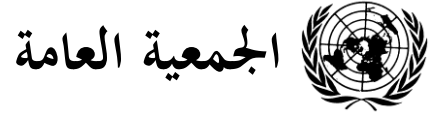


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مجلس حقوق الإنسان

الدورة الثالثة والأربعون

٢٤ شباط/فبراير - ٢٠ آذار/مارس ٢٠٢٠

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

زيارة إلى فيجي

تقرير المقرر الخاص المعني بمسألة التزامات حقوق الإنسان المتعلقة بالتمتع ببيئة
آمنة ونظيفة وصحية ومستدامة*

موجز

أجرى المقرر الخاص المعني بمسألة التزامات حقوق الإنسان المتعلقة بالتمتع ببيئة آمنة ونظيفة وصحية ومستدامة، ديفيد ر. بويد، زيارة إلى فيجي في الفترة الممتدة من ٧ إلى ١٨ كانون الأول/ديسمبر ٢٠١٨، تلبيةً لدعوة من الحكومة. وخلال الزيارة، بحث المقرر الخاص كيفية وفاء فيجي بالتزاماتها المتعلقة بحقوق الإنسان والمتصلة بحماية البيئة، وحدد الممارسات الجيدة، ودرس التحديات البيئية التي يواجهها البلد.

* يعمّم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيعمّم باللغة التي قُدّم بها فقط.



الرجاء إعادة الاستعمال

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Annex

Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his visit to Fiji

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I. Introduction

1. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, visited Fiji from 7 to 18 December 2018, at the invitation of the Government. The purpose of the visit was to examine how Fiji is implementing its human rights obligations relating to environmental protection, to identify good practices and to consider the environmental challenges the country faces. Fiji is an extraordinarily beautiful country, and the Special Rapporteur was delighted by the warmth, generosity and strong environmental values of everyone he encountered.
2. The paramount environmental challenge facing Fiji is the global climate crisis, which is already having devastating impacts on many small island developing States and least developed countries. Fiji is still recovering from the impact of Tropical Cyclone Winston, a category 5 storm that struck in February 2016, killing 44 people and causing massive destruction.
3. During his visit, the Special Rapporteur met with a wide range of people, including President Jioji Konrote, Attorney-General Aiyaz Sayed-Khaiyum, government ministers and officials, members of Parliament, Chief Justice Anthony Gates, representatives of United Nations agencies and the National Human Rights and Anti-Discrimination Commission, iTaukei landowners, representatives of civil society organizations, and concerned citizens. Most of these meetings were held in Suva, but the Special Rapporteur visited two informal settlements near Lami, called Vuniivi and Qauia, and travelled to the village of Vunidogoloa, the first community in Fiji, and one of the first in the world, relocated because of climate change. He met with a wonderful group of Fijian children (kindly organized by the United Nations Children's Fund) and also participated in the Attorney-General's annual law conference in Natadola, where he made two presentations and met with many lawyers and judges.
4. The Special Rapporteur would like to thank the Government of Fiji for its invitation and cooperation throughout the visit. He is particularly grateful to Ambassador Nazhat Shameem Khan and Second Secretary Robyn-Ann Elizabeth Mani for their extraordinary generosity. The Special Rapporteur also thanks the United Nations Resident Coordinator and the country team in Fiji for their invaluable support in arranging the visit.
5. The Special Rapporteur is grateful to the many Fijians he met in Suva, Vunidogoloa, Vuniivi, Qauia and Natadola. He was highly impressed with the government representatives, indigenous peoples, citizen activists, local residents, children and parents who are passionate about the environment in Fiji and steadfastly committed to its protection.

II. Legal and policy framework

A. International law and policy

6. Fiji ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 2018, and is now a party to all of the major global human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Environmental protection is essential to fulfilling many of the rights recognized in these agreements, including the rights to life, health, food, water, culture and development. Of critical importance is protecting the rights of those who may be most vulnerable to environmental harms and climate change, including women, children, indigenous peoples, people living in poverty and persons with disabilities.
7. In 2019, Fiji became the first Pacific island nation elected to serve on the Human Rights Council, with a term running through 2021. Fiji pledged to champion global recognition of the right to a safe, clean, healthy and sustainable environment and to continue to build bridges between the international human rights and climate change

communities, and to ensure that human rights obligations inform, strengthen and accelerate the implementation of the Paris Agreement.¹

8. Fiji has ratified a large number of multilateral environmental agreements, including the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the United Nations Convention on the Law of the Sea, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury. Fiji was the first country in the world to ratify the Paris Agreement.

9. Fiji is a member of the Secretariat of the Pacific Regional Environment Programme, whose main purpose is to strengthen the capacity of Pacific island nations to plan and manage their own national environment programmes and to enhance regional cooperation to deal more effectively with transboundary issues, including nature conservation, pollution prevention and climate change.

B. Economy and political structure

10. Fiji has a population of approximately 900,000 people, the majority of whom (over 90 per cent) reside on the five main islands of Viti Levu, Vanua Levu, Kadavu, Ovalau and Taveuni. Life expectancy in Fiji was 70.4 years in 2017. On the human development index, which integrates measures relating to life expectancy, education and per capita income, the scores of Fiji ranked ninety-second in 2018.² Although approximately 30 per cent of the population lives in poverty, this is one of the lowest rates in the Pacific.³

11. In 2018, the gross domestic product (GDP) of Fiji was US\$ 5.48 billion,⁴ with recent growth rates averaging 4 per cent annually. The economy is dominated by the services industry, at 69 per cent of GDP, followed by industry at 17 per cent and agriculture at 14 per cent (figures for 2017). The main exports of Fiji are bottled water, sugar, fish and gold, while its main imports are petroleum products, cars and trucks. The number of tourists visiting Fiji has more than doubled since 1995 to more than 800,000 per year, creating economic growth and employment but increasing environmental pressures.

12. Fiji gained its independence from the United Kingdom of Great Britain and Northern Ireland in 1970. Since 1987, four coups d'état have taken place in Fiji, the most recent one in 2006. The country was under military rule until September 2014. Democratic elections were held successfully in 2014 and 2018.

13. Fiji is a democratic republic with three levels of government: national, provincial and local. Fiji has a unicameral parliamentary system of government, with a president as head of State and a prime minister as head of the Government. Parliament consists of 51 members elected to serve four-year terms. There are 14 provinces governed by provincial councils (part of the traditional system of governance). Within the 14 provinces, there are 187 districts (*tikina*) and approximately 1,171 villages (*koro*). Although the provincial councils do not have a law-making function, they provide an important channel of communication between traditional leaders and the national Government. Locally, there are municipal and rural councils (as well as an island council for Rotuma). The Ministry for Local Government, Housing and Environment oversees the municipal councils, while the National Board of Health oversees rural local authorities. In addition to the western legal

¹ See www.universal-rights.org/wp-content/uploads/2018/08/Fiji_Voluntary-pledges-and-commitments.pdf.

² United Nations Development Programme, "Fiji: Human Development Indicators" (2018). Available at <http://hdr.undp.org/en/countries/profiles/FJI>.

