28th August 2024

The Chairperson

Standing Committee on Justice, Law, and Human Rights

Parliament of the Republic of Fiji

**RE: Submission from Save the Children Fiji on Proposed Amendments to the Child Care and Protection Bill and Child Justice Bill**

**Organization Name:** Save the Children Fiji  
**Address:** 25 Pender Street, Suva  
**Target Group Focus:** Children, Parents, Guardians, Teachers, and Youth  
**Contact Person:** Shairana Ali  
**Email Address:** Shairana.ali@savethechildren.org

Save the Children Fiji (SC Fiji) is a leading child rights organization that has been operational in Fiji since 1972. As part of the global Save the Children network, which operates in more than 120 countries, SC Fiji is dedicated to protecting the rights and welfare of children, particularly the most vulnerable and marginalized. In Fiji, SC Fiji actively contributes to sustainable community-level changes aimed at improving service delivery for children and advocates for policies that safeguard their rights and well-being. Our key focus areas include Child Protection, Child Participation, Education, Water, Sanitation, Hygiene, Livelihoods, Disaster Risk Reduction, and Humanitarian Response.

**Mission and Vision:**  
Our vision is a world where every child realizes their right to survival, protection, development, and participation. We achieve this through our mission to inspire breakthroughs in the way the world values children while ensuring immediate and lasting improvements in their lives.

**1. Introduction**

Save the Children Fiji welcomes the opportunity to submit our recommendations on the proposed Child Justice Bill 2024 and Child Care and Protection Bill 2024. We respectfully request an opportunity to present an oral submission to further elaborate on our positions.

**2. A Child Rights-Based Approach**

As a leading advocate for child rights, Save the Children Fiji emphasizes the need for robust child protection systems that adhere to the general principles of the United Nations Convention on the Rights of the Child (UNCRC), including non-discrimination, participation, survival, development, and the best interests of the child. Given the alarming rise in child abuse cases in Fiji, our submission is informed by key provisions of the UNCRC, specifically:

* **Article 2:** The right to non-discrimination.
* **Articles 3, 6, and 12:** The best interests of the child should be the primary consideration in all decisions affecting them.
* **Article 6:** The right to life and development.
* **Article 10:** The right to live with their parents unless it is contrary to the child's best interests.
* **Article 19:** The right to protection from harm and abuse.
* **Article 21:** The right to appropriate care in cases of adoption, fostering, or alternative care arrangements.
* **Article 25:** The right to have care arrangements regularly reviewed when placed outside the home.
* **Article 37:** The right to be protected from inhumane treatment or punishment.

**3. Support for the Proposed Legislation**

Save the Children Fiji supports the underlying intent of both Bills, recognizing their critical importance in strengthening the Ministry of Women, Children, and Social Protection's commitment to safeguarding children and other stakeholder partners.

**4. Recommendations**

**4.1 The Child Care and Protection Bill;**

* **Page 7 (Definition of Sexual Abuse and Exploitation):** We recommend amending the terminology to "Child Sexual Abuse" and "Child Sexual Exploitation" to ensure a clear focus on children.
* **Section 4(a-d):** Caregivers and schools should be explicitly included within the scope of this section.
* **Section 5(c):** We suggest rewording this section to address "any child below the age of 18 living and working on the streets" and urge that the State take proactive responsibility for investigating the reasons for the child's presence on the streets. Noting the ambit of the Act, it is recommended that measures be in place to deal with children living in the streets. What powers should the Director have over them and how can this be managed in line with the best interest of the child?
* **Section 8(f-i):** We propose that the department retains authority in assessing the safety and developmental needs of children, particularly where preferred environments may not be conducive to their welfare. This should align with the principles outlined in Articles 43 to 54 of the UNCRC, ensuring that decisions are made in the best interests of the child, with interagency collaboration to provide a secure and supportive environment.
* **Section 9:** This section should reference the Interagency Guidelines and outline how they complement the Child Welfare Act.
* **Section 11:** Clear criteria must be established for agencies and individuals to qualify as child protection service providers, including mandatory Child Safeguarding Policies, minimum standards for residential care, and child-safe recruitment practices.
* **Section 11 (Renewal Process):** Clarification is needed on whether registration is subject to annual renewal or a separate renewal process.
* **Section 19:** Provisions should be made to address scenarios where the individual reporting abuse is also the perpetrator.
* **Section 20:** We recommend replacing the phrase "timely referrals" with specific timeframes for action (e.g., 24 hours, 48 hours) to ensure accountability and prompt intervention.
* **Section 23(3):** Mandatory reporters should be required to participate in case conferences.
* **Section 40(1):** The Bill should explicitly protect the dignity of the child during medical examinations conducted without their consent. Measures must be taken to ensure the child’s comfort and dignity throughout the process. Consent must be safeguarded at all times and is crucial in ensuring the protection of children. So this provision is problematic.
* What is the purpose of Section 287B (4) – this needs clarification or just removal from this Act,

