especially the girl child, are often forced into producing pornographic material, which is then mass produced and distributed in a highly commercialised manner.

With Fiji being the hub of the Pacific, and heavily reliant on tourism related activities, there is also a sinister backdrop which creates vulnerabilities faced by the girl child in tourism related activities including sexual exploitation of children. In a Research conducted by Save the Children Fiji, it was found that more young girls were found to be victims of sexual exploitation across Fiji with ages ranging from 13 to 17 year olds². The percentage of the prostitution victims interviewed felt the main reasons they fell into commercial sex work was because of lack of educational and employment opportunities³.

In addition to this, in a research conducted by FWRM titled *Balancing the Scales: Improving Fijian Women's Access to Justice*⁴ one of the key findings was that the age of girl victims for child sexual offences were getting younger and younger over the years of rape cases analysed.

Therefore FWRM takes this opportunity to submit herein our analysis and recommendations relating to the Optional Protocol.

Issues of Concern

f) Sexual Exploitation of Children

¹ <http://fwrn.org.fj/>

² <http://www.savethechildren.org.fj/publications/sex-trafficking-of-children-in-fiji/>

³ <http://www.savethechildren.org.fj/publications/sex-trafficking-of-children-in-fiji/>

⁴ http://www.fwrn.org.fj/images/fwrn2017/publications/analysis/Balancing-the-Scales-Report_FINAL-Digital.pdf

ECPAT (End Child Protection And Trafficking) International⁵, a network of civil society organisations which works towards ending child sexual exploitation and trafficking in a 2019 report observed: “In line with global trends, children in Fiji are exploited in both individual and organized operations, often in clubs and brothels operating as motels or massage parlours. Similar reports have described that while girls comprise the majority of children exploited in prostitution in Fiji, boys are also exploited in this way as well⁶.

Even though statistics on human trafficking in Fiji are hard to find, due to the lack of targeted research and data collection to date and the insidious nature of the crime⁷, the Fiji Police Force registered 7 TIP cases and 1 case of domestic trafficking in 2019. A total of 5 Trafficking In Persons (TIP) cases from 2016 were under investigation in 2019 and 3 TIP cases were successfully prosecuted in 2010, 2012 and 2014⁸ as mentioned by SSP Mr. Aporosa Lutunauga Director Strategic Planning, Policy, Research & Development, Fiji Police Force at the National Strategic Planning Forum held in August 2019 in Suva, Fiji.

Additionally the Office of the Director of Public Prosecutions released a media update recently about an ongoing case of domestic trafficking of children⁹ which is still before the courts, which shows that prosecution of sexual exploitation of children offences are now surfacing. However this is only 1 media update for an offence of such a nature for the year 2020 so far. This does not correlate with numerous research conducted by various CSOs including Save the Children Fiji which show how prevalent sexual exploitation of children is in Fiji, particularly the girl child.

Media reports of Sexual Exploitation of Children

Reports of prominent religious figures sexually exploiting children in school and church settings over decades have surfaced in the media recently¹⁰ which exposes decades of systematic sexual abuse of children in Fiji by Catholic priests who were often sent to Fiji to serve as priests.

Fijian Court Case about Domestic Trafficking Involving a Child

State v Werelagi - Sentence [2019] FJHC 1159; HAC425.2018 (12 December 2019)¹¹

Accused was found guilty of one count of aggravated sexual servitude and three counts of domestic trafficking involving a child contrary to the *Crimes Act of Fiji*. The Accused worked as a hairdresser and a sex worker. Victim was 15 years old at the time of offending. Final sentence was 14 years imprisonment with 10 years non-parole period set.

g) Heightened vulnerabilities of the Girl Child

Poverty

In a report by Save the Children Fiji they found “After the 2000 coup, conservative estimates state that 30% of [Fiji’s population] are in poverty with another 30% vulnerable to poverty¹². The increasing poverty has adverse effects on children, not only in terms of basic needs but

■ <https://www.ecpat.org/>

■ Wing, H., Koster, V., Griffin, V. (2005). *The Commercial Sexual Exploitation and Sexual Abuse of Children in Fiji: A Situational Analysis*. Save the Children Fiji. (Accessed from <https://www.ecpat.org/wp-content/uploads/2019/05/ECPAT-Country-Overview-Report-Fiji-2019.pdf> on 29/09/2020)

■ <https://reliefweb.int/report/fiji/project-launched-protect-rights-victims-trafficking-fiji>

■ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_726134.pdf

■ <http://odpp.com.fj/wp-content/uploads/2020/09/ODPP-MEDIA-UPDATE-State-v-Jacqueline-Sesenieli-4.9.20.pdf>

■ <https://www.tvnz.co.nz/one-news/new-zealand/uncovering-abuse>

¹¹ <https://fijisun.com.fj/2019/12/12/court-hands-down-14-year-sentence-for-child-trafficking/>

(a) Khan, C and Barr, K. 2003. Christianity, poverty and wealth at the start of the 21st century: Fiji country case study. Ecumenical Centre for Research, Education and Advocacy, Suva, Fiji, pp.17-18.

also in terms of CSEC and CSA. This is supported by a 2001 study that found “that the rise in the number of cases of child abuse was an effect of poverty¹³”.

Tourism

Tourism plays a very crucial role in unpacking this issue, as it often leads to creating a demand for child prostitution, as discussed in the situational analysis in Fiji by Save the Children which stated that “assessing the alternative of lower wages in restaurants or hotels, some children engaged in prostitution in areas such as Savusavu, which is perceived as a hotspot for affluent foreign retirees¹⁴”. This is a stark reminder that with the heavy reliance on Tourism, it is costing young girls their childhood and ultimately their ability to live violence free lives, and therefore the State must intervene.

Natural disasters

In March 2012, flooding caused by torrential rain devastated the western and northern parts of Fiji’s main island, Viti Levu, leaving more than 8,000 people sheltered in 91 evacuation centres. Together, the disasters affected more than 350,000 people and cost the country more than USD 65 million. In one of these evacuation centres, three girls were raped in one night.¹⁵

Studies show that women and girls, and even more so women with disabilities, LGBT community, ethnic minority women, are more likely to be targeted by violence than men, highlighting that people’s social identities (i.e. their gender, age, sexual orientation, class or class status) influence their vulnerability to risks immediately post disaster.¹⁶

Moreover in the aftermath, natural disasters pose significant increased risks to the girl child, on multiple levels such as poverty, inaccessibility to proper housing, education, thereby increasing the gender gap even further. This can lead to more girls being exploited for sexual purposes. For Fiji, post natural disasters, there seems to be an increase in sexual violence offence cases, as discussed in the *Balance* newsletter by FWRM.¹⁷ Seemingly it would appear that natural disasters often heighten vulnerabilities already faced by the girl child.

Covid-19

COVID-19 increases the existing barriers and inequalities which exist in our country as found in the Rapid Gender Analysis by the Covid-19 Response Gender Working group.¹⁸ Ratification of the Optional Protocol gives the State an opportunity to review existing laws, policies and work towards changing attitudes towards child abuse, particularly in the post Covid-19 era.

In the USA the FBI issued a warning to parents regarding the presence of sexual predators on the internet. “Due to school closings as a result of Covid-19, children would potentially have an increased online presence and/or be in a position that puts them at an inadvertent risk,” read the FBI warning. “Due to this newly developing environment there is heightened dangers of online sexual exploitation and signs of child abuse¹⁹.”

(b) Carling, M. 2001. Study of the impacts of the political crisis on children and families in Fiji. Save the Children Fiji, Suva, p.24.

(c) Wing, H., Koster, V., Griffin, V. (2005). The Commercial Sexual Exploitation and Sexual Abuse of Children in Fiji: A Situational Analysis.18. Save the Children Fiji.

¹⁵ <https://reliefweb.int/report/fiji/fiji-first-responders-train-address-sexual-violence-disasters>

¹⁶ WHO (World Health Organization) (2013). ‘Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence’. Geneva: WHO, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine and South African Medical Research Council. (Accessed from <https://www.refworld.org/pdfid/583c0c744.pdf> on 29/09/2020)

¹⁷ http://www.fwrn.org.fj/images/fwrn2017/publications/balance/pdf/Balance_June_2020_5.pdf

¹⁸ http://www.fwrn.org.fj/images/Gender_and_COVID_Guidance_Note_-_Rapid_Gender_Analysis.pdf

¹⁹ <https://www.nbcsandiego.com/news/investigations/rise-in-reports-of-child-sex-trafficking-exploitation-cases-during-covid-19/2388917/>

In Fiji, Covid-19 has seen huge job reduction which has placed women and girls at the forefront of this global pandemic. Girls will have no choice but to succumb to socio-economic pressures of providing for their families resulting in them becoming easy targets for sex traffickers.

h) Preventative vs Remedial Approach

Under current legislative framework the approach taken is remedial in the sense that once a crime is perpetrated against a child victim, then the child survivor has the onus of bringing the complaint him/herself or through a parent or guardian (Crimes Act, Online Safety Act, Child Welfare Act etc). Given the sinister nature of sexual exploitation of children, which often disappears into the shadows, only to reappear in another location (due to demand and accessibility) there has to be a shift in the way this problem is addressed.

All stakeholders, including (but not limited to) the State (Police, Office of the DPP, MWCPA, Social Welfare Office, Immigration Office etc), foreign embassies, CSOs, faith and community based organisations should come together to take a strong preventative approach to nipping the problem in the bud, so to speak. This includes, but is not limited to, conservative regulation of online content dealing with children, strengthening 3rd party liability of persons distributing or storing harmful content involving minors and targeted advocacy towards communities with the engagement of CSOs and community based organisations. Additionally law enforcement agencies' capabilities should also be strengthened to allow them to assist victims/survivors in the swiftest way possible²⁰.

RECOMMENDATION

- (i) FWRM strongly recommends that the State ratify the Optional Protocol to further strengthen its commitment under the Convention on the Rights of the Child, by strengthening its legislative framework, implementation processes, enforcement capabilities and national remedial processes;
- (ii) FWRM calls on the Standing Committee to make special reference to the girl child, in particular Para 5 of the Preamble of the Optional Protocol which requires States to recognize that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited;
- (iii) FWRM also recommends that the State work in collaboration with CSOs to create awareness on the issues raised, and to have a holistic approach in terms of eradicating the sale of children, child pornography and prostitution.

²⁰ <https://www.fbcnews.com.fj/news/majority-of-police-officers-cannot-identify-a-human-trafficking-case/>

Written Submission from the University of Fiji

The University of Fiji

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Parliamentary Submissions on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography(OPSC).

By

Professor Shaista Shameem

Dean of the Justice Devendra Pathik School of Law (currently also Acting Vice Chancellor).

Ratification Necessary

Government should ratify the Optional Protocol to the Convention, without a doubt. This would be in accordance with its avowed statutory obligation to eradicate cruel and degrading treatment in all its forms. The sale of children, child prostitution and child pornography constitute cruel and degrading treatment of children who are recognised by the Child Rights Convention (CRC) as being vulnerable to abuse and ill-treatment. Since Fiji has ratified the CRC it is appropriate that we also should ratify the Optional Protocol.

Significance of Optional Protocols

Optional protocols signify either a substantive or procedural shortcoming in the basic Convention or Treaty. They have the effect of modernising and making Conventions current. Clearly the degradation and human rights abuse of children that the Optional Protocol to the CRC seeks to eradicate is sufficiently serious to warrant ratification and is binding for states which ratify. Many people could not conceive of the sale of children, prostitution of children and child pornography but many others do and many also make profit from it. The Internet is the vehicle through which these activities also take place. Perhaps trying to eradicate it is just not possible; however it has to be tried through any means available to society such as ratifying treaties, making or amending laws and reforming education so that such practices are not considered as normal.

Reform of National Laws

Ratifying an international treaty places one main obligation on Government and Parliament: to implement national legislation. Merely accepting that the provisions of a Treaty are also noted or mentioned in the constitution of a nation does not mean that implementing legislation is also present or drafted when the Treaty is ratified. There is often a disjunction between a Treaty and national legislation and Fijian constitutional provisions (see section 41) usually only guide interpretation. Fiji (government and civil society including students) should now consider all our relevant legislation to ensure that they are consonant with the Optional Protocol of the CRC. This would include not only criminal law but also family law, adoption law, marriage law and employment law. Just a few minor amendments would be necessary in most cases to ensure consistency and compliance with the Optional Protocol; in other cases entirely new laws would be necessary. However, the subject of the Optional Protocol and the fact that Fijian children are not immune to such degradation allows us to think that amendment and new laws, where required, are a matter of commitment for the Fijian people.

Written Submission from the Human Rights and Anti-Discrimination Commission

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Ashwin Raj, Director HRADC

Submission to the Parliamentary Standing Committee on Foreign Affairs and Deface

8 October 2020

The Human Rights and Anti-Discrimination Commission commends the State for considering the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (**Optional Protocol** hereafter) as it would serve to further strengthen Fiji's resolve to fulfil its obligations under Article 34 of Convention on the Rights of the Child (**Convention** hereafter) to protect children from all forms of sexual exploitation and sexual abuse and Article 39 of the Convention which requires States Parties to ensure recovery and dignified reintegration of child victims of sexual exploitation.

Article 34 of CRC states:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- i) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- j) The exploitative use of children in prostitution or other unlawful sexual practices;*
- k) The exploitative use of children in pornographic performances and materials.*

While section 34 of the Convention requires States Parties to protect children from “**all** forms of sexual exploitation and sexual abuse”, the Optional Protocol requires States Parties to introduce and implement measures to prohibit specific acts and activities relating to the sale of children, child prostitution and child pornography. It criminalizes specific acts and activities that amount to the sale of children, child prostitution and child pornography, whether such offences are committed domestically or transnationally or by an individual or as an organized crime. It sets out the minimum standards required to protect the rights of child victims in the criminal justice system giving primacy to the principle of the best interests of the child and recognizes the right of victims to seek compensation and dignified and safe reintegration of child victims. It calls for the strengthening of international cooperation and assistance in combating the root causes of offences.

The Optional Protocol was adopted by the United Nations General Assembly on 25 May 2000 and entered into force on 18 January 2002. Fiji ratified the Convention on the Rights of the Child (CRC)

in 1993 and signed the Optional Protocol on 16 September 2005 but is yet to ratify the Optional Protocol. As of December 2019, 176 states are party to the Optional Protocol.

It is imperative to note that Fiji already has in place a very comprehensive and effective legislative framework to respond to violence, abuse and sexual exploitation of children criminalizing specific acts and activities relating to the sale of children, trafficking in children including domestic trafficking in children, slavery, sexual servitude and deceptive recruiting, child prostitution, child pornography, child marriages and constitutional safeguards against harmful cultural practices that would result in the diminution of the constitutional rights and freedoms of the child. The salient features of these national laws are centered around the protection of children from sexual abuse and exploitation and in ensuring that the perpetrators face the criminal justice system. They include:

- Section 41 of the *Fijian Constitution*,
- Section 15 of the *Child Welfare Act 2010* on the best interests of the child,
- Section 29 - Penalty for marrying a minor of the *Marriage Act 1968*
- Section 88 (Crime against humanity—rape), Section 89- (Crime against humanity—sexual slavery), Section 90 – (Crime against humanity—enforced prostitution), Section 91- (Crime against humanity—forced pregnancy), Section 93- (Crime against humanity—sexual violence), Sections 102 to 108 (Slavery, Sexual Servitude and Deceptive Recruiting), Sections 111-120 - Division 6 (Trafficking in Persons and Children), Sections 206 – 224 (Sexual Offences), Section 211 (Abduction of person under 18 years of age with intent to have carnal knowledge), Section 214 (Defilement of children under 13 years of age), Section 226 (Selling minors under the age of 18 years for immoral purposes), Section 227 (Buying minors under the age of 18 years for immoral purposes), Section 229 (Authority of court as to custody of young persons), Section 230 (Person living on earnings of prostitution or persistently soliciting), Section 232 (Suspicious premises), Section 233 (Brothels), Section 284 (Child stealing), and Section 285 (Abduction of young persons) of the *Crimes Act 2009*.
- Part 10 (children) sections 90-91 (prohibition of worst forms of child labour) of the *Employment Relations Promulgation Act 2007*
- Section 62 A (1) (Pornographic activity involving juveniles) of the *Juveniles (Amendment) Act 1997*
- Section 24 – Causing harm by posting harmful communications and Section 25 – Posting an intimate visual recording of the *Online Safety Act 2018*
- Section 11 provides for the offence of child pornography and Section 11(2) defines “child pornography” of the *Cybercrime Bill 2020* (tabled in Parliament)

The ratification of the Optional Protocol will complement and strengthen this legal framework. Furthermore, Fiji has ratified the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and is also party to the 1993 Convention on protection of Children and Co-operation in Respect of Intercountry Adoption both of which inspired the Optional Protocol as well as the 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) and the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ('Palermo Protocol') that in

turn have been influenced by the Optional Protocol. The Fijian Constitution also allows for the application of international law.

Salient features of the Optional Protocol	National laws on child protection
<ul style="list-style-type: none"> ▪ Protection of rights and interests of children ▪ Protection from neglect, violence, abuse, inhumane treatment ▪ Protection of children against harmful cultural practices ▪ Best interests of the child 	<p><u>Fijian Constitution</u></p> <p><i>Section 41 – Rights of children</i></p> <p>41— (1) Every child has the right—</p> <p>) to be registered at or soon after birth, and to have a name and nationality;</p> <p>) to basic nutrition, clothing, shelter, sanitation and health care;</p> <p>to family care, protection and guidance, which includes the equal responsibility of the child’s parents to provide for the child—</p> <p>whether or not the parents are, or have ever been, married to each other; and</p> <p>whether or not the parents are living together, have lived together, or are separated;</p> <p>) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and</p> <p>) not to be detained, except as a measure of last resort, and when detained, to be held—</p> <p>(i) only for such period of time as is necessary; and</p> <p>i) separate from adults, and in conditions that take account of the child’s sex and age.</p> <p>(2) The best interests of a child are the primary consideration in every matter concerning the child.</p>

	<p>Child Welfare Act 2010</p> <p>Section 15 Best interests of the child 15 (1) This Act is to be administered subject to the principle that at all times the welfare and the best interests of the child are paramount and under the following principles-</p> <ul style="list-style-type: none"> a) every child has a right to protection from harm or likely harm; b) families have the primary responsibility for the physical, psychological and emotional well-being of their children; c) the preferred way of ensuring a child's wellbeing is through a support of the child's family an extended family; d) any powers under this Act must be exercised in a way that is open, fair, and respects the rights of people affected by their exercise, and in particular in a way that ensures- <ul style="list-style-type: none"> i. the views of a child and a child's immediate and extended family are considered; and ii. a child and the child's parents have the opportunity to take part in making decisions affecting the well-being of the child; e) a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate having regard to the child's age and ability to understand.
<ul style="list-style-type: none"> ▪ Sexual exploitation of children 	<p><u>Marriage Act 1968</u></p> <p><i>Section 29 - Penalty for marrying a minor</i></p> <p>29 – Any person who –</p> <p>willfully and unlawfully marries a person under the age of 18 years; or</p> <p>induces or endeavours to induce any marriage officer or other person to solemnise marriage between parties when the person so acting knows that one of the parties to the marriage is a minor; or</p>

	<p>(c) abets or assists the principal offender in any such act or endeavours as is described in paragraphs (a) and (b), knowing that a party to the marriage or intended marriage is minor, shall be guilty of an offence and liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 2 years.</p>
<p>Article 3</p> <ul style="list-style-type: none"> • Sale of Children • Child prostitution • Sexual exploitation • Trafficking of children • slavery • Engagement of child in forced labour 	<p><u>Crimes Act 2009</u></p> <p><u>Crime against humanity—rape</u></p> <p>88— (1) A person (the perpetrator) commits an indictable offence if—</p> <ul style="list-style-type: none"> the perpetrator sexually penetrates another person without the consent of that person; and the perpetrator knows of, or is reckless as to, the lack of consent; and (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population. <p>Penalty — Imprisonment for 25 years</p> <p>(2) A person (the perpetrator) commits an indictable offence if—</p> <ul style="list-style-type: none"> (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and b) the perpetrator knows of, or is reckless as to, the lack of consent; and (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population. <p>Penalty — Imprisonment for 25 years.</p> <p>(3) In this section— “consent” means free and voluntary agreement.</p> <p>(4) Without limiting the generality of the references to consent in this section, a person does not consent to an act if—</p>

-) the person submits to the act because of force or the fear of force to the person or to someone else;
-) the person submits to the act because the person is unlawfully detained;
-) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
-) the person is incapable of understanding the essential nature of the act;
-) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
-) the person submits to the act because of psychological oppression or abuse of power;
-) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(5) In this section—

“sexually penetrate” means—

-) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
-) penetrate (to any extent) the mouth of a person by the penis of another person; or
-) continue to sexually penetrate as defined in paragraph (a) or (b).

