

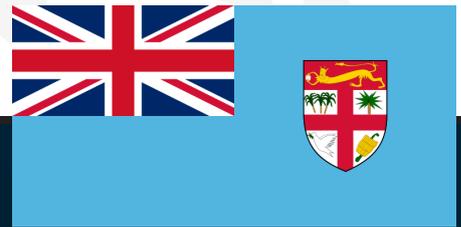
DECENT WORK

A better world starts here.



International
Labour
Organization

Legislative Compliance Review of Child Labour Laws in Fiji



International Programme on the Elimination of Child Labour (IPEC)
Tackling Child Labour through Education -Fiji Programme
ILO Country Office for South Pacific Island Countries

**International Labour Organization
Office for Pacific Island Countries**



**Legislative Compliance Review of Child Labour
Laws
in Fiji**



**Siwatibau & Sloan
Barristers & Solicitors**

September 2009

TABLE OF CONTENTS

1. Executive Summary	6
2. Introduction and Brief Background	10
2.1. Project description	10
2.2. Objectives of the Review	10
2.3. Authors	11
2.4. Project stakeholders	11
2.5. Methodology	12
2.6. Abbreviations and Definitions	13
2.7. Developments in Fiji's Legal System	14
2.8. Process for Amending Legislation	14
2.9. Conventions Ratified by Fiji	15
3. ILO Convention No. 138 and No. 182	17
3.1. ILO Convention No. 138 and No. 1852	17
3.2. What is Child Labour?	17
3.3. ILO Convention No. 138	18
3.3.1. Overview of ILO Convention No. 138	18
3.3.2. Policy	18
3.3.3. Minimum Age for Admission to Work	19
3.3.4. Hazardous Work	19
3.3.5. Light Work	20
3.3.6. Exclusions	21
3.3.7. Artistic Performances	22
3.4. Overview of ILO Convention No. 182	22
3.5. Implementation and Enforcement	23
4. Review of the Legislative and Policy Framework	24
4.1. Policy	24
4.1.1. Overview	24
4.1.2. Approach to Policy Formulation	25
4.1.3. Committee for Formulating Policy	25
4.1.4. Technical Assistance	27
4.2. Legislative Framework	27
4.2.1. Employment	27
4.2.1.1. Minimum age for employment in ERP	27
4.2.1.2. Minimum age for employment in Industry	28
Specific Legislation	
4.2.1.3. Hazardous work	29
4.2.1.4. Light Work	35
4.2.1.5. Exclusions	36
4.2.1.6. Artistic Performances	38

4.2.2. Education	38
4.2.2.1. Minimum Age for Compulsory Education	39
4.2.2.2. Barriers to Education	40
4.2.2.3. Overall Approach to Review of Education Legislation and Policy	41
4.2.2.4. Technical Assistance	41
4.2.3. Harmonisation of definition of “child” in legislation	42
4.2.4. Worst Forms of Child Labour	44
4.2.4.1. Slavery	44
4.2.4.2. Sale and Trafficking of Children	45
4.2.4.3. Forced/Compulsory Labour	50
4.2.4.4. Forced Recruitment	50
4.2.4.5. Prostitution	51
4.2.4.6. Pornography	57
4.2.4.7. Illicit and Drug-related Offences	58
4.2.5. Practical Difficulties	61
4.2.5.1. Ministry of Labour	61
4.2.5.2. Ministry of Education	61
4.2.5.3. Department of Social Welfare	62
4.2.5.4. Police	64
4.2.6. Specific Issues	66
4.2.6.1. Amendments to Juveniles Act	66
4.2.6.2. Child Sensitive Court Procedures	67
4.2.6.3. Child Labour Unit	68
4.2.6.4. Centralised Child Labour Database	70
4.2.6.5. Role of Worker’s and Employer’s Organisations	70
4.2.7. Enforcement	71
4.2.7.1. Enforcement of Labour Laws	71
4.2.7.2. Enforcement of Compulsory Education	73
4.2.7.3. Unconditional Worst Forms of Child Labour	75
5. Summary of Recommendations	78
5.1. Policy	78
5.2. Hazardous Work	78
5.3. Light Work	79
5.4. Artistic Performances	79
5.5. Education	79
5.6. Minimum age for employment in industry specific legislation	80
5.7. Harmonisation of the definition of “child” in legislation	80
5.8. Worst Forms of Child Labour	81

5.8.1.	Amendments to the Penal Code	81
5.8.2.	Amendments to the Juveniles Act	82
5.8.3.	Hotel Licensing Process	82
5.8.4.	Amendments to the Adoption of Infants Act	82
5.8.5.	Amendments to the Marriage Act	83
5.8.6.	Forced Recruitment	83
5.9.	Increased Co-operation	83
5.10.	Centralised Child Labour Database	84
6. Annexures		
Annexure 1: List of Recommended Amendments to Legislation		85
Schedule A: Recommended Amendments to the Labour Legislation		85
Schedule B: Recommended Amendments to the Education Legislation		86
Schedule C: Recommended Amendments to the Penal Code		87
Schedule D: Recommended Amendments to the Juveniles Act		91
Annexure 2: Original Terms of Reference		93
Annexure 3: List of Legislation and Policies Reviewed		101
Schedule A: List of Legislation Reviewed		101
Schedule B: List of Policies Reviewed		103
Annexure 4: List of People interviewed		104
Annexure 5: Reference List		105

Copyright © International Labour Organization 2009

1. EXECUTIVE SUMMARY

This report examines Fiji's compliance with the International Labour Organization's ("ILO") Minimum Age Convention, 1973 (No.138) ("**ILO Convention No. 138**") and ILO Worst Forms of Child Labour Convention, 1999 (No. 182) ("**ILO Convention No. 182.**")

Fiji ratified ILO Convention No. 182 in 2002 and ILO Convention No. 138 in 2003.

The Employment Relations Promulgation 2007 ("**ERP**") updated Fiji's labour laws and brought them more in line with ILO Convention No.s 138 and 182 ("**Conventions.**") However, there are still major gaps in the application of the Conventions in Fiji's laws.

Policy

In line with ILO Convention No. 138, Fiji is required to formulate a comprehensive national policy on child labour. There is currently a child labour subcommittee of the National Coordinating Committee of Children ("**NCCC**") which could pilot the formulation of a child labour policy in Fiji. However, wide consultation with all key Ministries, Departments and other government officials would be necessary.

Labour Legislation

In order to be fully compliant with ILO Convention No. 138 and No. 182, the Ministry of Labour, Industrial Relations and Employment ("**Ministry of Labour**"), in consultation with stakeholders, should: -

- determine a list of hazardous work which is prohibited for children under the age of 18;
- determine a list of light work which is suitable for children from the age of 13-15 years;
- consider the possibility of further regulations which guarantee fair remuneration and entitlements for children and cover working conditions and working hours.

Education Legislation

Amendments to the Education Act (Cap. 262) and subsidiary legislation are recommended in order to harmonize the minimum age for completion of compulsory education with the minimum working age. The statutory age for completion of compulsory education in Fiji currently ranges from 12-15 years. The Education Legislation needs to be amended to increase the minimum age for completion of schooling so as to coincide with the minimum working age of 15 years.

Consideration should be given to amendments to the Education Legislation which:

- grant a right to free primary education;
- remove provisions relating to school fees and to the prosecution of parents for non payment of fees;
- hold parents responsible for not ensuring their child attends school;
- ensure there are sufficient schools in number, character and equipment;
- provide financial assistance to poor families;
- make the duty to provide education enforceable by the courts;
- outline mechanisms for monitoring attendance and following up on cases of absenteeism.¹

A comprehensive review of the Ministry of Education, National Heritage, Culture, and Arts’ (“**Ministry of Education**”) legislation, policies, structure and budget is recommended to address key issues including the funding of basic education and the enforcement of compulsory education.

Worst Forms of Child Labour

There are gaps in the application of ILO Convention No. 182 in Fiji. There are no **time bound measures or programmes** in place to eliminate the worst forms of child labour and to prevent or remove children from the worst forms of child labour.

The Penal Code (Cap. 17) and the Juveniles Act (Cap. 56), which govern criminal offences by and against children, are both in urgent need of review and amendment.

Penal Code

Recommended amendments to the Penal Code include: -

- a revision of age thresholds;
- the introduction of new offences including offences: -
 - of indecent dealings with children under the age of 18;
 - relating to the commercial sexual exploitation of children (“**CSEC**”) under the age of 18;
 - which target the user or customer, not the exploited child;
- the use of gender neutral language to protect boys;
- a revision and updating of terminology;
- the consideration of criminal compensation for victims;
- the removal of references to corporal punishment;
- a revision of penalties.

¹ ILO’s “*Time Bound Programme Manual for Action Planning, 2003*”, page 29

The Review Team has been advised that a revised Penal Code (to be known as the Crimes Act), incorporates many of the recommended amendments to the Penal Code contained in this Report. The draft Crimes Bill was not made available to the Review Team.

Juveniles Act

Recommended amendments to the Juveniles Act include: -

- the incorporation of child sensitive practices in the Juveniles Court, particularly for children giving evidence in cases involving the sexual and physical abuse of children and CSEC;
- an amendment to the definition of a juvenile “in need of care, protection or control”² to include situations where a juvenile is ill-treated, abused or seriously deprived or where a juvenile has committed offences so as to give serious concern for the well-being of the juvenile;
- new provisions which include reference to: -
 - family group conferences;
 - counseling;
 - drug related offences;
 - the principle of the best interests of the child;³
 - emergency procedures for children including orders for emergency protection, orders for maintenance, support and education.
- The repeal of Section 57(7) of the Juveniles Act which states that a parent, teacher or other person having lawful control or charge of a juvenile may administer reasonable punishment to him.

Enforcement

One of the biggest gaps in the application of ILO Convention No.s 138 and 182 is the lack of enforcement in Fiji. Ongoing monitoring, inspections, investigations and prosecutions for child labour offences are required. The monitoring and enforcement of compulsory education, which is currently not carried out by the Fiji government, is an important factor in the prevention of child labour.

Numerous issues relating to the handling of CSEC cases and the removal of children from the worst forms of child labour need to be addressed. Such issues include the provision of adequate counselling services and support services in court for child victims.

² [Section 40](#) of the Juveniles Act defines a juvenile “in need of care, protection and control.”

³ The Fiji Law Reform Commission’s *Report for Children: A Review of Laws Affecting Children*, May 2000, page 49 recommends that “the principle of the best interests of the child be incorporated into [Section 19](#). The said report recommends that section 19 is amended in the following way: “19. Every court in dealing with a juvenile who is brought before it shall have regard to his welfare and best interests and shall, if it thinks fit, take steps for removing him from undesirable surroundings and for securing that proper provision be made for his maintenance, education and training.”

Resources

In order to take real steps to eliminate child labour, there needs to be a commitment from government to allocate resources. As noted in ILO's *"Time Bound Programme Manual for Action Planning, 2003,"*

"However, policies and laws on paper are likely to fail to secure effective action unless governments accompany them with firm commitment, identifying relevant implementing agencies and backing them with adequate budgets and personnel. It would be helpful for governments to articulate and adopt national policies on child labour and specify their place in overall development policy. This might involve an agenda for action spelling out national plans with indicators, goals and budgetary allocations and identifying priorities."⁴

⁴ ILO's *"Time Bound Programme Manual for Action Planning, 2003,"* page 10

2. INTRODUCTION AND BRIEF BACKGROUND

2.1. Project Description

- 2.1.1. TACKLE (“Tackling Child Labour through Education”) is a project which works with ILO’s tri-partite partners,⁵ social partners and civil society groups to formulate, implement and enforce policies and programmes to fight child labour. TACKLE is a global programme aimed at tackling child labour through education in 11 countries across Africa, the Caribbean and the Pacific, including Fiji and Papua New Guinea (“PNG”). A Partnership Protocol Agreement was signed by the European Union, ILO, the Ministry of Education and the Ministry of Labour in Fiji and PNG.
- 2.1.2. The Legislative Compliance Review of child labour laws in Fiji was commissioned by ILO and carried out as part of the TACKLE project.
- 2.1.3. A Project Advisory Committee for Child Labour/ TACKLE (“PAC”) has been set up, which consists of representatives from ILO, the Ministry of Labour, Ministry of Education, Department of Social Welfare, Fiji Employers Federation and Fiji Trades Union Congress. The PAC works with the NCCC via a Child Labour subcommittee of the NCCC.
- 2.1.4. As part of the TACKLE Project, research is being carried out concurrently on the following research sectors: -
- School survey conducted by the Fiji Trade Unions Congress and the Fiji Teachers’ Union;
 - Survey of Informal settlements and squatter communities conducted by the University of the South Pacific;
 - Commercial Sexual Exploitation of Children (CSEC) Survey conducted by Save the Children Fiji;
 - Rural & Agricultural Survey conducted by Live & Learn Environmental Education;
 - Street Children Survey conducted by the Foundation of the Peoples of the South Pacific International.

The researchers are stakeholders in the TACKLE project.

2.2. Objectives of the Review

- 2.2.1. In accordance with the Terms of Reference (attached at Annexure 2), the key objectives of the Legislative Compliance Review were to: -

⁵ ILO’s tri-partite partners are the Government and employers and workers’ organizations

- Review the existing legislation, policies and programmes relevant to child labour in Fiji;
- Assess whether ILO Convention No. 138 and No. 182 have been applied in Fiji law;
- Focus on the harmonization of Fiji's education and labour legislation;
- Identify the gaps and inconsistencies between Fiji's legal framework and ILO Convention No. 138 and No. 182;
- Make recommendations to strengthen the legislative and policy framework in relation to child labour and education;
- Identify areas in which ILO can assist in terms of strengthening the legal framework in Fiji.

