



Human Rights and Anti-Discrimination Commission

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03 July 2024

Honorable Ratu Rakuita Vakalalabure
The Chairperson
Standing Committee on Justice, Law, and Human Rights
Parliament of the Republic of Fiji
SUVA

Dear Sir,

SUBMISSION REGARDING THE CHILD CARE AND PROTECTION Bill 2024 AND CHILD JUSTICE BILL 2024

1. I enclose a submission from the Human Rights and Anti-Discrimination Commission concerning the proposed Bills: - Child Care and Protection Bill 2024 and Child Justice Bill 2024 for the Committee's consideration.
2. Please do not hesitate to contact the undersigned at email pravesh.p.sharma@gmail.com or Director Loukinikini Lewaravu at email loukinikini@fhrc.org.fj should you require further information or clarification.

Yours faithfully,

Pravesh Sharma

Pravesh Sharma
CHAIRPERSON

Enclose: HRADC Submission

*Neither Greater nor Lesser but Equal:
Dignity, Equality and Freedom for All in Fiji*



HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION SUBMISSION REGARDING THE CHILD CARE AND PROTECTION BILL 2024 AND CHILD JUSTICE BILL 2024

A. INTRODUCTION

1. Sections 45 (4) (d) and (g) of the Constitution of the Republic of Fiji 2013 and sections 12 (1) (f) and (i) of the Human Rights and Anti-Discrimination Commission Act 2009 grant the Human Rights and Anti-Discrimination Commission (HRADC) the mandate to:
 - a. monitor compliance by the State with its obligations under international human rights treaties or conventions;
 - b. make recommendations on the desirability of legislative, administrative, or other action to give better protection to human rights and
 - c. make recommendations on the implications of any proposed law or policy that may affect human rights.
2. The HRADC makes the following submission per its said mandate.

B. FIJI'S COMMITMENT TO PROMOTE AND PROTECT CHILDREN'S RIGHTS

3. Section 41 of the Constitution of the Republic of Fiji 2013 expressly protects and promotes the rights of children in Fiji.
4. Fiji has ratified all 9-core international human rights treaties or conventions including the Convention on the Rights of the Child (CRC) in 1993 and its two Optional Protocols.¹
5. Fiji's Universal Period Review in 2020 concluding observations noted Fiji's commitment to continue to strengthen its efforts to protect children from all forms of violence and abuse including prohibiting corporal punishment, protection from human trafficking, and other forms of modern slavery and sexual exploitation.
6. The concluding observations by the CRC Committee on Fiji's CRC report in 1998, outlined suggestions and recommendations to Fiji to accelerate necessary measures to further protect and promote the rights of children in Fiji. This included:²
 - (i) legal reform to prevent and combat sexual economic exploitation of children, including the use of children in prostitution and pornography and the trafficking and abduction of children;
 - (ii) undertake further efforts to establish rehabilitation centers for child victims of ill-treatment, sexual abuse, and economic exploitation;
 - (iii) that detention be used only as a measure of last resort;
 - (iv) raise the minimum age for criminal responsibility and raise it to 18 years the age of persons considered under the juvenile justice system.

¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (29 March 2021) and Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (9 March 2021)

²<https://documents.un.org/doc/undoc/gen/g98/166/23/pdf/g9816623.pdf?token=QigzypBm6EgMP0Qs44&fe=true>



7. The HRADC commends the Government for taking another step of commitment to further protect the rights of our vulnerable children as per its human rights obligations by introducing the proposed Bills.

C. KEY GUIDING PRINCIPLES TO CHILD RIGHTS

8. The CRC details the full list of rights for children and young people under the age of 18 and outlines the general guiding principles that are the bedrock for securing the rights of children under the said convention.
- (i) All the rights guaranteed by the CRC must be available to all children without discrimination of any kind.
 - (ii) The best interests of the child must be a primary consideration in all actions concerning children.
 - (iii) Every child has the right to life, survival, and development.
 - (iv) The child's view must be considered and taken into account in all matters affecting them.
9. In Fiji's last CRC reporting in 1998, the CRC Committee through its concluding observations noted a concern that Fiji did not appear to have fully taken into account the general principles in its legislation, administrative and judicial decisions, and policies and programs relevant to children.³
10. Therefore, the HRADC recommends to the Committee when reviewing the two proposed Bills and any other measures to be developed must take into account the said guiding principles.

D. PROPOSED BILLS

D.1 General comment for both Bills

Continuous systemic training of professionals, law enforcement officers etc in the child justice system

11. Such professionals should be well informed about the physical, psychological, mental, and social development of children as well as about the special needs of the most marginalized children.