) In this section, being reckless as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

Section 89- Crime against humanity—sexual slavery

(1) A person (the perpetrator) commits an indictable offence if—

-) the perpetrator causes another person to enter into or remain in sexual slavery; and
-) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years

) For the purposes of this section, sexual slavery is the condition of a person who provides sexual services and who, because of the use of force or threats— (a) is not free to cease providing sexual services; or (b) is not free to leave the place or area where the person provides sexual services.

) In this section— “sexual service” means the use or display of the body of the person providing the service for the sexual gratification of others.

“threat” means—

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
-) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

Crime against humanity—enforced prostitution

90— (1) A person (the perpetrator) commits an indictable offence if—

-) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and
-) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and
-) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

	<p>(2) In sub-section (1)— “consent” means free and voluntary agreement.) Without limiting the generality of the references to consent in this section, a person does not consent to an act if—) the person submits to the act because of force or the fear of force to the person or to someone else;) the person submits to the act because the person is unlawfully detained;) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;) the person is incapable of understanding the essential nature of the act;) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes); the person submits to the act because of psychological oppression or abuse of power;) the person submits to the act because of the perpetrator taking advantage of a coercive environment.</p> <p>In this section “threat of force or coercion” includes— a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or (b) taking advantage of a coercive environment.</p> <p>(5) In sub-section (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.</p> <p><u>Slavery, Sexual Servitude and Deceptive Recruiting</u></p> <p><i>Definition of slavery</i></p> <p>102 - For the purposes of this Division, slavery is the condition of a person over whom any or all of</p>
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the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

Slavery offences

103— (1) A person who, whether within or outside Fiji, intentionally—

) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or

(b) engages in slave trading; or

(c) enters into any commercial transaction involving a slave; or

) exercises control or direction over, or provides finance for—

(i) any act of slave trading; or

) any commercial transaction involving a slave; commits an indictable offence.

Penalty — Imprisonment for 25 years

(2) A person who—

(a) whether within or outside Fiji—

enters into any commercial transaction involving a slave; or

exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or

(iii) exercises control or direction over, or provides finance for, any act of slave trading;

(b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading; commits an indictable offence.

Penalty — Imprisonment for 17 years

(3) In this section—“slave trading” includes—

) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or

(b) the purchase or sale of a slave.

(4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.

(5) The defendant bears a legal burden of proving the matter mentioned in sub-section (4).

Definition of sexual servitude

104— (1) For the purposes of this Division, sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or threats—

) is not free to cease providing sexual services; or

) is not free to leave the place or area where the person provides sexual services.

(2) In this section—“threat” means—

(a) a threat of force; or

(b) a threat to cause a person’s deportation; or

) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

Extended jurisdiction for offences against this Division

105 - A person commits an offence against all sections of this Division—

) whether or not the conduct constituting the alleged offence occurs in Fiji; and

) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

Sexual servitude offences

106—(1) A person—

-) whose conduct causes another person to enter into or remain in sexual servitude; and
-) who intends to cause, or is reckless as to causing, that sexual servitude; commits an indictable offence.

Penalty—

in the case of an aggravated offence under section 108 - imprisonment for 20 years; or
(ii) in any other case - imprisonment for 15 years.

(2) A person—

-) who conducts any business that involves the sexual servitude of other persons; and
-) who knows about, or is reckless as to, that sexual servitude - commits an indictable offence.

Penalty—

in the case of an aggravated offence under section 108 - imprisonment for 20 years; or
(ii) in any other case - imprisonment for 15 years.

In this section— “conducting a business” includes—

- taking any part in the management of the business; or
- exercising control or direction over the business; or
- (c) providing finance for the business.

Deceptive recruiting for sexual services

107— (1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about—

-) the fact that the engagement will involve the provision of sexual services; or
- (b) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or

	<p>) the extent to which the person will be free to leave the place or area where the person provides sexual services; or</p> <p>) the extent to which the person will be free to cease providing sexual services; or</p> <p>) the extent to which the person will be free to leave his or her place of residence; or if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or</p> <p>) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents; commits of an indictable offence.</p> <p>Penalty—</p> <p>(i) in the case of an aggravated offence under section 107 - imprisonment for 9 years; or</p> <p>(ii) in any other case—imprisonment for 7 years.</p> <p>(2) In determining, for the purposes of any proceedings for an offence against sub-section (1), whether a person has been deceived about any matter referred to in a paragraph of that sub-section, a court may have regard to any of the following matters—</p> <p>(a) the economic relationship between the person and the alleged offender;</p> <p>b) the terms of any written or oral contract or agreement between the person and the alleged offender;</p> <p>(c) the personal circumstances of the person, including but not limited to:</p> <p>(i) whether the person is lawfully entitled to be in Fiji; and</p> <p>(ii) the person’s ability to speak, write and understand English or the language in which the deception or inducement occurred; and</p> <p>the extent of the person’s social and physical dependence on the alleged offender.</p>
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(4) In this section—
“sexual service” means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

Aggravated offences

108— (1) For the purposes of this Division, an offence against section 106 or 107 is an aggravated offence if the offence was committed against a person who is under 18.

If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person under that age.

In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

Trafficking in Persons and Children

114 - Offence of trafficking in children

(1) A person (the first person) commits an indictable offence of trafficking in children if—
the first person organises or facilitates the entry or proposed entry into Fiji, or the receipt in Fiji, of

another person; and

(b) the other person is under the age of 18; and in organising or facilitating that entry or proposed entry, or that receipt, the first person—

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or

(i) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty — Imprisonment for 25 years

(2) A person (the first person) commits an indictable offence of trafficking in children if —
the first person organises or facilitates the exit or proposed exit from Fiji of another person;
and

(b) the other person is under the age of 18; and
in organising or facilitating that exit or proposed exit, the first person:

) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or

) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty — Imprisonment for 25 years

(3) In this section—

“sexual service” means the use or display of the body of the person providing the service for the sexual gratification of others.

Section 117 - Offence of domestic trafficking in children

A person commits an indictable offence of domestic trafficking in children if—

the first-mentioned person organises or facilitates the transportation of another person from one place

in Fiji to another place in Fiji; and

(b) the other person is under the age of 18; and
in organising or facilitating that transportation, the first-mentioned person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty — Imprisonment for 25 years

(2) In this section—

“sexual service” means the use or display of the body of the person providing the service for the sexual gratification of others.

Extended jurisdiction for some offences against this Division

120. A person commits an offence against sections 112 – 114 (inclusive) (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and

(b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

Defilement of children under 13 years of age

214.— (1) A person commits an indictable offence (which is triable summarily) if he or she unlawfully and carnally knows any child under the age of 13 years.

Penalty — Imprisonment for life.

(2) A person commits a summary offence if he or she attempts to have unlawful carnal knowledge of any child under the age of 13 years.

Penalty — Imprisonment for 5 years.

Defilement of young person between 13 and 16 years of age

215.— (1) A person commits a summary offence if he or she unlawfully and carnally knows or attempts to have

unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years.

Penalty — Imprisonment for 10 years.

(2) It shall be a sufficient defence to any charge under sub-section (1) if it shall be made to appear to the court that the person charged had reasonable cause to believe, and did in fact believe, that the person was of or above the age of 16 years.

) It is no defence to any charge under sub-section (1)(a) to prove that the person consented to the act.

Section 227 - Buying minors under the age of 18 years for immoral purposes

) A person commits an indictable offence (which is triable summarily) if he or she buys, hires or otherwise obtains possession of any minor under the age of 18 years with intent that the minor shall at any age be employed or used for the purpose of—

(a) prostitution; or

(b) illicit sexual intercourse with any person; or

) for any unlawful and immoral purpose or knowing it to be likely that the minor at any age will be employed or used for any such purpose

Penalty — Imprisonment for 12 years

(2) Any common prostitute or other person of known immoral character who buys, hires or otherwise obtains possession of a minor under the age of 18 years shall, until the contrary is proved, be deemed to have obtained possession of the minor with the intent mentioned in this section.

Section 226— Selling minors under the age of 18 years for immoral purposes

(1) A parent or any other person having the custody, charge or care of a minor under the age of 18 years commits an indictable offence (which is triable summarily) if he or she sells, lets for hire or otherwise disposes of such minor with intent

that the minor shall at any age be employed or used for the purpose of—

- (a) prostitution; or
- (b) illicit sexual intercourse with any person; or
- (c) for any unlawful and immoral purpose—

or knowing it to be likely that such minor at any age will be employed or used for any such purpose.

Penalty — Imprisonment for 12 years

(2) When a minor under the age of 18 years is sold, let for hire or otherwise disposed of to a common prostitute or other person of known immoral character, the parent or person so disposing of the minor shall, until the contrary is proved, be deemed to have disposed of the minor with the intent mentioned in this section

Person living on earnings of prostitution or persistently soliciting

230— (1) A person commits a summary offence if he or she—

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any public place persistently solicits or offers a person for immoral purposes.

Penalty — Imprisonment for 6 months.

(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person (or generally), he or she shall unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Suspicious premises

232 - If it is made to appear to a magistrate by information on oath that there is reason to

suspect that any house or any part of a house is used for purposes of prostitution, and that any person residing in or frequenting the house—
(a) is living wholly or in part on the earnings of the prostitute; or
(b) is exercising control, direction or influence over the movements of the prostitute—
the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Brothels

233. A person commits a summary offence if he or she—

- (a) keeps or manages, or acts or assists in the management, of a brothel; or
- (b) being the tenant, lessee or occupier of any premises knowingly permits the premises or any part of the premises to be used as a brothel, or for the purposes of habitual prostitution; or
- (c) being the lessor or landlord of any premises (or the agent of such lessor or landlord) lets the premises or any part of them with the knowledge that the premises are or is to be used as a brothel, or is willfully a party to the continued use of such premises as a brothel

Penalty— Imprisonment for 5 years or a fine of \$10, 000 penalty units, or both.

Abduction of person under 18 years of age with intent to have carnal knowledge

211.— (1) A person commits a summary offence if he or she, with intent that any unmarried person under the age of 18 years shall be unlawfully and carnally known by any person (whether such carnal knowledge is intended to be with any particular person or generally), takes or causes to be taken the person out of the possession and against the will of his or her father or mother, guardian or any other person having the lawful care or charge of the person under 18 years.

Penalty — Imprisonment for 5 years

(2) It shall be a sufficient defence to any charge under this section if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the other person was of or above the age of 18 years.

Abduction of young persons

285. Any person commits a summary offence if he or she unlawfully takes or causes to be taken any young person, being under the age of 18 years, out of the possession and against the will of his or her father or mother, or of any other person having the lawful care or charge of the young person.

Penalty — Imprisonment for 5 years.

Employment Relations Promulgation Act 2007

PART 10 — Children

Objects of this Part.

The objects of this Part are—

- (a) to prohibit work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;
- (b) to establish the circumstances and ages at which children may work; and
- (c) to confer certain rights on children and provide protection in view of their vulnerability to exploitation.

Prohibition of worst forms of child labour

91. The following forms of child labour are prohibited—

- (a) all forms of labour slavery or practices similar to slavery, such as the sale and trafficking of

	<p>children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict;</p> <p>(b) 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</p> <p>(c) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, and a person who engages a child in such prohibited form of child labour commits an offence.</p>
<p>Child Pornography</p>	<p><u>Juveniles (Amendment) Act, 1997</u></p> <p><u>"Pornographic activity involving Juveniles</u></p> <p>62A. (1) Any person whether in public or in private, who</p> <p>(a) records from, reproduces, places onto, views, or accesses on or from, media or records of pornographic activity directly or indirectly involving juveniles, or persons who look like juveniles whether they are or not;</p> <p>(b) 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;</p> <p>commits a felony and is liable on conviction-</p> <p>(i) in the case of a first offender, to a fine not exceeding \$25,000 or a term of imprisonment not exceeding 14 years, or both; or</p> <p>(ii) in the case of a second or subsequent offence, to a fine not exceeding \$50,000 or life imprisonment, or both.</p>

Online Safety Act 2018

Causing harm by posting electronic communication

24.— (1) A person who—

- (a) posts an electronic communication with the intention to cause harm to an individual;
- (b) posts an electronic communication where posting the electronic communication would cause harm to an ordinary reasonable individual in the position of the individual; and
- (c) posts an electronic communication where posting the electronic communication causes harm to the individual, commits an offence.

(2) A person who commits an offence under subsection (1) is liable upon conviction to—

- (a) in the case of an individual, a fine not exceeding \$20,000 or imprisonment for a term not exceeding 5 years or both; and
- (b) in the case of a body corporate, a fine not exceeding \$100,000, and for a director, chief executive officer, manager or officer in charge for the time being, to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 7 years, or both.

3) In determining whether posting an electronic communication would cause harm, the court may take into account any factor it considers relevant, including—

- (a) the extremity of the language, images or videos used;
- (b) the age and characteristics of the individual concerned;
- (c) whether the electronic communication was anonymous;
- (d) whether the electronic communication was repeated;
- (e) the extent of circulation of the electronic communication;
- (f) whether the electronic communication is true or false; and

(g) the context in which the electronic communication appeared.

Posting an intimate visual recording

25—(1) Subject to subsection (3), a person must not post or threaten to post an intimate visual recording of an individual.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to—

(a) in the case of an individual, a fine not exceeding \$20,000 or imprisonment

for a term not exceeding 5 years or both; and

(b) in the case of a body corporate, a fine not exceeding \$100,000 and for a

director, chief executive officer, manager or officer in charge for the time

being, to a fine not exceeding \$50,000 or to a term of imprisonment not

exceeding 7 years, or both.

(3) Subsection (1) does not apply if the individual, who is the subject of the electronic communication concerned, consents to the specific post of the intimate visual recording.

(4) In this section, “consent” must be voluntary, expressed and informed, and does not include the consent of a child.

Cybercrime Bill 2020 (Tabled in Parliament)

Section 11 provides for the offence of child pornography.

Section 11(2) defines “**child pornography**” as content that depicts, presents or represents—

(a) a child engaged in sexual intercourse or sexually explicit conduct;

(b) a person appearing to be a child in sexual intercourse or sexually explicit conduct;

(c) an image, animation, text material or video of a child engaged in sexual intercourse or sexually explicit conduct that includes any audio, visual or text material.

Where, pursuant to 11(3)

	<p>(a) the impression conveyed by the content is that the person shown is a child; or</p> <p>(b) the predominant impression conveyed is that the person shown is a child, notwithstanding that the persons physical characteristics are those of an adult</p> <p>A person commits an offence if he or she intentionally who intentionally</p> <p>(a) takes or permits to be taken child pornography</p> <p>(b) offers, distributes, makes available or shows child pornography;</p> <p>(c) procures through a computer system and has in his or her possession child pornography for himself or herself or with a view of the content being distributed or shown to any other person or</p> <p>(d) publishes or causes to be published an advertisement likely to be understood as conveying that the advertiser distributes such content or intends to do so. An individual on conviction is liable to a fine not exceeding \$50,000 or imprisonment of a term for a term not exceeding 15 years or both and in case of a body corporate a fine not exceeding \$200,000. In addition to the conviction, a court may order (a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence; or</p> <p>(b) that the material subject matter of the offence no longer be stored on and be made available through the computer system, or that the material be deleted.</p>
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Core Elements of the Optional Protocol

Article 1

Implores on State parties to prohibit the sale of children, child prostitution and child pornography.

Article 2

Defines the sale of children, child prostitution and child pornography:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Establishes the following acts and activities, at the very minimum and extraneous of whether they are committed domestically or transnationally that must be covered under criminal or penal law:
 - sale of children
 - Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - (a) Sexual exploitation of the child;
 - (b) Transfer of organs of the child for profit;
 - (c) Engagement of the child in forced labour;
 - Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (a) Offering, obtaining, procuring or providing a child for child prostitution
 - (b) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography
2. Subject to the provisions of the national law of a State Party, the above applies to an attempt to commit any of the abovementioned acts including any complicity or participation in such acts.

3. Requires State Party to make such offences punishable through appropriate penalties that reflect the grave nature of such acts.
4. Subject to the provisions of its national law, State Party is required to establish the liability of legal persons, whether criminal, civil or administrative, for offences under Article 3.
5. Requires State Party to take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments such as the Hague Convention.

Article 4

State Party is required to establish its jurisdiction over the offences referred to in article 3

Article 5

The offences under Article 3 are deemed as extraditable offences in any extradition treaty between State Parties. It also provides for the legal basis for extradition for the offences in the absence of an extradition treaty between the State Parties to the Optional Protocol. It equally requires that where the State Party does not extradite a person(s) based on the nationality of the offender, the State Party must refer the case to a competent authority for prosecution.

Article 6

Implores State Parties to cooperate and support each other with investigations or criminal or extradition proceedings brought in respect of the offences under Article 3, including assistance in obtaining evidence.

Article 7

Places obligation on States Parties to take measures, including request from another state Party to provide for the seizure and confiscation of materials, assets and other instrumentalities used to commit or facilitate offences including proceeds derived from such offences under the Optional Protocol.

Article 8

Provides that State party shall adopt measures to protect the rights and interests of child victims at all stages of the criminal justice system. These include:

- Recognising the vulnerability of child victims including their special needs as witnesses.
- Informing child victims of their rights, their role, timing, progress and disposition of their cases.

- Enabling the views, needs and concerns of child victims to be presented and considered in a manner that is consistent with the national law.
- Provision of appropriate support services to child victims throughout the legal process,
- Protecting the privacy and identity of child victims, including taking measures that are consistent with national laws to avoid disclosure that could lead to the identification of child victims.
- Providing protection to the child victims, their families and witnesses on their behalf, from intimidation and retaliation.
- Ensuring there are no unnecessary delays in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
- Ensuring that the actual age of the child victims is not used to prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
- Ensuring the best interest of the child shall be a primary consideration when dealing with child victims during the criminal justice processes.
- Ensuring persons working closely with the child victims undergo appropriate training, in particular legal and psychological training.
- Adopt measures in order to protect the safety and integrity of those persons, organizations involved in the prevention, protection and rehabilitation of the victims.
- Ensuring that the accused have a fair and impartial trial.

Article 9

Implores on the adoption or strengthening, implementation and dissemination of laws, administrative measures and social policies and programmes by State Party to prevent offences outlined in the Optional Protocol. It also calls State Party to:

- promote awareness both for public and children about the preventive measures and harmful effects of the sale of children, child prostitution and child pornography.
- encourage the participation of the community and, in particular, children and child victims in awareness and training programmes including at the international level.
- ensuring appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
- ensure all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
- ensure the production and dissemination of material advertising the offences defined in Article 3 are prohibited.

Article 10

Provides for international cooperation by multilateral, regional, and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment for those responsible for

acts involving the sale of children child prostitution, child pornography and child sex tourism including coordination between authorities, national and international non-governmental organisations and international organisations. It equally calls on State Parties to promote international cooperation to:

- assist child victims in their physical and psychological recovery, social reintegration and repatriation, address root causes such as poverty and underdevelopment which often accentuates the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
- Provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Provides that nothing in the Optional Protocol affects any provision, either in the national law of the State Party or international law in force for the State Party, that are more conducive to the realization of the rights of the child.

Article 12

Makes it incumbent on State Party to submit a report within 2 years following the entry into force of the Optional Protocol 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.

Articles 13 to 17

Outlines the administrative procedures for the ratification and accession, entry into force, denunciation and amendments to the Optional Protocol.