2.3. Authors

2.3.1. The authors involved in the Review (“**Review Team**”) were: -

- Lorraine Reiher (LLB/BA): responsible for legislative compliance review and drafting the report;
- Atu Siwatibau (LLB/B.Com): assisted with overall review of the report;
- Artika Prasad(LLB/B.Com): involved with legislative/policy review (including identifying the relevant legislation and sections of such legislation) and legislative compliance review;
- Neomai Maravuakula (LLB): involved with legislative/policy review (including identifying the relevant legislation and sections of such legislation) and legislative compliance review;
- Aminiasi Vulaono (LLB): involved with legislative/policy review (including identifying the relevant legislation and sections of such legislation);
- Sarote Hiagi: librarian and principal researcher of legislation/policy.

2.4. Project Stakeholders

2.4.1. The stakeholders in relation to this Project are: -

2.4.1.1. ILO;

2.4.1.2. The government agencies whose responsibility it is to implement and enforce legislation, policies and programmes to eliminate child labour, including the: -

- Ministry of Labour;
- Ministry of Education;
- Department of Social Welfare;
- Fiji Police Force;
- Department of Tourism.

- 2.4.1.3. Members of the Project Advisory Committee on Child Labour in Fiji and stakeholders in relation to child labour and education issues including the Fiji Trade Unions Congress, Fiji Teachers' Union, the Fiji Employers' Federation, civil society groups including non governmental organizations (“NGO’s.”)

2.5. Methodology

- 2.5.1. The Review Team referred to: -

- 2.5.1.1. the guiding principles in ILO Conventions No. 138 and No. 182 and Recommendation Numbers 146 and 190;
- 2.5.1.2. the Desk Review Findings of the ILO TACKLE team in Geneva dated 23 September 2008 in relation to Fiji's compliance with ILO Conventions 138 and 182, in particular the ILO Committee of Experts' Direct Request (2006) to Fiji on the application of ILO Convention No.s 138 and 182;
- 2.5.1.3. the informal Comparative Analysis of law and practice in Fiji in light of ILO Convention No.s 138 and 182 made by IPEC Geneva, dated 27 July 2005;
- 2.5.1.4. ILO publications relating to child labour. ILO's Publications *“Modern Policy and Legislative Responses to Child Labour,”* 2007 and *“Time Bound Programme Manual for Action Planning,”* 2003 were particularly helpful in providing examples of legislative provisions governing child labour in other jurisdictions and existing policies.

- 2.5.2. The Review Team reviewed the list of the legislation and policies reviewed attached at Annexure 3. The key legislation outlined in this report includes: -

- Adoption of Infants Act (Cap 58);
- The Constitution of the Republic of Fiji Act 1997 (“**Constitution**”);
- Dangerous Drugs Act (Cap 114);
- Education Act, (Cap 262), and subsidiary legislation including Education Regulations and Compulsory Education Orders;
- Employment Relations Promulgation 2007 and Regulations;
- Factories Act (Cap 99);
- Health & Safety at Work Act 1996 and Regulations;
- Illicit Drugs Control Act 2004;
- Juveniles Act (Cap 56);
- Marine Act 1986 and Regulations;
- Marriage Act (Cap. 50);

- Mining Act (Cap. 146);
- Penal Code (Cap. 17);
- Quarries Regulations.

2.5.3. In table form, the Review Team identified the legislative provisions relevant to each Article in ILO Convention No. 138 and No. 182. The Review Team identified whether each Article had been applied in Fiji and the gaps in the application of such Articles in Fiji's legislation. The table included comments and recommendations and formed the basis for questions to the Ministries, Departments and stakeholders.

2.5.4. Interviews were carried out with stakeholders and officials from the Fiji Government's Ministries and Departments including representatives from the: -

- Ministry of Labour;
- Ministry of Education;
- Department of Social Welfare;
- Department of Tourism;
- Fiji Police Force (Juvenile Bureau and the Child Abuse and Sexual Offences Unit);
- Department of Immigration;
- NGO's (Save the Children Fiji and Fiji Women's Crisis Centre);
- Fiji Employer's Federation;
- Fiji Trades Union Congress and Fiji Teachers Union.

2.5.5. The report was drafted with a focus on key recommended changes to the law.

2.6. Abbreviations and Definitions

CEACR:	ILO Committee of Experts
CRC:	United Nations Convention on the Rights of the Child 1989
CSEC:	Commercial Sexual Exploitation of Children
Education	means the Education Act and all subsidiary
Legislation:	legislation including the Education Regulations, Compulsory Education Orders and the Rotuma (Primary School) Regulations
ERP:	Employment Relations Promulgation 2007
ERAB:	Employment Relations Advisory Board
FNPF:	Fiji National Provident Fund
FLRC	Fiji Law Reform Commission
HSWA:	Health and Safety at Work Act 1996
Labour	includes the ERP and all subsidiary legislation
Legislation:	including regulations
NCCC:	National Coordinating Committee on Children
NGO's:	Non Governmental Organisations

- PAC:** means the Project Advisory Committee on Child Labour in Fiji
- TPAF Act:** Training and Productivity Authority of Fiji Act, Cap 93
- TPAF:** Training and Productivity Authority of Fiji
- TPAF Order:** Fiji National Training (1976) (“FNTC”) Order

2.7. Developments in Fiji’s Legal System

- 2.7.1. The Constitution of Fiji was abrogated by the President of Fiji on 10 April 2009. Although this report makes reference to the provisions of the Constitution, such provisions are currently not in force as a result of the abrogation.
- 2.7.2. All laws of Fiji as at the date of abrogation of the Constitution have been preserved and still have the force of law in the country. All new legislation in Fiji is, as at the date of this report, currently being passed as Decrees by the President of the Republic of the Fiji Islands.
- 2.7.3. Prior to the abrogation of the Constitution, the Interim Government of Fiji compiled, after extensive consultation with members of the public and key stakeholders, The People’s Charter for Change, Peace and Progress (“**Charter**”). The Charter was initially intended to complement the Constitution but now, after the abrogation of the Constitution, will most likely be the guiding document for the current Interim Government. The Charter contains guidelines for any Government policies in Fiji by its pillars.

2.8. Process for Amending Legislation

- 2.8.1. Formerly, the Fiji Law Reform Commission (“**FLRC**”) was responsible for reviewing laws, organizing the consultation on proposed changes to laws and initiating the process for amending laws. The FLRC had programmes and timelines for anticipated law reviews so that interested parties were aware that submissions could be made. The Review Team understands the FLRC is not currently operational and its lawyers have been incorporated as part of the Attorney-General’s Chambers and the Solicitor-General’s Office. The Review Team has been advised that currently individual Ministers are responsible for making submissions to Cabinet on proposed amendments to legislation which affects each Ministry.
- 2.8.2. There do not appear to be any set timelines for proposed reviews of legislation, except for the Education Legislation. Proposed amendments to legislation are made to Cabinet on a case by case basis by individual Ministers. In order to amend legislation in line with the recommendations in this report, it is critical that ILO works closely with the relevant government Ministries and Departments which will

be responsible for pushing forward any legislative changes. Further consultation by Ministries and Departments with the Attorney-General's Chambers is recommended to confirm the current process for amending legislation and passing subsidiary legislation like regulations.

2.8.3. The Review Team is unable to provide clear timelines or schedules for introducing amendments to the law, because the amendments are dependant on individual Ministry initiatives.

2.8.4. Any submissions to Cabinet on proposed legislative amendments are confidential and were not made available to the Review Team.

2.9. Conventions Ratified by Fiji

Section 43(2) of the Constitution provides that the courts must have regard to public international law which is applicable to the protection of the rights set out in Chapter 4 of the Constitution.⁶

The ILO Conventions which are most applicable to child labour and which have been ratified by Fiji are: -

- 2.9.1.1. ILO Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- 2.9.1.2. ILO Rights of Association (Agriculture) Convention, 1921 (No. 11)
- 2.9.1.3. ILO Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
- 2.9.1.4. ILO Forced Labour Convention, 1930 (No. 29)
- 2.9.1.5. ILO Underground Work (Women) Convention, 1935 (No. 45)
- 2.9.1.6. ILO Labour Inspection Convention, 1947 (No. 81)
- 2.9.1.7. ILO, Freedom of Association and Protection of the Right to Organize Convention, 1949 (No. 87)
- 2.9.1.8. ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- 2.9.1.9. ILO Equal Remuneration Convention, 1951 (No. 100)
- 2.9.1.10. ILO Abolition of Forced Labour Convention, 1957 (105)
- 2.9.1.11. ILO, Seafarers' Identity Documents Convention, 1957 (No. 108)
- 2.9.1.12. ILO Discrimination (Employment and Occupation) Convention, 1958 (111)
- 2.9.1.13. ILO Minimum Age Convention, 1973 (No. 138)
- 2.9.1.14. ILO, Occupational Safety and Health Convention, 1981 (No. 155)

⁶ Chapter 4 of Fiji's Constitution lays down the Bill of Rights, which includes [Section 33](#) which refers to the right to fair labour practices, including humane treatment and proper working conditions.

- 2.9.1.15. ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
 - 2.9.1.16. ILO Safety and Health in Agriculture Convention, 2001 (No.184).
- 2.9.2. Other relevant international treaties which relate to child labour and which, as at the date of this report, have been ratified or adopted by Fiji include:
- 2.9.2.1. United Nations Convention on the Rights of the Child 1989;
 - 2.9.2.2. Convention on the Civil Aspects of International Child Abduction 1980;
 - 2.9.2.3. International Convention for the Suppression of Trafficking in Women & Children 1921;
 - 2.9.2.4. United Nations Human Rights Conventions including the International Covenant on Economic, Social and Cultural Rights, 1966 (“**ICESCR**”), the International Covenant on Civil and Political Rights 1966 (“**ICCPR**”) and Optional Protocols. These Conventions protect, inter alia, the right to decent work,⁸ family life,⁹ and free, compulsory primary education.¹⁰ The engagement of a child in child labour infringes these basic human rights.

Fiji has signed but not ratified the: -

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000; and the
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000.

When in force, section 43(2) of the Constitution provides that the courts are bound to apply international human rights law in the interpretation of rights. The applicability of international treaties via Fiji’s Constitution is currently problematic because of the abrogation of the Constitution.

⁷ [Section 200](#) of the Family Law Act provides that regulations (which have been passed as the Family Law Regulations 2005 (LN.49)) may make such provision as is necessary to enable the performance of the obligations of the State, or to obtain for the State any advantage or benefit under the Convention on the Civil Aspects of International Child Abduction 1980.

⁸ [Article 6](#) of ICESCR

⁹ [Article 10](#) of the ICESCR provides that “parties must take “special measures” to protect children from economic or social exploitation, including setting a minimum age of employment and barring children from dangerous or harmful occupations.”

¹⁰ [Article 13](#) of ICESCR and [Article 26](#) of the Universal Declaration of Human Rights

3. ILO CONVENTIONS 138 AND 182

3.1. ILO Convention No. 138 and No. 182

- 3.1.1. The Review Team examined ILO Convention No. 138 and No. 182 (“**Conventions**”), their related recommendations and assessed whether they had been applied in Fiji’s legal framework.
- 3.1.2. ILO Convention No. 138 and No. 182 seek to protect children against work which may affect their fullest physical and mental development, and, in particular, their health, safety and morals.
- 3.1.3. ILO Convention No. 138 states that members must specify a minimum age for admission to work, which shall be not less than 15 (or the age of completion of compulsory schooling, which varies in Fiji.)
- 3.1.4. ILO Convention No. 182 addresses the need to secure the prohibition of the worst forms of labour. The worst forms of child labour include crimes such as slavery and bonded labour, child prostitution, pornography, illicit activities including the sale and trafficking of drugs. Another distinct category of the worst forms of child labour is hazardous work. Immediate action needs to be taken to prevent and liberate all children under 18 who are engaged in the worst forms of child labour.

3.2. What is Child Labour?

- 3.2.1. ILO’s Publication on “*Child Labour, a Textbook for University Students*” states: -

“Not all work done by children should be classified as child labour that is to be targeted for elimination. Children’s or adolescents’ participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children’s development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life.

The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: -

- is mentally, physically, socially or morally dangerous and harmful to children; and
- interferes with their schooling:
 - by depriving them of the opportunity to attend school;
 - by obliging them to leave school prematurely; or
 - by requiring them to attempt to combine school attendance with excessively long and heavy work....

Whether or not particular forms of “work” can be called “child labour” depends on the child’s age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country, as well as among sectors within countries.”¹¹

3.3. ILO Convention No. 138

3.3.1. Overview of ILO Convention No. 138

The key requirements of ILO Convention 138, supplemented by Recommendation No. 146, are that Member States should: -

- pursue a national policy to ensure the effective abolition of child labour; and
- progressively raise the minimum age for employment or work to a level consistent with the fullest physical and mental development of young persons.¹²

3.3.2. Policy

Article 1 of ILO Convention No. 138 provides that each Member State undertakes to pursue a national policy designed to ensure the effective abolition of child labour.

Recommendation No. 146 provides that high priority should be given to planning and meeting the needs of children and youth in developing national policies and programmes which cover: -

- a national commitment to full employment;
- economic and social measures to alleviate poverty;
- the development of social security and family welfare measures;
- the development of educational and vocational orientation;
- the development of appropriate facilities for the protection and welfare of children and young persons.¹³

¹¹ ILO Publication “*Child Labour (A textbook for university students)*” 2004, page 16

¹² Article 1, ILO Convention No. 138

¹³ [Paragraph 1](#), Minimum Age Recommendation, 1973 (No.146)

3.3.3. **Minimum Age for Admission to Work**

The core obligation imposed by ILO Convention No. 138 is found in [Article 2](#) which states that each Member State must specify a minimum age for admission to work, which should not be lower than the age for the completion of compulsory education and in not any case, less than 15 years.