HRADC as an independent monitoring body

12. Persons in detention are inherently at risk of suffering human rights violations. They are under the power of others and that power is usually founded, directly or indirectly, on the ability to use weapons or other force. Detainees cannot leave the place of detention and so have no means to escape from a situation of human rights violation. They are at risk both from those responsible for the detention, generally State officials or persons authorized by State officials, and from other detainees. Children are highly likely to be more at risk due to their vulnerability.

³<https://documents.un.org/doc/undoc/gen/g98/166/23/pdf/g9816623.pdf?token=QigzypBm6EgMP0Qs44&fe=true>



13. National Human Rights Institutions (NHRI) (such as the HRADC) typically have the function of monitoring places of detention for compliance with human rights standards. In most instances, "places of detention" are defined or interpreted widely to include not only prisons but any place to which a person is compulsorily consigned and from which the person is not permitted by law to depart. It includes immigration detention centers, psychiatric hospitals, and children's residential services.⁴ The purpose of this monitoring is preventive;

- a. To regularly examine the treatment of persons deprived of their liberty in places of detention to strengthen, if necessary, the protection of their human rights which includes looking at the whole system;
- b. to make recommendations to the relevant authorities on areas that may require improvement or strengthening

14. Independent monitoring of children's rights is one of the central functions of a Human Rights Commission's work related to children. NHRIs monitor the extent to which children's rights are respected and implemented from an entirely independent perspective, without requiring orders from governments, parliaments, or other authorities. NHRI monitoring includes the full range of children's rights, rather than a sole focus on specific aspects such as the fulfillment of material needs and basic service provision. NHRIs seek to encourage change and orient their monitoring towards ensuring improvements. They do not merely observe the situation. NHRIs' role is both reactive and preventive.

15. As the Committee on the Rights of the Child (CRC Committee) underlined in its General Comment No. 2:

NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities⁵

16. According to the Committee of the CRC, independent inspectors should be empowered to conduct inspections regularly and to undertake unannounced inspections on their initiative which can include holding conversations with children in the facilities. Furthermore, children should be able to make complaints to independent authorities.

17. Sections 45 (4) (c) (d) (g) of the Constitution and sections 11 and 12 of the Human Rights and Anti-Discrimination Commission, grant the HRADC a general mandate to inspect places of detention. The HRADC also has the mandate to receive and investigate complaints of alleged human rights complaints. Furthermore, section 20 (2) of the Corrections and Service Act 2006, allows the HRADC to visit prisons and prisoners to undertake any investigation or inquiry per the Human Rights and Anti-Discrimination Act 2009.

⁴ OPCAT Article 4, Asia Pacific Forum of National Human Rights Institution, A manual on National Human Rights Institutions, pg 138

⁵ Committee on the Rights of the Child, General Comment No. 2, 'The role of independent national human rights institutions in the promotion and protection of the rights of the child', CRC/GC/2002/2 (2002), para.9.



18. In light of this, the HRADC recommends expressing in the two Bills the role of the HRADC in the Child Justice system and Child Care and Protection process. (See attached table for suggested amendments). This will ensure there is an independent oversight that can monitor and report on the protection and promotion of the rights of children in the justice system and care and protection system whether through detention, homes, arrests etc. The advantage of this is that the HRADC can advise and recommend to the Government should there be any aspect of its policies, measures, or activities that may require human rights strengthening etc.
19. The HRADC further recommends that the Bills expressly allow the HRADC to undertake *unannounced* inspections which can include holding conversations with children in the facilities and that any obstruction of the HRADC officers from carrying out its role should be subject to penalties of a fine, imprisonment or both.

D.2 Child Care and Protection Bill 2024

20. See the attached table for specific comments on the sections of the Bill.

D.3 Child Justice Bill 2024

Early intervention and prevention of child offending

21. While the Commission welcomes the Government's initiative to have in place a new Child Justice system with the aim of strengthening the treatment of children in conflict with the law at all stages of the child justice process, the Commission also stresses the important role early intervention and prevention of child offending can play in reducing the risk of children coming into child justice systems.
22. Therefore, the Commission encourages the Government to invest in strengthening its early intervention and prevention measures and mechanisms. To have in place the most relevant and appropriate prevention strategies, the Government must first carry out research to identify and understand the root causes of children's involvement with the justice system.
23. Some of the strategies to look at include family and community-based programs designed to make positive changes in aspects of the various social systems such as home, school, community, and peer relations that contribute to serious behavioral difficulties. Developing community-based services and programs that respond to the specific needs, problems, concerns, and interests of children. Provide support for families in particular those in vulnerable situations or where violence occurs such as appropriate counseling and guidance to their families, and home visitation to enhance parenting capacity, especially for young parents. investment in early childhood care and education.