³ World Bank, "Fiji", *Poverty and Equity Brief* (April 2018). Available at <http://documents.worldbank.org/curated/en/531821528202548810/Fiji-poverty-and-equity-brief-spring-2018>.

⁴ World Bank, "Fiji". Available at <https://data.worldbank.org/country/fiji>.

system, a traditional iTaukei system of customary law and governance continues to operate in Fiji.

14. Land ownership statistics in Fiji are unusual. Only 6 per cent of land is privately owned freehold land, 4 per cent is State owned land and 90 per cent belongs to the iTaukei indigenous peoples. The lands of the iTaukei are registered under a *mataqali* (clan), which is the legal land-owning unit, as stated in the Native Lands Act (1961). This land cannot be sold, transferred, mortgaged or otherwise encumbered, except to the Crown. However, iTaukei lands may be leased for use or development through the iTaukei Land Trust Board.

C. Laws, policies and institutions

15. The Constitution of Fiji of 2013 recognizes the right to a healthy and sustainable environment. Article 40 (1) states: “Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.” Article 40 (2) states: “To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.”

16. This right requires the Government to take steps to ensure clean air, clean water, adequate sanitation, healthy and sustainable food, a safe climate, a non-toxic environment in which to live, work, study and play, and healthy biodiversity and ecosystems. The inclusion of the right to a healthy environment in the Constitution of Fiji sets an important precedent for other small island developing States, as many of these nations have not yet granted legal recognition to this fundamentally important human right.⁵

17. The Constitution of 2013 contains other positive elements with respect to human rights, including: a Bill of Rights incorporating a comprehensive list of civil, political, economic, social and cultural rights; a comprehensive list of grounds on which discrimination is prohibited; the rights of the child; and the rights of persons with disabilities. The Constitution clarifies that international standards and principles may be considered by courts, tribunals or other authorities when interpreting and applying the Bill of Rights.

18. In November 2017, the Ministry of Economy published 5-year and 20-year national development plans. These plans are aligned with global commitments, including the 2030 Agenda for Sustainable Development and the Sustainable Development Goals. The 20-year plan is aimed at achieving universal access to all services, including housing, electricity, clean water and sanitation, high-quality education and health care.

19. Fiji has numerous statutes and regulations addressing environmental and natural resource protection. Among the most important are the Environment Management Act (2005), the Environment and Climate Adaptation Levy Act (2015), the Endangered and Protected Species Act (2002), the Offshore Fisheries Management Act (2012), the Forest Act (1992), the Land Use Act (2010), the Land Conservation and Improvement Act (1953), the Litter Act (2008), the Mining Act (1966), the Natural Disaster Management Act (1998) and the Ozone Depleting Substances Act (1998).⁶

20. The Environment Management Act is the most important environmental law of Fiji. It provides for “the protection of the natural resources and for the control and management of developments, waste management and pollution control and for the establishment of a

⁵ Small island developing States that do not yet legally recognize the right to a healthy environment include Antigua and Barbuda, the Bahamas, Barbados, Dominica, Kiribati, the Marshall Islands, Micronesia (Federated States of), Nauru, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu.

⁶ For further information on these statutes and regulations, see Fiji Environmental Law Association, “Environmental and other relevant laws of Fiji”. Available at www.fela.org.fj/environmental-laws.html.

national environment council and for related matters.” It plays another important role in that it establishes and regulates the process for environmental impact assessments.⁷

21. The Environment Management (EIA Process) Regulations govern the environmental impact assessment process of Fiji. They require every proponent of a development proposal to apply to the approving authority for a screening of the proposal and a decision under part 4 of the Environment Management Act before undertaking any work that could damage the environment. The Environment Management (Waste Disposal and Recycling) Regulations provide essential oversight for solid waste management.

22. The Environment and Climate Adaptation Levy Act (2015) established a levy that applies to a range of goods and services primarily used by tourists and wealthy Fijians, such as hotels, large engines, tourism activities and yacht docking fees. In 2017, regulations established a fee on plastic bags, which was increased to F\$ 0.50 per bag in 2019.⁸

23. In recent years Fiji has created a plethora of important environmental policies, including the National Climate Change Policy 2018–2030 (2019), the Fiji Low Emission Development Strategy 2018–2050 (2018), the National Adaptation Plan Framework (2017), the NDC⁹ Implementation Roadmap (2017), the National Biodiversity Strategy and Action Plan 2017–2024, the National Air Pollution Strategy, the Green Growth Framework (2014), the Integrated Coastal Management Framework, the National Solid Waste Management Strategy, and the National Liquid Waste Management Strategy and Action Plan. These policies, strategies and plans are principled, detailed and admirable documents. The challenge for Fiji is to implement the large number of environmental commitments it has undertaken, in order to meet its ambitious sustainable development objectives.

24. The Department of Environment, which is part of the Ministry of Waterways and Environment, is the lead environmental agency tasked with formulating, coordinating and monitoring the implementation of the national environmental policies of Fiji. The Climate Change and International Cooperation Division of the Ministry of Economy coordinates climate-related action, including climate finance, adaptation efforts and monitoring progress towards the Sustainable Development Goals. Several other ministries, departments and agencies have significant environmental roles. The Ministry of Infrastructure and Transport oversees the Department of Energy (responsible for implementing the National Energy Policy), the Water Authority of Fiji (drinking water and wastewater treatment), and the Maritime Safety Authority of Fiji (marine pollution).¹⁰ The Ministry of Lands and Mineral Resources is the main governing body for the use of State land and mining resources. The Ministry of Fisheries and Forests oversees the conservation and sustainable management of two sectors that are both environmentally and economically important for Fiji.

III. Environmental context and challenges

25. Comprised of 332 islands (only one third of which are inhabited), Fiji has a total land area of 18,272 square kilometres and an exclusive economic zone covering 1.3 million square kilometres of the Pacific Ocean. The islands are mountainous and covered in tropical forests and farms. Settlements are concentrated along coastlines, with more than half of the population now living in towns and cities.

26. The majority of the population of Fiji is comprised of the iTaukei indigenous people. The iTaukei not only possess title to over 90 per cent of the land area of Fiji, but also play an important role in coastal and marine management through their customary *qoliqoli* system. Indigenous people are especially dependent on healthy ecosystems and biodiversity for food, water, culture and livelihoods. Environmental degradation threatens all of these

⁷ Fiji Environmental Law Association and EDO NSW, *Towards an Effective Legal Framework for Marine Protected Areas in Fiji: Policy and Law Discussion Paper* (Suva, Fiji Environmental Law Association, 2017), pp. 29 and 30.

⁸ Environment and Climate Adaptation Levy (Plastic Bags) Regulations 2017 (L.N. No. 61 of 2017).

⁹ NDC: nationally determined contribution.

¹⁰ Fiji, Maritime Safety Authority of Fiji, “Environment: marine pollution”. Available at <https://msaf.com.fj/environment/>.

rights. Fiji is a party to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and deserves credit for introducing a bill on traditional knowledge, intended to protect the intellectual and cultural property rights of the iTaukei people. However, Fiji has not endorsed the United Nations Declaration on the Rights of Indigenous Peoples.