Recommendation No. 146 provides that Members should aim to progressively raise the minimum age for admission to employment to 16 years.¹⁴

The Convention provides that a Member State with an insufficiently developed economy may, following consultation with social partners, drop the minimum age for employment to 14 years.

3.3.4. **Hazardous Work**

Hazardous work is defined as “**work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize or harm the health, safety or morals of children.**”¹⁵

[Article 3\(1\)](#) of ILO Convention No. 138 prescribes a minimum age of 18 years for hazardous work. Article 3(2) of ILO Convention No. 138 requires that Member States must determine a list of the types of employment or work which constitute hazardous work.

Article 3(d) of ILO Convention No. 182, which also deals with hazardous work, shall be dealt with concurrently with **Article 3(1)** of ILO Convention No. 138 in this Report. Hazardous work which is likely to harm the health, safety or morals of children is prescribed as a worst form of child labour in ILO Convention No. 182.

Recommendation No. 190¹⁶ states that in determining hazardous work, consideration should be given to: -

- work which exposes children to physical, psychological or sexual abuse;
- work underground, under water, at dangerous heights or in confined spaces;
- work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or

¹⁴ [Paragraph 7](#), Minimum Age Recommendation, 1973 (No.146)

¹⁵ **Article 3(d)**, ILO Convention No. 182

¹⁶ [Paragraph 3](#), Recommendation No. 190

to temperatures, noise levels, or vibrations damaging to their health;

- work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Article 3(3) of ILO Convention No. 138 and Recommendation No. 190 provide that the national authority may exceptionally authorize some activities among the listed hazardous work for young people from the age of 16 years, provided that the young person's health, safety and morals are fully protected and that the young person has received adequate training.

This exception is not applicable to the worst forms of child labour defined under Article 3(a) to (c) of Convention 182, which includes slavery, prostitution, pornography and illicit activities.

3.3.5. **Light Work**

[Article 7](#) of ILO Convention No. 138 provides that light work may be permitted for persons 13 to 15 years of age where the work is:

- (a) not likely to be harmful to their health or development;
- (b) not such as to prejudice their attendance at school or in a vocational, orientation or training programme.

The types of work which constitute "light work" should be determined and the competent authority must prescribe the number of working hours and conditions in which "light work" may be undertaken.

Recommendation No. 146 states that there should be measures in place to safeguard and supervise the conditions of employment for children and young people who have reached the minimum working age or who undertake "light work" including: -

- the provision of fair remuneration;
- the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime;
- the granting of a minimum of 12 consecutive hours' night rest;
- the granting of an annual holiday with pay of at least four weeks;
- coverage by social security schemes;
- the maintenance of satisfactory standards of health and safety.¹⁷

¹⁷ [Paragraph 13](#), Recommendation No. 146

3.3.6. Exclusions

There are several flexibility provisions in ILO Convention No. 138.

Article 4 of ILO Convention No. 138 states that limited categories of work may be excluded, after consultation, where there are special or substantial problems of application. In relation to the application of this Article in Fiji, there have been comments by the ILO Committee of Experts (“CEACR”) in 2009 that finally noted¹⁸ with interest the ERP, which “applies to all undertakings, in any branch of economic activity, where workers are employed”. Therefore, the flexibility clause in Article 4, which requires the specification in the first report from the Government, is no longer applicable to Fiji.¹⁹

Article 5 of ILO Convention No. 138 provides that a Member with an insufficiently developed economy and administrative facilities may, following consultation, limit the scope of application of the Convention. Fiji did not use this optional limitation of the scope.

The following industries cannot be exempted from the scope of application of ILO Convention No. 138: -

- Mining and quarrying;
- Manufacturing;
- Construction;
- Electricity, gas and water;
- Sanitary services;
- Transport, storage and communication;
- Plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

Any Members who limit the scope of application of ILO Convention No. 138 must file reports with ILO outlining the general position of the exempted activities and progress which may have been made towards wider application of the provisions of the Convention.

There are further exclusions for children and young people in educational, vocational, technical and training institutions and to work carried out by persons at least 14 years of age in undertakings which are an integral part of an education or training programme.²⁰

¹⁸ CEACR Direct Request made in 2008 to Fiji on ILO Convention No. 138

¹⁹ The Review Team understands that Fiji did not claim an exclusion under Article 4 in its first report to ILO

²⁰ **Article 6**, ILO Convention No. 138

3.3.7. **Artistic Performances**

[Article 8](#) of ILO Convention No. 138 provides an exclusion from the minimum working age of 15 in relation to artistic performances. Following consultation, a permit may be granted by the competent authority for participation in artistic performances by children and young people. The permit must limit the number of working hours and prescribe the conditions in which employment is allowed.

3.4. **Overview of ILO Convention No. 182**

ILO Convention No. 182: -

- requires Member States to put in place immediate and effective measures for the prohibition and elimination of the worst forms of child labour as a matter of urgency;²¹
- applies to “children” under the age of 18;²²
- includes as the worst forms of child labour: -
 - slavery ;
 - forced labour;
 - sale and trafficking of children;
 - forced recruitment of children for use in armed conflict;
 - use of children in prostitution, pornography and illicit activities;
 - hazardous work;²³
- requires monitoring mechanisms;²⁴
- requires the implementation of programmes to eliminate the worst forms of child labour;²⁵
- requires effective implementation and enforcement including the provision and application of penal or other sanctions;
- requires effective and time-bound measures to prevent, remove, rehabilitate and social integrate children removed from the worst forms of child labour and access to free basic education;
- requires that children at special risk and the special situation of girls is taken into account;²⁶
- requires international co-operation with other Member States.²⁷

²¹ [Article 1](#), ILO Convention 182

²² [Article 2](#), ILO Convention 182

²³ [Article 3](#), ILO Convention 182

²⁴ [Article 5](#), ILO Convention 182

²⁵ [Article 6](#), ILO Convention 182

²⁶ [Article 7](#), ILO Convention 182

²⁷ [Article 8](#), ILO Convention 182

Recommendation No. 190 encourages Member States to: -

- design and implement programmes of action, in consultation with relevant government institutions and employers' and workers' organizations, which: -
 - identify and denounce the worst forms of child labour;
 - prevent the engagement of children and provide for rehabilitation and social integration;
 - give special attention to younger children, girls, children in hidden work situations and other children with special vulnerabilities or needs;
 - work with communities with children at special risk;
 - raise awareness and mobilize society;²⁸
- compile detailed information and statistical data on child labour, to serve as a basis for determining priorities for a national action plan;²⁹
- establish appropriate mechanisms to monitor and implement the programmes;³⁰
- ensure that the competent authorities who are implementing the national policies and programmes co-operate with each other and co-ordinate their activities;³¹
- co-operate with international efforts to eliminate the worst forms of child labour.³²

3.5. Implementation and Enforcement

Both ILO Conventions No. 138³³ and No. 182³⁴ provide that implementation and enforcement of the provisions of the Conventions are required not only in law but also in practice.

The Conventions require Member States to apply the provisions of the Conventions in legislation and policy.

ILO Convention No. 182 explicitly requires active enforcement of the provisions of the Convention. Member States are required to take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour and provide assistance for the removal of children from the worst forms of child labour.

²⁸ [Paragraph 2](#), Recommendation No. 190

²⁹ [Paragraph 5](#), Recommendation No. 190

³⁰ [Paragraph 8](#), Recommendation No. 190

³¹ [Paragraph 9](#), Recommendation No. 190

³² [Paragraph 11](#), Recommendation No. 190

³³ [Article 9\(1\)](#), ILO Convention No. 138

³⁴ [Article 7\(1\)](#), ILO Convention No. 182

4. REVIEW OF THE LEGISLATIVE AND POLICY FRAMEWORK

4.1. Policy

4.1.1. Overview

Fiji does not fully comply with Article 1 of ILO Convention No. 138 as Fiji has no formal written policy framework relating to child labour.

Fiji has other policies which are consistent with the elimination of child labour, including an education policy to ensure “that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to a complete free and compulsory education of good quality.”³⁵ Cabinet has recently “...approved continued government support for the achievements of the Education for All Goals by 2015.”³⁶

The Ministry of Education’s policies listed at Annexure 3, Schedule B were reviewed. Although the Ministry of Education has comprehensive policies that may be compatible with a national child labour policy, the Ministry of Education’s Director for Policy confirmed that the Ministry of Education does not have a written policy on child labour as such.³⁷ It is clear that Fiji does not have a national policy on child labour and it is a key recommendation of this report that a national child labour policy needs to be formulated.

It is important that the national policy framework on child labour is compatible with and integrates the policies of individual Ministries and Departments.

4.1.2. Approach to Policy Formulation

In terms of formulating and making recommendations on a national policy on child labour, it is recommended that the Government:-

- takes a co-ordinated approach, ideally via a committee on child labour which includes all key stakeholders, including social partners;
- addresses related socio-economic factors in Fiji, including unemployment, poverty, children’s access to education and social welfare measures;
- formulates a deliberate and cohesive plan of action to guide decisions and achieve rational outcomes;

³⁵ “Education for All” Mid Decade Assessment Report 2008 from the Ministry of Education, page 40

³⁶ Fiji Government Online Portal, 25 February 2009: http://www.fiji.gov.fj/publish/page_14304.shtml

³⁷ Correspondence with Mr Benaiamino Salacakau of the Ministry of Education dated 10 September 2009

- makes a political decision to secure a commensurate level of budgetary resources;³⁸
- assesses the existing systems of labour, health, school inspection and law enforcement mechanisms at the outset;³⁹
- formulates clear, written policies relating to the elimination of child labour in Fiji;
- trains government officials to increase awareness of child labour issues in a Fiji context;
- gives clear indications of the responsibilities of Ministries and Departments in implementing and enforcing the provisions of relevant legislation and Conventions.

4.1.3. **Committee for Formulating Policy**

Consideration should be given to the composition of the committee to make recommendations for a policy on child labour.

Fiji has existing committees on child labour including the PAC and a child labour subcommittee of the NCCC.

The NCCC was endorsed by Cabinet and established following the ratification of the UN Convention on the Rights of the Child 1989 (“**CRC**”) by Fiji in 1993. NCCC was mandated by Cabinet to oversee the implementation of the CRC in Fiji.

In some countries, it is recommended that a committee on child labour should be appointed or approved by Cabinet.⁴⁰ However, given the size of Fiji, with a population of less than one million people, there is a likelihood that the same people will be serving on several child protection and child labour committees. It is therefore important that the key stakeholders consider the most efficient and practical means to co-ordinate the formulation and implementation of a national policy on child labour.

Consideration should be given to: -

- whether a new committee on child labour policy should be formulated;
- the current role of the NCCC and whether its mandate could be widened to include the implementation of ILO Convention No. 138 and No. 182;

³⁸ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, page 40

³⁹ Ibid

⁴⁰ Clive Pegas’ *“Review of Child Labour Laws of Barbados”*, June 2005 states: “It is therefore highly recommended that all Committees on Child Labour should be appointed or approved by the Cabinet, in recognition of the national significance of their remit and ensuring that all Ministries are seized of the relevance and importance of the policy implications to their Ministries”, page 23

- the co-ordination of existing programmes to address child protection issues, national child protection work plans and frameworks;
- the co-ordination of future plans to address child protection and child labour issues, including reviews and amendments of the Penal Code and Juveniles Act.

There is some overlap in the provisions of the CRC and ILO Convention No. 138 and 182. The CRC includes provisions which: -

- prohibit hazardous work for children under the age of 18;
- requires the law to criminalize the worst forms of child labour including trafficking, forced or compulsory labour and forced prostitution;
- requires that the minimum age for employment to be not less than 15 and at least equal to the age of completion of compulsory education.

There is overlap between the Conventions and the responsibilities of government officials in implementing the provisions of the CRC and ILO Conventions. The Police and Department of Social Welfare have key roles in implementing the provisions of the CRC and attempting to combat CSEC.

Consideration should be given to giving the child labour subcommittee of the NCCC a mandate to make recommendations and formulate a national policy on child labour. Wide consultation with other stakeholders from relevant Ministries and Departments who are not members of the child labour subcommittee is essential.

Consultation on Fiji's national child labour policy is recommended with the:-

- Ministry of Labour;
- Ministry of Education;
- Department of Social Welfare;
- Fiji Police Force;
- Ministry of Health;
- Attorney General's Chambers;
- Director of Public Prosecutions;
- Department of Immigration;
- Customs Authority;
- Ministry of Foreign Affairs;
- Department of Tourism;
- Bureau of Statistics;
- Representatives of Employers' and Workers' organizations;

- Representatives of industries which engage child labourers including mining, quarrying, marine, fishing, agriculture and tourism;
- NGO's and other social partners;
- Community based organizations;
- Faith based organizations.

4.1.4. **Technical Assistance**

Technical assistance from ILO is recommended to: -

- advise on the key elements that should be included in Fiji's child labour policy, with reference to ILO Convention No. 138 and No. 182 and the related Recommendations;
- provide recommendations on the steps that should be taken in order to formulate a national policy;
- consult with relevant stakeholders and assist with policy identification and formulation;
- assist with policy drafting, which is understandable and applicable in a Fiji context;
- help improve the institutional capabilities of Ministries and Departments;
- provide advice on the implementation of policies;
- promote and coordinate the use of technology (which could include a centralized child labour database.)

