



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Sixty-seventh session

### Summary record of the 1909th meeting

Held at the Palais Wilson, Geneva, on Thursday, 4 September 2014, at 3 p.m.

*Chairperson:* Ms. Sandberg

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*The meeting was called to order at 3 p.m.*

### **Consideration of reports of States parties**

*Combined second to fourth periodic reports of Fiji (CRC/C/FJI/2-4, CRC/C/FJI/Q/2-4 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Fiji took places at the Committee table.*

2. **Mr. Koroivueta** (Fiji), introducing the combined second to fourth periodic reports of Fiji (CRC/C/FJI/2-4), said that the State was committed to fulfilling its international obligations, especially under the Convention on the Rights of the Child and its optional protocols. Children made up 38.5 per cent of the population and the State continued to make progress regarding child protection. The 2013 Constitution granted specific rights to all children, had lowered the voting age to 18 and prohibited discrimination on the grounds of gender. After summarizing some of the legislative and policy developments, details of which were contained in the report and replies (CRC/C/FJI/Q/2-4/Add.1), he said that the State planned to finalize its review of legislation concerning children and release the results after the elections scheduled for September 2014. Developing a network with other small island States had proved effective in helping to provide a safe environment for children, and, in 2014, Fiji had acceded to international protocols allowing it to participate in an intercountry adoption arrangement.

3. Programmes were being implemented by partnerships between the Government and NGOs thanks to funding from the United Nations Children's Fund (UNICEF), whose multi-year work plan provided for awareness-raising and capacity-building activities in community and educational settings. The Government had taken legislative and other action to improve key performance indicators relating to children. That was evident in the high literacy rates (98 per cent) as a result of free primary and secondary education and loan schemes for tertiary education. The Government had also increased the monthly allowance for children in institutional care facilities. However, it would continue to require assistance in fully implementing the Convention, and recognized the importance of partnerships with civil society in reaching that objective.

4. **Mr. Gurán** (Country Rapporteur), noting the dramatic changes that had taken place in Fiji since the consideration of its previous report, including the introduction of the Public Emergency Regulation of 2009, asked how the Government cooperated with NGOs in that context, particularly regarding their freedom of expression. He also requested clarification of the involvement of NGOs in the preparation of the report. Given the fact that the State party had no specific strategy on the rights of the child, he asked how the Government intended to incorporate the spirit of the Convention in all legislation, beyond specific laws addressing children. He asked the delegation to provide information on independent monitoring, the structure, funding and effectiveness of the National Coordinating Committee on Children (NCCC) and the current situation of the Fiji Human Rights Commission, especially the Child Rights Desk Officer. Lastly, he wished to know how the State party would collect disaggregated data about children when assistance in that area provided by UNICEF was no longer available.

5. **Mr. Mezmur** (Country Rapporteur) asked whether the Child Rights Desk Officer position was still vacant and, if so, why. What measures had been adopted to make the position more effective? He wondered whether the State party would be open to establishing the post of a children's rights commissioner with competence to represent child complainants in court. It was unclear whether activities pertaining to the Convention received direct funding, whether funds granted by UNICEF were sufficient and whether financial resources were properly monitored. Noting the extensive list of definitions

relating to children and young people under national laws, mentioned in the report, and the fact that the Constitution had no overarching definition of a child, he asked what steps had been taken to harmonize definitions so as to avoid confusion.

6. In view of the Committee's concern about the deep-rooted perceived gender roles and legislation discriminating against girls in family and public life in Fiji, he wished to hear what progress the State party had made in eliminating them. He requested clarification regarding the birth registration rate in the light of information suggesting that it had either remained the same or declined over the previous two years and asked what measures had been put in place to address the problem. To what extent did the practice of charging a registration fee and fining late registration hinder birth registration, particularly for vulnerable children and those in remote areas?

*The meeting was suspended at 3.25 p.m. and resumed at 3.45 p.m.*

7. **Ms. Shameem Khan** (Fiji) said that the Public Emergency Regulation of 2009 had been repealed in 2012. The Constitution was based on international instruments and granted a range of civil and political rights, including freedom of assembly and association. Courts could draw on international law when interpreting the Constitution, including when limiting the rights enshrined in it. For example, if an NGO's application for a permit to demonstrate was rejected, the police must indicate how the Constitution had been interpreted in order to limit freedom of assembly in such a way. All laws were subordinate to the Constitution, and Parliament, which would soon sit for the first time in eight years, would be able to repeal any legislation, as necessary.