27. Fiji has made it clear that climate change is its top environmental priority. However, other environmental problems also demand attention. The State's ranking on the Environmental Performance Index of 2018, published by Yale and Columbia universities, is 107th out of 180 nations. According to that study, areas of strong performance include fisheries, forests and heavy metals. Areas that need strengthening include biodiversity and habitat protection, waste management and air pollution.

28. The World Health Organization estimates that environmental risk factors such as air pollution and water contamination contribute to 918 deaths per year in Fiji, or approximately 15 per cent of total deaths. This compares favourably to most other countries, but these premature deaths could be prevented with stronger environmental laws and policies, as well as increased implementation and enforcement.

29. Rapid urbanization is leading to increased demand for housing, infrastructure and public services, especially in the greater Suva area. At present, there is a need for a comprehensive, coordinated and strategic regional and urban planning process. Of particular concern from the perspective of environmental risks and human rights are urban sprawl, inadequate sewage collection and wastewater treatment infrastructure, and poor solid waste management.

30. There are about 200 informal settlements in Fiji, home to approximately 15 per cent of the population. Informal settlements often lie on the outskirts of cities and towns, have not been subject to zoning or subdivision plans and are particularly vulnerable to climate change. Most residents have migrated from outer islands or rural areas. Housing quality is poor, increasing vulnerability to climate-related natural disasters, and access to municipal services is limited, leading to pollution and health risks. In Vuniivi and Qauia, the two informal settlements near Lami that the Special Rapporteur visited, the three major concerns are regular flooding, inadequate sanitation and a lack of waste management services.

IV. Fulfilling the right to a clean and healthy environment

31. The right to a clean and healthy environment, articulated in the Constitution of Fiji, has both procedural and substantive elements. The procedural elements include the rights of access to environmental information, public participation in environmental assessments and decision-making, and access to justice and adequate remedies in cases where the right to a clean and healthy environment is being threatened or violated. The substantive elements include a safe climate, clean air, safe drinking water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.

32. At the same time that the full enjoyment of human rights depends on a healthy environment, the exercise of human rights helps to ensure the protection of the environment. The free and full exercise of rights relating to information, participation and access to justice enables people to ensure that environmental policy is fair and effective. In some countries today, it is dangerous to be an environmental human rights defender, as they are harassed, sued, subjected to violence and even murdered. Governments have obligations to protect environmental defenders from such threats to ensure that they can participate fully and without fear in the environmental decision-making process.

33. Fiji is fortunately not among the countries where environmental defenders have been reported as murdered or imprisoned. Yet the Special Rapporteur heard concerns expressed by environmentalists and human rights activists about feeling threatened or intimidated. Fiji should welcome environmentalists and human rights activists with open arms, for their voices are vital to a healthy democracy and their ideas are essential in creating a sustainable future.

A. Access to information

34. The Environment Management Act requires that a national state of the environment report be published every five years. The most recent report, from 2014, provides a comprehensive and even-handed assessment, complete with useful recommendations. The next state of the environment report should be published in 2019. In 2016, the Ministry of Health and Medical Services published an excellent report on environmental influences on human health. There is also a prodigious amount of information on the climate change policies and plans of Fiji, available on the website of the Ministry of Economy.

35. Although there is abundant information available about the state of the environment in Fiji and the Government's plans and policies for addressing environmental problems, there are some important gaps. The website of the Department of Environment contains little detailed information, especially regarding environmental quality, environmental assessments, an environmental tribunal, and the implementation and enforcement of the many laws and regulations for which it is responsible. These gaps can pose a significant barrier to public participation in environmental decision-making.

B. Public participation in environmental decision-making

36. The Special Rapporteur received conflicting information about the extent to which the public is given meaningful opportunities to participate in environmental decision-making. On one hand, the Government described extensive efforts to engage the public through various processes. For example, notices are published in national newspapers about upcoming consultations on proposed developments. On the other hand, civil society organizations, citizens and some iTaukei landowners with whom the Special Rapporteur met expressed concerns about their inability to gain easy, timely and affordable access to important information, to participate meaningfully and to have their concerns addressed. Examples cited include proposed mining projects, the raising of the Wainisavulevu weir in Naitasiri, and industrial developments in the Draunibota Bay area.

37. The main example of this conflict relates to environmental impact assessments. States have an obligation to conduct environmental impact assessments, and to do so with meaningful public participation. The Department of Environment oversees the environmental impact assessment process, applying a regulation established pursuant to the Environment Management Act. For any development with potentially significant environmental impacts, the project developer must host at least one public meeting during the environmental impact assessment process and one public consultation after the environmental impact assessment report has been prepared. The Department of Environment must maintain a public register that makes environmental impact assessment reports and approvals (including conditions) available for inspection and copying. Citizens, civil society organizations and some iTaukei landowners expressed concern about difficulties gaining access to information on environmental impact assessments, the poor quality of some environmental impact assessment reports and the lack of access to remedies. The Government has prescribed a fee of about F\$ 5 per page for environmental impact assessment documents. This fee is clearly excessive and should be waived for individuals and groups seeking to protect the environment and human rights. It would be preferable to make documents available in PDF form, free of charge, through an online registry.

C. Access to justice and effective remedies

38. Concerns were also raised about a lack of access to remedies. While interested parties have the ability to file lawsuits in the High Court of Fiji to challenge decisions with adverse environmental consequences that may not comply with the law, this approach is complex, expensive and time-consuming. As a simpler and more expeditious alternative, the Environment Management Act provides for the appointment of an environmental tribunal that can hear appeals from certain administrative decisions. Rules governing the tribunal were published in 2013 and apparently three cases have been referred to it. However, there is little publicly available information regarding the tribunal's members, procedures or decisions, making the process opaque and inaccessible.

39. The Special Rapporteur was unable to identify any Fijian court decisions relying on or referring to the constitutional right to a clean and healthy environment. The constitutional right to a clean and healthy environment has not yet been incorporated into any of the national environmental laws to emphasize this right as a fundamental principle. Although the right is directly enforceable under section 44 of the Constitution, which gives the High Court original jurisdiction to hear applications of actual or anticipated breaches of the Bill of Rights, and under the High Court Constitutional Redress Rules of 2015, this is an important step for Fiji to take. Based on the experiences of many other jurisdictions, incorporating the right to a clean and healthy environment into environmental legislation would contribute to stronger, more sustainable administrative decisions, increase public participation in environmental decision-making, and bolster the implementation and enforcement of environmental laws, regulations and standards.

40. Courts in Fiji have made numerous decisions in environmental cases. In a high-profile case in 2019, the Department of Environment issued stop-work orders against a resort and casino being built on Malolo Island. Eventually a court intervened and the unlawful project was halted.

