



STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

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



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Chairperson's Foreword

I am pleased to present the Review Report on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography ('Optional Protocol').

Fiji ratified the Convention on the Rights of the Child (CRC) in 1993, which sets out standards and protocols to safeguard the rights and welfare of our children. The Optional Protocol is an international instrument to the CRC and was adopted on 25 May 2000. It entered into force on 18 January 2002 with 176 States being party to the Optional Protocol. As a Party, the Fijian Government is mandated to implement child protection laws and initiatives aligned to the CRC.

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.

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. 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. As a member of the Human Rights Council, 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.

In its concluding observations of 2014, the United Nations Committee on Human Rights expressed "deepest concern" that sexual exploitation and abuse of children is prevalent in Fiji, including through organized child prostitution networks and brothels.¹ The Committee also expressed concern that sexual exploitation of children is closely linked to poverty, with pressure placed on children to earn money. 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.

The Optional Protocol 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.

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,

¹ UN OHCHR Submission on 05th October 2020, pg. 3 para 3

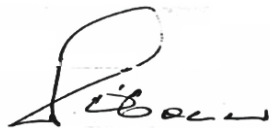
as well as the need for strengthened global partnership among all actors and the importance of law enforcement at the national level.

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.

The Committee recommends that Fiji ratify the Optional Protocol. It is consistent with the laws of Fiji, it reflects our values, it protects our children and it reaffirms our commitment to global solidarity.

I take this opportunity to thank members of my Committee and the Secretariat for compiling this bipartisan report.

On behalf of the Standing Committee on Foreign Affairs and Defence, I submit this report to the Parliament.



Hon. Alexander O'Connor
Chairperson

Acronyms

CRC	Convention on the Rights of the Child
CSOs	Civil Society Organisations
FPF	Fiji Police Force
FWRM	Fiji Women’s Rights Movement
ICT	Information, Communication and Technology
MODNSP	Ministry of Defence, National Security and Policing
MEHA	Ministry of Education, Heritage and Arts
MOFA	Ministry of Foreign Affairs
MS Teams	Microsoft Office 365 Teams Application
MWCPA	Ministry of Women, Children and Poverty Alleviation
NGOs	Non-Governmental Organisations
OHCHR	United Nations Office of the High Commissioner for Human Rights
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
OSG	Office of the Solicitor-General
SCF	Save the Children Fiji
SDGs	Sustainable Development Goals
SO	Standing Orders
UNICEF	United Nations International Children’s Fund
USP	University of the South Pacific

Recommendation

The Committee recommends that Parliament ratify the Optional Protocol.

Introduction

Background and Terms of Reference

The Committee had its first virtual online meeting on Tuesday 8th September 2020 and reviewed the Treaty:

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

From 15th September to 6th October 2020 stakeholders made virtual online submissions on the MS Office Teams in Suva.

The Report is divided into three parts:

Part One - focuses on the Committee recommendations

Part Two - covers the Findings of the report to Parliament

Part Three -covers the Conclusion

Committee Remit and Composition

Pursuant to Standing Orders 109(2) (e) that the Standing Committee on Foreign Affairs and Defence is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisation.

The members of the Standing Committee on Foreign Affairs and Defence are as follows:

Hon. Alexander O'Connor – Chairperson
Hon. Dr. Salik Govind– Deputy Chairperson
Hon. Selai Adimaitoga – Member
Hon. Anare Jale – Member
Hon. Pio Tikoduadua – Member

Procedure and Program

The Standing Committee on Foreign Affairs and Defence commenced its deliberation on the 8th September to 20th October 2020 in the Parliament using the online MS Office Teams, also received written and oral submissions from stakeholders with the following attendees:

- Pacific Islands Development Forum (PIDF) – written submission only
- University of the South Pacific (USP)
- Ministry of Defence, National Security and Policing (MODNSP)
- Ministry of Foreign Affairs (MOFA)
- United Nations International Children's Emergency Fund (UNICEF)
- United Nations Office of the High Commissioner for Human Rights (OHCHR)
- Ministry of Women, Children and Poverty Alleviation (MWCPA)

- Fiji Revenue and Customs Service (FRCS)
- Save the Children Fiji (SCF)
- Ministry of Education, Heritage and Arts (MEHA)
- Office of the Solicitor-General (OSG)
- Pacific Conference of Churches (PCC)
- Fiji Police Force
- Fiji Women Rights Movement (Written Submission)
- University of Fiji (Written Submission)
- Fiji Human Rights and Anti-Discrimination Commission (Written Submission)

Committee Deliberation and Analysis

Committee Findings

1. Civil Society Organisations/Non-Government Organisations

1.1. Positives

- 1.1.1. 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 and 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.²
- 1.1.2. The Pacific Conference of Churches supports the ratification of the Optional Protocol to the Convention and affirms the value of children in a Fiji where they are protected, nurtured, and empowered due to Christian teachings.³
- 1.1.3. 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. 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.

1.2. Negatives

- 1.2.1. The Optional Protocol does not pose any impacts on Fiji.