Recommendations

- It is recommended that Fiji ratify the Optional Protocol without reservations.
- It is further recommended that the provisions of the Crimes Act as it relates to the age of criminal liability under section 27 of the Act to children who are over ten years of age but under fourteen years who may be held criminally liable under section 230 of the Crimes Act for living on earnings of prostitution or persistently soliciting must be interpreted in consonance with the principles of the best interests of the child as it can

leave such children who are already in a vulnerable position susceptible to criminal prosecution.

- Human rights training of law enforcement agencies, child welfare officers and community advocates in building their capacity to effectively deal with child victims during investigation and at various stages of the criminal justice process as well as dignified reintegration into society.
- Promote education and advocacy on the rights and obligations under the Optional Protocol through multisectoral cooperation between the state, civil society, national human rights institution including the mobilization of communities and the media to raise awareness including in schools through human rights education.
- It is imperative that the State, law enforcement agencies and the national human rights institution develops its capacity in this area to enable independent monitoring and reporting. There is a need to develop a more robust monitoring mechanism to track progress in the implementation of the Optional Protocol.

A cohesive child friendly support system/network should be set up to assist child victims and survivors of sexual exploitation with adequate psycho-social support enabling constructive engagement between state, civil society, communities and national human rights institution to assist with dignified and safe reintegration of child victims into the communities, help empower child victims and ensuring that their views are heard when making decisions about their life.



Pacific Islands Development Forum



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REF: OM20-055-SG

Friday, October 23, 2020

Hon. Alexander O' Connor
Chairperson
Foreign Affairs & Defence Standing Committee
Parliament of the Republic of Fiji
SUVA

Dear Sir,

PIDF Submission:
Optional Protocol to the Convention on the Rights of the Child the Sale of
Children, Child Prostitution and Child Pornography

Greetings from the Pacific Islands Development Forum (PIDF) Secretariat.

I wish to acknowledge receipt of your email dated 14 September 2020 pertaining to the above subject and provide below our views, which I must qualify with the appropriate caveat that the issue does not fall within our area of expertise.

However, we strongly feel that a response is warranted from us because it impacts on the sustainable development platform we promote for building climate resilient economies and societies. Recent studies have found a strong correlation between the impact of climate change on communities and the social dislocation affecting children.

Our response is predicated on this and we submit the following in response to the question posed on the subject:

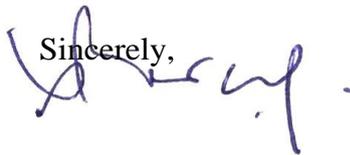
- a) We support the bill;
- b) We recognize that Fiji has enacted several legislations in the past aimed at criminalizing sexual exploitation of children;





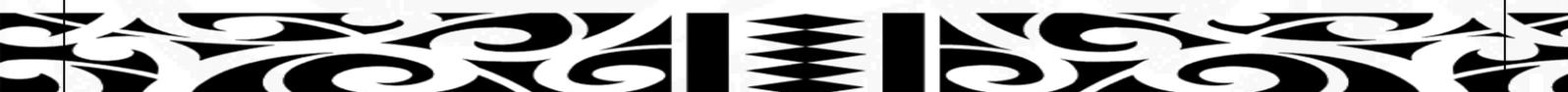
- c) We also note that several convictions have been made in court;
- d) However, the continuing emergence of new cases seems to suggest the non-availability of adequate resources to address the issue at the socio- economic level;
- e) The UN Pacific Socio-Economic Impact Assessment of COVID-19 in Fiji highlighted that 16 percent of Fijian girls had suffered sexual abuse before the age of 15;
- f) Relevant line Ministries and Departments need to be provided with adequate resources to establish child support system or network to assist and empower victims and survivors of sexual exploitation through professional support; and
- g) Fiji needs to reach out to the UN body responsible for the Convention and seek assistance in the form of technical and material support needed to address the socio-economic triggers that propel children into the sex trade.

The PIDF appreciates the parliamentary subcommittee's desire to seek our submissions on this pertinent bill and apologies for this belated response.

Sincerely,




Ambassador Solo Mara
Secretary General



[VERBATIM REPORT]

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

AGREEMENT/PROTOCOL/CONVENTIONS

- l)* **Republic of Fiji-Solomon Islands Maritime Delimitation Agreement.**
- m)* **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.**

INSTITUTIONS: (1) **Pacific Islands Forum Secretariat (PIFS)**

- **Pacific Islands Development Forum (PIDF)**
- **University of the South Pacific (USP)**

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

DATE: **Monday, 15th June, 2020**

VERBATIM NOTES OF THE VIRTUAL MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE VIEWED AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON 15TH SEPTEMBER, 2020 AT 9.31 A.M.

Online Interviewee/Submittee:

Pacific Islands Forum Secretariat (PIFS)

In Attendance:

- Mr. Alifeleti Soakai – Political Issues Adviser
 - Ms. Nola Faasau – Acting International Legal Adviser
-

MR. CHAIRMAN.- A very warm welcome to Mr. Alifeleti Soakai and Ms. Nola Faasau from the Pacific Islands Forum Secretariat (PIFS). For the benefit of the general public who may be listening in to this telecast this morning, a warm welcome. We have before us Mr. Alifeleti Soakai and Ms. Nola Faasau from the PIFS and will be submitting on two Treaties that are before the Standing Committee on Foreign Affairs and Defence on these subjects:

- Agreement between the Republic of Fiji and Solomon Islands Concerning their Maritime Boundary; and
- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Mr. Alifeleti Soakai and team for your benefit, I wish to introduce my Committee.

(Introduction of the Committee Members by Mr. Chairman)

With those words of introduction, Mr. Soakai, the floor is yours. Thank you.

MR. A. SOAKAI.- Thank you very much, Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence of the Parliament of the Republic of Fiji. Mr. Chairman, I extend the sincere apology of the Secretary-General of the PIFS, Ms. Dame Meg Taylor, who due to prior busy commitment is directly unable to make to this verbal presentation.

Mr. Chairman, thank you for the invitation extended to the PIFS to speak about the Agreement between the Republic of Fiji and the Solomon Islands concerning their maritime boundary.

Mr. Chairman, may I extend our apologies, we will be making our submission on the maritime boundary and with your kind permission, we request that we make a written statement on the second matter.

Before I go on to our submission, Mr. Chairman, may I provide some context on the PIF and the Secretariat it serves.

Fiji is a founding member of the Pacific Islands Forum (PIF), established some 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.

The PIF 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.

Mr. Chairman, 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. The Forum has a number of milestones, one of which is the pioneering role in the token of with the 1982 UN Convention on the Law of the Sea and, indeed, the basis for today's hearing.

Mr. Chairman and Honourable Members of the Committee, the role of the Forum Secretariat is to provide 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 United Nations Convention on the Law of the Sea (UNCLOS).

Mr. Chairman, 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 Secretariat of the Pacific Community (SPC) and a Maritime Boundaries Commission of key partners, to support Members' efforts in this regard.

Mr. Chairman, we understand that the SPC has been invited to provide a submission to your Committee. Therefore, SPC is best placed to address and submit on the specific technical issues on this matter.

Mr. Chairman, I refer to some of our Leaders' decisions and commitments. The first of which was in 2010 under the Pacific Oceanscape. It sets out Strategic Priority 1 Jurisdictional Rights and Responsibilities. There are 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. These include:

- (g) formalising maritime boundaries and securing rights over their resources; and
- (h) fixing baselines and maritime boundaries to ensure the impact of climate change and sea-level rise does not result in reduced jurisdiction in Pacific Island Countries.

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, the security and well-being of the Blue Pacific. Leaders are further committed to progressing the resolution of outstanding maritime boundary claims and report back on the progress at their next meeting which is supposed to be this year.

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

Mr. Chairman, I have the honour to refer to the current status of maritime boundaries in the Pacific and the regional support available. The maritime boundaries are established through a process of declaring maritime boundaries which involve technical elements (mapping), legal elements (drafting and review of law), political elements (advocacy and negotiations which required, including treaty-making) and submission of maritime boundaries to the United Nations.

As alluded to, the Pacific Community or SPC provides technical advice and support to 14 Pacific Island Countries to formalise their respected maritime boundaries through treaties. I have included Mr. Chairman, a link to that in our statement:

Currently, there are 48 shared or overlapping boundaries (EEZs) between countries in the Pacific Islands region. To date, 35, or 73 percent 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.

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.

However, Mr. Chairman and Honourable Committee Members, the work is very technical in nature and requires time, effort and most importantly, the political will. There are, of course, a few long-standing negotiations and one overt dispute in the region.

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.

The recent endorsement by Leaders to 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 in full support of Forum Secretariat.

Compounding this issue is the region's biggest security threat – climate change – being a key driver, in particular the findings of the recent Intergovernmental Panel on Climate Change (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.

Mr. Chairman, 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. Leaders 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.

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 (UNCLOS), Members maritime zones could not be challenged or reduced as a result of sea level rise and climate change.

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 here last week, Members once again emphasised the criticality of concluding all outstanding maritime boundaries claims and zones and related bilateral treaties and legal frameworks.

Mr. Chairman, I now turn to the Draft Agreement that has been provided. With respect to the Draft Agreement, we made three observations:

Firstly, "sovereignty rights" under Article 5 appears to be inconsistent with UNCLOS which states under Article 56 of the Convention regarding the EEZ which makes specific reference to

“sovereign rights” and not “sovereignty rights”. I repeat, the UNCLOS, under Article 56, makes specific reference to “sovereign rights” and not “sovereignty rights”.

Mr. Chairman, “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 “sovereignty rights”. Under UNCLOS, these are two distinctive rights.

Therefore, Mr. Chairman, consistent alignment with the wording in UNCLOS would be highly recommended. UNCLOS exerts “sovereignty” within the internal waters, archipelagic waters and the 12 nautical miles 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.

Mr. Chairman, the second observation we offer relates to Article 6 - Adjustments to Maritime Boundary. While we note that Article 6 is a standard clause in most maritime boundaries, it could read as 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.

Mr. Chairman, 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 UNCLOS, that the Members’ maritime zones could not be challenged or reduced as a result of sea-level rise and climate change.

Mr. Chairman, a body of state practice is, therefore, emerging in the region to develop consistent evidence of non-ambulatory maritime boundaries, which is fundamental to the development of customary international law.

Mr. Chairman, we submit that 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.

Our third and final observation, Mr. Chairman, 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 that is final and permanent and, therefore, cannot be challenged or reduced as a result of sea-level rise and climate change.

Mr. Chairman and Honourable Members of the Committee, in conclusion, we close our submission by recommending that 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 tangible step forward and supports a collective commitment made by all the 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, the security wellbeing of our Blue Pacific Continent.

Mr. Chairman, on the basis of this submission, the PIFC supports the completion and signing of the Agreement between the Republic of Fiji and the Solomon Islands concerning their shared maritime boundary, and hopes that the submission is of assistance to your Committee. Thank you, Mr. Chairman and Honourable Members of the Committee.

MR. CHAIRMAN.- I thank you again, Mr. Soakai, for that very informative submission from your Secretariat Office. We will open the floor now for a few questions, if you do not mind, Sir.

I have one question. With the increase in rising sea levels, do you see that affecting the boundaries over time? Let us say, a decade from now, if the two Parties - Solomon Islands and Republic of Fiji, sign the Agreement and it is included with the other 36 or that becomes 36, do you see that as a problem needing a change in time in 10 years down the line?

MR. A. SOAKAI.- Mr. Chairman, thank you for the question. The essence of our submission is that, we need to complete our boundaries in the face of climate change, because climate change may affect our boundaries. I would not say that it will affect our boundaries, so there is a sense of urgency amongst regional organisations that we support our Members and confirming those boundaries as a matter of urgency, Sir.

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

HON. DR. S.R. GOVIND.- Thank you, Mr. Soakai, for your very informative presentation. I would like to understand a little bit more about the sovereignty rights and the sovereign rights over the EEZ. Can you please explain what this actually means, and give some examples?

MR. A. SOAKAI.- Thank you. Mr. Chairman, through you, may I answer the Honourable Member's question. With your permission, Mr. Chairman, I invite my colleague, Ms. Nola Faasau, who is the Acting International Legal Advisor to give specific examples to the question posed by the Honourable Member.

MR. CHAIRMAN.- Hello, Nola, nice to see you again.

MS. N. FAASAU.- *Bula*, Honourable Members. Thank you very much for your question, Honourable Member. I will just refer briefly to Article 56 of the Convention which specifies the sovereign rights coastal States to their boundaries and EEZ. And without going into too much technical analysis around this, our main comments was around complying to the actual language of the Convention which uses sovereign rights as opposed to sovereignty rights.

There is no such thing in the Convention as sovereignty rights, and we do recognise that in the draft Agreement, the title of Article 5 is "Sovereign Rights", but then later in the provision it says sovereignty, we are just wondering whether this might actually be a typographical error or whatever, but we do believe and with our discussions with the Pacific Community (SPC), there is a clear difference between sovereign because when you have sovereign rights over your jurisdiction between Fiji and Solomon Islands, it is shared rights, as opposed to sovereignty where you have supreme absolute control over it without any rights to another party. So just for the avoidance of doubts or any interpretation issues, our recommendation is just allowing them to be inconsistent to the language of Article 56 of the Convention. Thank you.

MR. CHAIRMAN.- Thank you. Any other question, Honourable Members?

HON. LT. COL. P. TIKODUADUA.- Yes, thank you. My question is on Article 6. First, I want to thank Mr. Soakai for his presentation and the answer just given by Ms. Faasau. Thank you.

Now, Article 6, Mr. Soakai, seems to suggest that some aspects of this Article do not quite gel or, sort of, could undermine or regionally affect the Leaders' agreement. Could you just say a little bit more than that? I missed out the end part of what you said.

Also, the third concern that you raised is on the finality clause, that you hope Fiji would take into account. Thank you.

MR. A. SOAKAI.- Thank you, Mr. Chairman and through you, we would like to answer the question posed by the Honourable Member. The second observation we made relates to Article 6 - Adjustments to Maritime Boundary.

While we note that Article 6 is a standard clause in most maritime boundaries Treaties, it could be read as supporting the argument that maritime boundary is ambulatory or subject to change after. So that is why we are suggesting permanent agreement so that our claims are solidified and recognised under the Convention, Sir.

For the second question, I would refer to my colleague, Ms. Faasau, to speak on that. Thank you.

MS. N. FAASAU.- Thank you very much, Mr. Chairman. Just to add, the language of Article 6, just the word 'adjustments' itself, as Mr. Soakai has mentioned, speaks to an interpretation that would support the argument that maritime boundaries will change over time.

We are conscious that climate change and sea-level rise means a decrease in the maritime boundaries or maritime zones or your EEZ and that appears contrary to the regional discussions over the last few years in our regional collective interest to secure our boundaries and not have our boundaries diminished or challenged or changed due to sea-level rise. This interpretation will also support the collective effort that Members are currently working through at the moment to contribute to the development of international law in this area.

As Members may be aware, there is no clear international rule that safeguards our boundaries or coastal areas. Even under the Law of the Sea Convention it is silent on this particular issue. So just last week as Mr. Soakai has mentioned, there was a regional conference that discussed this issue and there was a collective appreciation of the complexities around this issue, and that we, as a region, will continue to be heavily engaged in this process. We want to ensure that boundaries do not diminish over time and so we are currently working very actively towards fulfilling the Leaders' direction on this particular point, to ensure that once these agreements, these boundaries have been deposited with the UN Secretary-General as proposed to find out a clause which will ensure that there are no changes to these boundaries regardless of our own circumstances. Finally, this contributes to a body of State Parties and Regional Parties which will strengthen our regional position. Thankyou.

MR. CHAIRMAN.- Honourable Jale, do you have a question?

HON. A. JALE.- Yes. Thank you very much, *Malo a Bula*, Mr. Soakai and thank you, Ms. Faasau, for the opportunity to interact with us and talk to us this morning. The two issues that I would like to raise, first, is on the finality clause. You emphasised the importance of that. Do you

feel that this Agreement that Fiji has to sign with the Solomon Islands should have a finality clause? At the moment I see that there is no provision on the finality clause in the Agreement.

Secondly, what is your organisation doing in disseminating information about this matter which is really important with this climate change and sea-level rise? It certainly is going to have an effect on maritime boundaries and other things that are covered under UNCLOS, so if you can clarify that for us.

The finality clause, is there really a need? You said the importance of it, however, from the draft that I have seen, there is nothing there. The other point is the dissemination, we still have about 12 or 13 overlapping boundaries that have really not been addressed until now and I think there is an importance of trying to get those organised and finalised. Thank you.

MR. A. SOAKAI.- Thank you, Mr. Chairman. In response to the Honourable Member's questions, on the issue of finality, Mr. Chairman and Honourable Members, the Agreement itself as it stands is alright, it will work, but our point is that, we need to get clarity and permanency to our Agreement because climate change will happen and it will affect our claims, our territories, our resources and our security. I think that is the main crux, that we would respectfully suggest to the Government of Fiji to consider finality so that it is consistent with the regional approach and, indeed, what the leaders have said.

On your second point, Honourable Member, it is well noted and well taken. This is an area of work that has very much been conducted at the technical level by the PIFS and SPC and we agreed that it needs to be promoted further but it is an ongoing piece of work, it is highly respectable and it takes time. At the moment, it is not so much in the public consciousness because they are very much focused on climate change, on natural disasters, on COVID-19 and the social-economic impact of COVID-19 but we would make our best efforts to address the second point you have made, Honourable Member. Thank you.

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. Just out of curiosity and this is a question that I would like to raise, when you refer to permanency, I wonder when considering permanency in countries such as Kiribati where there is a real concern that the left area of Kiribati might actually get under water, does that actually change when the atoll is not there and it is all covered, God forbid, under water like 50 years or 100 years from now? I am ignorant here, so I am just trying to learn something. Does that change the laws of the sea - UNCLOS, et cetera, where it virtually does not exist and its inhabitants are living in other countries?

I know this is a side issue, but would just like to raise that perhaps as a matter of concern because internally in Fiji, that might also be the case for some islands, even though internally it might affect some kind of fishing boundary. So just some insight to that, Sir.

MR. A. SOAKAI.- Thank you very much. Mr. Chairman, through you, my colleague, Ms. Faasau, will answer the Honourable Member's question.

MS. N. FAASAU.- Thank you, Mr. Chairman. This is actually the ongoing debate that is happening right now and I think this is what we have just referred to and emphasised in our paper as well.

Our Leaders have taken a very proactive approach. Even though the Law of the Sea is silent and what happens to our islands as it gets overridden with sea-level rise and climate change, our

collective approach at the moment is to be very, very uptake in the development of international law. And that process includes State partners which the very first step is for all countries to conclude all their negotiations on their shared maritime boundaries, as well as high seas delimitation.

For Kiribati, for example, shared boundary is one type of boundary but the high seas delimitation, once that process is approved, the argument that we are promoting and that the region is working towards is ensuring that those limits, those measurements are not changed and are not affected. So countries are using things, like legislation, to incorporate a finality or common key provision. So if all of our countries could do those kinds of practices which includes adding a finality clause in the Agreement as we are considering today, that will all accumulate into a very strong body of law with purpose. But we will strengthen our case to ensure that international law aspects follows what we have done at the national level. And that is, regardless of whatever happens, even if Kiribati goes under water tomorrow, it will not lose sovereignty and its sovereign rights over its jurisdiction because it has already and deposited into the UN process. But it is a debate and, of course, our region has a very specific and particular view and our work at the moment is to try and get everyone else on board.

HON. LT. COL. P. TIKODUADUA.- Thank you very much for that. MR.

CHAIRMAN.- Thank you, Nola. Honourable Jale?

HON. A. JALE.- I am asking the question about this Agreement that will be signed with Solomon Islands. I do understand that Fiji also have an overlap of the EEZ boundary or maritime boundary with Vanuatu. Would this Agreement have some implications or effects on Fiji's endeavour in the future to also come to a, sort of, agreement with Vanuatu?

MS. N. FAASAU.- Thank you very much, Honourable Member, our collaboration with the SPC is to provide technical assistance to countries on the agreements, et cetera, on this particular matter.