D. A safe climate

41. Among the six substantive elements of the right to a healthy and sustainable environment, a safe climate is of paramount importance to Fiji. Along with other small island developing States, Fiji is acutely vulnerable to the adverse impacts of climate change, from rising sea levels to the increasing intensity of extreme weather events such as cyclones. Fiji is rated as “highly vulnerable” on the environmental vulnerability index (comprised of 50 indicators). Modelling done by the World Bank in preparing the climate vulnerability assessment of Fiji indicated that climate-related disasters, mainly floods and cyclones, would cost the equivalent of 5 per cent of GDP annually and push approximately 25,000 people into poverty each year, unless effective adaptation measures were put in place.

42. Climate change is an urgent challenge that Fiji must confront, yet other States are responsible for causing the problem. Per capita carbon dioxide emissions in Fiji are only 1.4 tons per year, compared to 8 tons in China and 16 tons in the United States. The sectors responsible for the greenhouse gas emissions of Fiji are energy and transport (59 per cent), agriculture (22 per cent), forestry (15 per cent) and waste (4 per cent).

43. During his visit, the Special Rapporteur heard about the extensive damage already inflicted on Fiji by flooding, droughts, rising sea levels, saltwater intrusion and salinization, and the devastating Tropical Cyclone Winston in 2016, which is widely viewed as a sign of more frequent and intense storms in the future. Annual average temperatures and sea levels have increased each decade in Fiji, and the sea level is projected to rise 7–17 centimetres by 2030. In the agriculture sector, social and economic impacts include crop losses, reduced food production capacity and higher demand for imported staples. Over the longer term, ocean acidification is also a major concern. Climate change amplifies the risks of natural disasters to which Fiji has always been exposed, including floods and extreme weather events. These climate change-related impacts are wreaking havoc on Fijian farms, forests, fisheries, infrastructure and communities, and in doing so they are violating the rights to life, health, food, water, sanitation, housing, and a clean and healthy environment.

44. Tropical Cyclone Evan hit Fiji in 2012. In 2016, Tropical Cyclone Winston hit Fiji hard. It was the strongest recorded storm to ever reach landfall in the southern hemisphere, with wind gusts exceeding 300 kilometres per hour. The cyclone caused 44 deaths, destroyed and damaged many homes, impacted 540,000 people (60 per cent of the population of Fiji), and cost between US\$ 1.0–1.4 billion, or one quarter of annual GDP. In a testament to disaster preparedness in Fiji, early warnings reduced human losses and key infrastructure was quickly repaired. To assist residents in recovering, the Government’s response also quickly scaled up existing social protection programmes, including the Poverty Benefit Scheme, the Care and Protection Allowance and the Social Pension Scheme.

45. Fiji has been one of the world’s most powerful voices in calling for urgent action to address the terrible toll that climate change is inflicting on human health, human rights and well-being. As stated above, Fiji was the first country to ratify the Paris Agreement. Fiji

presided over the twenty-third session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. It was one of the first countries in the world to develop a 2050 pathway to decarbonize the economy, consistent with the goal of the Paris Agreement to achieve climate neutrality and a low-emission world. Its Planned Relocation Guidelines have an admirable human rights focus, as does its National Climate Change Policy 2018–2030.

46. As part of his visit, the Special Rapporteur travelled to the village of Vunidogoloa, on the island of Vanua Levu. Vunidogoloa was relocated inland in 2014 because seawater was inundating homes and crops in their idyllic oceanside location, causing coconut, breadfruit and banana trees to die. A village leader showed where his childhood home had been located, pointing out concrete pads and wooden posts that were submerged under about 30 centimetres of water. The Special Rapporteur saw the remnants of a stone seawall built in 1978 to protect the village, largely destroyed by the relentlessly encroaching ocean. The village leader's voice cracked as he said, "We thought we would live here forever."

47. The graves of the villagers' ancestors had been left behind. Although the relocation process was deeply painful for Vunidogoloa residents, the new village site offers improved housing conditions, better sanitation, solar-powered electricity (although currently limited to one small panel per home), and improved access to health care and education. The new site was selected by the community and subjected to an environmental impact assessment.

48. Several other villages have already been moved, several more moves are in progress, and at least 40 additional communities are awaiting relocation. Fiji had developed the Planned Relocation Guidelines to ensure that the rights and dignity of persons involved are respected. Relocation is appropriately viewed as a last resort and is only contemplated at the request of an affected village and after an extended collaborative process.

49. During a meeting with 15 Fijian schoolchildren in Suva, the Special Rapporteur heard first-hand accounts of their concerns about the environment they are inheriting and how important a healthy planet is to them. Climate change dominated the conversation. One young girl spoke about her family's custom of going to a beach near her village for picnics, but said, "Now it's scary sometimes when the waves come." This child's anxiety highlights the negative impact of climate change on mental health. The children spoke with one voice in calling for adults and Governments to work hand in hand to stop causing climate change in order to safeguard their future.

50. Fiji is not only exercising leadership through international advocacy on climate change but also implementing mitigation and adaptation actions domestically pursuant to its National Climate Change Policy (2012), National Adaptation Plan Framework, NDC Implementation Roadmap and National Climate Change Policy 2018–2030. The National Climate Change Policy 2018–2030 offers a compelling vision of a resilient and prosperous Fiji, in which the well-being of current and future generations is supported and protected by a socially inclusive, equitable, environmentally sustainable, net-zero emissions economy. The first pillars of the policy are that it is human rights based and gender responsive. A national climate change bill has been drafted, which will provide an essential legislative framework to guide and implement the many commitments, policies and programmes of Fiji, ensuring transparency and accountability.

51. The climate vulnerability assessment of Fiji identified five priority areas for intervention, including: guiding urbanization towards safe areas and developing climate-resilient housing; improving infrastructure in the areas of flood prevention, electricity, water and sanitation, transport, and education and health-care facilities; supporting climate-smart agriculture and fisheries; strengthening the conservation of ecosystems, especially native forests, mangroves and coral reefs; and building resilience by reducing poverty, improving disaster preparedness, increasing access to affordable health care and closing the gender gap.

52. Examples of actions taken to tackle climate change include the Environment and Climate Adaptation Levy, investments in and tax breaks for new sources of renewable energy, a solar homes programme, a green bond that raised F\$ 100 million and incentives for the purchase of fuel-efficient vehicles. The Levy applies to a variety of goods and services, including plastic bags, hotels, restaurants, bars, large engines, very high-income earners (10 per cent on income above F\$ 270,000 per year) and yacht docking fees. In 2018, the Levy generated more than F\$ 100 million. These funds should be dedicated exclusively

to climate mitigation and adaptation projects, but they have sometimes been spent in other areas, such as upgrading rural roads.

53. Fiji has abundant renewable energy resources, and recent assessments have shown that a combination of solar, wind, geothermal, marine, biomass and biofuel could be used to meet the islands' energy needs while decreasing electricity costs, increasing energy access and promoting energy independence. The proportion of electricity generated from renewables in Fiji grew from 56 per cent in 2011 to 67 per cent in 2015, with goals of 80 per cent by 2020 and 100 per cent by 2030.

54. On the smaller islands, solar photovoltaic systems are used to provide access to electricity for inhabitants. The Government installed thousands of solar home systems but hundreds were severely damaged by Tropical Cyclone Winston and are being repaired. The Department of Energy is replacing diesel generators with cyclone-resilient solar electricity systems. The establishment of a Barefoot College has been planned to train women in the installation and maintenance of solar electricity systems and to enhance their entrepreneurial skills.