8. **Mr. Mezmur** said that the report seemed to be a combination of a State party report and an alternative report.

9. **Mr. Gastaud** asked how civil society had contributed to the report, whether children had the right to freedom of assembly, or whether they required adults' permission for that purpose, and whether there were associations that existed solely for children. The report provided information on a series of one-off events that had taken place regarding the implementation of article 12 of the Convention concerning children's right to be heard. While such events were laudable, he wondered whether that right was contained in regulations or legislation.

10. **Mr. Fatiaki** (Fiji) said that many NGOs were members of the NCCC and those that had contributed to fulfilling the Convention's requirements had been consulted during the drafting of the report. It had been decided that only one report would be submitted because NGOs were an integral part of the Government's efforts to implement the Convention, for example through the provision of counselling and awareness-raising programmes relating to child protection. Aware that it lacked the resources to meet all the Convention's requirements, the Government had signed memorandums of understanding with NGOs to give them support and funding, thus avoiding any duplication of efforts and ensuring that resources were used wisely.

11. **Ms. Shameem Khan** (Fiji) said that freedom of association applied to everyone, including children. Because children in Fiji were not outspoken, it was possible that they were vulnerable to abuse and neglect and that many offences against children went unreported. It was important to encourage children to speak out, something which had been achieved in part by the Constitution's prohibition of corporal punishment. While the Convention provided that the best interests of the child should be "a primary consideration", under the Constitution of Fiji they were "the primary consideration", thus prioritizing children above all else. The voting age had been lowered to 18, meaning that children aged 16 to 18 had been included in political discourse in the run-up to the elections that would soon take place in the country.

12. **Mr. Gastaud** asked whether the constitutional ban on corporal punishment was supported by criminal provisions that established appropriate penalties for perpetrators.

13. **Mr. Mezmur**, noting that the report provided copious information about training and awareness-raising initiatives to prevent corporal punishment but was less thorough in its explanation of the supporting legislative framework, asked the delegation to clarify the scope of the prohibition against such punishment. He was concerned that corporal punishment could be interpreted as being lawful in home, day-care and alternative care settings, in that article 57 of the Juveniles Act of 1974 authorized the use of “reasonable punishment” by parents and other persons with lawful charge of a juvenile. Other more recent legislation (the Child Welfare Decree of 2010, the Domestic Violence Decree of 2009 and the Crimes Decree of 2009) also fell short of establishing an outright prohibition.

14. **Mr. Gurán** asked whether translations of the Committee’s general comments Nos. 12 and 14 were envisaged to support the Government’s awareness-raising efforts.

15. **Ms. Shameem Khan** (Fiji) said that assaulting a child, or indeed any person, had always been an offence in Fiji, both under the now repealed Criminal Code and subsequently under the Crimes Decree, and that reasonable chastisement had never been a legally permissible defence. The new constitutional amendment had heralded new awareness-raising policies, particularly in education, but not a change of criminal law. Past leniency towards parents and carers who used corporal punishment had been attributable not to legal lacunae, but to social mores, police acceptance and prosecutorial discretion, although that acceptance had already been substantially diminished by a 2002 High Court ruling.

16. Article 57 of the Juveniles Act was a targeted piece of legislation intended to protect children in care settings. It did not exonerate carers who used corporal punishment from penalty. Rather, it expressly established that any person who wilfully assaulted, neglected or abandoned a child was guilty of an offence and liable to a fine, and that criminal court proceedings could be initiated whenever the offence was deemed sufficiently serious.

17. In any case, the Juveniles Act was currently under review and, following the constitutional amendment, there was a generalized recognition that certain sections needed updating. A High Court decision had in fact already extended the protection provided under the Act to all children under 18 years of age (previously the Act had protected children aged under 17 years only), meaning that juvenile offenders could no longer be sent to adult prisons, but should remain in residential institutions until the age of majority. Other heightened protection accorded by the High Court had included a ruling that young offenders charged with serious offences falling under its jurisdiction should no longer be tried as adults but should also benefit from the protective measures available in juvenile courts.

18. **Mr. Singh** (Fiji) said that the Ministry of Education was working to make children aware of their rights and overturn the cultural norm which dictated that they should remain silent in school. It was encouraging students to express their views and opinions in a number of ways, including training in public speaking and debating contests, and any student who felt that their rights had been infringed could thenceforth take their concerns to the relevant student council, prefect body or child protection authority.