4.2. **Legislative Framework**

4.2.1. **Employment**

The Employment Relations Promulgation 2007 came into full effect in April 2008. The ERP brought Fiji's labour laws more in line with ILO Convention No. 138 and No. 182. Implementation and enforcement of the ERP is required in order to fully comply with ILO Convention No. 138 and No. 182.

4.2.1.1. **Minimum age for employment in ERP**

ILO Convention No. 138 provides that each Member State must specify a minimum age for admission to work, which should not be lower than the age for the completion of compulsory education and in any case, not less than 15 years. Recommendation No. 146 advocates the progressive raising of the minimum age for admission to employment to 16 years or at least fixing a minimum age for work in certain industries including manufacturing, construction, electricity and gas.⁴¹

⁴¹ Paragraph 7(1) and Paragraph 8, Minimum Age Recommendation, 1973 (No.146)

Fiji has complied with **Article 2(1)** of ILO Convention No. 138 by setting a minimum working age of 15 years in the ERP.⁴²

4.2.1.2. **Minimum Age Specified: 15 Years**

Section 92 of the ERP sets the minimum age for admission to work at 15 years in Fiji.

The minimum age for completion of compulsory education in Fiji varies from age 12 to 15 years. The Education Legislation needs to be amended to set the minimum age for completion of compulsory education at 15 years. The harmonization of the minimum age for completion of compulsory education and the minimum working age of 15 years would be compliant with ILO Convention No. 138.⁴³

4.2.1.3. **Minimum age for employment in industry specific legislation**

The minimum age for admission to work specified in some of Fiji's industry specific legislation is inconsistent with ILO Convention No. 138 and No. 182. For hazardous work, which includes mining and quarrying, the minimum working age should be increased in industry specific legislation to the age of 18.

The Mining Act (Cap 146)

Section 95(1): of the ERP provides that "A child must not be employed underground in a mine."

Section 97 of the Mining Act conflicts with the provisions of the ERP and Article 3(1) of ILO Convention No. 138, as it states that the minimum age for males working in or about a mine is 14 years and working underground in a mine is 16 years. Work in mines by females is prohibited.⁴⁴

The Quarries Regulations

Regulation 20(1) of the Quarries Regulations provides that the minimum working age for males working in or about a quarry is 14 years and at the working face of a quarry is 16 years. Work in quarries by females is prohibited.⁴⁵

⁴² Fiji did not elect, pursuant to Article 2(4) of Convention 138 to specify a minimum age of 14 years.

⁴³ **Article 2(3)** of ILO Convention No. 138

⁴⁴ **Section 97(1)** of Mining Act (Cap. 146)

⁴⁵ **Regulation 20(1)** of the Quarries Regulations

Gap

The Mining Act is inconsistent with the ERP which states that a child under the age of 18 should not be employed in a mine. Work in a quarry is considered hazardous work and the minimum working age in the Quarries Regulations should be 18 years.

Recommendation

Mining and quarrying is regarded as hazardous work and should be considered in the tripartite consultation in relation to hazardous work.

The Mining Act and Quarries Regulations should be amended to increase the minimum age for mining and quarrying to the age of 18.

The Marine Act 1986

The Marine Act states that the minimum working age on vessels is 16 years. A person between the age of 16 and 18 years may be employed on a vessel if the requirements of the regulations are complied with.⁴⁶

The Marine Regulations⁴⁷ conflict with the Marine Act and state that the minimum working age on a vessel is 10 years.

The tripartite consultation in relation to hazardous work should consider whether work or particular activities on a vessel are hazardous work.

Recommendation

If work on a vessel is considered hazardous work, the Marine Act and regulations should be amended to increase the minimum age for work on a vessel to the age of 18. In any event, Schedule 1, Part 2 to the Marine (Masters and Seamen) Regulations, 1990⁴⁸ should be reviewed and consideration given to references to the repealed Employment Act and to the provision which prescribes a minimum age of 10 years for working on a vessel.

4.2.1.4. Hazardous Work

ILO Convention No. 138⁴⁹ and ILO Convention No. 182⁵⁰ prohibit work which is likely to jeopardize the health, safety or morals (“**hazardous**

⁴⁶ [Section 110\(1\)](#) of the Marine Act

⁴⁷ [Schedule 1, Part 2](#) of the Marine (Masters and Seamen) Regulations, 1990 – Legal Notice 821

⁴⁸ Legal Notice 821

⁴⁹ [Article 3\(2\)](#) of ILO Convention No. 138

⁵⁰ [Articles 3\(d\)](#) and [Article 4](#) of ILO Convention No. 182

work”) of children under the age of 18. ILO Convention No. 182 provides that hazardous work is a worst form of child labour.

ILO Convention No. 138 and No. 182 have only been partly applied in Fiji. The ERP and the Health and Safety at Work Act 1996 (“**HSWA**”) contain provisions which prohibit hazardous work for children. Determination of the types of work and occupations which constitute hazardous work is required.

One of the objects of the ERP is to prohibit hazardous work.⁵¹

Section 4 of the ERP defines a “child” as a person under the age of 18 years, which is consistent with Article 2 of ILO Convention No. 182.

Section 95(2) of the ERP provides that: -

“...the Minister may, after consulting the National Occupational Health and Safety Advisory Board established under the Health and Safety at Work Act 1996 and by order in the *Gazette* declare any employment of workplace to be a prohibited or restricted employment or workplace for the purposes of this Part on the ground that it is injurious to health or is hazardous, dangerous or unsuitable, including attendance on machinery, working with hazardous substances, driving motor vehicles, heavy physical labour, the care of children or work within security services.

Section 95(5) further provides: -

”An employer who: -

(a) employs a child underground in a mine or in an employment or workplace declared under subsection (2); or

(b) contravenes subsection (3),

commits an offence.

Regulation 40(1) of the Employment Relations (Administration) Regulations 2008⁵² provides that: -

“A child must not be employed or permitted to be employed in any of the following situations:

(a) in situations of direct hostilities;

(b) any work for which the child has little capacity;

⁵¹ **Section 90** of the ERP

⁵² Legal Notice 52

- (c) any work which is hazardous to the child’s health, mental, spiritual or social development;
 - (d) in an environment which subjects the child to physical harm, psychological torture, any form of neglect, torture, any form of cruel, inhuman or degrading treatment, or which does not foster the health, self-respect and dignity of the child.
- (2) An employer who does not comply with sub regulation (1) commits an offence.”

The HSWA has comprehensive provisions which govern hazardous work and regulations which define types of hazardous work⁵³ and hazardous substances. The penalties under the HSWA are significant. A company can be fined up to F\$100,000 and an individual can be fined up to F\$10,000.⁵⁴

The HSWA does not define a “child” but it is likely that the definition of “worker” would include children.⁵⁵

Gap

A list of hazardous work has not been determined in Fiji. Section 95(2) of the ERP does not compel the Minister to determine a list of hazardous work and does not state that there must be tripartite consultation with employers and workers’ organizations.⁵⁶

Given that the ERP has recently come into effect, rather than amend the legislation to compel determination of a list of hazardous work via a tri-partite process, it is recommended that the process of determining the list is commenced immediately.

Recommendations

It is recommended that the Minister of Labour consult with the National Occupational Health and Safety Advisory Board established under the HSWA (“**Health and Safety Board**”) and employers and workers’ representatives in order to determine a list of hazardous work. Following tripartite consultation, a list of hazardous activities and occupations should be determined and gazetted.

It is essential that there is wide tripartite consultation, with the relevant Ministries and Departments (including the Ministry of Health)

⁵³ [Regulation 30](#) of the Health and Safety at Work (General Work Place Conditions) Regulations 2003 defines hazardous work.

⁵⁴ [Section 66](#) of the HSWA

⁵⁵ [Section 5](#) of the HSWA defines a “worker” as a person who is employed under a contract of service or who works under a contract for service.

⁵⁶ As required by Article 3(2) of ILO Convention No. 138

and the employers and workers organisations. Consultation with children and young people may also be considered.

The tripartite consultation should consider whether Fiji should take advantage of an exception⁵⁷ to authorize certain kinds of hazardous work for 16 -17 year olds under strict conditions.

It is recommended that ILO provide advisory and technical support to the Ministry of Labour and stakeholders in relation to the determination of hazardous work. Advice on relevant international standards⁵⁸ and indications of the types of work which constitute hazardous work (for example, mining and quarrying) would be helpful. The Review Team understands that “the process to determine the list of hazardous work for children in Fiji will soon begin through the PAC in consultation with stakeholders.”⁵⁹

It is recommended that: -

- “Rather than designating entire sectors or occupations as hazardous, it is preferable to identify the specific tasks within each sector that are likely to pose a risk to young people;
- It is very important to involve occupational health and safety specialists or others with a relevant medical training.”⁶⁰

Recommended Amendments to the Labour Legislation

ILO’s “*Time Bound Programme Manual for Action Planning, 2003*” recommends that the Minister for Labour should be empowered to make regulations or legislation which: -

- provide that the list of hazardous work should be periodically examined and revised following consultation;⁶¹
- establishes procedures for the verification of the age of the persons under 18 prior to their being engaged in employment. Fiji has a birth registration system with minimal charges. It should be considered whether the Labour Legislation should be amended to require employers to hold copies of birth certificates of children as proof of the age of children employed;
- provides for the emergency removal of children from situations of hazardous labour to a place of safety;
- provide guidelines on what should be included in the registers of children who are employed;

⁵⁷ **Article 3(3)** of ILO Convention 138

⁵⁸ As required by **Article 4** of ILO Convention 182

⁵⁹ ILO Suva, TACKLE Update, Vol. 1, March 2009

⁶⁰ ILO’s “*Time Bound Programme Manual for Action Planning, 2003*”, page 33

⁶¹ As required by Article 4(3) of ILO Convention No. 182

- authorize labour inspectors and police officers to enter and search any premises where there are reasonable grounds to believe that a child is involved in prohibited hazardous labour.⁶²

ILO's *Time Bound Programme Manual for Action Planning, 2003* also recommends that "the following measures should be considered to strengthen enforcement of the regulation:

- institute and consolidate a coherent system of registration and inspection of business establishments, self employment and labour;
- provide for the designation of special child labour inspectors, or at least the granting of a mandate of general labour inspectors to intervene on hazardous work carried out by children;
- elaborate the powers and functions of child labour inspectors."⁶³

It is suggested that these recommended amendments to the Labour Legislation are considered, including an amendment to [Section 99](#) of the ERP to require that the register should include the name, address, and date of birth of every person appearing to be under 18 employed, the type of work performed and the hours of work performed.

Community Work

It is recommended that the tripartite consultation on hazardous work consider whether court ordered community work⁶⁴ may constitute work that is likely to harm the health, safety or morals of children.

The Community Work Act provides, inter alia, that: -

[Section 3](#): Community work may be ordered by a court as an alternative to imprisonment.

[Section 4](#): The court must be satisfied that: -

- the person consents to community work;
- the person is a suitable person to perform community work;
- suitable work is available for that person to perform for the purpose of the sentence; and
- there exist satisfactory arrangements for the supervision of that person's performance of the work.

⁶² ILO's *Time Bound Programme Manual for Action Planning, 2003*, page 34

⁶³ ILO's *Time Bound Programme Manual for Action Planning, 2003*, page 34

⁶⁴ Pursuant to section 3 of the Community Work Act

Section 9: Following sentencing, the Supervising Officer shall arrange for the offender to perform suitable authorized work for the number of hours specified by the Court;

Section 15: outlines the types of work that an offender may be required to perform which may include work in a hospital, for any Provincial, Tikina or Village Council or on any State land.

Recommendation

If certain types of community work are considered hazardous work, consideration may be given to: -

- including such types of community work in the list of hazardous work which should not be carried out by children;
- amending the Community Work Act. Amendments might include:
 -
 - a prohibition of hazardous community work being ordered for children;
 - children being defined as persons under the age of 18.⁶⁵

The Community Work Act provides that community work may be imposed by a court, as an alternative to imprisonment, and with the consent of the person who has been convicted of an offence. It is preferable that community work is not imposed by an administrative authority, otherwise the work could fall within the scope of “forced labour”, which is prohibited as a worst form of child labour.

Working Conditions and Night Work

Recommendation No. 190 provides guidelines on the types of work that constitute hazardous work, including “...work for long hours or during the night...”⁶⁶

The Labour Legislation has various provisions which protect children’s working conditions and relate to night work including: -

Section 97(1): A child must not be employed or permitted to be employed for more than 8 hours in a day and must be given at least 30 minutes paid rest for every continuous 4 hours worked;

Regulation 41: no child may work beyond 10pm at night and each child employed at night must be given a 30 minute paid dinner break within 2 hours of starting work;⁶⁷

⁶⁵ A “child” is not defined in section 2 of the Community Work Act

⁶⁶ **Paragraph 3** of Recommendation No. 190

⁶⁷ Regulation 41 of the Employment Relations (Administration) Regulations 2008, Legal Notice 52

Section 98: the Minister may, after consultation with the Employment Relations Advisory Board (“ERAB”), by order in the Gazette, prescribe conditions for the employment of children between 6pm of any day and 6am on the following day in a workplace;

Section 264(1): the Minister may, on the advice of the ERAB, make regulations to give effect to the provisions of the ERP including regulations which prescribe the hours of work for children, the records, registers and documents kept by employers in respect of children, prohibit, restrict, control and regulate the employment of children in workplaces and specified occupations.

Recommendation

It is recommended that further regulations are passed relating to children’s working conditions and hours of work, taking into account Recommendation No. 146.