1.3. Proposals for Amendments/Considerations

- 1.3.1. FWRM strongly recommends that the State ratify the Optional Protocol to further strengthen its commitment under the Convention on the Rights of the Child.
- 1.3.2. 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

² Human Rights and Anti-Discrimination Commission Written Submission

³ Pacific Conference of Churches Submission on the 29th September 2020

children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited;

- 1.3.3. 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.
- 1.3.4. 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.
- 1.3.5. It is further recommended that the provisions of the Crimes Act 2009 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 2009 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.
- 1.3.6. Promote education and advocacy on the rights and obligations under the Optional Protocol through multi-sectorial 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.
- 1.3.7. It is imperative that the State, law enforcement agencies and the national human rights institution develop 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.
- 1.3.8. 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.
- 1.3.9. 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) 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.

- 1.3.10. 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.⁴
- 1.3.11. 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.
- 1.3.12. 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.
- 1.3.13. 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.
- 1.3.14. 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. Fiji then submitted its combined second and fourth periodic report in 2011, and was reviewed by the Committee in October 2014. Its combined fifth and sixth periodic report was due on 11 September 2020.
- 1.3.15. 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

⁴ United Nations High Commissioner for Human Rights

mobile world, the sale and sexual exploitation of children in the context of travel and tourism represents a growing threat.

2. Higher Education Institutions

2.1. Positives

- 2.1.1. Ratification of the Optional Protocol 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.
- 2.1.2. Fiji is respected 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.
- 2.1.3. 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.⁵

2.2. Negatives

- 2.2.1. The Optional Protocol does not pose any impacts on Fiji.

2.3. Proposals for Amendments/Considerations

- 2.3.1. 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.

3. Government Ministries

3.1. Positives

- 3.1.1. 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;
- 3.1.2. Promote victim support and awareness;
- 3.1.3. Complements our existing laws;

⁵ University of Fiji, School of Law written submission; 6/10/2020.

- 3.1.4. Promotes and strengthens international relations and cooperation between State Parties; and
 - 3.1.5. Strengthen Fiji’s commitment and obligations to other international conventions.
 - 3.1.6. 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.
 - 3.1.7. Furthermore, ratification of the Optional Protocol will also promote co-operation and strengthen international relations with other States Parties who have acceded to or ratified the Optional Protocol.
- 3.2. Negatives**
- 3.2.1. The Optional Protocol does not pose any impact on Fiji.
- 3.3. Proposals for Amendments/Considerations**
- 3.3.1. Fully agree with the ratification of the Optional Protocol.

Challenges

One of the challenges in monitoring and enforcement of policies on the sale of children, child prostitution and child pornography is the lack of synchronised data. Way forward is to strengthen coordination mechanisms between government agencies, NGOs, CSOs and donor partners to collate, analyse and disseminate information to all stakeholders for effective policy, formulation and implementation.

Oral and Written Evidence Received

The Committee received oral and written submissions from stakeholders and the public as listed in *Appendix A*.

Sustainable Development Goals (SDG) and Gender Analysis

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.

Ratification of the Optional Protocol ties in with the Government of Fiji's history of strong engagement with the Committee on the Rights of the Child and other international human rights bodies.

This is a milestone in Fiji's broader global commitments to SDG 16: Peace and Justice and SDG No 17: Partnerships for the Goals that articulate Fiji's International commitments to meeting SDG 5: Gender Equality and to ensure all genders adhere to the Protection of the Child and all Fijian Children at all times.

Conclusion

The Standing Committee on Foreign Affairs and Defence has fulfilled its mandate approved by Parliament which is to review the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Members' Signature



Hon. Alexander O'Connor
Chairperson




Hon. Dr. Salik Govind
Deputy Chairperson

Hon. Pio Tikoduadua
Member



Hon. Selai Adimaitoga
Member



Hon Anare Jale
Member

Appendices

All other written and transcribed evidences gathered during the public submissions and public consultations will be made accessible on the Parliament website on:

<http://www.parliament.gov.fj/committees/standing-committee-on-foreign-affairs-and-defence/>

No	Date	Agency/Organisation	Written Evidence	Oral Evidence (Online MS Teams submission)
1.	15/09/20	Pacific Islands Development Forum (PIDF)	✓	
2.	15/09/20	University of the South Pacific (USP)	✓	✓
3.	22/09/20	Ministry of Defence, National Security and Policing (MODNSP)	✓	✓
4.	22/09/20	Ministry of Foreign Affairs (MOFA)	✓	✓
5.	5/10/20	United Nations Children's Fund (UNICEF)	✓	✓
6.	5/10/20	United Nations Office of the High Commissioner for Human Rights (OHCHR)	✓	✓
7.	28/09/20	Ministry of Women, Children and Poverty Alleviation (MWCPA)	✓	✓
8.	28/09/20	Fiji Revenue Customs Service (FRCS)	✓	✓
9.	29/09/20	Save the Children Fiji (SCF)	✓	✓
10.	5/10/20	Ministry of Education, Heritage and Arts (MEHA)	✓	✓
11.	5/10/20	Office of the Solicitor General (OSG)	✓	✓
12.	6/10/20	Pacific Conference of Churches (PCC)	✓	✓
13.	5/10/20	Fiji Police Force	✓	✓
14.	28/09/20	Fiji Women Rights Movement	✓	
15.	6/10/20	University of Fiji	✓	
16.	8/10/20	Fiji Human Rights and Anti-Discrimination Commission	✓	