Diversion Plan

24. The Commission welcomes the planned diversion plans in Part 3 of the Bill which aims to avoid resorting to judicial proceedings when dealing with children in conflict with the law. This approach is designed to avoid stigmatization and criminal records



which in turn should produce good results for children is congruent with public safety, and is said to have proven to be cost-effective.⁶

25. According to international human rights standards, diversion should be the preferred manner of dealing with children in most cases. Therefore, the UN CRC Committee has encouraged States Parties to the CRC to continually extend the range of offenses for which diversion is possible, including a series of offenses where appropriate.⁷ When applying diversion, some of the matters that must be taken into consideration include the following:

- a. Diversion should only be used when there is compelling evidence that the child committed the said offence; that he or she freely and voluntarily admits responsibility without intimidation or pressure; and that admission will not be used against the child in any subsequent proceedings;
- b. The child's free and voluntary consent to diversion must be based on adequate and specific information on the nature, content, and duration of the measure and on an understanding of the consequences of a failure to cooperate or complete the measure
- c. The law should indicate the cases in which diversion is possible and decisions by police, public prosecutor and/or other agencies should be regulated and reviewed;
- d. All state officials and actors participating in the diversion process should receive necessary training and support;
- e. Child allowed to seek legal representation; and
- f. Completion of the diversion should result in a final and closure of the case. They should not be viewed as criminal convictions or result in criminal records.

Minimum age of criminal responsibility

26. The Commission notes and welcomes the increase in the minimum age of criminal responsibility from 10 years to 14 years.

27. The Commission notes that the increased proposed minimum age to 14 years is recognized by the CRC standard as the most common minimum age of criminal responsibility internationally.

28. Article 40 (3) of the CRC requires State parties to the CRC to establish a minimum age of criminal responsibility, however, the article does not specify the age. Documented evidence in the field of child development and neuroscience indicates that the maturity and the capacity for abstract reasoning are still evolving in children aged 12 to 13 years because their cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings.

29. The CRC Committee has encouraged State parties to take note of recent scientific findings and to increase their minimum age accordingly, to at least 14 years of age.⁸

⁶ Committee on the Rights of the Child, General Comment No.24 on children's rights in the child justice system, 18 September 2019, CRC/C/GC/24.

⁷ *ibid*

⁸ *Ibid*



Use of reasonable force and restraint on a child

30. The Commission notes that the Bill articulates in various sections (section 19 (3) and (4), 25 (2) (c) and (3)) the boundaries in which a police officer may use physical force or means of restraint on a child. The CRC standard recognizes that restraint and force can be used **only** when:
- a. The child poses an imminent threat of injury to himself or herself or others; and
 - b. All other means of control have been exhausted.
31. It should never be used as punishment, secure compliance, or deliberate infliction of pain.
32. The Commission notes that it has dealt with cases/complaints where children and young people's rights were affected when in the custody of police and the Department of Social Welfare. Therefore, the HRADC encourages the Fiji Police Force (FPF) and the Department of Child Care and Protection to put in place effective checks and balance measures to ensure the safety of children in conflict with the law so they are not put in further harm's way and their rights and freedoms while in the care of FPF is respected.

Decisions without delay

33. The Commission suggests to the Government that the timeframe involved in the justice process involving a child should be as short as possible. This includes the time of the commission of the offence and the conclusion of proceedings involving a child in conflict with the law. The longer this period, the more likely it is that the response loses its desired outcome. These timeframes should be much shorter than those set for adults, but should still allow legal safeguards to be fully respected. Similar speedy limits should apply to diversion measures.

Sexual offences by a child to another child

34. The HRADC notes in the Bill that there are no measures provided to address situations where a child commits sexual offences against another child. On the day of submitting this submission to the Standing Committee, Fiji Village reported on social media statistics released by the Office of the Director of Public Prosecutions (DPP) on sexual offences cases in June. DPP shared that a 15-year-old boy charged with raping a 5-year-old girl and a 13-year-old boy has been charged with the rape of a 12-year-old boy.⁹ This issue is a concern for the HRADC and we would like to see how the Ministry responsible for Child Welfare will address these types of cases in the Bill.
35. See the attached table for specific comments on the sections of the Bill

Attached Table

⁹ https://www.fijivillage.com/news/15-yr-old-boy-charged-with-raping-5-yr-old-girl-and-13-yr-old-boy-charged-with-raping-12-yr-old-boy-4rx85f/?fbclid=IwZXh0bgNhZW0CMTEAAR3wz4oK85vjDvuegPif2Bcxf-uEtS2Avv9RKQX25oIJN2YfLFkFOOhpPGg_aem_DDz7hyA7aMTh3xQegUL6fg