The decision on Fiji and Vanuatu, the issue of developing and concluding the boundaries, that is rather a sovereign decision of each particular country. I believe the SPC might have a more specific answer to that question because of the relationship that they have with individual Members but to answer your question, we do not deal with those particular issue unless (Inaudible) on that. We are moving towards the collective decision for each boundary to be finalised and concluded, so that we can clearly define maritime boundaries.

MR. CHAIRMAN.- Thank you, Nola.

Jacob, do you wish to raise any questions with the PIFS Team?

MR. J. ABRAHAM.- Yes, thank you, Honourable Chair. With your permission, Sir, just two questions from the Secretariat from our end:

- (vi) Why has not the United States of America signed up to UNCLOS?
- (vii) Are there any pertinent discussions with regard to the maritime boundary between Fiji and Tonga towards the eastern part from Ono-i-Lau towards the Tongan side? I think, Ms. Faasau, knows where we are getting at, respectfully, Sir.

HON. A. JALE.- Mr. Chairman, that is a dispute between Ono-i-Lau and Tonga. It should not be discussed here, Sir.

MR. A. SOAKAI.- Thank you, Mr. Chairman, through you, I would like to answer the Secretariat's questions. With respect to the United States' reluctance to sign the Convention (it is a list of many Conventions that the US is still considering) and I would respectively refer you to the United States Government to answer that question.

On the second question, it is something that is way above my (inaudible), Mr. Chairman and Honourable Members, and is best answered within the political realm.

MR. J. ABRAHAM.- Thank you, Mr. Chairman. MR.

CHAIRMAN.- *Vinaka.*

Honourable Members, if there are no other questions, may I take this opportunity to thank Mr. Soakai and Ms. Faasau for your contribution, your submission this morning. At this juncture, I also thank the members of the public who have taken their time out to listen to this telecast.

With those few words, Mr. Soakai, you have any departing comments, thank you.

MR. A. SOAKAI.- Mr. Chairman, just to get again reiterate our thanks to you and Honourable Committee Members for the opportunity to make a submission to the Standing Committee on Foreign Affairs and Defence. It has been a while since the Secretariat has had this honour, and we hope that we can continue to provide assistance from the Government and the Parliament of Fiji. Thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Honourable Members. Thank you again for your commitment, Sir.

With those few words, we will just adjourn. The

Committee adjourned at 10.09 a.m.

The Committee resumed at 10.28 am.

Interviewee/Submittee: Pacific Islands Development Forum

In Attendance:

- | | | | |
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| (f) | Mr. Solo Mara | - | Secretary-General, PIDF. |
| (g) | Ms. Arpana Pratap | - | Team Leader – Member Capacity |
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MR. CHAIRMAN.- A very warm welcome to you, your Excellency, Mr. Mara. Also a very warm welcome to the members of the public who are listening to this livestream this morning. Thank you for taking interest in your Parliament affairs. For your benefit, Sir, just word of introduction.

(Introduction of Committee Members by Mr. Chairman)

With those words of introduction, Sir, welcome to the Standing Committee on Foreign Affairs and Defence. Without further ado, Sir, I give you the floor to commence your submission, Sir.

MR. S. MARA.- *Vinaka sa' valevu.* The Chairman of the Standing Committee on Foreign Affairs and Defence and Members of your Committee, first of all, good morning, *yadra vinaka, saka.* Thank you very much, Sir, for asking PIDF to provide a brief presentation on whether Fiji should sign the Agreement with the Solomon Islands concerning their maritime boundaries. Yesterday, we have submitted a written paper and this morning, I wish to go over some of the pertinent points to allow for discussion afterwards.

Mr. Chairman, in a nutshell, the PIDF supports this Agreement because it demonstrates the global commitment of our member States towards the United Nations Convention on the Law of the Sea (UNCLOS), SDG14 and the UN Oceans Conference, particularly the commitments made by both, Fiji and the Solomon Islands in those international platform.

As you may be aware, Sir, the vast majority of the world's nations have signed those two Articles which is known as the Constitution for the Oceans. The Treaty provides guidelines on how nations use the world seas and their natural resources. It also contains mechanism for addressing our disputes. And this is important for Small Island Developing States (SIDS) like Fiji and the Solomon Islands.

Firstly, it shows how we are contributing to strengthen international law, secondly, how we are working towards conservation in general in our EEZ and, thirdly, the areas of security, how we are collaborating to ensure that international Conventions and laws relating to security are adhered to within our EEZ.

As you are no doubt aware, Mr. Chairman and Honourable Members, a defined maritime boundary allows for efficient monitoring and enforcement. An unresolved maritime boundary invites Illegal, Unregulated and Unreported (IUU) fishing, it provides routes for illicit trafficking of illegal substances, et cetera.

On the area of conservation, UNCLOS also provides a more effective platform for managing depleted fish stocks, for example. It also strengthens international law by:

- (iii) asserting the freedom of navigation and the rights of SIDS; and
- (iv) in the area of international law, it also allows SIDS, like us, to challenge excessive maritime claims by other bignations.

Finally, Sir, on this area of developing the blue economy in the Pacific and around the world, which is yet to reach its full potential here in the Pacific. You may be aware that oceans support millions of jobs through a variety of sectors, namely; fisheries, transport, tourism and energy, and it has been estimated that it adds US\$1.5 trillion to the global economy every year. And these are areas why it is important for countries in the Pacific to strengthen their maritime boundaries by entering into this Agreement. I understand that Fiji still has some outstanding maritime boundary agreements with Vanuatu, Tonga and New Zealand down the South, and I think this agreement with the Solomon Islands will provide that momentum and show our neighbouring countries that Fiji is serious about securing our maritime boundaries.

With that, Sir, I will submit this Report for your consideration and will await your questions.
Thank you.

MR. CHAIRMAN.- Thank you, Mr. Mara. We will open the floor now for questions from Honourable Members. Honourable Members, any questions, your time is now.

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I do not have any questions, thank you. MR.

CHAIRMAN.- Alright, thank you. Honourable Jale.

HON. A. JALE.- Mr. Chairman, I think there was a suggestion made by Mr. Mara that we change the title of Article 2 to international law or something on international law. Can you expand on that please, Mr. Mara?

MR. S. MARA.- Yes, Mr. Chairman. I believe the reference is on Article 2 of the Agreement, on the purpose. We thought it might read well if we insert the name of the Agreement, the UN Convention on the Law of the Sea, after the word 'international law', so that it clarifies what the Agreement is referring to rather than just a broad reference to international law.

MR. CHAIRMAN.- Thank you. Does that answer your question, Honourable Member?

Honourable Dr. Govind?

HON. DR. S.R. GOVIND.- Thank you for your presentation, Mr. Mara. I just wanted to know if the PIDF has any role in monitoring the agreements of these regional countries.

MR. S. MARA.- Thank you for that question. I believe the agreement is one that deals with national sovereignties and the responsibility lies with Member States in terms of monitoring their EEZs, so to speak. But in terms of canvassing regional positions for international meetings and conventions, we, in the Secretariat, can help out with that position in providing position papers for Member States. Thank you, Sir.

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

MR. CHAIRMAN.- Thank you. Mr. Mara, I just have one question. You know the practicality of the EEZ whereby you have your territorial seas of 12 nautical miles and then your contiguous zone

of 24 nautical miles and then thereafter is the EEZ, the 200 nautical miles. Immediately after that, the continental shelf or whatever that they call it, you have the high seas. Are you familiar with the practicality of the EEZ and in particular, interpret the high seas?

MR. S. MARA.- Certainly, Mr. Chairman. There are certain areas in the world, in the Pacific for that matter, where a country's 200-mile EEZ does not overlap, meaning that there are areas where there are no countries claiming sovereignty over those portions of the high seas but there is a provision in UNCLOS under Article 74, I believe, where you can claim beyond the 200-miles EEZ using your continental shelf scientific data, and those are some of the areas where negotiations are still taking place. I believe when I was at the Ministry of Foreign Affairs, we have started the negotiation with New Zealand on the extension of our 200-miles EEZ based on the continental shelf provision.

MR. CHAIRMAN.- Basically, Mr. Mara, you are referring to the delimitation, is that correct?

MR. S. MARA.- Yes, that would be correct, Mr. Chairman, but in this case of Fiji and the Solomon Islands, the area that we are referring to, there is an overlap in that 200 mile. So, they have come to an agreement based on the rule of equidistance.

MR. CHAIRMAN.- Thank you, Sir. Honourable Jale?

HON. A. JALE.- I think when we write up our presentation to Parliament, the issue that the Mr. Mara has raised about the security issue, I think we need to highlight that because as I see from the Agreement, there is really no mention about why the Agreement is so important to us. The security matter that he raised, I feel, is really important so I think we have captured him and it has been recorded, so I feel, Mr. Chairman, that we should highlight it in our submission which is, to me, very important.

MR. CHAIRMAN.- Honourable Members, any further questions Mr. Mara?

Since there are no questions, Sir, I take this opportunity to thank you once again. Thank you for coming before the Committee and offering us your brief submission.

With those words, thank you again, Sir, and if you have any departing comment, the floor is yours, Sir.

MR. S. MARA.- *Vinaka saka vakalevu*, Mr. Chairman. The PIDF stands ready to provide advice to your Committee in the area that we might have expertise on.

With those words, I thank you for reaching out. As I have said, as a Member State, Fiji has direct access to the resources we have here at the PIDF.

MR. CHAIRMAN.- Thank you.

The Committee adjourned at 10.51 a.m.

The Committee resumed at 11.16 a.m. **Interviewee/Submittee:**

University of the South Pacific

In Attendance:

- Mr. Esaroma Ledua - Assistant Lecture, – Ocean Resource Management
 - Dr Atul Raturi - Associate Professor, School of Engineering and Physics
 - Dr. Natasha Khan - Coordinator, Diploma in Leadership, Governance and Human Rights
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MR. CHAIRMAN.- For the benefit of the general public who may be listening in or viewing this telecast, a warm welcome to the Standing Committee on Foreign Affairs and Defence and I take this opportunity to thank you for taking interest in your Parliament.

A very warm welcome to Mr. Esaroma Ledua, the Assistant Lecture Ocean Resource Management; Dr Atul Raturi, Associate Professor, School of Engineering and Physics; and Dr. Natasha Khan, Coordinator, Diploma in Leadership, Governance and Human Rights.

Welcome to the Standing Committee on Foreign Affairs and Defence. By way of introduction, I will ask the Committee Members to raise their right hand.

(Introduction of Committee Members by Mr. Chairman)

Ladies and gentlemen, will be joining us near the term of your presentation is the Honourable Pio Tikoduadua, who just slipped out after the last presentation and also ably assisted by our Secretariat, Jacob Abraham and Susana Korovou.

With those few words of introduction, I give the floor to you, Mr. Ledua and your team.
Thank you.

MR. E. LEDUA.- Thank you so much, Mr. Chairman and Honourable Members of the Committee. Good morning to you, Sirs and Madam. This morning, just before I present on the first topic, I would like to convey the sincere apology of our Team Leader, Professor Pal, the Vice- Chancellor for not being here this morning as he has another commitment outside the University..

Mr. Chairman, just because of time, I will go straight into my presentation which will be on the Agreement between Fiji and the Solomon Islands concerning their maritime boundaries. As you may have seen in the slides that was sent to you, Mr. Chairman, I have about seven minor comments that are there.

After looking through your Written Analysis and the 10 Articles of the Agreement, I came up with seven comments.

On paragraph 1.4 of your Written Analysis, I am suggesting that it should be reworded a bit because Fiji's EEZ boundary is already defined under Chapter 158 of the Marine Spaces Act 1978. It is already there in the laws of Fiji. So, to me, that paragraph is not perfect at the moment.

The second comment is on the coordinates specified under Article 3 of the Agreement. It is consistent with section 6 of the Marine Spaces Act, as well as it is in line with those coordinates that are already there in the Second Schedule and paragraph 3 of the current Fiji Marine Spaces Act. Although the new coordinates appear to me, Mr. Chairman, that it may increase the space that Fiji will have within the EEZ a little bit more, which is a reason why we will be very much supporting the endorsement of the recommendation.

Another point, Sir, the last line of Article 9 of the Agreement, needs to be amended a bit. Instead of Article 1, I believe it should be Article 3 because Article 3 of the Agreement contains the coordinates.

The second last point, Mr. Chairman, on your Written Analysis, Part 4.0 - Impact of Execution of the Agreement, we see that there is going to be minimal impact. Only most of the changes will be on Chapter 158 of the Marine Spaces Act which will need to be amended.

We support the recommendation for Parliament to endorse the Agreement because the North- West Pacific, Mr. Chairman, is a very rich tuna fishing ground and most of the fishing activities of the Fijian fleet are concentrated up there. It is also an area where we have hydrothermal deposits, according to the South Pacific Applied Geoscience Commission (SOPAC) studies, and Fiji needs to work quickly and be able to delimit this zone as quickly as possible, Mr. Chairman. Thank you so much.

MR. CHAIRMAN.- Thank you again, Sir, for your brief presentation. Honourable Members, do you have any questions for Mr. Ledua at this stage?

HON. A. JALE.- I did not capture very well the issue that you raised about the need to amend the Marine Spaces Act, if we have to get into this Agreement with Solomon Islands. What section of the Marine Spaces Act that will be impacted through the proposed Agreement, if it is signed by Fiji and Solomon Islands?

MR. E. LEDUA.- Well, the demarcations is defined under section 6 of the Marine Spaces Act, but the coordinates is the only thing that will change which is under Schedule 2, Paragraph 3, I believe.

HON. A. JALE.- Can you just explain a bit so that we understand what you are trying to push through because you raised the issue that we were trying to verify. If we get into this Agreement what are laws that will be impacted that need to be changed by the Parliament of Fiji?

MR. E. LEDUA.- I have with me the Laws of Fiji which is Marine Spaces Act (Cap 158A). HON.

A. JALE.- Yes.

MR. E. LEDUA.- At the back in Schedule 2, Paragraph 3, you will see there are coordinates similar to the one on Article 3 of your Agreement. So, this will have to change to be consistent with what I have suggested.

HON. A. JALE.- Thank you, you have clarified that.

MR. CHAIRMAN.- *Vinaka*. With no further questions for Mr. Ledua, perhaps we will now go to Dr. Atul Raturi for your submission. Thank you, Sir, the floor is yours.

DR. A. RATURI.- Thank you very much, Mr. Chairman and Honourable Members, a very good morning to you.

My submission is going to be very simple and straightforward but I thought before we get into the actual submission, because being a teacher, I thought I would talk about why we need so many energy in the Pacific, in Fiji, especially.

I will start with the Sustainable Development Goals (SDGs). When we had the Millennium Development Goals (MDGs), there was no mention of energy and everyone said there should be energy, without energy we cannot do many things. So when the SDGs came, SDG 7 – Affordable and Clean Energy to all.

As you can see in my first slide, SDG7 could be connected to all the other SDGs. If we do not have energy, we will not have education, health, jobs, gender equality, so access to affordable and clean energy is very, very important. I think that is why being a member of International Solar Alliance and developing of solar energy sources is very very important for Fiji and all the Pacific Island Countries.

I will talk about how solar access is helping the Fijian community. If you see the second slide, those are some of the projects so I am concentrating on the projects that we have been doing with the communities in Fiji. Those are some of the projects that we did with the schools, they are remote schools - Lagalaga Primary in Vanua Levu, another one is Namau School in Ba and various schools were running shortage of water, they had big boreholes but they are not in a position to run them.

We had some of the funding from the Taiwanese Government and we used that money to set up solar panels. We could see from the comments that these kind of small systems would provide light for children and the staff. We have done other projects of similar kind.

We believe that energy has to have some meaning. If we are not using energy to generate income or generate jobs, then it is of not much use. What we do is, we have done some work with communities again. We ask the communities, if you have energy, what would you do? Most of the communities would say, if we have a freezer, we could save all the catch and make some money out of that. So we started doing these projects and we have about five projects, thanks to some funding from the French Government. We are developing communities, especially women, and they are making ice candies and generating some income. So solar energy is not only for light energy, we could see jobs and the well-being of the society.

It is not only about lights and other things, but even transport. In the coming years, we would see that there will be some electric vehicles around the countries in the Pacific and solar energy will be used for charging these vehicles. So imagine, like running all our fleet based on solar energy that is coming from the sun, so we could cut down on the import of petroleum fuel and things like that.

At a larger scale, so when we look at energy, at the moment we have about 50 percent or 55 percent coming from hydro but the rest is from fossil fuels. In the coming years, if we have electric vehicles coming in, then we would need more electricity and that electricity has to come from renewable energy sources. And we believe that solar is going to be the source that is going to provide that extra energy.

What other various ways you could do? Bring in solar, so you have rooftop solar. The land is always a challenge, so we could have floating solar. We could use some of the reservoirs, like the Monasavu Reservoir where you could have floating solar which could be connected to the grid, and we would not be using the land for setting up solar plants.

We have other storage and one of those storage techniques that we can use is pumped hydro. Fiji is very good with the hydro schemes, Fiji has the geography, so we could get some pumped hydro systems. Whenever you have extra solar energy coming in, you pump water up the reservoir and later on when you have the demand, you bring that water down and use it as a hydro scheme. So that is another way that we could bring in more solar into the grid, together with the battery storage.

The last one there is, congratulations to Fiji Development Bank, they got grant of \$10 million for their Agrophotovoltaics where you have the Agrophotovoltaics and that you are growing plants with agriculture and that is going to be in Ovalau. These kind of more projects are in the country and there are possibilities. This is where I think ISA will come into the picture, if we can access the funds.

If we look at the ISA, as everyone knows, this came into being in 2016. The overall mission is, every home should have light, but there is a bigger vision when they are talking about one world, one grid. The idea is to connect most of the world with one grid.

That is like One Belt, One Road, so you have in a day electricity being produced through solar reaching Fiji and Africa and being supplied to Europe, similarly energy in Australia could be supplied to other countries, so the idea is to build one grid. But, of course, the island countries might not be a part of that. For island countries, solar energy could be used using distributor systems, the smaller systems.

But as you can see here that the proposals are ... (inaudible) proposal, that is going to have US\$10 billion and it is going to be called a Solar Bank and that bank would be able to finance solar projects in the future.

There are a number of other things happening, I will not read all of them. But, the recent ones, an MOU was signed between the ISA and Global Green Growth Institute (GGGI), a Korean-based entity, and they are going to get one million agriculture solar pumps. Fiji is one of the nine countries which would get those solar pumps and those solar pumps could be used for agriculture. Similarly, the ISA is looking at getting about nine million solar home systems which would be distributed and which would be supplied to neighbouring countries.

Solar for agriculture, solar for cooling and the family, the training and capacity building, is one of the most important work that ISA could do which is already being done through Indian Technical and Economic Co-operation (ITEC) but we would like more collaboration, more collaborative work done between the higher education institutes.

So, today, the amendment that we are talking about is basically straightforward. Earlier, the membership was limited to the countries in the tropics and now the amendment says that membership should be open to all the countries in the world. Personally, I do not think this has any negative aspect for Fiji. In fact, all the member countries coming in, you will find that most of the solar work was initially done in countries which are outside the tropical belt - Germany, Japan and the US. They, they have done a lot of work in solar energy and they have a lot of technology which is available. So all those countries coming into the fore will be beneficial to other countries from the

Global North to the Global South. So, if there is a win-win situation, I think, I do not see any negative aspects.

My recommendation would be, that Fiji should be actively seeking more financing from those institutions, from banks, and making sure that ISA shows its presence in this part of the region. Thank you very much.

MR. CHAIRMAN.- Thank you, Dr. Atul. Honourable Members, do you have any questions for Dr. Raturi.

HON. A. JALE.- *Vinaka va'levu*. Thank you for the presentation, very useful and informative. I do understand that Fiji has already ratified this and we are now a member of ISA. It is centred in India but I have been wondering about the assistance that ISA will be able to offer this region, particularly Fiji and I think the list, you have already mentioned that. Have we received any assistance from ISA in one of the projects that you highlighted or do we still need to present a project to them so that they can fund?

DR. A. RATURI.- As far as I am aware, most of them, the assistance has come in terms of technical training. We have had our people going from this side, so we have people going from Department of Energy and other places, going to India for training. That has been going on for a very long time.