Paragraph 13 of Recommendation No. 146 states that special attention should be given to: -

- the provision of fair remuneration for children bearing in mind the principle of equal pay for equal work;
- the strict limitation of working hours in a week and a prohibition of overtime;
- the granting of a minimum of 12 hours’ night rest;
- the granting of an annual holiday with at least four weeks paid leave and, in any case, not shorter than that granted to adults;
- coverage by social security schemes. In a Fiji context, this would include the Fiji National Provident Fund (“FNPf”);
- the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

The conditions outlined in Paragraph 13 of Recommendation No. 146 are most relevant to young people who have reached the minimum working age of 15 and are working full time. Full details of the recommended amendments to the Labour Legislation are outlined at Annexure1, Schedule A.

It is also recommended that the Fiji National Provident Fund Regulations are amended to lower the age of a person who is eligible to make voluntary contributions to the fund from 16 to 15 years.

4.2.1.5. Light Work

Article 7 of ILO Convention No. 138, which provides that light work may be permitted for 13-15 year olds, has only been partly applied in

Fiji. The types of work that constitute “light work” need to be determined.

Section 93(2) of the ERP provides that: -

“Subsection (1) does not apply to a child of 13 to 15 years of age engaged in employment or light work or in a workplace in which members of the same family or of communal or religious group are employed provided that –

- (a) the employment is not likely to be harmful to the health or development of the child; and
- (b) the employment is not such as to prejudice the child’s attendance in school, participation in vocational orientation or training programmes approved by a competent authority or capacity of the child to benefit from the instruction received.”

Gap

A list of the types of employment or work which constitute “light work” for 13 to 15 year olds has not been determined in Fiji.

Recommendation

It is recommended that the Ministry of Labour consult with relevant stakeholders and prepare a list of the types of work that constitute “light work” for 13 to 15 year olds. The list of “light work” should be incorporated in the Labour Legislation. Technical assistance from ILO is recommended, to provide guidance on what is considered “light work” in other developing countries and the process for determining a list of “light work.”

ILO Convention No. 138 provides that the hours of work and working conditions for children and young people who undertake “light work” should be determined.⁶⁸

4.2.1.6. Exclusions

There are several flexibility provisions in ILO Convention No. 138, which Fiji has not taken advantage of.

Fiji has not elected to drop the minimum age for entry into employment from 15 to 14 years.

⁶⁸ Article 7(3) of ILO Convention No. 138 and Paragraph 2 of Recommendation No. 146

In carrying out consultation and determining lists of “hazardous work” and “light work”, it should be considered whether Fiji should take advantage of exclusions relating to: -

- certain types of listed hazardous work that are acceptable for 16-17 year olds under strict conditions.⁶⁹ Certain categories of work, including manufacturing, construction and transport cannot be exempted;⁷⁰
- children and young people in educational, vocational, technical and training institutions and to work carried out by persons at least 14 years of age in undertakings which are an integral part of an education or training programme.⁷¹

The Training and Productivity Authority of Fiji (“**TPAF**”) is the competent authority for vocational training and apprenticeship. The Training and Productivity Authority of Fiji Act, (Cap. 93) (“**TPAF Act**”) is consistent with ILO Convention No. 138. The minimum age for an apprentice is 15 years.⁷² The Fiji National Training (1976) Order (“**TPAF Order**”) provides that a condition shall be implied into every agreement of apprenticeship in a designated trade or occupation that an apprentice under the age of 18 shall not be permitted to work more than 20 hours overtime in a month without prior Council approval.⁷³

Recommendation

Consultation with TPAF is recommended to ascertain whether amendments or further legislative provisions are required in relation to:-

- the system of vocational and technical education;
- the monitoring and minimum standards of such institutions;
- the conditions of work for children and young people as part of their vocational and technical education;
- implementation of the TPAF Act and whether in practice there is any monitoring of the age and employment of apprentices including any monitoring of overtime by apprentices under the age of 18;
- the types of employment and activities covered by the TPAF Act, and whether this includes hazardous work.

⁶⁹ Article 3(3) of ILO Convention 138

⁷⁰ Article 5 of ILO Convention 138

⁷¹ Article 6, ILO Convention No. 138

⁷² [Order 3\(1\)\(a\)](#) of the TPAF Order

⁷³ [Order 4\(1\)\(xi\)](#) of the TPAF Order

4.2.1.7. **Artistic Performances**

Article 8 of ILO Convention No. 138 provides an exclusion from the minimum working age of 15 for artistic performances. Article 8 of ILO Convention No. 138 has not been used in Fiji.

Gap

There are no legislative provisions in relation to artistic performances in the Fiji's Labour Legislation.

Recommendation

Article 8 of ILO Convention No. 138 requires a system of individual permits (for each child who performs. This provision may be used for a very young child or even a baby who appears on television or an advertisement for instance.

It is recommended that a provision is included in the ERP relating to cultural and artistic performances by children. Following investigation and tripartite consultation, consideration should be given to adopting a provision which: -

- allows an individual permit to be granted by the competent authority for participation in artistic performances by children and young people. The provision should state that the permit must limit the number of hours that can be worked and prescribe the conditions in which employment is allowed; or
- provides for an equivalent system.

Further tripartite consultation and assistance from ILO is recommended, particularly on the practical implications of granting individual permits, including cases in remote areas, where children are part of groups who regularly perform cultural items at tourist resorts. Article 8 of Convention 138 requires an individual permit for each child who performs.

4.2.2. **Education**

Article 2(3) of ILO Convention No. 138 provides that the minimum working age shall be not less than the age of completion of compulsory schooling and, in any case, not less than 15 years.

ILO Convention No. 182 emphasizes the importance of education in eliminating child labour and provides that Member States must put in place time bound measures to ensure access to free basic education,

and wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour.⁷⁴

Fiji's Education Legislation is not consistent with Article 2(3) of ILO Convention No. 138 and Article 7 of ILO Convention No. 182.

The Education and Labour Legislation need be harmonized by increasing the age of completion of compulsory schooling to the minimum working age of 15, throughout Fiji.

The ILO Committee of Experts, in its Direct Request (2006) concerning Fiji under Convention 182, as noted among the Desk Review Findings of the ILO TACKLE team in Geneva dated 23 September 2008 ("**ILO Committee of Experts' Direct Request (2006) on C182**") noted: "The Committee expressed concern at the large number of children who do not attend school and may be engaged in the worst forms of child labour. The Committee also expressed its view that education contributes to eliminating the worst forms of child labour and it encouraged the Government to continue its efforts to ensure access to free primary education to all children in Fiji."⁷⁵

The Ministry for Education's policies advocate "universal primary education"⁷⁶ and "Education For All"⁷⁷ but important issues need to be addressed, including how to fund, monitor and enforce compulsory education.

4.2.2.1. **Minimum Age for Compulsory Education**

Fiji's Education Legislation provides that: -

- the Minister for Education has the power to make orders to specify any area in which all children of a certain age shall be required to attend school;⁷⁸
- it is compulsory for children to commence school at Class 1 level (when they turn 6);⁷⁹
- the minimum age for completion of education is Class 8 or Form 2 level throughout Fiji. Further orders and regulations have been passed which vary the minimum age for completion of compulsory education in different districts;⁸⁰

⁷⁴ Article 7 of ILO Convention No. 182

⁷⁵ ILO Committee of Experts' Direct Request (2006) on C182, page 3

⁷⁶ *Sustainable Economic and Empowerment Development Strategy (SEEDS) Report 2008-2010*, Ministry of Education, page 24

⁷⁷ *Education for All" Mid Decade Assessment Report 2008* from the Ministry of Education, page 30

⁷⁸ **Section 28** of the Education Act (Cap. 262)

⁷⁹ **Regulation 3(1)** of the Compulsory Education Regulations, 1997

⁸⁰ Regulation 3(2) of the Compulsory Education Regulations, 1997

- initially, a Compulsory Education Order prescribed a minimum compulsory school age of 15 for two districts (Rakiraki and Cakaudrove);⁸¹
- a further Compulsory Education Order prescribed a minimum compulsory school age of 15 for two additional districts (Eastern Division and Macuata/Bua Districts);⁸²
- In Rotuma⁸³ the age of compulsory education is 14.⁸⁴

Gap

The minimum age for completion of compulsory education varies through out Fiji from 12 to 15 years and is not consistent with the minimum working age prescribed in ILO Convention No. 138 or the ERP.

Recommendation

It is recommended that the Education Legislation is reviewed and amended in order to make 15 years the consistent age for completion of compulsory education throughout Fiji, including Rotuma.

4.2.2.2. Barriers to Education

Barriers to free basic education in Fiji include: -

- the cost of education. School fees are generally payable in addition to school related expenses.⁸⁵ The Education Act provides that students may be refused admission or re-admission to school for non payment of fees and proceedings may be instituted for the recovery of school fees in Government schools;⁸⁶
- related family pressures;
- social and cultural factors including lack of parental commitment to a child's education;
- academic failure;
- lack of facilities/resources for children with special needs;
- school admission and readmission policies (currently, a child may be struck off the role if s/he is absent for more than 4 weeks);⁸⁷
- peer pressure;
- violence in schools (including corporal punishment);
- access problems to schools in remote areas;⁸⁸

⁸¹ [Order 4\(2\)](#) Compulsory Education Order 1997

⁸² [Order 1](#) Compulsory Education Order 1998

⁸³ Rotuma, a Fijian Dependency, is an island outside the four divisions of Fijian.

⁸⁴ [Regulation 4\(1\)](#) of the Rotuma (Primary School) Regulations

⁸⁵ Save the Children's Report: *Keeping Children in School 1998* noted: "The Ministry provides teacher salaries and a per capita grant for each student but many school management boards maintain their schools cannot function without other student fees," Page 8

⁸⁶ [Section 25](#) of the Education Act

⁸⁷ Interview with Mrs Viniana Kunabuli, Ministry of Education on 11 March 2009

- language barriers;⁸⁹
- a lack of legislative provisions relating to parents' roles in enforcing compulsory education;⁹⁰
- risk factors such as HIV/AIDS, drugs and prostitution.⁹¹

4.2.2.3. **Overall Approach to Review of Education Legislative and Policy**

It is essential that any review and amendment of the Education Legislation and policy takes an all-encompassing approach and considers: -

- the underlying causes which prevent access to free basic education and result in drop outs and absenteeism;
- a variety of options and addresses the obstacles to education, including the possibility of a non formal approach to education;⁹²
- gaps in the current policies and programmes, including clear written policies which address obstacles to education and possible solutions;
- funding and resource issues;
- identification and prioritisation of programmes including a time line for implementation, which is best determined by the Ministry of Education.

4.2.2.4. **Technical Assistance**

The Ministry of Education would benefit from technical assistance to assess and advise on: -

- strategic planning of the policy and legislative review for the Ministry including a plan of action, steps that should be taken and a time line for implementation;
- and assist with policy advice and policy formulation;
- the key elements that should be included in the Ministry of Education's policies, with reference to ILO Convention No. 138 and No. 182, the related Recommendations and the CRC;
- institutional capability and resource issues within the Ministry of Education.

Particular sections in the Education Legislation which should be reviewed are outlined at Annexure 1, Schedule B to this Report.

⁸⁸ Save the Children's Report , *"Keeping Children in School" 1998*, Pages 20-29

⁸⁹ *Education for All Mid Decade Assessment Report 2008* from the Ministry of Education noted at page 31: "English is the official language taught in schools but is the second language to most students";

⁹⁰ *Education for All Mid Decade Assessment Report 2008* from the Ministry of Education, page 30

⁹¹ *Education for All Mid Decade Assessment Report 2008* from the Ministry of Education, page 32

⁹² For example, ILO's Publication *"Modern Policy and Legislative Responses to Child Labour"* states "In Bangladesh, the non-formal education programme (NFE) provides education in designated non-formal education centres run by Government and NGO's," page 85.

The Annual Corporate Plan 2009 for the Ministry of Education states that the Education Act is to be reviewed by December 2009. Recent reports indicate that the deadline for submissions is 31 October 2009. The Ministry of Education has invited stakeholders to provide their views on issues including: -

- compulsory education;
- fees and levies;
- management of schools;
- absenteeism;
- rights of parents and students;
- rights of school management;
- disciplinary procedures;
- examinations and assessments;
- curriculum;
- religious education;
- communities and health and safety.⁹³

It is recommended that ILO make written submissions to the Ministry of Education in relation to proposed amendments to the Education Legislation. It is recommended that policy content and formulation are considered before amendments to the Education Legislation are made. Consultation with stakeholders on proposed legislative and policy amendments is also recommended.

4.2.3. **Harmonisation of definition of “child” in legislation**

Article 2 of ILO Convention No. 182 and the CRC⁹⁴ define a child as a person under the age of 18.

The ERP, Family Law Act and Immigration Act consistently define a “child” as a person under the age of 18.

Some of Fiji’s legislation, including the HSWA, does not define a “child” but would be applicable to children.

The following legislation is inconsistent with the definition of a child in ILO Convention No. 182 and the CRC: -

Section 4 of the Factories Act: a “child” is a person under the age of 15 years and a “young person” is a person under the age of 18.

Section 2 of the Juveniles Act: a “child” means a person under the age of 14. A “Juvenile” means a person who has not attained the age of 17

⁹³ Fiji Government online: http://www.fiji.gov.fj/publish/page_15800.shtml

⁹⁴ **Article 1** of the CRC

years and includes a child and a young person. A young person is defined as a child between the age of 14 and 17 years.

A “child” is not defined in the Penal Code but various provisions⁹⁵ have age thresholds.

Section 3(2) of the Adoption of Infants Act defines an “infant” as a person under the age of 21.

Section 12 of the Marriage Act provides that the age of consent to marriage is 18 years in the case of a male and 16 years in the case of a female.

Gap

The legislation relevant to child labour does not consistently define a child as a person under the age of 18. The legislation should be amended so there is a consistent definition of a child.