55. The Special Rapporteur was pleasantly surprised to witness large numbers of fuel-efficient hybrid vehicles on the roads in Fiji, largely due to reduced import duties. Public transit in Fiji is currently limited but will be an important area for future investment.

56. Protecting the human rights of the people of Fiji from the adverse impacts of climate change requires action not only by Fiji but by all States, particularly those who historically have been and/or are currently major contributors to climate change. In his 2019 report to the General Assembly, the Special Rapporteur identified a number of essential actions that States must take in order to fulfil the commitments made in the Paris Agreement, including steps to end society's addiction to fossil fuels, rapidly reduce greenhouse gas emissions, cut back on livestock production, replace deforestation with reforestation, and dramatically scale up financing for mitigation, adaptation, and loss and damage (A/74/161). Wealthy countries must fulfil their commitment to mobilize at least US\$ 100 billion annually by 2020 to assist vulnerable States such as Fiji. For example, relocating dozens of communities is an expensive process whose costs should not be borne by Fiji but rather by those who caused the problem.

57. Fiji is undoubtedly a global leader in advocating international policies to counter climate change and has developed an impressive array of plans, strategies and policies. However, the Government lacks sufficient technical expertise, human resources and financial capacity to fully implement protective measures. Fiji already devotes a substantial part of its budget (about 10 per cent) to reducing climate risks and preparing for natural disasters. It has been successful in securing funds for numerous projects through the Global Environment Facility. However, proposed mitigation actions could cost US\$ 3 billion, while adaptation actions have an estimated cost of US\$ 5 billion. The private sector, other Governments and international financial institutions must play key roles in helping Fiji to acquire the financing needed to implement its comprehensive climate mitigation and adaptation plans.

E. Clean air

58. Poor air quality can violate the rights to life, health, and a clean and healthy environment, as well as the rights of the child. The Special Rapporteur observed that air quality in Fiji appeared to be generally good, subject to several important exceptions discussed below. Even in the largest city, Suva, air quality usually meets the guidelines of the World Health Organization.

59. However, our modern understanding of air pollution is that adverse health effects occur even when the air appears to be clean. Breathing polluted air causes respiratory illnesses, heart disease, stroke, lung cancer and negative birth outcomes (for example, low birth weight). It is estimated that household air pollution causes 383 premature deaths in Fiji annually, while outdoor air pollution causes 286 premature deaths annually. Major sources of air pollution in Fiji include vehicle emissions, industrial emissions, open burning of household waste, agricultural burning, incinerators, cookstoves burning solid fuels (mostly wood), emissions from ships, dust from gravel roads and diesel generators. While rules are in place to address most of these sources, monitoring and enforcement appear to

be limited. The Ministry of Health and Medical Services recently noted that monitoring environmental air quality was limited by the lack of equipment and trained personnel.

60. During his visit to the village of Vunidogoloa, the Special Rapporteur was treated to a delicious traditional Fijian meal, but he was concerned by the fact that it was cooked over an open fire. The woman who had prepared the meal told him that she cooked over an open fire three times daily. This puts her health, and her children's health, at risk and inadvertently contributes to climate change through black carbon emissions. A made-in-Fiji solution being delivered by the Ministry of Women, Children and Poverty Alleviation is called the Fijian rocket stove. It is a low-cost stove that reduces household air pollution by burning wood much more efficiently, also taking pressure off forests and the people who gather firewood for cooking (again primarily women).

61. Although the use of solid fuels in household cooking declined from 55 per cent in 1990 to 37 per cent in 2010, it remains a serious health threat to many Fijians, especially in rural areas. This practice is particularly problematic for women, who do the vast majority of cooking, and young children, who spend much of their time with their mothers. The use of kerosene for cooking and lighting, again more common in rural areas, is also a significant source of exposure to air pollutants. The draft national energy policy identifies the goals of providing universal access to electricity and zero per cent of Fijians cooking with solid fuels by 2030.

62. There has been a surge in peer-reviewed scientific articles about air pollution in Fiji, focused on Suva, Lautoka and Vatukoula. A recent study showed that levels of fine particulate matter in the city of Lautoka, largely from vehicle emissions, cause an increased risk of hospitalization for heart disease. The biggest health risk relating to air pollution in Suva is from "fossil fuel smoke" that is produced by industry and vehicle emissions. Black carbon (from diesel vehicles, fossil fuel burning power plants and open burning) is not only a harmful air pollutant but also a powerful greenhouse gas that contributes to climate change. As such, its reduction should be a priority for Fiji.

63. Not all populations are equally exposed to air pollution. Populations living in close proximity to polluting industrial facilities, such as cement factories and fossil-fuel power plants, face elevated risks from poor air quality. Communities located close to busy roads are disproportionately exposed to vehicle emissions. In both of these cases, the people suffering adverse impacts on their health and human rights are likely to be living in poverty.

64. The Land Transport Authority is implementing several actions to reduce emissions from the transportation sector, including public education about air pollution from vehicles, increased inspections, data collection and emissions testing, and fines for violations of emissions standards. Fiji recently strengthened fuel standards for diesel and gasoline, dramatically reducing the sulphur content of these fuels. Taxes on diesel fuel are lower than on petrol/gasoline, which the Organization for Economic Cooperation and Development has concluded is poor public policy given that diesel causes higher levels of air pollution.

F. Access to clean water and adequate sanitation

65. The rights to water and sanitation are integral components of the right to a clean and healthy environment. In fact, the Constitution of Fiji specifically includes the right to clean and safe water in adequate quantities and the right to sanitation. In addition, the constitutional provision on the rights of children specifically mentions the right to sanitation (art. 41).

66. The latest data available indicate that 94 per cent of people in Fiji have access to improved drinking water sources, while 95 per cent enjoy access to at least basic sanitation facilities, up from 57 per cent in 1990. The Water Authority of Fiji is extending piped service to a growing number of households. The problematic practice of open defecation has been eliminated, which is a significant step forward. Improved sanitation is contributing to improved water quality in some areas. For example, levels of faecal coliform bacteria in the Rewa River have dropped, reducing the health risks to persons who use the river for water supply, fishing and recreation.

67. However, these positive developments are accompanied by several ongoing challenges. According to the Ministry of Health and Medical Services, water and sanitation

are much improved but they continue to be a problem in Fiji. Inadequate sanitation facilities cause water pollution, threatening human health and ecosystem health by contaminating soil, food, fresh water and the ocean. For example, some urban creeks have high levels of faecal coliform bacteria, probably due to inadequate sanitation. The impressive total percentages for access to improved sources of drinking water and sanitation mask the fact that urban populations enjoy significantly higher access than rural populations.

68. Many people living in informal settlements and some people living in rural areas and remote islands, including children, still lack access to safe water sources and adequate sanitation. Poor water quality and limited water availability have disproportionate impacts on women because women are primarily responsible for activities that require water, such as cooking, cleaning, laundry, bathing young children and caring for family members who are ill.