I see GGGI signing this MOU with ISA for the agriculture funds, so Fiji appears there, so those things should be available in Fiji in the coming years. I think we should be putting together more proposals, pushing more because Fiji has been a founding member right from the beginning, Fiji is a member of ISA. So it will be nice to see more projects coming into Fiji. Thank you.

MR. CHAIRMAN.- Honourable Members, are there any questions for Dr. Raturi?

Since there are no further questions, thank you again, Dr. Atul. We will now hand the floor over to Dr. Natasha Khan.

DR. N. KHAN.- Thank you, Mr. Chairman and Honourable Members of the Parliament. My focus today will be the Ratification of the Optional Protocol on Convention on the Rights of the Child (CRC). I will just give a brief background and will go into what we have, as a country, already done and what needs to be done further.

Of the 14 independent Pacific Island Countries, only four have ratified the Protocol which are Kiribati, the Republic of the Marshall Islands, Samoa and Vanuatu. Only three have actually signed the Protocol which are Fiji, Nauru and Solomon Islands. So, you can see that almost 50 percent, seven countries have not done anything about it yet.

The Optional Protocol is a lower ratification compared to the major Convention, so Fiji did ratify the Convention on the Rights of the Child (CRC) in 1993 and signed the Optional Protocol in 2005 which is 15 years ago.

Going into some of the research that has been done around issues about child abuse and exploitation because this Protocol is on the Sale of Children, Children Prostitution and Child Pornography. 17

In 2018, there was an ILO Report done on worst forms of child labour and it states that the commercial exploitation of children was rife. This was one of the first time it came out as a major research and there was a highlighted concern about it, and the main perpetrators of these crimes were family members, taxi drivers, foreign tourists, businessmen and crew of foreign fishing vessels.

In a Master's thesis by Marie Fatiaki in 2019, she did a study on trafficking of children in Fiji or for sexual exploitation, she argued that social economic conditions of a family are the major causes of vulnerability and risk. In particular, the children were forced into sex trade by parents who neglected or abandoned them and families who could not provide for their well-being. The vulnerability of children in these situations were exacerbated by the current effects of COVID-19 pandemic, especially we have seen an increase in unemployment and the impact itself, and it is very likely that it is going to increase.

In another recent study on child abuse in Fiji that I and a few other colleagues from FNU and USP were involved in, we did that research with the Ministry of Women, Children and Poverty Alleviation, it was identified that there were two key drivers for child abuse; one was opportunity in terms of close access and relationship by the perpetrator to children, provided by home setting and even the community in the village; and the security in terms of the perpetrator's perception that the abuse may neither be found nor reported due to being covered under the secure blanket of tradition and family values and even if reported, is most likely be withdrawn from legal prosecution.

In the next slide where the figures are showing, this is again from the recent study we did. In the powerpoint that I sent in this morning, we have got some figures of sexual-related cases that we got the data from the Ministry of Women, Children and Poverty Alleviation. From 2017 to 2019, we found that there were four categories of sexual abuse identified. In those four categories, we saw consistently around 80 percent of these were female and around 15 percent were really male, so there were largely female I am talking about but girls under 18 years were the target for this.

The perpetrators, again, there is a figure on that. Around 65 percent were people close to these children, so they were family members, immediate family members, relatives, friends and step-parents. Step-parents actually constituted quite a smaller number, contrary to what the perception is in the community, boyfriend and neighbour, someone they knew very closely. So, that was the concern because it goes to the question about how in the Pacific, we value our families, and family is very positive aspect for these vulnerable victims if it is really a very negative aspect.

The existing laws in Fiji; there are three very good categories of law that links to this Optional Protocol which is prohibition of child trafficking and we have got three specific Articles relating to Employments Relations and Crimes Decree under that. And then there is a prohibition of commercial sexual exploitation of children, again, there are three specific Articles under Employment Relations, Crimes Decree and Juveniles Act. Under the Prohibition of Using of Children in Illicit Activities, again, in the Employments Relations Promulgation and the Juveniles Act.

The sad part is that, even though we have got really good laws, the enforcement continues to be weak. So the laws are there already existing that would be very easily align to the Optional Protocol but it continues to be weak.

But in 2018, there was a report that the Fiji Police and the Department of Immigration had actually started to meet quarterly to discuss human trafficking issues, particularly involving foreign nationals. During this period, Fiji Police also formalised the Human Trafficking Unit to improve Fiji Police Force's anti-trafficking efforts in the country.

The Fiji Government also has started this programme but they have very insufficient social programmes available, particularly for child victims of human trafficking and commercial sexual exploitation. NGOs do step in and assist, particularly for emotional counselling and other forms of support, but they are largely concentrated in the larger Suva area.

How USP can have help; under the Convention on the Rights of the Child (CRC) and the Optional Protocol, non-State actors at USP do not have any obligation. However, because the States are the duty-bearers in relation to human rights to respect, protect and fulfil them but USP has worked and continuous to work in many of the human rights issues and they are particularly involved in training and research work.

I am going to cover briefly the next slide, but there is a significant amount of work that USP has done over the years. Our School of Government, Development and International Affairs has been working at Postgraduate level and the governance issue, the Programme that I am in charge of is on Leadership, Governance and Human Rights and since 2013, we have been delivering courses, particularly related to human rights across the Pacific.

Recently, again, the research we did on child abuse, very specifically relates to this Optional Protocol where apparently the first step there is discussion that this could be taken further in a bigger research to be done.

Over the years we had different academics and different sections have done training with different Government Departments. Personally, in our section, we have worked very closely with the Fiji Police, the Correctional Officers, the Judiciary, in conducting training in different issues, particularly on good governance.

Way forward; we strongly endorse the ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The reason is, ratification will strengthen Fiji's commitment and obligation to CRC and promote cooperation and strengthen relations with other countries, internationally as well as regionally. It will also open up resources. As I have said earlier, we have got very good laws but maybe, we are under resourced and because of that, the enforcement it weak. Once we sign up to that Protocol, it also opens up to the resources which allows us to tap into technical expertise from international and across the region as well.

Ratification will indicate to the world that Fiji is serious about committing itself to human rights standards, particularly in relation to child or children. Fiji has respect in the Pacific as a leader in many areas and the ratification of this Protocol will make Fiji a country to emulate in the Pacific. We are hoping that once Fiji does that, it will start an escalation, sort of, the signing and ratification of the Protocol among the other Pacific Island Countries.

USP in addressing the challenges; one of the challenges is monitoring and enforcement of the sale of children, child prostitution and child pornography because of lack of synchronised data. So USP, with experts in different areas of research, would collaborate with key agencies, such as the Ministry of Women, Children and Poverty Alleviation, the Police, the Immigration Department and DPP's Office, to conduct a series of workshops with a view to synchronise, and the categorisation of sexual-related offences because at the moment, we have found in our research that different sections are categorised in very different ways. And because of that, it is harder to have policy-related and actions related to that. So, this will strengthen the links between agencies and make it easier to produce statistical analysis and targeted policies for enforcement of various forms of child abuse data in a more coherent way.

Thank you, Honourable Members of the Committee.

MR. CHAIRMAN.- Thank you, Dr. Khan for a very concise submission on the Optional of Protocol of the Convention on the Rights of the Child (CRC).

Honourable Members, do you have any questions for Dr. Khan or any other member of the team this morning?

HON. A. JALE.- Mr. Chairman, I would like to raise few points with Dr. Khan. You really covered some of the areas that we are trying to look into. If Fiji has to ratify this Protocol, it should also put....

MR. CHAIRMAN.- Your speaker, Honourable Jale, the microphone. HON.

A. JALE.- Thank you. Sorry for that, Mr. Chairman.

I was saying that you had raised a point about the legislation, the laws that we have been place, to see that Fiji can effectively address the Convention that you had ratified earlier. This one is the Protocol which certainly supports whatever is in the original Convention.

I thank you for the brief that you have given us but the issue is about Fiji's position and readiness to take on this challenge, or put in place laws and enforce them. I wonder where you have analysed the laws that we have and what are the laws that need to be put in place or strengthened in order to support this Protocol?

The point that you have raised about having laws and not enforcing it is really a concern also, which is important when we do put a report to Parliament, that we highlight these things so that the Government is aware of the shortfalls and the actions that need to be taken. I am glad that you mentioned this morning about the laws that we have in place, I know the employment law maybe there, there may be other laws, but do we have specific laws that you feel that are inadequate and what provisions need to be put in place to support Fiji's action in adhering to the requirements of this Protocol? Thank you.

DR. N. KHAN.- Thank you, Mr. Chairman and Honourable Member for the question. As I have mentioned earlier, the laws are actually very good. The enforcement continues to be weak and one of the areas, I think, where new law or policy needs to be developed is the synchronisation of data. So, there are agencies, for example, the DPP's office, the Fiji Police Force and the Ministry of Women, Children and Poverty Alleviation, where they do not work together on this issue.

Our recent research also suggested that there should be some kind of policy framework done where it forces them to work together, share their data because at the end of the day, we are still looking at the same victims. The data, at some point, is so close to their chest, so they are not willing to share. There are some sharing of data but it still continues to be very sporadic, so it depends on more or less on who is at the desk and how willing they are to share the data.

I think if there is a policy that requires them to share data, also with the Department of Immigration because when we are talking about child trafficking prostitution, there is an element of foreign nationals involved in it, I think that policy will make a significant difference in the implementation of the policies and laws that we currently have because that data collection will strengthened all the agencies that work on that.

HON. A. JALE.- Mr. Chairman, I think, the University has a lot of information that can be disseminated to people so that they are really aware of the seriousness of this trafficking or whatever that people have been doing or subjecting children to and I wonder what you have been doing. I saw some of the write-ups that you have put on the screen for us to look at which I think is very useful. I am sure some of the write ups that you have put on the screen for us to look at is very useful. Has that been disseminated to people so that they are aware of some of your findings and well-researched papers that you have already done? Has that been shared and how do you share them?

The second point is, for your organisation (USP), what have you put in place to try to stop these types of things because it is a huge organisation? I think in some issues abroad, as of my understanding, these organisations have been used to also subject children. There may not be any children there, but what have you done in your organisation to see that the requirements of this Protocol is put in place so that the University can be a very effective tool to act against anyone with that type of intentions? We are talking about people who bring in instruments who come in and do pornography. It is really the intellectual people who do these types of things. There have been cases in Fiji in the past. I was wondering what the University has in place to see that this does not happen in your organisation.

MS. N. KHAN.- Thank you, Mr. Chairman. Regarding the data, the ILO Report and Ms. Fatiaki's research thesis are publicly available. The research we are doing which is just in the finalisation stage, also has to go through Parliament because it was conducted for the Ministry of Women, Children and Poverty Alleviation. Once it is verified and vetted and agreed to or endorsed by Parliament, it will be made as a public document, so it will be widely shared.

Regarding what the University is doing, the University has got a very strong policy on sexual harassment and sexual abuse. So all the staff have to go through police clearance before they can join, and every three years that police clearance has to be done again, so it is proactive in that. If there is any identified cases, they will definitely deal within the University Disciplinary Committee as well as a police case if it comes to them.

MR. CHAIRMAN.- Honourable Dr. Govind.

HON. DR. S.R. GOVIND.- Thank you, Mr. Chairman. I would like to thank Dr. Khan for her comprehensive presentation. I just wanted to know whether there are some studies or data on the contribution of social media in child abuse, especially pornography in Fiji.

MS. N. KHAN.- Thank you, Mr. Chairman. I am not personally aware of anything, but I am sure there might be some. I know that some discussions have been happening after an issue about pornography was raised, but I do not know any specific data that is available. But, again, I can check and find out and let the Secretariat know.

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

To Mr. Ledua, Dr. Raturi and Dr. Khan, I take this opportunity, on behalf of the Standing Committee on Foreign Affairs and Defence, to thank you once again for appearing before us. Certainly, you will oblige if we do have any other pertinent or pressing questions when we start compiling our report to Parliament. With those few words I thank you once again and also thank the members of the public for listening in to this transmission. Thank you.

The Committee adjourned at 11.56 am.

[VERBATIM REPORT]

**STANDING COMMITTEE ON
FOREIGN AFFAIRS AND DEFENCE**

AGREEMENT/PROTOCOL/CONVENTIONS

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

INSTITUTIONS: (1) Ministry of Women, Children and Poverty Alleviation
(2) Fiji Revenue and Customs Service (FRCS)

VENUE: Big Committee Room (East Wing)

DATE: Monday, 28th 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 28TH SEPTEMBER, 2020 AT 10.49 A.M.

Online Interviewee/Submittee: Ministry of Women, Children and Poverty Alleviation

In Attendance:

- | | | | |
|----|-----------------------|---|--|
| n) | Mr. Rupeni Fatiaki | - | Director, Social Welfare |
| o) | Ms. Ela Tukutukulevu- | | Assistant Director, Child Services |
| p) | Ms. Anushka Artika | - | Senior Administration Officer, Executive Support Unit. |
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(Welcome by Mr. Chairman and introduction of Committee Members)

MR. R. FATIAKI.- I am the Director, Social Welfare and with me is Ms. Ela Tukutukulevu, who is the Assistant Director for Child Services. So on that, I will now give this time to the Assistant Director Child Services, Ms. Tukutukulevu, to do our presentation on the Ministry's presentation on the Optional Protocol on the Convention on the Rights of the Child, and then we will finish off, Honourable Members of the Committee, in answering your questions.

MS. E. TUKUTUKULEVU.- Thank you, Mr. Chairman and Honourable Members. On the Ministry, just beginning with way of a background on the Protocol, children represent approximately 34 percent of the Fijian population. The Government of Fiji is committed to ensuring that all children grow up in a safe and loving family, and are supported to reach their full potential. Through pronouncements in our Constitution and our commitments under the Convention on the Rights of the Child (CRC), we remain as a nation dedicated to protecting children from all forms of violence, abuse, neglect and exploitation.

Fiji ratified the CRC in 1993, which sets out standards and protocols to safeguard rights and welfare of our children. As a signatory, Government is mandated to implement child protection laws and initiatives aligned to the United Nations (UN) CRC. The Ministry of Women, Children and Poverty Alleviation is the agency responsible for reporting on the CRC, on a periodical basis. The next State Report, Honourable Members, is due in 2021.

In terms of child sexual abuse, Fiji recorded 231 cases in 2019 under the mandatory reporting provisions of the Child Welfare Act (CWA). There have been no reports on commercial sexual exploitation of children on record since the implementation of the CWA.

Mr. Chairman and Honourable Members, I would just like to clarify at this point that there may have been cases of sexual exploitation but this is only brought up after officers carry out their investigations, investigate the case even more but for our reporting, we usually record these types of cases after sexual abuse. So after further investigations, then it is found that there are children who have been coerced for sex, sexual activities and even for trafficking. That is something that we just wanted to clarify this morning.

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A report by End Child Prostitution and Trafficking International (ECPAT International) and Save the Children Fiji suggests that children in street situations resulting from urbanisation, the majority of whom are boys, are particularly vulnerable to multiple forms of labour and sexual exploitation, including through prostitution and trafficking. The report also states that Fiji's

vulnerability to natural disasters also contribute to children's vulnerability to sexual exploitation, as it tends to disrupt social order to such an extent that local capacity to cope is highly stretched and in these situations, children are the most vulnerable to neglect, abuse and exploitation.

On the Optional Protocol on the Sale of Children, Child Prostitution and Pornography, Fiji signed the Optional Protocol on 16th September, 2005 but has yet to ratify it. If Fiji ratifies the Optional Protocol, it must submit a 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 Protocol.

The purpose of the Optional Protocol is to prohibit the sale of children, child prostitution and child pornography. The Optional Protocol also requires State parties to adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process.

The Optional Protocol requires State Parties to:

- at a minimum, ensure that offences related to the sale of children, child prostitution and child pornography are fully covered under its criminal law and to establish jurisdiction over such practice when the offences are committed in its territory or on board a ship or aircraft registered in that State; and
- make such offences extraditable within its existing extradition treaties and in any subsequent extradition treaties entered into.

On the analysis on Fiji's proposed ratification, the Office of our Permanent Representative to the United Nations in Geneva (PRUNOG) has made an analysis of the Optional Protocol vis-a-vis our laws and has concluded that ratification will not add further obligation as our current laws already cover the legal obligations under the Optional Protocol.

The Fijian Constitution 2013, Crimes Act 2009 and 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 3(1)(b) of the Extradition Act 2003, as they prescribe penalties well above 12 months imprisonment.

The Fijian Constitution 2013 guarantees all Fijians freedom from slavery, servitude, forced labour and human trafficking and freedom from cruel and degrading treatment. Section 41 of the Fijian Constitution 2013 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 exploitative labour. It further states that the best interests of a 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 2013.

Sections 226 and 227 of the Crimes Act 2009 provide that the selling and buying of minors under the age of 18 years for prostitution, to 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 recruitment for sexual services are criminal offences which have extended jurisdiction, whether or not the conduct constituting 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.

Also, the Online Safety Act 2018 renders it an offence to post an intimate visual recording of an individual unless that individual concerned consents to the specific post. However, the Act provides that this 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 an 'intimate visual recording' includes a photograph, video or digital image where the individual is:

- naked or has genitals, pubic area, buttocks, chest or breasts exposed or clad solely in undergarments;
- engaged in sexual activity; or
- showering, toileting or other activity which involves undressing.

PRUNOG has recommended that Fiji ratify the Optional Protocol. Fiji's ratification of the Optional Protocol will further strengthen our commitment towards safeguarding Fijian children and will also be a fulfilment of one of the recommendations of the UPR.

In conclusion, in light of the above and considering that Fiji is already a signatory to the CRC, Fiji's ratification of the Optional Protocol will further strengthen the commitment towards safeguarding Fijian children. Therefore, the Ministry of Women, Children and Poverty Alleviation supports the ratification of the Protocol. The Ministry of Women, Children and Poverty Alleviation confirms that we are willing to provide the necessary services mandated by this ratification.

MR. R. FATIAKI.- Mr. Chairman and Honourable Members, allow me to add and our apologies that we have missed out few additional information. I believe Parliament has recently passed a very important Bill which is called the Adoption Act 2020 (Act No. 37 of 2020) and that Act also includes the inter-country adoption. I believe in Article 3 paragraph 5 of the Optional Protocol, it briefly mentions adoption and it also mentions the adoption of children.

Part 6 of the Adoption Act 2020 is the guideline and safeguards when States are involved, in the inter-country adoption of children, and so it includes the three traditions of payments;

- (i) advertising of children for adoption;
- (j) giving a false statement;
- (k) impersonation;
- (l) presenting of forged consent or other documents; and
- (m) undue influence.

These are additional information to our submission which we will be happy to put it on paper by way of a written submission to the Secretariat. My apologies, Sir.

Mr. Chairman and Honourable Members of the Committee, this is the Ministry's presentation to the Committee on the Protocol that is before us. Thank you very much.

MR. CHAIRMAN.- Thank you, Mr. Fatiaki and Ms. Tukutukulevu for that presentation this morning. We will now open the floor for any questions that the Honourable Members may wish to ask.

HON. A. JALE.- Mr. Chairman, can I start? My apologies you cannot see me.

MR. CHAIRMAN.- That is fine, I can hear you.

HON. A. JALE.- Thank you Director and Assistant Director. I have got a few questions to raise with you. I will ask them all now and you can find the opportunity to address them if you can.

- (viii) The Optional Protocol was signed by Fiji in 2005. Why has it taken this while to bring the matter to Parliament for ratification?
- (ix) The definition of 'child' under your laws, what is the definition? Is there any uniformity of the definition of 'child' in your laws and those in the Employment Act and other laws that are existing in Fiji now?
- (x) Apart from the Fijian Constitution which you have mentioned had covered widely the requirements under the CRC and also the Optional Protocol, are there any other legislation that we need to put in place to address in full the added requirement under the Optional Protocol?

Thank you, Mr. Chairman. Do you hear me?

MR. CHAIRMAN.- Yes. Thank you, Honourable Jale. The Ministry will reply to your questions shortly.

HON. A. JALE.- Thank you.

MR. R. FATIAKI.- Thank you, Mr. Chairman and Honourable Member. I will give the first and second question to our Assistant Director to answer them and I will answer the third question.