19. **Ms. Shameem Khan** (Fiji) said that, to prevent child abuse going unreported, a 2013 amendment to the Child Welfare Decree had extended the mandatory reporting obligation to teachers as well as lawyers, doctors, police and social welfare officers. The reporting procedure was not complex; oral reports were permitted, subject to written confirmation; and mistaken reporting was not penalized. Doctors were empowered to issue care and treatment orders under which children could be held in hospitals or medical

facilities for up to 72 hours if a welfare officer was not immediately available, as might be the case in remote areas.

20. Statistics showed that reports of child abuse had escalated in recent times. Convictions and the severity of sentences had also risen, sending out a clear message of zero tolerance. After languishing in the pipeline for many years, the Domestic Violence Decree had finally been passed in 2009. With support from NGOs, its enactment had been accompanied by rigorous training for legal officials which was contributing to an ongoing rise in the number of restraining orders issued by the courts. Also contributing to that rise was the fact that the new Decree accorded powers to request restraining orders to individuals and NGOs as well as legal professionals, and that it extended the definition of violence to include, in addition to physical injury and sexual abuse, stalking, causing or allowing a child to witness violence and other forms of cruel or degrading treatment. Furthermore, in recognition of the considerable pressure to reconcile with their abuser which women frequently endured, especially when financially dependent, the Decree empowered the courts to order perpetrators of violence to provide urgent monetary relief for their victims, without the need for direct contact, pending a definitive settlement.

21. **Ms. Herczog** asked whether the various categories of professionals subject to the reporting requirement had been trained together or separately; what consequences were faced by professionals who failed in their duty to report; and whether other health professionals in addition to doctors were subject to the obligation.

22. **Ms. Shameem Khan** (Fiji) said that all professionals had been trained together. The courses had also been open to professionals with an interest in ensuring that the mandatory reporting system functioned effectively but who were not subject to the obligation themselves. Non-reporting in cases of reasonable suspicion was a criminal offence. Doctors who failed to report abuse were also liable to disciplinary action under their professional regulations. Members of the nursing profession present at the training courses had expressed the view that, as front-line workers well placed to detect signs of abuse, especially in rural communities, they too should be subject to the reporting obligation. The authorities were giving that possibility due consideration.

*The meeting was suspended at 4.40 p.m. and resumed at 4.50 p.m.*

23. **Mr. Fatiaki** (Fiji) said that over 400 cases of child abuse had been reported in the first half of 2014, which was a considerable increase on previous years. The rise was a testimony to the greater awareness and confidence in the system found among children, professionals and the public in general.

24. In its original form, the NCCC had been composed of technical experts without sufficient authority and, for that reason, had not been entirely effective. However, with its membership due to be extended to include the permanent secretaries of the relevant ministries, the NCCC would in future be better equipped to drive policy change. The current members would retain their seats within the technical working group, while the different divisions and agency groups would continue working in the field and with communities to address child protection issues at the district level. The terms of reference for the new structure of the NCCC had been approved by the current members and had been submitted to Cabinet for endorsement.

25. Responding to a question from Mr. Gurán regarding the structure of the NCCC and the division between Government and non-governmental representatives, he referred the Committee to Annex II of the periodic report.

26. **Ms. Shameem Khan** (Fiji) said that the Fiji Human Rights Commission was still operational and had been very closely involved in treaty body reporting processes and the universal periodic review. Regrettably, however, it had lacked a Child Rights Officer for

over two years as the Government had been awaiting the establishment of the new, revamped Fiji Human Rights and Anti-Discrimination Commission, pursuant to section 45 of the new Constitution, before advancing with the Commission's work. The revamped Commission would have greater powers both to investigate violations and initiate court proceedings. An act giving formal, legal effect to those powers was very likely to be passed at the next sitting of Parliament and a Child Rights Officer should be appointed shortly thereafter.

27. **Mr. Koroivueta** (Fiji) said that the Government recognized the deficiencies in its national data collection systems, but that a number of child welfare agencies, including the NCCC, had effective systems. The challenge lay in how to coordinate and consolidate those systems and the delegation would welcome any input and advice that the Committee might provide in that area.

28. **Ms. Shameem Khan** (Fiji) said that under the first National Gender Policy, approved in Parliament in April 2014, the Government had undertaken to maintain gender- and age-disaggregated statistics at nationwide level. The National Gender Policy had been drafted by the Ministry of Women in close consultation with civil society and government organizations. It covered categories including development and planning, employment and labour, social justice, religion and culture, health, climate change and education. The section on families envisaged the introduction of paternity leave as part of a wider drive to change the patriarchal attitudes that had traditionally impeded women's opportunities for success both at home and at work.