69. Inadequate sanitation in rural areas and informal settlements is a leading cause of waterborne disease in Fiji. The Institute for Health Metrics and Evaluation estimates that unsafe water, inadequate sanitation and improper handwashing are responsible for 4.4 per cent of all deaths of Fijian children under 5 years of age, and 5.5 per cent in the age group 5–14 years. Levels of waterborne diseases such as typhoid fever and dysentery, relating to pollution from inadequate sanitation, rose in Fiji between 2003 and 2010. An investigation into this problem, published in 2018, revealed that the largest risk factor for typhoid fever in Fiji was inadequate sanitation facilities. Both rural and urban residents are affected, by drinking contaminated surface water and consuming unwashed produce. Poor hygiene practices increase the risk. Both informal settlements that the Special Rapporteur visited are located in regularly flooded areas, yet residents rely on pit toilets or home-made septic tanks, raising risks of waterborne disease. During his visit, there was an outbreak of typhoid fever in Naitasiri, with 31 confirmed and 14 suspected cases.

70. Fiji needs to connect more households to public wastewater collection and treatment systems. Fewer than half of Fijian households are connected to sewage systems, while the most common form of wastewater disposal is septic tanks, which are vulnerable to poor design, faulty construction and inadequate maintenance.

71. In recent years there have been problems with water quantity or availability due to the growing use of water and occasional droughts. Agriculture is the main water user in Fiji (61 per cent), followed by industry (11 per cent) and domestic consumption (28 per cent). There is a lack of information on groundwater quantity.

72. Fiji is attempting to address its water and sanitation challenges. A national water resources and sanitation strategy has been under development for some years but does not appear to have been passed by the Cabinet. There is also a rural water and sanitation strategy and the National Liquid Waste Management Strategy and Action Plan. The Water Authority of Fiji conducted an outfall testing programme across major rivers and creeks in Fiji to identify chief sources of sewage, with the intent to prioritize these areas for sewage connections or education campaigns.

73. Vuniivi and Qauia, the two informal settlements visited by the Special Rapporteur, are part of an initiative led by the United Nations Human Settlements Programme to upgrade housing and infrastructure in 16 informal settlements. In addition, the Government is striving to secure 99-year leases for residents of these settlements so that they have security of title and can invest in their future without the fear of being evicted.

74. In the most recent universal periodic review of Fiji, it was recommended that the State continue to strengthen the implementation of the rights to drinking water and sanitation for the whole population, especially for rural communities (A/HRC/28/8, para. 99.78). A recent report from the Pacific Region Infrastructure Facility recommended that Fiji set ambitious delivery targets for sanitation services, integrate human rights, health and environmental outcomes, identify the responsible agencies and prioritize funding to meet the targets set.

75. The Government is making commendable efforts to extend services to informal settlements, but greater emphasis needs to be placed on upgrading sanitation facilities and protecting water sources in order to fulfil its obligations relating to the human rights to water, adequate sanitation and a clean and healthy environment. In the short term, people

living in the informal settlements need guidance on constructing and maintaining their sanitation facilities to minimize health risks.

G. Healthy and sustainably produced food

76. In addition to being a vital element of the right to a clean and healthy environment, the right to be free from hunger and to have adequate food of acceptable quality are specifically recognized in the Constitution of Fiji (art. 36).

77. There has been a significant decline in the area of land being used for farming since 1990, with the largest declines relating to sugar cane farming and copra (coconut) production. With declining domestic food production and declining consumption of traditional foods, such as cassava, taro (also known as dalo) and other tubers, Fiji is importing a larger proportion of its food supply. This shift has been accompanied by a shift towards more energy-dense processed foods. A study published in 2013 revealed that 90 per cent of school-aged Fijian children drank soft drinks or other sugar-sweetened beverages on a regular basis. These dietary changes have social, economic, health, human rights and environmental implications. Fewer people are working in agriculture. Imported food is more expensive. The report on the state of the environment in Fiji refers to decreased food security.¹¹ Imported foods, processed foods and meat generally have higher greenhouse gas emissions, more packaging and larger ecological footprints. Climate change is contributing to these changes, as domestic agricultural production suffered huge disruptions because of tropical cyclones, increased temperatures, drought, flooding and other climate-related factors.

78. With the decline in dietary quality, Fiji has experienced a dramatic rise in the prevalence of obesity, now afflicting more than 30 per cent of all adults. Life expectancy, which was steadily increasing, has recently levelled off as a result.

79. Fisheries are vital to fulfilling Fijians' right to food, and subsistence and commercial fisheries play an important role in contributing to the national economy. However, fisheries face multiple pressures, including climate change, pollution, invasive species and overharvesting. Several reports have highlighted concerns about the health of the marine ecosystems of Fiji, including the Asian Development Bank, the Institute of Marine Resources at the University of the South Pacific and the Secretariat of the Pacific Regional Environment Programme. Water pollution impacts bivalves and crustaceans, creating a pathway for foodborne disease.

80. Populations of some fish species relied on for subsistence are declining.

81. To its credit, Fiji has adopted a number of important measures, including a cap on offshore licences, a quota on albacore tuna, the increased use of observers, a ban on shark-finning, and seasonal bans on catching grouper and harvesting sea cucumbers (*bêche-de-mer*). The Offshore Fisheries Management Act (2012) and the Offshore Fisheries Management Regulations (2014) represent important regulatory advances. In 2019, a company was convicted and fined F\$ 20,000 for violating the Offshore Fisheries Management Regulations by harvesting, purchasing and/or exporting sea cucumbers. Fiji has an extensive network of locally managed marine areas, including tabu areas (areas temporarily or permanently closed to rebuild populations of different species), which has been effective. In addition, Fiji has formed partnerships with States, including New Zealand and the United States of America, in an effort to tackle the problem of illegal, unreported and unregulated fishing in its huge exclusive economic zone.

82. Food-related recommendations made in the report on the state of the environment in Fiji include education programmes encouraging the consumption of traditional healthy foods, the conservation of traditional crop varieties, and regulations on the import and advertising of unhealthy snack foods such as soda pop, chips and instant noodles.¹² It is also important to ensure access to land and fishing grounds for poor households in rural Fiji in order to enable them to maintain diverse and healthy diets.

¹¹ Secretariat of the Pacific Regional Environment Programme, *Fiji's State of Environment Report* (Apia, 2013).

¹² *Ibid.*, p. 128.

H. Non-toxic environments in which to live, work, study and play

83. The right to a clean and healthy environment includes non-toxic environments for living, working, studying and playing. The Special Rapporteur focused his study on five issues raised by citizens and civil society, namely pesticides, solid waste management, plastics, marine pollution and mining.

Pesticides

84. Pesticide use in Fiji has doubled in recent decades to 775 tons per year, with heavy use in sugar cane growing, and is reportedly damaging soil quality (by increasing the acidity of soil). Pesticides can also contaminate food and water and cause harm to species and ecosystems. In Fiji, the registration of pesticides is governed by the outdated Pesticides Act (1971). A total of 28 highly hazardous pesticides, as identified by the World Health Organization and the Food and Agriculture Organization of the United Nations, are registered for use in Fiji, including atrazine, bromadiolone, carbaryl, diazinon, glyphosate, methyl bromide and paraquat. The Special Rapporteur was disturbed to learn that in 2014 more than one quarter of all suicides and attempted suicides in Fiji involved the use of the pesticide paraquat.