MS. E. TUKUTUKULEVU.- Thank you, Mr. Chairman and Honourable Members. Honourable Anare Jale, we will try to briefly answer your question.

The first question on Fiji signing the Optional Protocol on Convention in 2005 and why now, I believe we have been working on other Bills that ensure the safeguarding of Fijian children. Why we have thought of signing the Optional Protocol is because now, we realise that cases of violence against children continue to increase.

Those are risks of children with all the developments that are taking place in the country and all the technology that has been introduced into the country and because of the statistics we are receiving on violence against children, it continues to increase and the cases continue to be complicated. So I believe that the Ministries are moving into securing this Protocol so that we have mechanisms in place to safeguard the children of Fiji. I hope that answers that question, Honourable Member.

On the definition of a child, yes, with our Juveniles Act which is one of the legislation that we work with in Fiji, at that time we had the definition of a child as 17 years old and below. But we have reviewed our laws, our Bills and our Policies, and we are aligning ourselves to the CRC which has a change in terms of the definition. So now it is persons under the age of 18 years old.

MR. R. FATIAKI.- Mr. Chairman and Honourable Members, in regards to additional legislations that we need to put in place, we have addressed this issue. I believe one of that was the

Child Welfare Act 2010 that mandates the reporting of child welfare abuse cases to the Permanent Secretary.

I believe there are two Bills that are yet to be passed in Parliament and that is the Child Justice Bill and the Children Need of Care and Protection. As I mentioned earlier, one of those Bills was also the Adoption Bill and we are grateful that last month, Parliament passed the Bill. Those were three of the Bills that were before Parliament and we are fortunate to have the Adoption Bill. Hopefully, the other two Bills will be passed.

We have reviewed the Juveniles Act but this Act, I think, was way back in the 1970s and as the Assistant Director has mentioned, the definition of a child is a person who is 17 years and below. So this is where we have reviewed the Act and we propose that we need to be changing our legislations to be in line with the international protocols. Again, and one of the things that may be in the past we have not experienced but we are seeing that it is happening in our domestic front is child trafficking and sexual exploitation of our young children. So in line with the change in the social issues and aspects, we need to be changing our legislations and we are working towards that.

MR. CHAIRMAN.- Thank you. Honourable Jale, that answers your questions. Would you wish to ask any more?

HON. A. JALE.- Yes, I think the only issue that I need further clarification on is why the delay in submitting this Protocol to Parliament for consideration on the issue of ratification? It is almost 15 years from 2005, now it is 2020. If it was important, the Protocol to the Convention on the rights of the Child, I am just asking that for us to note when we make our submission.

MR. CHAIRMAN.- Thank you, Honourable Jale. I beg your pardon, Mr. Fatiaki, do you wish to comment on that again?

MR. R. FATIAKI.- Mr. Chairman, I note the question from the Honourable Member, and allow us to go back and do our research and then respond through the Secretariat.

MR. CHAIRMAN.- Thank you, Mr. Fatiaki. We will look forward to that.

Honourable Members, any other question? I just wish to comment, Mr. Fatiaki. The fact is that in terms of child sex abuse, you did say that Fiji recorded 231 cases in 2019. As we all appreciate, in all these statistics there is always a degree of anonymity, people wish to remain anonymous. However, has the Ministry thought of means of trying to capture all the reporting of these sexual abuse cases at any stage? I know it is difficult to get the true figure and these are only what has been reported and recorded, like I said earlier, a degree of anonymity. What are your thoughts on that with regards to your Ministry, Sir?

MR. R. FATIAKI.- Mr. Chairman, thank you for your question. Under the Child Welfare Act which is mandatory reporting by professionals, there is a form that is filled by any profession, which means nurse, medical officer, a teacher or anyone who comes across sexual abuse cases, there is a form that is filled and it is submitted to the Ministry as per the Act.

We have those basic information on the name and the location of where those cases were reported, but due to the nature of our work, those information are confidential. We only release the figures. When cases are reported, our officers conduct the field assessment to find out as to what happened in those cases and what they could do in order to address those issues or cases. But in our

presentations, we only present the statistics and we do not present their names, but we have that and we have done it in such a way that in capturing information, we are able to identify hotspots, meaning where the statistics are coming from. So in doing that, we are able also to conduct awareness programmes where we are able to identify these hotspots and target these areas with our awareness programmes. Likewise, the calls that come through the Child Helpline are also referred to us but, again, it is confidential.

Yes, I agree with you as you mentioned the figures, the disparity in our figures because we capture only the cases that are reported to us. But then there are cases that are reported directly to Police and other stakeholders, so if it is not reported to us, then it is not captured. So, yes, we agree that there is disparity of child abuse cases that are reported nationally.

MR. CHAIRMAN.- Just a concern and I guess it is also with other helplines, we also have our helpline within the Ministry of Health but, again, what is reported is what is recorded.

Thank you again, Mr. Fatiaki and Ms. Tukutukulevu for your contribution. I do not think we have any other questions from Honourable Members. I take this opportunity to thank you again. Also, I take the opportunity to thank members of the public who are listening in or watching this livestream.

With those few words, Mr. Fatiaki, if you have any departing comments, the floor is yours.
Thank you.

MR. R. FATIAKI.- Mr. Chairman and Honourable Members, it is an honour for us to be able to contribute to the Convention that is before us. We are the ones not only mandated but are ones facing these kinds of cases daily. So, we thank you for that opportunity that we able to contribute in helping to protect our children in Fiji. Thank you very much.

MR. CHAIRMAN.- Thank you again, Mr. Fatiaki and Ms. Tukutukulevu. The

Committee adjourned at 11.17 a.m.

The Committee resumed at 11.55 a.m.

Online Interviewee/Submittee: **Fiji Revenue and Customs Service (FRCS)**

In Attendance:

- | | | | |
|-----|--------------------|---|---------------------------------|
| (h) | Ms. Fane Vave | - | Acting Chief Executive Officer. |
| (i) | Mr. Jonetani Vuto | - | Director, Border. |
| (j) | Ms. Timaima Rayawa | - | Legal Counsel. |
| (k) | Ms. Reijeli Drauna | - | Senior Customs Officer |
| (l) | Mr. Shavindra Nath | - | Deputy Director, Policy |
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The Committee resumed at 11.54 a.m.

MR. CHAIRMAN.- Welcome, Ms. Vave and Team from the Fiji Revenue & Customs Services (FRCS). A very warm welcome to members of the public who are probably listening into this live stream or watching it from the comforts of their home. A word of introduction for my Committee.

(Introduction of Committee Members by Mr. Chairman)

Also, welcome to members of the media who are also in on this live stream.

The submitters from FRCS will be submitting on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Welcome, Ms. Vave, and with a brief introduction from your good self and your Team, the floor is yours, Madam.

(Introduction of FRCS Team)

Without further ado, Mr. Chairman, through you, I will start our presentation in terms of FRCS's submission on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Our presentation will be very brief, Mr. Chairman. Firstly, I will start off with an overview of our core role and how our business relates to the subject matter at hand. Through your approval, Mr. Chairman, if I can start the presentation, if that is acceptable with you.

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

MS. F. VAVE.- Thank you, Mr. Chairman. In a nutshell just to take us through at a higher level summary, the vision of FRCS is to be 'A World Class Revenue Service Delivering Excellence in Revenue Collection, Border Security, Trade and Travel Facilitation'. Our mission is to help 'Fiji grow as a leading contributor and funder of sustainable economic, security and social initiatives'. That is pretty much our core business.

In terms of the subject matter at hand, we have an overlay of responsibilities which cross lines with Fiji Police Force and if you have a look at it, while Police takes on enforcement side of things,⁷for customs, our work in this area is mainly to do with the border in terms of customs offences, control

of goods and means of transport, supply chain security and trade facilitation, revenue collection and the fight against any illicit trade coming through the border.

We have about 10 areas which overlay with our colleagues at Fiji Police Force and in these areas, we work side by side in terms of the sharing of information. In terms of integrated functions, we have a standard operating procedures in these areas relating to the following:

- Drugs trafficking;
- Money laundering;
- Environmental crime;
- Illicit diversion of precursors and essential chemicals – this is pretty much in relation to drugs;
- Protection of public health;
- Intellectual Property Rights fraud;
- Arms trafficking;
- Organised crime; and
- Trade terrorism.

In this space, in the areas that you see that the overlay with our Police colleagues, we have standard operating procedures that dictate where Customs hands over to police and then they take it on from there in all our endorsed areas of operations.

In terms of opposition relating to the subject matter, FRCS supports the ratification of the Protocol, acknowledging that child trafficking is a form of modern-day slavery and that Fiji's strategic position, not only geographically but also influence in the region makes it even more important for us to support it. Also, to mitigate the potential exploitation of communities and our major industry - tourism and this is our official position in terms of FRCS.

Again, as alluded to before, our role at the border is a gatekeeper to ensure the facilitation of legitimate trade and travel and vessel movement. In our borders space, we have three major strategies in relation to this; the maritime strategy with deals with all the outer islands, passengers and cargo, so everything that is done under this banner, is divided into those three major areas. And obviously, that is to prevent elements of crime and, for us, it is all about protecting the community.

Some of the identified risks and vulnerabilities that we have identified is obviously travellers coming into exploit our communities intentionally doing that, and one of the areas identified is child sex tourism and also trafficking of our children out of Fiji and exploited in other countries. And in our discussions on this, it can be children legitimately leaving Fiji. Our young people are legitimately leaving Fiji but when they reach the other side, they are being exploited for other purposes.

In terms of our border control measures to assist us in this area, for us it is about international co-operation. We have the establishment of the trans-national crime unit in Fiji. Two cases were in 2019 involving New Zealand national and a US national who are convicted sex offenders and non-paedophiles.

Our intensive domestic coordination, we work with INTERPOL alerts on IBMS, which is the Fiji Immigration system and, of course, we do advance passenger profiling which is about identifying high risk and travellers prior to arrival. All the work we do in the border or in most of our spaces, we take a risk management approach, focussing on high-risk areas, so that we do not waste resources in other areas.

In terms of some of the challenges that we have identified, it has been the timely sharing of information between agencies both, locally and internationally, information security, the awareness and training of all frontline officers in terms of what are some of the indicators or profiles for such perpetrators, the strengthening of legislation and under Customs, we have the illicit drugs control but we do not have anything specific regarding offences relating to children. That is addressed under the Criminal Act.

Access to database is relevant in assisting law enforcement, and that will assist with profiling and targeting at our borders. So a lot of the work we also do with our counterparts overseas, we have learnt that if we can profile proactively, then we can identify a lot of these perpetrators before they even reach Fiji, or we can already follow the digital trail.

Thank you, Mr. Chairman and Honourable Members. That, in a nutshell, is our presentation from FRCS and we will be open to any questions. Thank you, Sir.

MR. CHAIRMAN.- Thank you Ms. Vave for your very brief and concise presentation. Honourable Members, do you have any question the FRCS Team?

HON. A. JALE.- Thank you for the presentation. We do understand the role that you play, but the issue of people entering Fiji without a visa - no visitor's visa required, does that complicate your enforcement role, allowing people to infiltrate our system and control at the border?

MS. F. VAVE.- Mr. Chairman, I thank the Honourable Member for the question. I will let the Director Border, Mr. Jonetani Vuto, respond to that question.

MR. J. VUTO.- Thank you, Honourable Members. Just in relation to the question posed by Honourable Jale, to briefly highlight our primary line function at the border and for your information about that issue, FRCS do not issue visas to passengers on arrival or passengers that are coming in. However, in consultation with the Immigration Department and laws provided under the jurisdiction, we are able to issue visa when they arrive at Nadi Airport.

In relation to the issue of people arriving without visas, from our end we have no objection to that, provided that information is timely available to us, who are manning the frontline areas..

HON. A. JALE.- When you talk about timely information, what do you mean by that? Can you elaborate on that?

MR. J. VUTO.- This is the timely information that is provided to us from the Immigration profiles and also the 24/7 database that is provided by Interpol to Fiji Police Force.

HON. A. JALE.- Thank you.

MR. CHAIRMAN.- Thank you, Mr. Vuto. You work very, very closely with the Fiji Navy nerve centre at the Stanley Brown Naval Base at Walu Bay. Do you have a fulltime officer down there as well?

MR. J. VUTO.- Thank you, Mr. Chairman. Yes, we can confirm that we have a full-time officer based with the Naval Team at Walu Bay and their primary role is to risk-assess all yachts that are approaching through Fiji waters. While yachts send in their advance information, they are

profiled by the team in looking at their movement using the Vessel Monitoring System that is available with the Fiji Navy.

MR. CHAIRMAN.- *Vinaka.*

Honourable Members, since there are no other questions, thank you once again Honourable Members. Ms. Vave and Team, thank you for your brief submission and appearance and we also thank the members of the public listening in to this telecast, and thank them for their interest in the Fiji Parliament. With those few words, Ms. Vave, if you have any departing comments, the floor is yours. Thank you.

MS. V.W. VAVE.- Thank you, Mr. Chairman. On behalf of the FRCS, thank you, Honourable Members, for your time and *vinaka vakalevu.*

MR. CHAIRMAN.- Thank you, Madam, and if we have any pertinent questions, we will send it through our Secretariat. I thank you again.

The Committee adjourned at 11.47 a.m.

[VERBATIM REPORT]

STANDING COMMITTEE ON FOREIGN AFFAIRS & DEFENCE

TREATIES/PROTOCOLS/CONVENTIONS

**Optional Protocol to the Convention on the Rights of the Child on
the Sale of Children, Child Prostitution and Child Pornography.**

INSTITUTION: Save the Children Fiji

DATE: Tuesday, 29th 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 29TH SEPTEMBER, 2020 AT 9.32 A.M.

Online Interviewee/Submittee: Save the Children Fiji

In Attendance:

q)	Ms. Shairana Ali	-	Chief Executive Officer
r)	Ms. Ardarsh Chettiar	-	Programme Manager
s)	Ms. Tasianna Lulu	-	Chief Protection Coordinator
t)	Ms. Meresiana Krishna	-	Child Rights Officer
u)	Mr. Nicholas Rabuku	-	Child Rights Officer
v)	Mr. Jofiliti Veikoso	-	Child Inclusion Officer

MR. CHAIRMAN.- A very warm welcome to the team from Save the Children Fiji. Also, a very warm welcome to members of the public who are listening in to this live stream or watching from the comforts of their home.

(Introduction of Committee Members by Mr. Chairman)

Unfortunately, we have apologies from our other two Honourable Government Members, Honourable Dr. Salik Govind and Honourable Selai Adimaitoga, who are both on Government or ministerial duties. I am Honourable Alexander O'Connor the Chairman of this Standing Committee on Foreign Affairs and Defence.

For those listening into this live stream or watching, Save the Children Fiji Officials will be delivering or submitting to us the 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. Ali, if you could just give a very brief introduction of your good self and your companion, and the floor is yours now, thank you.

MS. S. ALI.- Thank you, Mr. Chairman. Good morning to all of you, Honourable Members.

(Introduction of Save the Children Fiji Team)

Mr. Chairman, this morning, we are very pleased to present the views of Save the Children Fiji on the theory of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Very briefly, Save the Children Fiji is a child rights organisation that began operations in Fiji in 1972 and is dedicated to drive positive change for children in Fiji. Globally, Save the Children protects the rights of children in more than 120 countries and support millions of the most vulnerable and hardest to reach children around the world.

In Fiji, Save the Children Fiji works to create long lasting, sustainable change in the lives of children by driving change at community level for improved service delivery and contributed to important policy matters to improve children's lives and wellbeing.

Save the Children Fiji has worked with more than 50 communities across the Northern, Western, Eastern and Central Divisions and focusses on national advocacy work, to ensure the rights of children are met. Key focus sectors are; child protection, child participation, education, water, sanitation and hygiene, livelihood, child strength, disaster risk reduction and humanitarian response.

With that brief introduction, Mr. Chairman, I will hand over to my colleague, Ms. Tasianna Lulu, who will brief you on the optional goal.

MS. T. LULU.- Thank you, Ms. Ali. Mr. Chairman and Honourable Members, on 13th August, 1993, Fiji ratified the Convention on the Rights of the Child which was formally adopted by the United Nations General Assembly in November 1989. The Convention stipulates the key international standards on children's rights which must be upheld by countries around the world.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was adopted by the General Assembly on 25th May, 2000 and enforced on 18th January, 2002. The Optional Protocol was adopted to mobilise nations to act responsibly and be accountable for child rights abuses and exploitation of children.

Fiji is a signatory to the Optional Protocol from 16th September, 2005, however, has not ratified the Optional Protocol to-date. The Optional Protocol comprises of 17 Articles that require Nations to prohibit the sale of children, child prostitution and child pornography.

The definitions for each prohibition is as follows:

- Sale of children – Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration, or any other consideration.
- Child prostitution – Use of a child in sexual activities for remuneration, or any other form of consideration.
- Child pornography – Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a child for primarily sexual purposes.

The Convention generally defines a child as any human being under the age of 18 years. The Articles contained within the Optional Protocol are relevant and appropriate, to ensure that the Convention on the Rights of the Child (CRC) and its provisions are fully implemented and achieved, and to provide for better protection of children from being sold, engaged in child prostitution and pornography.

I will now hand over to the next speaker, Mr. Ardarsh Chettiar, to present on Save the Children Fiji's position on the ratification of the Optional Protocol.

MR. A. CHETTIAR.- Good morning, Mr. Chairman and Honourable Members of Parliament. We will now present on Save the Children Fiji's position on the ratification of the Optional Protocol.

The Honourable Attorney-General, Mr Aiyaz Saiyed Kaiyum, in his motion dated 31st August, 2020, has recommended that Fiji ratify the Optional Protocol. Save the Children Fiji affirms the recommendation of the Honourable Attorney-General to ratify the Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Fiji has an obligation to abide by the provisions of international legal instruments relevant to the protection of children, including the:

- Hague Convention on the Protection of Children and Cooperation in Respect of Inter- Country Adoption;
- Hague Convention on the Civil Aspects of International Child Abduction;
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; and
- International Labour Organization Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Fiji has an obligation to the Convention on the Rights of the Child (CRC) to ensure that children in Fiji are protected and that their rights are not compromised, neither violated at any time.

Fiji is well-placed to ratify the Optional Protocol and report to international authorities regarding key actions, as Fiji has clearly defined laws and policies in place to provide the highest protection to all children from abuse and exploitation. For example, Chapter 2 - Bill of Rights, Section 41 of the 2013 Constitution of the Republic of Fiji emphasises the rights of children. The 2010 Child Welfare Act is an important law that designates the Ministry of Women, Children and Poverty Alleviation as the line Ministry responsible for ensuring that child rights violations are addressed swiftly.

Mr. Chairman, Save the Children Fiji's 2018 Child Rights Situation Analysis (CRSA) Report finalised concerning cases of sexual exploitation of children mostly affecting girls aged 13 years to 17 years of age.

In terms of child rights governance, consultations with children around Fiji revealed that child rights is often a misunderstood concept, seen as conflicting with traditional, social and cultural norms. An overwhelming number of children reported little understanding of their rights and explained that the best protection from abuse was to listen to parents and do as they were told.

Mr. Chairman, despite having legal prohibition against prostitution, data has shown that this is a primary form of exploitation in children, who are victims of sexual exploitation. Studies in Fiji indicate that many young girls are exploited in prostitution as a means of providing income for their families' survival. Lack of education and employment opportunities, parental neglect and lack of support systems are all contributing factors to children's vulnerability.

The United Nations Pacific Socio-Economic Impact Assessment of COVID-19 in Fiji Report has indicated that commercial sexual exploitation of children continues to occur with the most common

forms being prostitution, pornography and sex trafficking. The main drivers of such abuse are poverty, homelessness and living away from parents and due to the economic impact of COVID-19. The Report further states that restrictions might change the forms of abuse, with a possible increase in online sexual exploitation of minors.

Mr. Chairman, improved access to internet and social media by both, adults and children in Fiji, exposes them to online predators and puts them at risk of being exposed to pornography, including child pornography. Save the Children Fiji is currently designing a child-focused digital safety project and in our consultations with children and communities, we noted that children's use of internet and social media is not supervised by parents and guardians, and parents' lack of awareness on how to effectively monitor their children's activities online.