29. Under the new policy, gender equality was viewed as a partnership through which men and women worked together to build a better, violence-free society. The policy also provided for easier access to housing for women, an ongoing review of legislation and its impact on people's daily lives, and regular consultation with traditional and religious leaders. The latter strategy had already met with success; a workshop for religious and traditional leaders organized with support from UNICEF had smoothed the way for a ripple-free introduction of new equality-based HIV/AIDS legislation that might otherwise have been received with irritation and disapproval.

30. The National Gender Policy showcased the partnership between non-governmental organizations and government bodies, which were working together on a practical, field-based service protocol on gender-based violence that would include training, coordination, institutional strengthening, victim support and counselling services for perpetrators.

31. The policy would be monitored and periodically reviewed and would be translated into the three major languages, disseminated via the Ministry of Information website and incorporated in the school curriculum. It would also be disseminated by the Fiji Women's Federation, which was a partnership between the Ministry of Women and civil society and played an advisory role, although it should play a statutory role in enforcing the policy in future.

32. **The Chairperson** asked whether children had participated in developing the National Gender Policy and whether they would be included in its review process.

33. **Ms. Shameem Khan** (Fiji) said that children had not been included in consultations, but that children's organizations had participated and spoken out on many issues. She hoped that the Ministry of Women would decide to include a person under the age of 18 in the Fiji Women's Federation, which also played a monitoring and evaluation role.

34. **Ms. De Jesús Oviedo Fierro** asked whether the law prohibiting discrimination against women focused on the needs of girls and adolescents as well as adult women because women's organizations and legislation tended only to represent the interests of adults.

35. **Mr. Mezmur** asked whether the National Gender Policy made adequate provision to protect boys as well as girls and women. He enquired about the minimum age of consent for sexual intercourse. He wondered how concerns about the practice of traditional apologies (*bulubulu*) being used as a form of reparation and mitigating factor in sexual offences were being addressed and whether the practice of *bulubulu* was used for other offences. Furthermore, how was confidentiality guaranteed in cases of sexual offences against children handled by the police and what progress had been made in producing a specialist module on the investigation of sexual offences against children and making it a standard component of law enforcement training?
36. **Mr. Gastaud** asked whether children were merely targeted in awareness-raising campaigns on climate change, or whether they played an active part.
37. **Mr. Fatiaki** (Fiji) said that in certain cases confidentiality was not guaranteed, for example, cases involving HIV, suicide, a risk to life, or particularly serious cases.
38. **Mr. Singh** (Fiji) said that the national curriculum included climate change and that national poster and film production competitions were occasionally held in schools. During the 2013 Pacific Islands Development Forum held in Fiji, schools had visited its Green Economy Expo and participated in speaking contests, debates and “ridge-to-reef” modelling activities.
39. **Ms. Shameem Khan** (Fiji) said that many women’s organizations in Fiji represented children’s interests, as the issues at stake were too intertwined to be separated from adult issues. The organizations represented boys, as well as women and girls, in the courts. The National Gender Policy explicitly stated its intention to protect boys and the Crimes Decree of 2009 had introduced gender-neutral language to describe sexual offences and classified the rape of boys as a criminal offence.
40. The age of consent to sexual intercourse was 16, making sexual relations with a person under the age of 16 a criminal offence, and the minimum age of marriage had been increased to 18.
41. It was regrettable that *bulubulu* had been used in the past to persuade girls to withdraw sexual offence complaints thereby exonerating the perpetrators. *Bulubulu* and reconciliation was a valuable traditional practice, helping families to live peacefully in their communities and preventing people from taking the law into their own hands. Under previous legislation, the judges in such cases had been duty-bound to try and reconcile them. It no longer happened because, under new legislation adopted in 2009, reconciliation of any form, traditional or other, could not justify dropping charges. However, reconciliation was still used as a means of reducing sentences, under the Sentencing and Penalties Decree.
42. **Mr. Mezmur** enquired about the mechanisms in place to monitor the observance of minimum standards in alternative care institutions, as he had heard that their management had been outsourced. Were adequate financial resources available for children deprived of their family environment and how were they allocated (i.e. through grants or means tests)? Were there any logistical barriers to accessing grants, particularly for those from vulnerable groups living in remote areas?
43. He asked what action had been taken to expedite the review of the Adoption of Infants Act to ensure that it was in compliance with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. What legislative and policy measures and monitoring mechanisms would be put in place regarding informal adoptions within the extended family to ensure that the children involved were guaranteed the same protection as children adopted through formal arrangements? He hoped that the revised act would address the challenges posed by the growing tendency to adopt children from China, India and Pakistan. Had discussions taken place between the Fijian Government and the

Governments of the countries concerned to address those challenges in the interim, in order to guarantee that the children's rights were not violated?