**4.2 The Child Justice Bill 2024:**

* **Section 12:** Similar to the Child Care and Protection Bill, this section should include detailed criteria for agencies to qualify as support services providers.
* **Section 12(f):** We note a grammatical error—“lawbe” should be corrected to “law be.”
* **Section 14(g):** We propose increasing the hours of community service and recommend that these provisions be periodically reviewed to ensure they are proportionate and effective.
* **Section 23(b):** We urge the use of "must" instead of "may" to guarantee that children receive necessary support, particularly in cases where access to support services may be impeded by existing language.
* **Section 5 is important and in line with recommendations of the CRC but the question to ask is** what studies have been done in Fiji to justify increasing the age of criminality to 14 years – how can we hold children responsible for criminal behaviors and actions, especially for serious offences like murder (0See charges of murder and attempted murder in Section 36 (3)) or trafficking of drugs etc.

**-** Should there be a legal test like doli incapax?**–** age of criminality in Australia is 10 while between 10 to 14, the doctrine of doli incapax is part of the determination –[The minimum age of criminal responsibility in Australia: a quick guide – Parliament of Australia (aph.gov.au)](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/Quick_Guides/MinimumAgeCriminalResponsibility)

**-** See also NZ [HumanRightsCommissionNewZealand.docx (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FHRBodies%2FCRC%2FGC10%2FHumanRightsCommissionNewZealand.docx%23%3A~%3Atext%3DIn%2520New%2520Zealand%252C%2520children%2520aged%2Cwrong%2520or%2520contrary%2520to%2520law.%26text%3DThis%2520means%2520that%2520there%2520are%2Cto%2520the%2520criminal%2520justice%2520system.&wdOrigin=BROWSELINK)

**5. Additional Comments**

* + Street Kids - how can the law address this growing issue; we note relevant provisions in the Act, but this is probably one of Fiji's growing child protection issues. We recommend that due to the rising cases of children selling on the streets late at night if it is reasonable for children to be selling, going past 9 pm must be regulated.
  + Effective monitoring of the Act – We recommend having the NCCC revived to ensure greater collaboration and inter-agency partnership on child protection issues under this and related Acts.
  + Resourcing - how will the Act be resourced? Noting of course it will come under the existing budgetary allocations, so are there plans to build new homes? work with community or faith-based bodies to establish care homes etc to address the rising number of cases of children in the street or subject to abuse and violations?
  + Education and Awareness of the Act - how is the government planning to raise awareness and have community consultations on the Act especially in schools, communities and other places where children are in?

**5. Conclusion**

In conclusion, we respectfully recommend that a child-friendly version of the finalized legislation be developed, ensuring that children are aware of the laws and understand their rights. This aligns with **Article 4** and **Article 42** of the UNCRC, which affirm that children and adults should be informed about their rights and that governments have a responsibility to make these rights a reality.

Save the Children Fiji remains committed to supporting the development and implementation of these critical bills and is available for further consultation or engagement on this matter. We appreciate the opportunity to contribute to the ongoing efforts to improve child protection and justice in Fiji.

Should you wish to discuss any of the terms disclosed in this submission, please contact the Chief Executive Officer on email **Shairana.Ali@SavetheChildren.org or** 3313178 at SC Fiji.

Yours faithfully,

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# Shairana Ali

# Chief Executive Officer