85. An encouraging sign is the trend towards organic agriculture in Fiji. For example, the amount of land under organic certification grew by 326 per cent in 2014 alone. That year, there were 627 organic food producers in Fiji. Organic agriculture uses no artificial pesticides and is healthier for workers, consumers and ecosystems. Through the Wakatu Fiji campaign, farmers receive training and assistance to switch to environmentally friendly practices such as organic agriculture, reduced fertilizer use and the elimination of crop residue burning.

Solid waste management

86. While travelling in Fiji, the Special Rapporteur was saddened to see some places where the country's natural beauty was being tarnished by littering, dumping and the burning of garbage. These actions pollute air, water and soil, creating risks to health. People resort to these practices because the waste management services offered by Governments are inadequate and because the rules prohibiting these actions are not enforced. Many communities do not have garbage pickup, there are only two properly built landfills, recycling programmes are limited and the composting of food scraps is uncommon.

87. In the absence of effective solid waste management services, it is estimated that more than half of households in Suva burn household waste. Although this practice is illegal, there is no evidence of enforcement. One reason for the lack of enforcement may be that the fine for burning household waste is fixed at F\$ 10,000, about half the average annual income in Fiji. Imposing such a harsh penalty for a widespread practice would be widely perceived as unfair.

88. The Government of Fiji, particularly the Department of Environment, recognizes the waste management challenges and is taking steps to address these problems. The 2018/19 budget includes F\$ 3.3 million to improve the Naboro landfill, F\$ 260,000 for a nationwide litter awareness programme to clean up Fiji, F\$ 100,000 for a reduce, reuse, recycle awareness programme, F\$ 1 million to purchase standardized garbage bins for municipal councils throughout Fiji, and F\$ 500,000 for a new compost bin pilot project to better manage and make use of organic waste. In addition, the Department of Environment has worked with municipal councils and several other government agencies to appoint hundreds of litter prevention officers, responsible for the implementation and enforcement of rules against littering. There were 1,036 recorded cases of littering in the two largest cities, namely Suva and Lautoka, in 2017, declining to about 750 in 2018, as a result of efforts by litter prevention officers. Improving solid waste management services is a good investment for Fiji because it protects human health and the environment, but also the economically important tourism sector.

89. The reduce, reuse, recycle awareness programme of Fiji has increased the volume of materials being recycled (and presumably less is being burned). The amount of recyclable materials collected increased from 251 tons in 2013 to 396 tons in 2016. It is estimated that

57 per cent of recyclable waste from vehicles, white goods, cans, polyethylene terephthalate (PET), paper and cardboard in Fiji is now exported, reused or recycled.

Plastics

90. Like people around the world, Fijians are increasingly concerned about the environmental impacts of plastics, on oceans in particular. Scientists have found plastic microparticles in the air, drinking water and seafood. As a nation that depends heavily on fisheries, Fiji is rightly concerned by studies finding microplastics in 97 per cent of fish species sampled in Fiji, New Zealand, Samoa and Easter Island. Hundreds of wildlife species, from whales and seabirds to crabs and turtles, are harmed by ingesting plastic or becoming entangled in it. Plastic is particularly problematic in Fiji because of inadequate waste management services, leading to the burning of garbage containing plastic, which produces highly carcinogenic dioxins and furans. A survey of litter in Fiji revealed that the majority of littered items are plastic wrappers, plastic bags and plastic bottles. Plastic refuse has also been implicated in blocking drainage systems, exacerbating the serious problem of flooding.

91. A plastic bag levy of F\$ 0.10 per bag was introduced by the Government in 2017 and has now been raised to F\$ 0.50, with the intention of banning single-use plastic bags in 2020. Early evidence indicates that the plastic bag levy is working, reducing plastic bag use in the first year by millions. Styrofoam will be banned in 2021. Along with ongoing public education efforts and plans to improve the coverage of waste management services, these are good steps, but a more comprehensive approach to the problems posed by plastic is needed.

92. Given the substantial costs involved in recycling plastics and other items, a particularly promising approach is extended producer responsibility, which shifts the burden of operating and paying for recycling systems from Governments to the industries that produce or import packaging or products. Extended producer responsibility regulations have proven effective in other nations not only for plastic bottles and packaging but also for a wide range of products and packaging, including batteries, newspapers, tires, consumer electronics, white goods and motor vehicles.

Marine pollution

93. The Special Rapporteur spoke to citizens and government officials concerned about pollution entering the ocean from land and ships, damaging fisheries, coral reefs and other marine ecosystems. These individuals also highlighted the environmental threats posed by derelict, abandoned and sunken ships. From the shore, he saw a number of derelict vessels in the otherwise breathtakingly beautiful Bay of Islands. Divers showed him disturbing videos of underwater pollution in Suva Harbour.

94. Despite the rules in place under the Sea Ports Management Act and the Maritime Transport Act, there are limited human and financial resources for enforcing environmental regulations relating to pollution from ships. There are currently 23 officers responsible for both ship safety and environmental protection, but their safety responsibilities leave little time for environmental monitoring or enforcement.

95. Fiji is considering the creation of a separate marine environmental enforcement unit to address these implementation, monitoring and enforcement challenges. Given the importance of healthy oceans to the people, culture and economy of Fiji, the Special Rapporteur strongly encourages the Government to make this a priority, along with other initiatives to strengthen the enforcement of environmental laws and regulations.

Mining

96. Human rights are important to the sustainable use of mineral resources, as improper mining can contaminate air, water and soil, affecting the human rights to health, food, water and a healthy environment. The legislation governing mining in Fiji is outdated and needs to be modernized. Numerous draft revisions have been produced but never enacted. The Special Rapporteur also heard from citizens and civil society organizations concerned about potential deep-sea mining, which would add yet another threat to already troubled ocean ecosystems. In 2019, the Attorney General of Fiji announced plans for a 10-year moratorium on deep-sea mining.

I. Healthy biodiversity and ecosystems

97. Many human rights, including the rights to life, health, food, water, culture and a healthy environment, are dependent on healthy ecosystems and healthy biodiversity. Article 40 of the Constitution of Fiji states that every person has the right to have the natural world protected for the benefit of present and future generations. The loss of biodiversity and diminishing populations of flora and fauna undermine these rights.

98. Fiji has rich biological diversity and a high number of endemic species (meaning they are found nowhere else in the world). For example, over half (56 per cent) of the country's 1,594 known plant species are endemic, making their conservation a matter of global importance.

99. More than 300 Fijian species are already listed as endangered and many other species are under pressure. Current estimates indicate that 25 per cent of bird species, 12 per cent of mammals, 67 per cent of amphibians and 11 per cent of reptiles are threatened or endangered in Fiji.

