



Notice of a Motion

Notice:

That the Standing Committee on Foreign Affairs and Defence review the following treaty—

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

Name of member submitting the motion: Honourable Attorney-General

Signature of member to move the motion: _____

Date Submitted: 31 August 2020

Date for the motion to be moved: 2nd September 2020

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Date and time received: _____

Name of person receiving the form: _____

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

WRITTEN ANALYSIS

1.0 Introduction

- 1.1 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. As a Party, the Fijian Government is mandated to implement child protection laws and initiatives aligned to the CRC.
- 1.2 The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ('**Optional Protocol**') is an international instrument to the CRC and was adopted on 25 May 2000. The Optional Protocol entered into force on 18 January 2002. As at August 2020, 176 States are party to the Optional Protocol.
- 1.3 Fiji signed the Optional Protocol on 16 September 2005 but has yet to ratify the Optional Protocol.

2.0 Summary of the Optional Protocol

- 2.1 Article 1 of the Optional Protocol requires States Parties to prohibit the sale of children, child prostitution and child pornography.
- 2.2 Article 2 of the Optional Protocol provides the definition of sale of children, child prostitution and child pornography.
- 2.3 Article 3 of the Optional Protocol outlines the various acts and activities that must be covered in a State Party's criminal or penal laws, whether these offences are committed or there is intention to commit those acts and activities domestically, transnationally or on an individual or organised basis.
- 2.4 Article 4 of the Optional Protocol provides that States Parties must take measures as necessary to establish their jurisdiction over the offences referred to in Article 3 of the Optional Protocol.

- 2.5 Article 5 of the Optional Protocol provides that the offences under Article 3 of the Optional Protocol are deemed as extraditable offences in any extradition treaty existing between States Parties. It also provides for the Optional Protocol to be the legal basis for extradition in cases where there is no extradition treaty between States Parties to the Optional Protocol. Further cases where the State Party does not extradite a person(s) based on the nationality of the offender, the State Party must submit the case to its competent authority for prosecution.
- 2.6 Article 6 of the Optional Protocol provides for mutual legal assistance between States Parties for the purposes of investigation, criminal or extradition proceedings or with respect to obtaining evidence necessary for the respective proceeding.
- 2.7 Article 7 of the Optional Protocol provides for measures with respect to seizure and confiscation of good such as materials, assets and other instruments used to commit or facilitate offences under the Optional Protocol including the proceeds derived from such offences.
- 2.8 Article 8 of the Optional Protocol provides various measures that States Parties are obligated to adopt in order to protect the rights and interests of child victims of the practices prohibited under the Optional Protocol at all stages of the criminal justice system.
- 2.9 Article 9 of the Optional Protocol *inter alia* provides that States Parties must adopt, strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the Optional Protocol.
- 2.10 Article 10 of the Optional Protocol *inter alia* provides for international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts of involving the sale of children, child prostitution, child pornography and child sex tourism.
- 2.11 Article 12 of the Optional Protocol makes it incumbent on States Parties to submit within 2 years following the entry into force of the Optional Protocol for that State Party to 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.

- 2.12 Articles 13 to 17 outline administrative matters including procedures for ratification or accession, entry into force, denunciation and amendments to the Optional Protocol.

3.0 Requirements for Implementation

- 3.1 Given the strong and salutary provisions in the Fijian Constitution and other relevant national laws, Fiji is in compliance with the minimum requirements of the Optional Protocol. Therefore there is no legal impediment to the ratification of the Optional Protocol.
- 3.2 Article 14 of the Optional Protocol provides that for each State ratifying the present Optional Protocol or acceding to it after its entry into force, the Optional Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

4.0 Impact of Accession

- 4.1 Fiji ratified the CRC on 13 August 1993. The Optional Protocol strengthens the obligations of States Parties under Article 34 of the CRC.
- 4.2 Given that Fiji is a party to the CRC and signed the Optional Protocol in 2005, ratification of the Optional Protocol will further strengthen Fiji's commitments and obligations under the CRC and complement all relevant existing national laws and policies.
- 4.3 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

In light of the above, it is recommended that Fiji ratify the Optional Protocol.

[ENGLISH TEXT — TEXTE ANGLAIS]

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

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing 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,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctional families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

- (i) The 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;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.
2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.
3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph I of the present Article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.
5. States Parties shall 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.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, in the following cases:
- (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall 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, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present Article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with Article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

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

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any