44. He wished to know how legislation and policies incorporating the rights of persons with disabilities had helped combat discrimination against children with disabilities and what measures had been adopted to ensure that girls with disabilities were not more vulnerable to sexual exploitation, including prostitution and violence. Was it a deliberate State policy to favour special schools for children with disabilities over inclusive education and, if so, how would that obstacle be overcome to move towards inclusive education? He highlighted the lack of well-trained professionals in Fiji working with children with disabilities, particularly speech therapists. He asked what steps were envisaged to upgrade training for community-based rehabilitation assistants to better detect and manage disabilities and further address infant and child mortality.

45. He requested information on measures adopted to improve surveillance systems and strengthen national capacity to plan, implement, monitor and evaluate national HIV/AIDS programmes and to shift the focus towards interventions, including for young populations affected. He noted the disparity between the infection rates in rural and urban areas.

46. He asked whether primary education was free and compulsory. If not, how did the Government intend to achieve that goal? He wondered what the positive or negative impact had been of the discrepancy between the Education Act, which provided for compulsory education to 15 years of age, and the Inclusive Education Policy, which provided for compulsory schooling for students up to the age of 17. What measures were in place to ensure that children in rural areas and the outer islands entered primary education, given that early education in remote areas was limited and a lack of provision at a lower level of education tended to affect enrolment to the next?

47. Turning to special protection measures, he enquired about: support available for victims of child exploitation, including ensuring their physical and psychological recovery and social reintegration; special training in identifying child trafficking and exploitation for customs officers responsible for monitoring vessels in Fijian waters; measures in place to protect street children and combat enforced begging; plans to set up child-friendly courts similar to the juvenile justice court established in Suva; steps envisaged to improve police training in dealing with children in conflict with the law; measures planned to ensure that children deprived of their liberty whose parents or guardians could not be located would benefit from the right to apply for bail; and steps envisaged to address the inconsistency between the definition of the child in the Juveniles Act and the Prison and Corrections Act.

48. He requested information on the extent of drug use, steps taken to address the problem, and recovery and psychosocial support systems put in place for children involved in drug and substance abuse.

49. He asked whether the State party was considering amending the Immigration Act to ensure that children seeking refugee status, whether unaccompanied, separated from or accompanied by an adult, received appropriate protection and assistance and that their right to family unity was recognized. Was the State party also considering accession to the 1961 Convention on the Reduction of Statelessness to ensure that every child enjoyed the right to acquire nationality? He sought assurance that sections 6 and 7 of the Citizenship of Fiji Decree were implemented in order that abandoned children whose parents were unknown acquired Fijian citizenship.

50. **Ms. Khazova**, while welcoming the construction of more schools in remote areas, asked whether: there were plans to build more schools throughout the country; children who were currently obliged to attend schools far from home either boarded or stayed with relatives in the towns and cities where they attended school; and young children had to remain at home without proper schooling until they were older.



51. **Mr. Gastaud** enquired about the existence of programmes, strategies and budgetary funds to address the problem of street children. He asked whether the Government had counted the number of children living on the streets and had trained officials to deal with them. According to the State party's report, children could not be charged with a criminal offence under the age of 10, or under the age of 14 if they were unaware that the act committed was wrong; whereas children between the age of 14 and 18 years could be charged and punished. Were children between the ages of 10 and 14 subject to punishment? Noting that the report also stated that a custodial sentence should not be imposed on children and that the Juveniles Act gave options for alternative forms of punishment, he requested information on those options.

52. **Ms. Winter** asked whether, on reaching the age of 18, juvenile offenders were transferred to adult prisons, or whether they could continue with vocational training in juvenile institutions between the ages of 18 and 21.

53. **Ms. De Jesús Oviedo Fierro** asked what steps were being taken to address childhood obesity and diabetes. She sought further details of the extent of the problem of child labour. Were there cases of street children being exploited for child prostitution and child pornography in Fiji?

54. **The Chairperson** asked the delegation to comment on reports of increasing suicide rates among children in Fiji.

*The meeting rose at 6 p.m.*