100. Two key approaches to protecting biodiversity are protected areas and enhanced protection for endangered species and their habitat. While Fiji employs both approaches, legal frameworks and resources required for implementation need to be improved. According to the report of 2013 on the state of the environment, most efforts to protect species and ecosystems are poorly coordinated and rely on the initiative of NGOs.¹³ Fiji has a wide range of laws and policies that contribute to the establishment and management of terrestrial and marine protected areas. However, it is widely agreed that either substantial amendments or new legislation is required to provide an effective framework for establishing and managing protected areas.

101. As a party to the Convention on Biological Diversity, Fiji is committed to the Aichi Target of protecting 17 per cent of its land by 2020. Of concern is the fact that terrestrial protected areas cover only 5.4 per cent of the land area of Fiji, although this figure has doubled in recent years. Proposed key biodiversity areas, important bird areas and priority forest areas would make up a further 10 per cent.

102. In 2005, Fiji made the commitment that, by 2020, at least 30 per cent of its inshore marine areas (reefs, mangroves and intertidal ecosystems) would be part of a comprehensive, ecologically representative and effectively managed network of marine protected areas. Pursuant to the Convention on Biological Diversity, the Aichi Target for marine protected areas is 10 per cent by 2020. Formally designated marine protected areas in Fiji cover only 0.9 per cent of its marine realm. This figure does not recognize the many areas in Fijian waters that are closed under rules governing locally managed marine areas.

103. To implement its commitments under the Convention on International Trade in Endangered Species and Wild Fauna and Flora, Fiji enacted the Endangered and Protected Species Act (2002). Unfortunately, this Act lacks many of the standard elements of endangered species legislation, including prohibitions on harming a listed species or its critical habitat, and the mandatory development and implementation of recovery plans for listed species. In partnership with the Government, conservation organizations have carried out recovery activities for some high-profile species, such as the critically endangered Fijian crested iguana and the Fiji petrel, but this is no substitute for a comprehensive approach.

104. Forests comprise over half of the land area of Fiji and are important for environmental, cultural and economic reasons. Forests are being affected by climate change, illegal logging, clearing for agriculture and urban expansion. A recent report by the Auditor General concluded that considerable progress had been made in implementing the Fiji Forest Policy Statement (2007). However, the Auditor General also identified some key gaps and urged the Government to expedite the passage of the revised Forest Bill to replace the outdated Forest Act of 1992.

105. The Special Rapporteur was encouraged to witness the replanting and restoration of mangrove trees along the sea wall in Suva and he concurs with the Auditor General that the

¹³ Ibid., p. 111.

Ministry of Forests should prevent any further removal of mangroves from coastal areas. These trees offer an effective and natural way of protecting the coastline and preventing erosion.

V. Conclusion and recommendations

106. Fiji is a global leader in recognizing the constitutional right to a clean and healthy environment, responding to the global climate change emergency, ratifying the full suite of multilateral environmental agreements and human rights treaties mentioned earlier, and developing an impressive array of strategies, frameworks and plans. Fiji has a relatively good set of environmental laws and policies, although some are outdated. A more important challenge for Fiji is to close the gap between laws and policies on paper and practices on the ground by increasing implementation and enforcement.

107. The Special Rapporteur was encouraged to learn that, since 2011, the number of staff at the Department of Environment has more than doubled, from 38 to 78. Since 2013, the annual budget of the Department has more than tripled, to F\$ 14,211,500. These are clearly steps in the right direction, and additional resources are being put to good use. The Department of Environment issued more than 50 prohibition notices in 2018, stopping or preventing unlawful activities. A growing number of environmental cases are being referred to the Director of Public Prosecutions. A new national environment hotline will promote enforcement by enabling the public to report such illegal activities as dumping garbage or damaging mangroves. Standards for maximum sulphur content in diesel fuel and gasoline were strengthened dramatically (coming into force in 2019 and 2021, respectively), which will have substantial air quality benefits. Fiji has entered into a partnership with Singapore to improve urban planning. A strong effort is being made to incorporate human rights and gender considerations into policymaking relating to climate change and the environment so that women's voices gain prominence.

108. The Special Rapporteur encourages the Government of Fiji to implement the following recommendations in order to enhance the reputation of Fiji as a nation that consistently follows through on its environmental and human rights commitments, and accelerate progress towards fulfilling the Sustainable Development Goals:

- (a) Continue its admirable record of speaking out forcefully about the need for accelerated climate action on mitigation, adaptation and climate finance;
 - (i) Support the global imposition of an air travel levy to fund a new loss and damage mechanism, providing compensation for climate impacts on vulnerable nations;
 - (ii) Continue taking an effective, rights-based approach to domestic climate action, including making accelerated efforts to reduce black carbon emissions through clean cookstove programmes and by eliminating diesel subsidies;
- (b) Increase the implementation of the polluter pays principle through taxes on toxic substances, including pesticides, fossil fuels and other hazardous materials, thereby generating additional revenue for environmental protection;
- (c) Assist other small island developing States in incorporating the right to a safe, clean, healthy and sustainable environment into their constitutions and/or legislation, and consider championing a regional agreement on environmental democracy, similar to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean;
- (d) Carry out a review of environmental legislation to identify where new or amended legislation and/or regulations are needed to be consistent with the constitutional right to a clean and healthy environment (for example, legislation relating to pesticides, protected areas, endangered species, forests and mining);

- (i) Amend the Environment Management Act to include protecting the right to a clean and healthy environment as the overarching purpose of the law;
 - (ii) Proceed with enacting and implementing a national climate change act to institutionalize and oversee the implementation of the country's international and domestic climate commitments and actions;
 - (iii) Finalize and implement national legislation and policies on sustainable safe water supplies and sanitation;
 - (e) Allocate more financial and human resources to all departments and agencies with environmental responsibilities, including the Department of Environment, the Land Transport Authority, the Water Authority of Fiji (to upgrade drinking water and wastewater infrastructure) and the Maritime Safety Authority of Fiji (to create a marine environmental enforcement unit), as well as municipal governments;
 - (f) Invest in public education and capacity-building relating to the right to a clean and healthy environment in government agencies, the legal profession and the judiciary;
 - (g) Apply extended producer responsibility in the context of solid waste management so that producers of paper, plastic, packaging and other materials become responsible for financing and operating an effective recycling programme;
 - (h) Enhance the public's ability to participate meaningfully in environmental decision-making by creating an online registry that would make environmental information easy to access, including on air and water quality, laws, regulations, policies, permit applications and decisions, pollution data and enforcement actions taken;
 - (i) Expedite actions to formally designate additional protected areas, both terrestrial and marine, in line with the Aichi Targets under the Convention on Biological Diversity;
 - (j) Continue to respect and protect indigenous rights in line with the United Nations Declaration on the Rights of Indigenous Peoples, as recommended by the Committee on the Elimination of Racial Discrimination;
 - (k) Take further steps to ensure a safe and enabling environment for environmental activists and other human rights defenders, as recommended in the universal periodic review of Fiji in 2014;
 - (l) Implement the recommendations of the Convention on the Rights of the Child regarding the need to protect children's rights from environmental hazards and include children's voices in climate policy and actions.
-