Recommendation

It is recommended that the definition of a “child” in **Section 2** of the Interpretation Act is amended to mean a person under the age of 18 years.

The effect of an amendment to Section 2 of the Interpretation Act is that in every written law and public documents enacted, a child will be universally defined as a person under the age of 18.

For uniformity, consideration may also be given to amending legislation which does not define a child as a person under the age of 18.

The provisions of the Factories Act have been superseded by the HSWA. Regulations should be passed under the HSWA in order to repeal the Factories Act.

The definitions of “young person” and “juvenile” under the Juveniles Act were amended from 17 to 18 years by the Prisons and Corrections Act No. 2 of 2006. The Prisons and Corrections Act No. 2 of 2006 is yet to come into force and a commencement date should be gazetted.

It is recommended that in line with the Fiji Law Reform Commission’s *Report on Sexual Offences Against Children*, May 2000 (“**FLRC’s Report on Sexual Offences Against Children**”) certain sections of the Penal Code with age thresholds below 18 are repealed. The

⁹⁵ Including sections 155, 156, 157, 158, 159, 160 and 171 of the Penal Code

provisions should be replaced by new offences of indecent dealings and other sexual offences against children under the age of 18 years. Some sections⁹⁶ in the Penal Code should be amended to reduce the age threshold from 21 to 18 years.

A full list of recommended amendments to the Penal Code is annexed to this Report at Annexure 1, Schedule C.

Consideration should be given to whether the definition of an “infant” (or “child” if amended) in the Adoption of Infants Act should be amended from the age of 21 to 18 years.

Section 12 of the Marriage Act should be amended to bring the age of consent for a female from 16 to 18 years.

4.2.4. **Worst Forms of Child Labour**

4.2.4.1. **Slavery**

There are legislative provisions in Fiji’s Constitution, ERP, Penal Code and Juveniles Act which relate to slavery or pursuant to which slavery offences may be prosecuted.

Section 24(1) of the Constitution: “A person must not be held in slavery or servitude.”

Section 91(a) of the ERP follows the wording of Article 3(a) of ILO Convention No. 182 and prohibits “all forms of labour, slavery or practices similar to slavery...”

Section 249 of the Penal Code: “Any person who kidnaps any person is guilty of a felony;”

Section 251 of the Penal Code: “Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony;”

Section 252 of the Penal Code: any person who kidnaps or abducts a person in order that such person may be subjected or in danger of being subjected to grievous harm or slavery or to the unnatural lust of any person or knowing it is likely that such person will be so subjected or disposed of is guilty of a felony.

Section 256 of the Penal Code: a person who wrongfully confines a person is guilty of a misdemeanor.

Section 57 of the Juveniles Act: a person who has custody, charge or

⁹⁶ For example, section 157 relating to procurement

care of a juvenile and willfully assaults, ill-treats, neglects, abandons or exposes such juvenile... or causes the juvenile to become in need of care, protection or control is guilty of an offence.

4.2.4.2. **Sale and Trafficking of Children**

The legislation relevant to the sale and trafficking of children in Fiji includes the Penal Code, Family Law Act, Immigration Act, Adoption of Infants Act and the Marriage Act. Fiji has also ratified the Convention for the Suppression of Trafficking in Women & Children 1921.

Penal Code

Section 153: any person who takes or causes an unmarried girl under the age of eighteen, out of the possession and against the will of her father or mother or other person having the lawful care or charge of her, with the intent that the girl shall be unlawfully and carnally known by any man is guilty of a misdemeanor. It shall be a sufficient defence that the person charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of eighteen years;

Section 157(1): any person who procures or attempts to procure any woman or girl to leave Fiji, with the intent that she may become an inmate of or frequent a brothel elsewhere⁹⁷ or procures or attempts to procure any woman or girl to leave her usual place of abode in Fiji (such place not being a brothel) with the intent that she may become a prostitute either in Fiji or elsewhere is guilty of a misdemeanor;⁹⁸

Section 162: any parent or person who has custody, charge or care of a minor under the age of sixteen, who sells, hires or disposes of such minor with intent (or knowing it is likely) that the minor shall be employed or used for prostitution or illicit sexual intercourse or any immoral purpose is guilty of a misdemeanor;

Section 163(1): any person who buys hires or obtains possession of a minor under the age of sixteen with intent (or knowing it is likely) that such minor will be employed or used for prostitution or illicit sexual intercourse or for any immoral purpose is guilty of a misdemeanor;

Section 163(2): Any common prostitute or other person of known immoral character who buys hires or otherwise obtains possession of a minor under the age of sixteen years shall, until the contrary is proved, be deemed to have obtained possession of such minor with the intent mentioned in this section;

⁹⁷ Section 157(1)(c) of the Penal Code

⁹⁸ Section 157(1)(d) of the Penal Code

Section 252: Any person who kidnaps or abducts a person in order that s/he may be subjected to grievous harm, or slavery or to the unnatural lust of any person...is guilty of a felony;

Section 253: any person who, knowing a person has kidnapped or abducted, wrongfully conceals or confines such person is guilty of a felony;

Section 254: any person who by force or fraud takes, decoys or entices away or detains a child under the age of fourteen years with intent to deprive the parent, guardian or caregiver of such child and any person who receives or harbours any such child is guilty of a felony;

Section 255: any person who unlawfully takes or causes an unmarried girl under the age of sixteen years out of the possession and against the will of her father or mother or person in lawful care or charge of her is guilty of a misdemeanor.⁹⁹

Gaps in the Penal Code

The age thresholds in the provisions relating to the sale and trafficking of children in the Penal Code vary.

Recommendation

- The age thresholds in the Penal Code should consistently be set at 18 years which would be consistent with the definition of a child in ILO Convention No. 182 and the CRC;
- It is recommended that the Penal Code is amended in line with the FLRC's Report on Sexual Offences Against Children. A summary of the recommended amendments to the Penal Code are outlined at Annexure 1, Schedule C.

Adoption of Infants Act

Section 3(2): an "infant" is defined as a person under the age of twenty-one;

Section 6(2): an adoption order shall not be made in any case where the sole applicant is a male and the infant is a female unless there are special circumstances which justify the making of an adoption order as an exceptional measure;

⁹⁹ s.255 Penal Code: Any person who unlawfully takes or causes to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, is guilty of a misdemeanour.

Section 6(4): an adoption order shall not be made in favour of any applicant who is not resident in Fiji or in respect of any infant who is not so resident;

Section 8: It is the duty of the Department of Social Welfare to act as the guardian ad litem and to investigate as fully as possible all the circumstances of the infant and the applicant, and all other matters relevant to the proposed adoption, with a view to safeguarding the interests of the infant before the court.

Gaps in Adoption of Infants Act

- Despite a legislative provision which prohibits adoptions by non residents, the cases indicate that inter country adoptions have been common place in Fiji;¹⁰⁰
- A “resident” is not defined in the Adoption of Infants Act. The Department of Social Welfare’s draft *Standard Operating Procedures* (“**Procedures**”) indicate that applications for adoptions will not be received from non residents, including Fiji citizens who reside overseas;¹⁰¹
- The Adoption of Infants Act needs to be updated, taking into account the provisions of the Conventions, CRC, current practices and Procedures.¹⁰²

Recommendations in relation to the Adoption of Infants Act

It is recommended that the Adoption of Infants Act is reviewed and it is considered whether: -

- the term “infant” should be replaced with the term “child”;
- the term “and the infant is female” should be deleted from section 6(2);
- whether gender neutral language should be used in section 6(2);
- the age of an infant in section 3(2) should be amended from 21 to 18 years;
- “Resident” should be defined;
- Section 6(4) should be amended to allow inter-country adoption if the child cannot be placed in an adoptive or foster family or cannot be cared for in a suitable manner in Fiji. Section 6(4) should also provide that proper safeguards must be put in place to

¹⁰⁰ *In re S (an Infant)* [1997] FJHC 182, Hbk0059j.1997s (24 November 1997)

Lakhan v Lata [1994] FJHC 26; HBC0585j.93s (22 March 1994)

Social Welfare Officer v Marshall [2008] FJHC 283, HBA11.2006 (7 March 2008)

¹⁰¹ Department of Social Welfare’s Procedures state “Applications will not be received from persons who are not resident in Fiji. [This is applied also to persons who may still have Fijian citizenship, but actually reside in any overseas country.]

¹⁰² The Department of Social Welfare’s Procedures provide that “Inter country adoption may be considered as an alternative means of a child’s adoption, only after all efforts have been exhausted to find an appropriate adoptive family in Fiji.”

protect the child in cases of inter-country adoptions.¹⁰³ The amended legislative provision could require the Department of Social Welfare to liaise with the country that the child will be resident in and make it a requirement for there to be post adoption monitoring;¹⁰⁴

- Section 6 should prohibit any financial gain for any adoptions with penalties;¹⁰⁵
- Informal adoptions are or should be considered or monitored by the Department of Social Welfare. Consideration should be given to whether the concept of “kinship care” by family should be defined and provisions relating to “kinship care” included in the Adoption of Infants Act or the Juveniles Act.¹⁰⁶

Marriage Act

Section 12: the age of consent to marriage by a female is sixteen years and a male is eighteen years.¹⁰⁷

Recommendation

It is recommended that the age of consent to marriage by a female is increased to 18 years.

Immigration Act 2003

The Immigration Act has comprehensive provisions relating to the trafficking of children, which include: -

Section 17: the definition of a child as “a person under the age of 18 years” which is consistent with ILO Convention No. 182;

Section 18: Part 5 relating to trafficking covers offences that took place in Fiji or outside Fiji if the trafficking originates in Fiji or if the trafficker is a Fiji citizen;

Section 20: “A person who engages in trafficking a child regardless of whether the child’s entry into the Fiji Islands or any other state was arranged by unlawful means commits an offence”;

¹⁰³ In line with Article 21(c) of the CRC: “Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.”

¹⁰⁴ The Review Team understands that this is the general practice of the Department of Social Welfare but recommends the practice is formalized. Interview with Ms Ilisapeci Rokotunidau, Mrs Ana Delana and Ms Arieta Tagivetaua at the Department of Social Welfare on 13 March 2009

¹⁰⁵ In line with Article 21(d) of the CRC: “Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.”

¹⁰⁶ Interview with Ms Ilisapeci Rokotunidau, Mrs Ana Delana and Ms Arieta Tagivetaua at the Department of Social Welfare on 13 March 2009. Mrs Rokotunidau noted that “kinship care” should be defined and legalized because it is common place in Fiji and another form of adoption.

¹⁰⁷ ILO’s “*Time Bound Programme Manual for Action Planning, 2003*”, recommends that “Consideration should be given to raising the minimum age at which a person can contract a marriage to 18 years.”

Section 21: an employer commits an offence if he/she prevents an employee from leaving Fiji, ascertaining or seeking his/her entitlement under Fiji law or disclosing the circumstances of his/her employment. Such action by the employer may include withholding the employee's passport, preventing the use of a phone and preventing a labour officer from entering the premises.

Section 27, 28, 29 and **30:** relate to offences to aid, abet, incite, conspire or attempt to commit an offence under Part 5;

Section 31 which states that “a trafficked person is immune from prosecution;”

Schedule 2 (Section 65): the penalty for trafficking children is a fine of F\$750,000 or 20 years in prison.

Recommendations in relation to the Immigration Department

It is recommended that: -

- the officers in the Department of Immigration receive training on child labour and in particular, child trafficking, which should include reference to: -
 - Part 5 of the Immigration Act relating to trafficking;
 - ILO Convention No. 182;
 - CRC;
 - Convention on the Civil Aspects of International Child Abduction 1980 ;
 - International Convention for the Suppression of Trafficking in Women and Children 1921;
 - Practical ways of identifying and handling suspected trafficking cases.
- the Department of Immigration consider the recommendation in ILO's *“Time Bound Programme Manual for Action Planning, 2003”* which states “It is imperative for States to create a conceptual framework setting out the key elements of trafficking, namely, recruitment, transportation, transfer, harbouring or receiving a child for the purposes of exploitation;”¹⁰⁸
- there is increased co-operation and co-ordination of information with other Ministries and Departments including the Customs Authority, Police and the Department of Tourism. It is critical that new systems are put in place to disseminate alerts, particularly from police and offshore agencies including INTERPOL;

¹⁰⁸ ILO's *“Time Bound Programme Manual for Action Planning, 2003”*, Page 18

- consideration is given to a new provision in the Immigration Act which gives special powers for assets to be traced overseas.¹⁰⁹

4.2.4.3. **Forced/Compulsory Labour**

Section 91(a) of the ERP prohibits “any form of forced and compulsory labour.”

Section 24(1) of the Constitution provides that “A person must not be held in slavery or servitude and must not be required to perform forced labour;”

Section 257 of the Penal Code states it is an offence for a person to compel another to labour.

4.2.4.4. **Forced Recruitment**

Section 7 of the Republic of the Fiji Military Forces Act (Cap. 81) (“**RFMF Act**”) provides that the minimum age for recruitment for enlistment into the army is 18 years, but the Commander has a discretion to recruit a person under the age of 18 who has applied for recruitment.

Recruitment is by application and is not forced or compulsory.

Section 18 of the RFMF Act states that the Minister may establish cadet units (which shall not form part of the Forces) composed of students between the age of 12 and 18 years. Further review and consultation is recommended to determine the types of activities the cadets carry out and whether any of the activities might be considered harmful to the children’s health, safety or morals.

Regulation 40(1) of the Employment Relations (Administration) Regulations 2008 also provides that a child must not be employed or permitted to be employed in situations of direct hostilities.

Section 7 of the RFMF Act should be reviewed and it should be considered whether the Commander’s discretion to recruit young people under the age of 18 should be repealed.