Mr. Chairman, Save the Children Fiji has noted that Fiji is identified as a source destination and transit country for children subjected to trafficking for sexual purposes. Within the country and of increasing concern despite legislation, some children may be actively engaging in their own exploitation through their personal networks, or with the assistance of facilitators, and demand for such activities is high, especially in tourist locations.

Thank you, Mr. Chairman and Honourable Members, I will now hand over to our CEO, who will provide the recommendation of Save the Children Fiji.

MR. CHAIRMAN.- Thank you.

MS. S. ALI.- Thank you, Mr. Chettiar. Through you, Mr. Chairman and Honourable Members, on behalf of the Save the Children Fiji, we will now present some of the recommendations that we have in regards to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

We strongly recommend that Fiji ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. We recommend the following action points for the consideration of the Respected Standing Committee to expedite the ratification process:

After the 2019 Universal Periodic Review, Fiji committed to ratify all the Optional Protocols to the Convention on the Rights of the Child. By ratifying these protocols, as well as abiding all the human rights Treaties, Fiji will be able to demonstrate to other nations that it is responsible and accountable for child protection, and demonstrate to its citizens and other stakeholders that children's well-being is a core component of Government's agenda and plan of action.

The ratification of the Protocol is also timely and Fiji is currently preparing for the Convention on the Rights of the Child (CRC), reporting to the Committee on the Rights of the Child. Save the Children Fiji is preparing a Shadow Report of the CRC, therefore, a ratification of the Optional Protocol signals good progress made by Fiji to implement previous recommendations of the CRC Committee.

Together with ratifying the Optional Protocol, Fiji must carefully review its current legislation to address the potential loopholes. For example, Article 91 of the Employment Relations Promulgation 2007, criminalises the sexual exploitation of children, however, it does not address the current reality of the⁴ online

nature of exploitation. The Online Safety Act does not contain any provisions criminalising grooming for the purpose of producing child sexual abuse, exploitation materials or causing children to view sexual abuse or sexual activities. These laws need to be revisited to align with international standards and to provide better protection to children to address threats that children face in the current context.

Finally, we are also recommending that Fiji reviews the draft Child Protection Policy to ensure that it provides for the child friendly and child responsive services, especially, to child victims and that adequate training is provided to relevant authorities for improved protection of children's right.

In conclusion, on behalf of Save the Children Fiji Board and staff, we thank you, Mr. Chairman and the Honourable Members, for the opportunity to present our views on the Optional Protocol. *Vinaka vakalevu.*

MR. CHAIRMAN.- Thank you, Ms. Ali and Team Save the Children Fiji for your submission this morning. Honourable Members, do you have any questions for Save the Children Fiji?

HON. A. JALE.- Ms. Ali has touched on some of the laws that need to be looked at and amended, or strengthened in order to capture fully the requirements of the Optional Protocol. The first one is the Online Safety Act, I would not read about it, but you are talking about the protection of the children. The other one is the Employment Relations Promulgation Act 2007 and you are talking about the online nature of exploitation. The third one you are talking about the draft Child Protection Policy. What have you done in terms of advancing, or taking up those concerns of yours to the authorities concerned in order for necessary laws to be changed or amended, to take on your concern?

MS. S. ALI.- Thank you, Honourable Member, for your question. Mr. Chairman, in relation to the policy and laws, we have actually conducted a study ...International, which is an organisation that looks/monitors child exploitation around the world. Last year, we completed a review and we just had to prepare that report and the findings with the Secretariat and the Committee.

In that review, we have identified certain loopholes within the current laws and legislations that we need to now work on. Obviously, we are meeting with the National Coordinating Committee on Children and using that platform to address the concerns that we have in relation to ... (inaudible) ... in the legislation. That has been highlighted.... (inaudible).... and also we have been raising these issues so far.

MR. CHAIRMAN.- Thank you, Ms. Ali. Honourable Tikoduadua?

HON. LT. COL. P. TIKODUADUA.- Ms. Ali and the Team, thank you for that comprehensive presentation. I cannot quite make out what you are saying, probably the quality of the audio or whether it is from this end but, by the way, can you hear me properly?

MS. S. ALI.- Yes, Honourable Tikoduadua, we can hear you.

HON. LT. COL. P. TIKODUADUA.- Alright, thank you. But I am not sure whether you have captured in your presentation where cases in Fiji have been reported for you, I am talking about Save the Children Fiji, with regards to abuse of children and what the Convention is trying to protect in terms of child pornography, child labour, et cetera.

Now, but if you have, yesterday we heard from the Ministry of Women, Children and Poverty Alleviation and they had spoken about their data and statistics and the difficulties that they have in consolidating the whole statistics or statistics in totality, and how NGOs and Government share data and figures and kind of work together in dealing, especially with the complaints that would come to your Office. Can you just confirm with me how your data is used in ... (inaudible)with the

MS. S. ALI.- Thank you, Honourable Member, for the question. Yes, to clarify, we do have a Child Safeguarding and Reporting Mechanism in place within Save the Children Fiji. Usually, we do get cases that are from the community that is reported to the Child Safeguarding focal points which is, myself and the Child Protection Coordinator and all cases are reported within 24 hours to the Child Services Unit within the Ministry of Women, Children and Poverty Alleviation. And then we work with the Child Services Unit and Welfare Protection Officers to provide support to the children.

MR. CHAIRMAN.- Thank you, Ms. Ali. I had the same concern well not so much concern but same interest as highlighted by Honourable Jale with regards to the promulgation, the Safety Act and also the policy and how effective was your organisation, but thank you for that.

Since there are no other questions, I thank you again, Ms. Ali and Team Save the Children Fiji. If there is any other pertinent question that we do may have when we compile our report, if you would oblige with those questions and having them sent to our Secretariat - Jacob and his team.

With those few words, I thank you once again, Ms Ali. If you have any departing comments, the floor is yours.

MS. S. ALI.- Thank you, Mr. Chairman and Honourable Members. We do not have any further comments and we are just grateful for this opportunity to be able to present. Thank you very much.

MR. CHAIRMAN.- We thank you once again.

The Committee adjourned at 9.56 a.m.

[VERBATIM REPORT]

STANDING COMMITTEE ON

FOREIGN AFFAIRS & DEFENCE

TREATIES/PROTOCOLS/CONVENTIONS

- w) **Republic of Fiji and the Solomon Islands Maritime Boundary – Delimitation Agreement.**
- x) **Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance.**
- y) **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:

- z) Agreement between the Republic of Fiji and the Solomon Islands concerning their Maritime Boundary;
- aa) Amendments to the Framework Agreement of the Paris Declaration on the International Solar Alliance of 30th, November, 2015; and
- bb) 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:

- (n) 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.
- (o) Article 2 provides the guiding principles and explains the ways in which members can take actions to meet the objective of the ISA.
- (p) 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.
- (q) 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.
- (r) 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.
- (s) 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.
- (t) Article 8 explains how partner organisation status may be granted by the Assembly to organisations that have the potential to achieve the ISA objectives.
- (u) Article 9 makes provision for the Assembly to grant observer status to the applicants.
- (v) 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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- (w) Article 11 provides to make amendments to the Framework Agreement and for withdrawal from the ISA.
 - (x) 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.
 - (y) 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:
Commissioner for**

**Office of the United Nations High
Human Rights**

In Attendance:

- | | | |
|-------|----------------------|------------------------|
| (xi) | Ms. Momoko Nomura - | Human Rights Officer |
| (xii) | 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:

- (z) all children must be protected from sexual exploitation or sexual abuse,
- (aa) such acts are criminal in nature, including attempting in complicity in such acts,
- (bb) the perpetrators must be identified and punished, and
- (cc) 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:

- (dd) those related to the elimination of violence against women and girls - Target 5.2;
- (ee) elimination of the worst forms of child labour - Target 8.7; and
- (ff) 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:

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

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- (ii) 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.
 - (jj) 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.
 - (kk) 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 & DEFENCE

TREATIES/PROTOCOLS/CONVENTIONS

**Optional Protocol to the Convention on the Rights of the Child on
the Sale of Children, Child Prostitution and Child Pornography.**

**INSTITUTIONS: (1) Pacific Conference of Churches (PCC)
(2) Fiji Police Force (FPF)**

DATE: Tuesday, 6th 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 6TH
OCTOBER, 2020 AT 9.30 A.M.**

Online Interviewee/Submittee: Pacific Conference of Churches

In Attendance:

- (1) Reverend James Bhagwan - General Secretary
 - (2) Ms. Mariana Waqa - Child Protection Coordinator
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MR. CHAIRMAN.- A warm welcome to Reverend James Bhagwan and Ms Mariana Waqa from the Pacific Conferences of Churches. On behalf of the Honourable Members, a very warm welcome to members of the public who may be listening or watching this livestream this morning.

By way of introduction for the benefit of the general public, could I ask Honourable Members of the Committee if they can raise their right hand when I call their names?

(Introduction Committee Members by Mr. Chairman.)

We welcome you this morning, Reverend Bhagwan, and by way of introduction, you may continue with your submission this morning. Thank you.

REVEREND J. BHAGWAN.- Thank you, Mr. Chairman and Honourable Members of the Standing Committee. It is good to see you again all be it virtually this time. It was a pleasure the last time we were here this year to meet with you in person regarding Fiji's ratification of the Nuclear Treaty to Prohibit Nuclear Weapons.

I bring you warm Christian greetings from the Member Churches of the Pacific Conference of Churches (PCC) which, as you know, is the peak ecumenical body representing 31 mainline churches, as well as nine National Councils of Churches from West Papua in the West, Marshall Islands in the North, Aotearoa New Zealand in the South and Maohi Nui in the East, accounting for about 80 percent of the Pacific population and it is arguably the largest civil society network in the region.

For the last six decades of its existence, the PCC has been at the forefront of social, economic and political issues from independent movements, addressing nuclear testing and structural inequality, Pacific regionalism, climate change and rethinking development issues.

In Fiji, our membership includes the Methodist Church in Fiji, the Roman Catholic Archdiocese of Suva, the Anglican Diocese of Polynesia and the Presbyterian Church in Fiji, as well as the Fiji Council of Churches which has additional members of its own.

In its 11th General Assembly in 2018, the Member Churches and National Councils of Churches which make up the Pacific Conference of Churches reaffirmed their condemnation on all forms of violence against women and children as a sin and called on the Christian Community in the Pacific to ensure that the dignity of our women and children are protected at all times.*SC FAD Interview with Pacific Conference of Churches Officials 2 Tuesday, 6th October, 2020.* -----

I acknowledge that Fiji-based Church leaders have been part of campaigns to name violence against women and children as “A Sin” and that all our faith leaders have been taking part in a campaign to say “My Faith says ‘No’ to Rape and Violence Against Women and Children.”

The PCC welcomes Fiji’s intention to ratify this important Optional Protocol which will strengthen the protection of our children by committing to the prohibition of the sale of children, child prostitution and child pornography.

The issues that this Optional Protocol addresses are key issues of concern by the Pacific Churches. The ratification of this Protocol is also a commitment to addressing social justice issues that place children in vulnerable situations open to exploitation through prostitution and pornography. This will mean, addressing structures of inequality and poverty.

As a minister who has served in circuit or parish, I often found myself struggling with the issue of child marriage in Fiji, when the age of marriage with the permission of parents, was 16 years. In that sense, I am grateful to the Fijian Government for changing this legislation to 18 years. Yet, we still have issues of teenage pregnancy, young girls becoming mothers while still children themselves and there is much that religious communities need to do to ensure that our daughters have the opportunity to flourish by access to education, the right information about their bodies, equal opportunities and a voice on matters that affect them and on issues with which they are concerned with.

In our region of the Pacific which is almost 90 percent Christian, Churches have not only play an influential role, but also obligation to ensure that the wellbeing of Pacific Islanders is holistic and for all. In the context of care for the heart, the mind, the body and the soul of all Pacific people, faith communities, Government, civil society and international agencies must work in partnership.

For Churches, this means demystifying and understanding secular terms like Sexual Reproductive Health Rights and others that, when unpacked, connect to the issue of abundant or flourishing of life for all, in particular those who are marginalised.

Our important role in preventing violence within families and mobilising communities to use available health services cannot be ignored, as many people seek religious leaders and not only medical experts for advice on social, medical and psychological issues. This call remains a challenge to Pacific Churches and faith-based communities in Fiji included, and we accept that challenge as difficult as it may be for us, to ensure that as communities of faith committed to justice, peace and abundant life for all, we will commit to defying those practices that harm our children.

Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence, I now hand over to our Ecumenical Enabler for Child Protection, Adi Mariana Waqa, to present the PCC’s submission to this Committee. *Vinaka.*

MS. M. WAQA.- Honourable Members of the Standing Committee, some of the highest prevalence of violence and abuse against children exist in the Pacific region. Cases of sexual violence against children in Fiji have increased considerably this year with 309 reported cases between February and April alone, compared to 130 cases in 2018, as reported by the Social and Child Services Department. Churches and religious institutions are, in many instances, engaged already in the work of

child protection and have significantly greater potential to do more in ending violence and abuse due to their pervasive presence in the country and at all levels of society. Churches in Fiji have the influence to re-orient some traditional and more recent attitudes and behaviours contributing to social norms that reinforce violence both, within church structures and communities.

The Pacific Conference of Churches supports the ratification of the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and we affirm the value of children in Fiji where they are protected, nurtured and empowered because our faith teaches and believes that they are precious gifts from God. To achieve this, Churches in Fiji are committed to address the prevalence of abuse, violence and exploitation of children.

In a time where our children and adolescents are exposed and impacted by excessive and unfiltered information, advancing technologies, globalization, economic lack, climate change, drugs, and an ongoing global pandemic which has created a “new norm”, it is evident that we are in need of much guidance and hope, and the Churches are crucial now more than ever for a prophetic response to the safety, wellbeing and future of our children.

We call upon the Government of Fiji to strengthen its work with faith communities due to the worrying statistics around the abuse and violation of minors. The prevalence of sexual violence and exploitation against young and vulnerable Fijians are a dilapidation of the duty of care that every child in this country should grow securely and safely under.

The PCC’s work on child protection has been mandated under the five-year Strategic Plan named, “Singing the Lord’s Song in Strange Lands and Times.” Outcome 23 of this Plan states for “Pacific Churches to advocate for child protection and safe spaces for children.”

The PCC’s child protection and safeguarding work has been supported through collaboration with UNFPA, UN Women and most specifically, UNICEF, whose partnership with PCC was mandated as a resolution of the 11th General Assembly and formally began in March this year through scoping missions in Fiji, the Solomon Islands and the Marshall Islands. As part of the objective, information derived from visitations to our member Churches were used to develop a framework through which strategies and resource materials based on Christian scripture and teachings would engage Churches and member stakeholders in gender-equitable, child-friendly and violence-free practices.

The PCC’s commitment to child protection and the safeguarding of children is emphasised in the Framework’s spirituality statement which highlights the responsibility Churches have in protecting children from all forms of harm and abuse.

Jesus’ preferential option for children in the Gospels presents the Churches a reminder of our Christian role to welcome, acknowledge and reassure children as valuable gifts from God. As Christians, we must acknowledge that there have been times when we have failed to follow the example of Jesus. We sometimes have silenced and pushed aside the wellbeing and needs of our children and in turn, became stumbling blocks causing them to fall.

Pacific holistic spirituality protects the physical, mental, emotional and spiritual wellbeing of children to develop safely under the guidance and love of their family, church and community. We

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understand that it takes the community of faith to protect children from violence and empower them in the process to love God, neighbour and creation with all their heart, soul, strength and mind. The PCC's Child Protection and Safeguarded Framework draft has now been completed and is undergoing review by members of the Fiji Council of Churches. This Framework is underlined by a number of principles which include:

- (1) Our belief in God, the Ministry of Jesus Christ and the learnings from the *Bible* which are the foundations of faith from which child safeguarding and eliminating violence against women is done.
- (2) Churches and all related institutions are to covenant around a zero tolerance of violence and abuse within their own structures and missions. This serves to position churches as credible advocates in the work to protect children against violence and exploitation.
- (3) Child protection and safeguarding is to be applied beyond the walls of the church to families, local communities, both nationally and regionally, particularly in the Ministries of Churches and Ecumenical networks.
- (4) Child safeguarding and ending violence against children activities and resources shall uphold and help inform and strengthen child protection systems of Pacific Countries. While being in compliance with the legal frameworks and working in collaboration with their child protection-related departments, Churches are called to go beyond this to meet the needs of children, to be safe and protected. In other words, Churches should not see themselves as limited by legal norms but have the freedom and God's grace to exceed them, consistent with national law and policy in protecting children.
- (5) As Churches, we align children's special rights with the responsibility of parents, institutions and young people, to ensure an overall conceptualisation of child wellbeing. This centres on God's will for the abundance of life involving spiritual, physical, mental and emotional wellbeing.
- (6) Pacific peoples and churches take ownership in the resources and processes developed in this Framework and shall resist approaches and messages that are ineffective for Pacific societies and cannot be sustained. Every opportunity shall be taken to contextualise approaches to Pacific cultures and churches.
- (7) Resources produced, shall be integrated into existing structures and processes of churches and other child protection stakeholders, building on strengths rather than replacing them with new structures and interventions with less likelihood of sustainability.

This Framework and the principles on which it is founded serves to provide an avenue for PCC to begin its child protection work by piloting resources and training programmes here in Fiji, the Marshall Islands and the Solomon Islands. Child protection systems and Safe Church Policies that SC FAD Interview with Pacific Conference of Churches Officials 5 Tuesday, 6th October, 2020. -----

extend into Pacific homes, churches and communities, will serve the next generation, who can continue to work for the elimination of violence against children.

The *Bible* is clear, Proverbs 22:6 says, and I quote: “If children are trained up in the way they should go, then they will not depart from it when they are older.” When a child grows up in a safe and a non-violent environment conducive to healthy and proper development, there are much higher prospects that will hold and strengthen this through the next generations.

The Fiji Government’s moves to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography has the full support of the PCC. Our commitment towards protecting the lives of Fiji’s youngest and most vulnerable citizens is a duty that stands to serve generations of precious children from the traumatic impacts of violence, which include the heinous crimes of child trafficking, child prostitution and child pornography.

According to the teachings of Jesus Christ who likened the wellbeing of children to the manifestation of the Kingdom of God, the PCC vows to do our part in ensuring this work transitions from legislations through to awareness and practice in our Churches, and into our homes and our communities.

Honourable Members of the Committee, I thank you for this opportunity. *Vinaka vakalevu* and may God Bless you and Fiji’s 50th year of Independence.

MR. CHAIRMAN.- Thank you, Reverend Bhagwan and Ms. Waqa for a very informative submission on behalf of the PCC.

Honourable Members, do you have any question for Reverend Bhagwan or Ms. Waqa?

HON. A. JALE.- *Yadra vinaka* and thank you Reverend Bhagwan and Ms. Waqa. Child abuse in Fiji, from statistics and for what we have read in the media are normally conducted by Christians. I think I may be right in saying that. Is that a concern to your organisation? What is the Council doing about that?

REVEREND J. BHAGWAN.- I am sorry. Can you repeat the first part of your question, please?

HON. A. JALE.- Child abuse in Fiji seems to be by people who are Christians. So, it certainly is a challenge to your organisation, the PCC. What is the Council doing about it?

REVEREND J. BHAGWAN.- Thank you, Mr. Chairman. Well, it is understandable that when you have 90 percent of the region as Christians, any crimes committed will have a large percentage of people involved.

This programme that we are rolling out with our partner churches, particularly on the area of child protection, and Adi Mariaana is our Officer, that is in partnership with UNICEF. We have the Fiji Council of Churches (FCC) members on board. So, not just our mainline churches but a number of the smaller churches as well. *SC FAD Interview with Pacific Conference of Churches Officials 6 Tuesday, 6th October, 2020.*

We are working on two levels:

(1) Supporting the work on ensuring that these Churches have what we call Safe Church Policies or Child Protection Policies within their systems. A number of churches have Codes of Conduct and this need to be in their own Churches, rolled out for their members to know, especially for those who are in ministry leadership to understand, particularly around these issues.