¹⁰⁹ ILO’s “Time Bound Programme Manual for Action Planning, 2003”, Page 19

4.2.4.5. **Prostitution**

Employment Relations Promulgation

Section 91(c) of the ERP follows the wording of Article 3(b) of ILO Convention No. 182 and states that “the use, procuring or offering of a child for **prostitution ...**” as a form of child labour is prohibited.

Penal Code

Section 155: any person who unlawfully and carnally knows any girl under the age of thirteen years is guilty of a felony;

Section 156(1)(a): any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of a girl between the age of 13 and 16 is guilty of a misdemeanour, provided that it is a sufficient defence if the person charged had reasonable cause to believe and did in fact believe that the girl was above the age of 16;

Section 157(1)(a) and 157(1)(b): any person who procures or attempts to procure any girl or woman under the age of 21 years (not being a common prostitute or of known immoral character) to have an “unlawful connection” with any other person or to become a prostitute is guilty of a misdemeanour;

Section 158: any person who procures a woman or girl (not being a common prostitute or a woman or girl of known immoral character) to have unlawful carnal knowledge by threats, intimidation or false pretences or false representations, or by giving a drug or substance in order to stupefy or overpower the woman or girl is liable for a misdemeanour;

Section 159: any person who owns, occupies, acts or assists in managing or controlling premises and induces or knowingly suffers any girl under the age of thirteen to be on the premises for the purpose of being unlawfully and carnally known by any man is guilty of a felony. It is a defence that the person being charged had reasonable cause to believe and in fact did believe that the girl was over the age of sixteen;

Section 160: any person, who owns, occupies, acts or assists in managing or controlling premises and induces or knowingly suffers any girl between the age of thirteen and sixteen to be on the premises for the purpose of being unlawfully and carnally known by any man is guilty of a misdemeanour. It is a defence that the person being charged had reasonable cause to believe and in fact did believe that the girl was over the age of sixteen;

Section 161: any person who detains any woman or girl against her will in premises with intent that she may be unlawfully and carnally known by any man or a brothel is guilty of a misdemeanour;

Section 164: gives Magistrates the power, on an application from any parent, relative guardian or any person acting bona fide in the interests of any woman or girl, where there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes, to issue a warrant to enter premises and remove such woman or girl;

Section 165: if in a trial of an offence under sections 149 to 164, the court finds that the seduction, prostitution or unlawful detention of any female under 21 years of age has been caused, encouraged or favoured by a parent or guardian, the magistrate may the court may divest such parent, guardian, master or mistress of all authority over her and appoint a guardian until she has attained the age of 21 years;

Section 166: every male person who lives off the earnings of prostitution or persistently solicits in any public place for immoral purposes is guilty of a misdemeanour;

Section 167: every woman who lives off the earnings of prostitution or exercises control, direction or influence over the movements of a prostitute as to show that she is aiding, abetting or compelling her prostitution is guilty of a misdemeanour;

Section 168: any common prostitute who loiters or solicits for immoral purposes in any public place shall be guilty of an offence;

Section 169: if there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution or that any person residing in or frequenting the house is living on the earnings of prostitution, or is controlling or influencing a prostitute, a magistrate may issue a warrant authorizing the police to enter and search the house and arrest such person;

Section 170: any person who keeps, manages, acts or assists in the management of a brothel or a tenant, lessee or occupier of premises, lessor, landlord or his/her agent who knowingly permits such premises to be used as a brothel is guilty of an offence. The penalty is significant, a fine not exceeding \$100,000 and/or five years imprisonment;

Section 171: any person who conspires to induce a woman or girl by false pretences or fraudulent means to permit a man to have unlawful carnal knowledge of her is guilty of a felony.

Gaps in the Penal Code

The ILO Committee of Experts' Direct Request (2006) on C182 stated "in its previous comments, the Committee noted that, while the Penal Code has extensive provisions prohibiting the procurement and use of young girls and women for prostitution, the Convention prohibits the use, procuring, or offering of both boys and girls under 18 years of age for prostitution."¹¹⁰

The Review Team reiterates the ILO Committee of Experts' comments that the Penal Code does not adequately protect young males who are procured or used in prostitution. The draft Crimes Bill should incorporate gender neutral language.

Recommendations in Relation to the Penal Code

The Review Team recommends that the Penal Code is amended in line with the FLRC's Report on Sexual Offences Against Children. Details of sections which should be considered in the review are attached at Annexure 1, Schedule C.

It is also suggested that the recommendations contained in ILO's *"Time Bound Programme Manual for Action Planning, 2003"* are taken into account including: -

- "States should create a set of specific offences to comprehensively cover sexual exploitation of children and not leave them to be dealt with by existing general offences;¹¹¹
- It should be an offence to: -
 - buy the sexual services of a child under 18;
 - recruit, induce or compel a child under 18 into commercial sexual exploitation;
 - participate, facilitate, advertise or allow the commercial sexual exploitation of a child under 18; and
 - receive money or other reward, favour or compensation for the sexual exploitation of a child;¹¹²
- It should be an offence for an adult to have sexual intercourse with a child below a certain age (at least the age of puberty or possibly 16.)¹¹³ Further consultation should be carried out to determine whether provisions with age thresholds should be retained or whether a new provision should be introduced making it an offence for an adult to have sexual intercourse with a child below a certain age. The consultation should determine the appropriate age threshold to be designated in the provision.

¹¹⁰ ILO Committee of Experts' Direct Request (2006) on ILO Convention No. 182, page 1

¹¹¹ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, Page 20

¹¹² ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, Page 21

¹¹³ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, Page 22

Criminal Compensation

- ILO's *"Time Bound Programme Manual for Action Planning, 2003"* recommends that Member States: -
 - Empower criminal courts, following conviction, to order an offender to pay the child full compensation for any personal injury, damage or loss resulting from the offence;
 - Empower both civil and criminal courts to direct welfare or other appropriate agencies to make arrangements for the protection, rehabilitation and welfare of the victims of worst forms of child labour...;
 - Consider establishing a government-funded compensation scheme for victims in addition to any rehabilitation programmes they are offered;
 - Limitation periods should not begin to run against victims until they have attained their majority or until they have fully recovered from post-traumatic stress whichever happens last."¹¹⁴

Consideration should be given to incorporating these recommendations in the Crimes Bill.

Recommended amendments to the Penal Code, which relate to sexual offences against children should include: -

- the use of gender neutral language to protect boys;
- the definition of "rape" should be widened;
- a "child" should be defined as a person under 18 years;
- a revision of the sections with varying age thresholds;
- consideration of whether certain sections, including sections 157 and 158 should be repealed;
- the introduction of a new provision of "indecent dealings against children under the age of 18 years";
- the introduction of new offences relating to offenders who: -
 - buy the sexual services of a child under 18;
 - recruit, induce or compel a child under 18 into commercial sexual exploitation;
 - participate, facilitate, advertise or allow the commercial sexual exploitation of a child under 18; and
 - receive money or other reward, favour or compensation for the sexual exploitation of a child;
- an examination of the provisions requiring corroboration of victim's testimony in sexual offences;¹¹⁵

¹¹⁴ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, Page 26

¹¹⁵ *State v A.V.* (HAC192 of 2008) held that corroboration of unsworn evidence of children is unconstitutional and is no longer required.

- a review of the Penal Code to frame offences “...in a way that does not rely on the willingness of the victim to testify.”¹¹⁶
- a revision and updating of terminology. The term “carnal knowledge” should be replaced by the term “sexual intercourse”¹¹⁷ and the term “defilement” should be replaced by “indecent dealings”;¹¹⁸
- references to corporal punishment should be removed;
- a new provision which targets the “user” or customer not the exploited child should be considered;
- penalties should be reviewed, particularly where perpetrators are in a position of trust over a child or buy or sell children for the purposes of illegal sexual acts;¹¹⁹
- consideration of whether sections 175(a) and 175(c) relating to “carnal knowledge of a male person against the order of nature” should be repealed;¹²⁰
- the defence that a person “had reasonable cause to believe and did in fact believe that the girl was above the age of 16” in sections 156, 159 and 160 is removed;
- a new offence “...for any person in a position of authority or trust in relation to a child (such as relatives, guardians, custodians, teachers, doctors) who knows or suspects that any offence has been, is being, or is about to be committed to fail to report it to an officer of a law enforcement authority;”¹²¹
- consideration of whether a new provision allowing criminal compensation to a victim should be included.

Sex Tourism

Stakeholders, including the Department of Tourism, acknowledge the existence of sex tourism in Fiji¹²² but admit that the scale is unconfirmed and there are currently no policies or programmes to address the issue.

Recommendations

In order to combat child sex tourism in Fiji, it is recommended that: -

- Assistance should be given to draft a training manual on child labour. The manual should be integrated with the Tourism Policy

¹¹⁶ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, page 16

¹¹⁷ FLRC’s Report on Sexual Offences Against Children, page 10

¹¹⁸ FLRC’s Report on Sexual Offences Against Children, page 11

¹¹⁹ FLRC’s Report on Sexual Offences Against Children, page 26

¹²⁰ In the case of *McCoskar v The State* [2005] FJHC 500 the High Court held that “section 175(a) and (c) is inconsistent with the Constitution and invalid to the extent that it criminalizes acts constituting private consensual sexual conduct against the course of nature between adults.” If section 175 is repealed, male child victims would be protected by the new provision of indecent dealings.

¹²¹ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, page 16

¹²² Interview with Acting Director in the Department of Tourism, Mr Manoa Malani on 17 March 2009

Training Course, which is currently provided by the Department of Tourism. The manual should make reference to the applicable legislative provisions, the CRC, ILO Conventions and child-sensitive approaches for dealing with children who are involved in sex tourism. The manual may be used for training inspectors and officers in the Ministry of Labour in relation to their powers under the ERP to combat the worst forms of child labour.

- there is further consultation with and co-operation between border control authorities, including the Ministry of Defence, Immigration Department, Fiji Police Force, Customs Authority and Quarantine Department. The border control authorities have a significant role to play in combating the worst forms of child labour and should be involved in consultations relating to a national child labour policy and the possible formation of a child labour unit and a centralized child labour database;
- Assistance is provided, if requested and in consultation with stakeholders, to review and utilise the hotel licensing process to penalise hotel owners or managers who allow the commercial sexual exploitation of children to take place on their premises.
- The Hotel and Guests Act (Cap. 195) provides that: -
 - a hotel licence is required for a premises to be used as a hotel;¹²³
 - the Hotel Licensing Board has an absolute discretion to grant a hotel licence¹²⁴ and such licence may be subject to conditions which are imposed by the Board;¹²⁵
 - “No licence shall be granted or renewed unless the Board is satisfied that the hotel will not be used for illegal or immoral purposes;¹²⁶
 - If a hotel is being used for illegal or immoral purposes, the hotel licence may be cancelled;¹²⁷
- Under the provisions of the Hotel and Guests Act, the Hotel Licensing Board could either cancel or refuse a renewal application for a hotel licence where sex tourism offences against children are being perpetrated in a hotel. Co-operation would be required, between the tourism police, the Department of Tourism and the Solicitor-General’s Office which currently oversees the issue of hotel licences;
- It is recommended that the Hotel Licensing Board’s criteria is updated with the police checklist to include child labour content.

¹²³ [Section 4\(1\)](#) of the Hotel and Guests Houses Act

¹²⁴ Section 4(3) Hotels and Guests Houses Act

¹²⁵ Section 4(4) of the Hotel and Guests Houses Act

¹²⁶ [Section 5](#) of the Hotel and Guests Houses Act

¹²⁷ [Section 6\(1\)](#) of the Hotel and Guests Houses Act

4.2.4.6. Pornography

Section 91(c) of the ERP states that the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances is a prohibited form of child labour.

Section 62A of the Juveniles Act:

“(1) any person whether in public or in private, who:

- a) records from, reproduces, places onto, views or accesses on or from, media or records of pornographic activity directly or indirectly involving juveniles, or person who look like juvenile whether they are or not;
- b) makes, participates in, observes, publishes, solicits, advertises, distributes, traffics in, lets on hire, buys, sells, offers to sell, media or records of pornographic activity directly or indirectly involving juveniles, or persons who look like juvenile whether they are or not commits a felony and is liable on conviction.”

Section 62A has significant penalties of a fine of up to F\$25,000 and/or a term of imprisonment not exceeding 14 years for a first offence and a fine of up to F\$50,000 and/or life imprisonment for a second or subsequent offence.

In the leading case of *State v Mutch [1999] FJHC 149*, the accused was convicted on two counts of rape and on four counts of indecent assault against children between the ages of nine and thirteen. The accused escaped conviction on pornography charges because there was no legislative provision relating to pornography offences.

The FLRC’s Annual Report for the Years 1997, 1998, 1999, 2000 and 2001 noted that: -

“In 1997, the ensuing discussions in the local media and in Parliament following the Mutch (Paedophile) case highlighted two concerns:

- (i) the fact that there was no law in existence in Fiji that provided an offence for the taking and electronic distribution of pornographic photographs or films of young persons; and
- (ii) that there was a need for a complete overhaul of the existing laws relating to the protection of children and to offences against children.

To address point (i) as mentioned earlier, a remedial measure was put in place resulting in the Juveniles (Amendment) Act No. 29 of 1997. This amendment makes it an offence to take out and or distribute child pornographic materials through any mediums such as the internet and email.”¹²⁸

Section 62A of the Juveniles Act was inserted by the Juveniles (Amendment) Act No. 29 of 1997.