(2) Training programmes to be run in faith communities themselves, and this is around educating our parents in particular, about the protection of children. We have to recognise though that we are increasingly seeing children been raised by non-biological parents. We have step parents, step-fathers in particular and we have grandparents raising children now.

In the same context, we have members of the extended family raising children, so we need to target this primary caregivers in our roll out of this education. That is some of the work that we are doing. We know that it is late in the game for many young people who have faced abuse. We have acknowledged that and we are urging our Churches and our faith communities to step up this work but it has been good to see a commitment from the Churches in addressing this, so we will continue to roll this out in that way. Thank you, Mr. Chairman.

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

HON. DR. S.R. GOVIND.- Thank you, Mr. Chairman and thank you, Reverend Bhagwan for your informative presentation. I was just going to ask you whether the PCC has any mandate to approve new Churches that are being established everywhere, whether you have any mandate or any screening mechanisms before the Churches are established, especially in rural areas?

The second one is, whether there are any monitoring mechanisms to monitor the Churches, that they are following their ethical practices and guidelines. My question is based on the recent, I think, yesterday's media highlighting a pastor being involved in unethical practices, so I was wondering whether your organisation, as the overarching organisation has any specific mandate? Thank you.

REVEREND J. BHAGWAN.- Thank you, Honourable Member, for that question. Mr. Chairman, if I may answer, through you, to those two questions.

In answering the first question, in the context of PCC, we are a fellowship of Churches so in that way, we are not an association where they are bound by in terms of membership. There are indigenous churches from their own countries across the region.

As I have mentioned, we have some 31 Churches so it is a free association where they join, but they do subscribe to the values that we have in our Constitution. That is the key part of the mandate of PCC and for us, the General Assembly is the overarching mandate of policy mechanism. Once the Churches agree in our General Assembly, then they are bound to follow through and work with us as we implement on their behalf. In that context, we are basically the church version of the Pacific Islands Forum Secretariat. We work with our member churches on those issues, but the implementation on the *SC FAD Interview with Pacific Conference of Churches Officials 7 Tuesday, 6th October, 2020*. -----

ground is left to the individual churches and that is where the Fiji Council of Churches would play a very important role.

In the past, the Fiji Council of Churches, for the context of Fiji, was usually consulted when it came to approval of any new church being set up. In that way, there was an allowance for due diligence, it was ensuring that there was no proselytism going on, they were able to make sure that there were governance structures in place and that tends to be one of the weaknesses.

In one of the new Churches, there were no strong governance mechanisms. A person can just start a faith community and that is a natural faith community. We understand that, but if you want to be in terms of organised religion, then it is important to have governance structures and so in that, that being the case, it is important that an organisation, like the Fiji Council of Churches is involved in that process.

In the past, any missionary coming to set up churches in Fiji would need to be vetted and approved or have an endorsement from, at least, one of the mainline churches and the Fiji Council of Churches. Any new churches being established or being vetted by the Fiji Council of Churches.

On the second question in terms of monitoring, we will be having that in this project that we are rolling out, so there are going to be reporting mechanisms for us, but these are just for monitoring in terms of the work we are doing. That is something that could be looked at in terms of legislation around the Religious Bodies Act in terms of the reporting of cases. We are encouraging all our Churches to have no-drop policies Codes of Conduct that include the reporting of cases straightaway to the police and making sure that there are strong mechanisms in place. However, it is really in the space of the Religious Bodies Act where something like that could be brought here. Thank you.

MR. CHAIRMAN.- Thank you. Honourable Tikoduadua, do you have a question?

HON. LT. COL. P. TIKODUADUA.- Mr. Chairman, I think I drifted off a bit. Am I okay now?

MR. CHAIRMAN.- Yes.

HON. LT. COL. P. TIKODUADUA.- Thank you, Reverend Bhagwan and your team from the Pacific Conference of Churches. My question is kind of related to what Honourable Jale asked you earlier but specifically relates primarily to the clergy and also particularly in relation to child abuse and other matters relating to it.

I am a Catholic myself, as you know, and this is something that we in the Catholic Church are not very proud about. Lately, there have been allegations and I know that His Grace, The Archbishop of Suva, had reacted to it and had come out very strongly with the position with regards to how the Catholic Church would deal with it.

In terms of the PCC, I know in your answer to an earlier question, you talked about a no-drop policy and I want to thank you for that. I believe the idea is the position of the Catholic Church right now but I am interested in what the PCC is doing, and how you relate to your member churches throughout the Pacific with regards to this very important matter of the clergy and sexual abuse. I would just like to hear out the programmes that you have. Thank you. *SC FAD Interview with Pacific Conference of Churches Officials 8 Tuesday, 6th October, 2020.* -----

REVEREND J. BHAGWAN.- Thank you, Honourable Member. Mr. Chairman, through you, may I respond to the question. We have an overarching safe church programme which covers two specific areas. There is one area which is called our just and safe Pacific communities of women and men which focuses on the issues of gender-based violence and gender equality. So looking at physical violence, sexual violence and structural violence against women and then we have a separate project within that framework which is our child protection project.

There are two aims to this; one is really in terms of rolling out programmes that can be taken by churches to roll them out on the ground so this is working with faith communities and families, parents recognising their role, members of the community recognising the need to protect and nurture our children, looking at the issues of gender-based violence, recognising the broader aspects of that, talking about the positive reflections from the Bible on gender equality, et cetera.

The other aspect is to work and develop safe church policies to be incorporated by our churches, so we have as you know, the Catholic Church has its code of conduct, the Methodist Church in Fiji, the Anglican Church here in Fiji, they all have codes of conduct which talk about these issues from domestic violence to child abuse to sexual abuse as an abuse of power which is really what it boils down to when we are talking about this issue within clergy and within leaders in the church. This is about people who have been given trust by their members, by their congregation, people whose authority has been acknowledged, so when they speak, whatever they say is taken as pardon the expression, the Gospel in some cases and we have seen this abuse in many different contexts, from financial to the issue of sexual abuse and so we are working with a number of our churches across the region.

Right now, our work in this area is with Fiji, the Marshall Islands and the Solomon Islands. There are other projects ongoing with a number of other Pacific Islands where we are at different stages of implementing this project.

One of the key things really is to ensure that the congregation also know the code of conduct. So, it is important that while clergy and ministry leaders of whatever form know this code of conduct, it is important that the congregation know it as well so that they can speak up when they feel that this is happening, when they recognise and not be afraid to call this out because that is often what people, as we know, equate the person with the title or the work that is being given to them as clergy.

We have seen this in a number of cases in the past in some of the new religious movements in Fiji, in some of the recent cases that have appeared in court over the last few years where you find people who are actually being convinced by this new religious leaders to participate in really what is sexual abuse. So, it is very important that we have these codes of conduct, that people know that they exist, that they understand and that they know that they should feel comfortable to take this matter forward because they know that the church will support them when they raise it. Thank you.

MR. CHAIRMAN.- Thank you, Reverend Bhagwan.

Honourable Members, since there are no other questions, we would like to thank Reverend Bhagwan and Ms. Waqa. Thank you again for obliging and coming before the Committee this morning to deliberate on the Treaty before us. *SC FAD Interview with Pacific Conference of Churches Officials 9*
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I also take this opportunity to thank the members of the public who are listening or watching this livestream and members of the media for taking an interest in your Parliament.

With those few words, Reverend Bhagwan and Ms. Waqa, I thank you once again. If you have any departing comments, the floor is yours, Sir.

REVEREND J. BHAGWAN.- Thank you, Mr. Chairman. Once again, thank you for the opportunity to have PCC make a submission and to wish you all, from PCC, a very happy Fiji Day and happy 50th Independence Anniversary. Vinaka.

MR. CHAIRMAN.- Likewise to you and the organisation, Reverend Bhagwan. *Vinaka*.

The Committee adjourned at 10.03 a.m. *SC FAD Interview with Fiji Police Force Officials 10 Tuesday, 6th October, 2020.*

The Committee resumed at 10.25 a.m.

Online Interviewee/Submittee: Fiji Police Force

In Attendance:

- (1) Mr. Itendra Nair - Acting Deputy Commissioner of Police
 - (2) SSP Mesake Waqa - Director Criminal Investigation Department (CID)
 - (3) SSP Serupepeli Neiko - Director Narcotics Bureau
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MR. CHAIRMAN.- Honourable Members, a very warm welcome. I would also like to welcome the Team from the Fiji Police Force and a warm welcome also to you members of the media who are watching the livestream this morning.

(Introduction of Committee Members by Mr. Chairman)

To ADCP Itendra Nair, just a word of introduction from your good self and you may continue with your submission this morning, Sir.

For the members of the public and the media, the Treaty being deliberated this morning by the Fiji Police Force is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The floor is yours, Mr. Nair. Thank you.

MR. I. NAIR.- Thank you, Sir. Mr. Chairman and Honourable Members of the Standing Committee on Foreign Affairs and Defence, members of the media, *bula vinaka* and a very good morning to all of you.

Basically, a quick introduction from our side. On my left is the Director Criminal Investigation Department, SSP Mesake Waqa, on my right is SSP Serupepeli Neiko, the Director Narcotics Bureau and myself, I am the Acting Deputy Commissioner of Police Itendra Nair.

First and foremost, Sir, the Acting Commissioner of Police sends his apologies. Unfortunately, he has to go to the Government House for the medal presentation. The Team here this morning should be able to take the Honourable Members through the efforts that your Police Organisation has done in terms of this Optional Protocol. I will quickly go to the presentation, Mr. Chairman, if it is alright with you.

MR. CHAIRMAN.- The floor is yours.

MR. I. NAIR.- Thank you, Sir. If you look at our presentation, you will see on the left hand side we are basically talking about the Instruments. In the second column, we are talking about or discussing the legislation which basically reflect those Instruments and on the far right hand corner, you will be able to look at some of the efforts of the Fiji Police in relation to the legislation and the instruments.

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Basically, the Instruments that we are talking about here, firstly, is the Convention on the Rights of the Child ratified in 1993. The one that we are dealing with now is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography adopted on 25th May, 2000, and signed on 16th September, 2005. Basically our presentation today will be concentrated on Article 3 of the Optional Protocol, which is very much related to policing functions.

In terms of the legislations in relations to this Optional Protocol, what we have already in place, firstly, the 2013 Constitution of the Republic of the Fiji, which happens to be the supreme law of our country, Section 41 administers the rights in the best interest of the child.

In terms of the legislation which is in place, our Juvenile Act 1973 was amended in 1997 which takes care of a number of issues which is basically the definition of a juvenile, protection of juveniles in criminal proceedings under sections 3 and 7. Juveniles need care, protection and control under sections 39 to 48. The offences which are criminalised is in sections 57 to 62 and in particular, section 62(a) which deals with pornographic activities, and then outlining procedures of handling of juvenile.

In terms of the policy and procedures and some of the cases that I might discuss later on, basically what the Fiji Police has done is, we have an Interagency Guideline on Child Abuse and Neglect 2015 – the enhancement of individuals and organisations’ understanding and knowledge of legislation policies associated with child abuse endorsed by five agencies - the Department of Social Welfare, Fiji Police Force, Ministry of Education, Ministry of Employment, Productivity and Industrial Relations and Ministry of Health and Medical Services. Then we have the Fiji Nationals Delivery Protocol for Responding to Cases on Gender-Based Violence 2018. The SOP for interagency responds to addressing and eliminating the scourge of gender-based violence.

Other legislations that the Fiji Police depends upon which is already enacted and available to us is the Crimes Act 2009, which criminalises offences in various sections:

- section 114 - Trafficking in Children;
- section 117 - Domestic Trafficking in Children;
- section 226 - Selling of Minors;
- section 227 - Buying of Minors;
- section 230 - Living on Earnings of Prostitution;
- section 231 - Loiter/ Solicit for Purpose of Prostitution;
- section 279 - Kidnapping;
- section 284 - Child Stealing; and
- section 285 - Abduction of a young person.

Some of the policies and the procedures that we have in place are:

1. National Coordinating Committee for Children (NCCC), formed in 2009 to promote and safeguard the wellbeing of children in Fiji;
 2. SOP for Handling Children 2012;
 3. SOP for Investigation of Sexual Offences 2012;
 4. CID Directives, which the Directors have issued 6/2016 - investigation of juvenile cases; and
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5. CID Directive 1/19 which deals with handling of child sexual abuse cases and other crimes against children.

Some other legislations that we seek assistance from are:

1. Police Act Cap 85 which gives us the general powers of policing under section 5 - Functions of the Force;
2. The Child Welfare Act 2010 - care and treatment orders for children under sections 10 to 16; and
3. Domestic Violence Act 2009 - safety and wellbeing of children under section 31.

Some of the policies and procedures in place is the legal guidance signed on 23rd April, 2020, guidance on procedures of handling children; and the FPF Pocket Guide 2012 on how to deal with young people.

Furthermore, in terms of the policies and procedures and the trainings that we have had:

- (1) Child Protection Training Manual 2012, to provide police officers with knowledge and understanding of the legislative policy and procedural requirements on child protection.
- (2) Awareness on REACH Programme - FPF partner with UNDP and other domestic stakeholders in reaching out to the communities at large.
- (3) Pacific Dialogue Programme - FPF has also stakeholders in this reaching out to the communities at large.

Mr. Chairman, with your permission, I will quickly take us through some of the recent cases in the past five to seven years that we have dealt with:

- (1) State versus Inoke Raikadroka (HAC 80/2013) - the individual was charged with domestic trafficking of children and aggravated sexual servitude and was sentenced to 14 years imprisonment.
- (2) State versus Filipe K. Tuisawau (HAC 172/2015) - charged with offences of rape, sexual servitude and pornographic activities involving children and was sentenced to 12 years.
- (3) State versus Josevata Werelagi (HAC 425/2018) - charged with offences of aggravated sexual servitude and domestic trafficking in children and was sentenced to 14 years.

Mr. Chairman, that basically is the presentation from the Fiji Police Force. Thank you.

MR. CHAIRMAN.- Thank you, Mr. Nair. Honourable Members, do you have any questions for the Fiji Police Force? *SC FAD Interview with Fiji Police Force Officials 13 Tuesday, 6th October, 2020. ---*

HON. A. JALE.- Mr. Nair, I thank you and your colleagues who are here for the presentation this morning. I saw from your presentation reference to minors and juvenile. You do understand that the Convention on the Rights of the Child has defined ‘child’ in that Convention. I am just curious to know the definition of ‘minors’ and ‘juvenile’ in your Crimes Act.

MR. I. NAIR.- The interpretation of the definition of the various categories of individuals that we deal with is provided for in the Juvenile Act, Cap 56 that we referred to, and a child means, a person who has not attained the age of 14 years and a juvenile in that matter is someone who is 17 years old. Child for us is a person who has not attained the age of 14 years. Juvenile means a person who has not attained the age of 18 years and includes a child and a young person. My understanding is that in Section 41 of the 2013 Fijian Constitution, it also interprets a child at 18 years, if I am not mistaken. We were just referring to the 2013 Constitution to be able to rectify that.

HON. A. JALE.- Mr. Chairman, the other bit that need clarification is the definition of ‘minor’ under the Crimes Act which the Police Department deals with. Thank you for the definition of juvenile. Yes, it does come under 18 years. The definition of ‘child’ under the Convention and some of the laws that are here in Fiji in confirmative with the Convention is that a child is someone who is under 18 years old. I am looking at the uniformity of these laws to be able to embrace the Convention.

MR. CHAIRMAN.- Any comments, Mr. Nair?

MR. I. NAIR.- I think that is basically it, in terms of that we are guided by the Juvenile Act which is Cap 56 and also the 2013 Fijian Constitution which places a child at the age of 18 years old.

MR. CHAIRPERSON.- Alright. Thank you for that. Honourable Tikoduadua?

HON. LT. COL. P. TIKODUADUA.- Thank you, Mr. Chairman. I thank the Acting Deputy Commissioner of Police and his Team for that presentation. I would just like to ask, may be if you can, two issues that you find has the greatest challenge in terms of the police work in dealing specifically with say, the child as you rightfully said the definition of a ‘child’ is under 18 years old. What are some of the challenges that the Force experiences and perhaps, need the greatest of assistance when it comes to dealing with child issues, like crimes against the child and crimes that a child is alleged to have committed? Just to give us some kind of action in terms of when we deal with this Convention, that we have a fair understanding of how the Police is challenged by the work that you do to protect the child from adults for that matter, and also to protect the child in that case. You have said cases where you have had convictions, but I would just like to find out the challenges that you do face and if you are going to ask Government or perhaps legislative endorsements that would make your work easier to protect a child in this matter, not only in pornography or other offences against the child, but on other general matters pertaining to the safety and welfare of a child. Thank you.

MR. I. NAND.- Thank you, Honourable Member, for your question, very valid and relevant questions that you have asked this morning. Through you Mr. Chairman, basically the two challenges that I will be able to point out to you this morning is facilities to be able to deal with the juveniles or
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young persons. By facilities, I mean that most of our infrastructure that have been built during the 1970s or during the colonial era, it was not sort of built to be able to cater for the needs of juveniles and young persons. If we want to keep them in our custody, that becomes a challenge for us because we need to be able to separate them from adults, for obvious reasons.

Secondly, how we are dealing with that because that is a legislative provision which is based on us to be able to follow and I give an example, if we have a juvenile at the Nadi Police Station and we do not have the cell facilities to be able to keep the individual there, then we will be able to push him or her to either Namaka or Sabeto if it is vacant, so we push him/her to the nearest facility to be able to deal with that issue.

However, in new police stations that are coming up, the three under constructions now which is at Nadi, Lautoka and Nakasi, we certainly have juvenile detention facilities for our juvenile offenders and young persons.

Sir, secondly in terms of the expertise, for us police officers, we are general police officers and there is a level of expertise that is needed to be able to deal with the psychology of juvenile offenders and young persons. We lack that and to some extent, we have had overseas exposures. We have sent few of our juvenile officers to undertake some of the trainings overseas to be trained and increase their level of expertise to be able to deal with the juvenile offenders in our country.

Those two challenges, I would put to be at the top 2 tier. Thank you, Honourable Member, and thank you, Mr. Chairman.

MR. CHAIRMAN.- Thank you, Mr. Nair. Honourable Dr. Govind?

HON. DR. S.R. GOVIND.- Thank you Mr. Chairman. I would also like to thank the Acting Commissioner for his very informative presentation. My question is that, during normal times other than during the COVID-19 period, the trans-border or cross-border activity can greatly contribute to child abuse and sale of children and prostitution, et cetera. My question is, what mechanisms are in place to network with other intelligence services like in other countries to deal with this problem? That is a major issue. Is there any facts and figures or statistics about crimes committed from outside rather than this country?

MR. I. NAIR.-Through you, Mr. Chairman, if I understand the question well, in terms of the networking that we may be having with outside jurisdiction, certainly we have that. We have that through the Pacific Chiefs of Police Meetings that we have. We are basically looking and gauging each other's activities at technical level as to how we are dealing with the COVID-19 situation in our different countries, and what are some of the best practices that we can be able to learn off each other, so we have regular meetings where we update each other, we are learning off them and they are also learning from us, so it is the best practices that we have that we are sharing.

Apart from that, we also have a Pacific Transnational Crime Unit that looks at some of the crime networks that happen within our region which also takes care of that, so that is basically through the various networks that we have which assist us to be able to deal with the current pandemic and the

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challenges that we face with all these and how, at very technical level, we may be able to assist each other in terms of dealing with COVID-19. Thank you, Sir.

MR. CHAIRMAN.- Honourable Members, since there are no further questions, Mr. Nair and Team, I thank you so much.

Also, would like to thank the members of the public who are listening in or watching this livestream and the media for taking an interest in your Parliament.

With those few words, Mr. Nair, if you have any departing comments, the floor is yours, and I thank you.

MR. I. NAIR.- Thank you, Sir. Just to say ‘thank you’ for giving us this opportunity to be able to make our presentation on this. The questions that have been put to us were very valid questions and we hope that we can be able to work together for the best interest of the young people in our country.

Vinaka!

The Committee adjourned at 10.46 a.m.