The FLRC *Report for Children: A Review of Laws Affecting Children, (Report on the Review of the Juveniles Act and the Juvenile Justice System)*, May 2000 (“**FLRC’s Juvenile Report**”) stated that: “It has been recommended in the report on Sexual Offences Against Children that s.62A of the Juveniles Act be repealed and included in the new provision of Indecent Dealings in the Penal Code. The Commission endorses this recommendation.”¹²⁹

Recommendation

In line with the FLRC’s Juvenile Report, the Review Team recommends that section 62A of the Juveniles Act is repealed and a pornography provision is included in the Penal Code (or Crimes Bill.) It is recommended that section 62A is widened to include accessing and viewing of pornography websites and “...the use of the Internet or other media in all its forms and to cover advertisers and possessors.”¹³⁰ Consideration may also be given to new legislative provisions which control viewing of child pornography on websites in internet cafes.

Consideration should be given to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which has been signed but not ratified by Fiji. Article 2 defines “child pornography” as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”

4.2.4.7. Illicit and Drug-related Offences

Section 58 of the Juveniles Act: any person having the custody or care of a child who causes, procures or allows him to beg is liable to conviction.

¹²⁸ FLRC’s Annual Report for the Years 1997, 1998, 1999, 2000 and 2001, pages 11 and 12

¹²⁹ FLRC’s Juvenile Report, page 34

¹³⁰ ILO’s “*Time Bound Programme Manual for Action Planning, 2003*”, Page 21

Section 91(b) of the ERP prohibits the “use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in relevant international treaties.”

Section 8 of the Dangerous Drugs Act:

“Every person:

(a) growing opium poppy, Indian hemp or coca leaf, whether for private use or otherwise; or

(b) found in possession of or sells or otherwise traffics or engages in the trafficking of any substance to which this part applies

shall be guilty of an offence and upon conviction shall be sentenced to imprisonment in accordance with this Act.

Provided that a sentence imposed under this section shall be custodial.”

The majority of cases, for possession and selling marijuana are prosecuted under section 8 of the Dangerous Drugs Act.

A “person” or a “child” is not defined in the Dangerous Drugs Act and there is no minimum age for criminal responsibility in that Act. It is likely that section 29 of the Juveniles Act would protect a child under the age of twelve from prosecution for drug-related offences.¹³¹ However, there is exposure for children above the age of 12 who are procured or used by parents or caregivers to sell and traffick drugs.

Section 5 of the Illicit Drugs Control Act also provides that it is an offence for a person to supply, possess and produce illicit drugs. The penalties are severe, a fine of up to F\$1,000,000 and/or life imprisonment. A “person” is not defined in the Illicit Drugs Control Act and it is likely that a child would be included within the definition of “person.”

The Ministry of Education’s Draft Task Force Proposed Project Submissions to ILO (“**Submissions**”) noted:

“The concern of the Ministry of Education in regards to children at risk is becoming more imminent in the area of drug use and abuse at schools.”¹³²

¹³¹ **Section 29** of the Juveniles Act

¹³² The Ministry of Education’s Draft Task Force Proposed Project Submission to ILO, page 8

The statistics contained in the Submissions noted that from 1998-2003 a total of 118 marijuana offences were reported in primary schools in Fiji. The Submissions noted that the highest number of cases (34 cases) were from the Nadroga/Navosa Education District: -

“The above figures show that the Nadroga/Navosa Education District is the most affected area in terms of drug use in primary schools.... Due to the high cultivation of marijuana in this area, students in the above schools are at high risk of coming in to contact and using the drug.”¹³³

Gaps in Drug Related Legislation

- The provisions and penalties contained in the Dangerous Drugs Act and the Illicit Drugs Control Act, including mandatory custodial sentences, would apply to children;
- There are no legislative provisions relating to the procurement or use of children in drug related offences.

Recommendations in relation to Drug-Related Legislation

The Review Team endorses the recommendations of the FLRC’s Juvenile Report which state that:

- “The Commission strongly supports the view that the sale and supply of drugs to children under 18 years of age and using children to traffic in drugs should be included in the section on offences against children in the Juveniles Act. The penalty for persons found guilty of this offence are those prescribed in the Third Schedule of the Dangerous Drugs (Amendment) Decree 1990”¹³⁴;
- The Commission recommends the incorporation of a new offence which prohibits the selling and dealing in drugs with persons under the age of 18 years in the Juveniles Act.¹³⁵

The Review Team recommends it is considered whether: -

- the Dangerous Drugs Act and the Illicit Drugs Control Act should be amended to state that the provisions of both Acts do not apply to children under the age of 18;
- in line with the FLRC’s Juvenile Report, new offences prohibiting the selling and dealing in drugs with persons under the age of 18 and using or procuring children to manufacture, produce, sell, deal in and traffick drugs and harmful or prohibited substances should be incorporated in the Juveniles Act.

¹³³ Ibid

¹³⁴ FLRC’s Juvenile Report, page 33

¹³⁵ FLRC’s Juvenile Report, page 34

4.2.5. **Practical Difficulties**

From the interviews carried out with officials from Ministries and Departments, there was a common consensus that the following issues need to be addressed in order to effectively tackle child labour in Fiji: -

- a lack of financial and human resources;
- further co-ordination and co-operation between Ministries and Departments;
- collaboration with social partners, including NGO's;
- Legislation needs to be updated;
- Community programmes are required to increase awareness of child labour issues which includes the responsibilities of parents and the value of education;
- training in a Fiji context, on child labour and CSEC issues is required. Such training should include: -
 - reference to the ILO Convention framework;
 - the relevant legislative provisions;
 - an indication of which Ministry, Department or Unit is responsible for implementing such provisions;
 - reference to other relevant Conventions and Protocols including the CRC and Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography 2000.

4.2.5.1. **Ministry of Labour**

The Review Team was advised that the Ministry of Labour: -

- is still in the process of implementing the ERP;
- had intended to establish a child labour unit by March 2009, which would be responsible for monitoring, carrying out inspections and prosecuting for breaches of Part 10 of the ERP. Due to financial and human resource shortages, the child unit labour had not been established as at the date of this report.¹³⁶

4.2.5.2. **Ministry of Education**

The Ministry of Education has policies in place which are consistent with the promotion of free education for all by 2015, as a key measure to combat child labour. These policies include: -

- Enterprise Education;
- Technical Vocational Education and Training;
- Drug and Substance Abuse in Schools.

¹³⁶ Interview with Director Labour Compliance, Mr. S. Ramagimagi, Ministry of Labour on 18 March 2009

In implementing its policies and programmes, there are pressing issues which must be addressed including: -

- the funding of free basic education;
- the allocation of resources to monitor and enforce compulsory education;
- gaps in written policies on important issues including: -
 - the adoption of a child protection policy by the Ministry of Education. The policy should include guidelines for training teachers on child protection issues so they are able to identify child protection and child labour cases;
 - a review of the Ministry of Education's Behavioural Management Policy to be consistent with the Ministry of Education's prohibition of corporal punishment in schools and to promote positive discipline of children;
 - enforcement of compulsory education;
 - school fees.

4.2.5.3. **Department of Social Welfare**

The Department of Social Welfare's role includes: -

- facilitating the payment of family and care and protection allowances;
- making recommendations in the best interests of children in adoption and family court proceedings;
- the care and protection of children and juveniles;
- providing counseling services to children and young people as part of family court and care and protection proceedings.

ILO Committee of Experts' Direct Request (2006) on C182 noted:

“In its previous comments, the Committee noted that the use of children in prostitution, mainly in sex tourism, appears to be a serious problem in the country. The Committee also noted that the Committee on the Rights of the Child, in its Concluding Observations (CRC/C/15/Add.89, 24 June 1998, paragraphs 17 and 25), expressed concern at the insufficient awareness of and lack of information on child abuse, including sexual abuse, and the insufficient legal protection measures and appropriate resources. It also expressed concern at the insufficient rehabilitation measures for ill-treated, sexually abused and economically exploited children as well as their limited access to the justice system. The Committee notes that the report of the National Workshop on the Implementation of Concluding Observations of the Committee on the Rights of the Child recommends that the Government ensure the provision of counselling to all child victims of abuse for their recovery and rehabilitation, including the availability of immediate counselling for victims by employing child

psychologists to work with the police and the Department of Public Prosecution. The Committee requests the Government to provide information on the time-bound measures taken to assist in the removal of children from the worst forms of child labour such as homeless children working in the area of sex tourism, and what initiatives are taken to ensure their rehabilitation and integration in response to the recommendation made at the national workshop.”¹³⁷

Indications from the Department of Social Welfare (“**Department**”) regarding the practical difficulties they face include: -

- Concerns relating to the minimum qualifications, training and monitoring of social workers. Currently, the minimum qualification for social workers is Form 7 level. It is recommended that a tertiary qualification is required as the minimum qualification for social workers;
- A lack of ongoing training for social workers, including training on child protection and child labour issues and on the applicable legislative provisions which govern the Department;
- The Department’s ability to provide unbiased counseling services by qualified professionals. The Department indicated that at times there are conflicts of interest in counseling families and protecting children’s interests and that it is working towards outsourcing counseling services. If counseling services are outsourced, there need to be minimum standards and qualifications for professional counselors and monitoring of the standards of counseling;
- A lack of direction and national base line for the Department.¹³⁸

Recommendations in relation to the Department of Social Welfare

The Department of Social Welfare would benefit from technical assistance: -

- to develop and draft further policies, if necessary;
- to carry out projects to review the Juveniles Act, Adoption of Infants Act and the Crimes Bill. This may include assistance to: -
 - draft submissions to Cabinet in relation to recommended amendments to legislation;
 - co-ordinate consultation with stakeholders and public submissions in relation to the Crimes Bill and Juveniles Act if necessary. The Review Team notes that consultation was carried out over ten years ago when the Fiji Law Reform Commission reviewed the laws relating to sexual offences

¹³⁷ ILO Committee of Experts’ Direct Request (2006) on C182, page 4

¹³⁸ Interview with Ms. Ilisapeci Rokotunidau, Mrs. Ana Delana and Ms. Arieta Tagivetaua at the Department of Social Welfare on 13 March 2009

- against children. Fresh consultation on draft legislation is recommended;
- fund a legislative drafter to draft new provisions or amend the Juveniles Act, Adoption of Infants Act and Crimes Bill;
- to make recommendations on the structure and resources of the Department, the services provided by the Department, and a national baseline for the Department;
- and advice on the resources required to implement policies and programmes to proactively remove children from the streets, place them in safe homes and rehabilitate children;
- to review the adequacy of the family assistance and care and protection allowances provided for in the Social Justice Act 2001. It is recommended that “...statutory child welfare schemes provide physical, psychological and social recovery for victims of the worst forms of child labour.”¹³⁹ The family allowance ranges from F\$60-\$100 per month and the common consensus is that it is not enough to cover school-related fees and expenses in addition to living expenses. The object of the allowance is to supplement rather than being the sole means of survival;¹⁴⁰
- on a review of counseling services in consultation with stakeholders, to consider whether it is appropriate to outsource counseling services, recommended minimum qualifications for social workers and monitoring of standards of social workers.

It is also recommended that pursuant to [Section 77](#) of the Juveniles Act, the Minister for Women, Social Welfare and Poverty appoints an Advisory Council. The Advisory Council could advise and make representations to the Minister on matters relating to the exercise of the Minister’s powers and duties, including the care and protection of children and young people.

4.2.5.4. **Police**

The Juvenile Bureau and Child Abuse and Sexual Offences Unit of the Fiji Police indicated that the practical difficulties they face include: -

- a severe shortage of resources, including a lack of transport, operating costs and information technology equipment. The Child Abuse and Sexual Offences Unit in the Fiji Police Force advised that they were unable to access alerts which are sent by the Australian police detailing movements of convicted sex offenders who are traveling to Fiji because they have no internet or email access;¹⁴¹

¹³⁹ ILO’s *“Time Bound Programme Manual for Action Planning, 2003,”* page 30

¹⁴⁰ Interview with Ms. Ilisapeci Rokotunidau, Mrs. Ana Delana and Ms. Arieta Tagivetaua at the Department of Social Welfare on 13 March 2009

¹⁴¹ Interview with Sergeant Moi Moi and Inspector Linieta in the Child Abuse and Sexual Offences Unit of the Fiji Police Force on 8 April 2009

- Insufficient powers under the police's current policies to investigate and prosecute unless a complaint is made;
- A lack of implementation of child-friendly court procedures. The Child Abuse and Sexual Offences Unit indicated that their biggest challenge is failing to obtain convictions because support services for child victims, including effective counseling and court-friendly procedures are not consistently available.¹⁴²

Recommendations in relation to the Police

The Review Team recommends: -

- Further consultation to address resource issues. The Juvenile Bureau indicated with further resources, it could play a greater role in the monitoring of truants, enforcement of compulsory education and the rehabilitation of homeless children;
- Assistance is provided to review the Force Standing Orders No. 311 ("**Police Standing Orders**"), which govern police practice and procedures and the Juveniles Act. The FLRC's Juvenile Report recommended that the Police Standing Orders, which are an internal document, are incorporated into the Juveniles Act;¹⁴³
- A review of the policies and practices within the Police Force in relation to sexual offences against children;
- assistance to include content on child labour and ILO Convention No. 138 and 182 in the police training manual and training materials at the Policy Academy;
- Consideration of whether reactivating the following protocols (or drafting new protocols) between the relevant Ministries and Departments would help increase co-operation: -
 - Protocol between the Fiji Police and the Department of Social Welfare, dated November 2002;
 - Protocol between the Police and the Ministry of Education (lapsed in May 2000);
 - Protocol between the Police and Ministry of Health dated 3 May 1998.
- Any inter-agency guidelines should specifically refer to child protection issues and outline how child protection and child labour cases should be handled.
- amendments to the Juveniles Act as outlined at Annexure 1, Schedule D are considered;
- The Fiji Government needs to urgently address the provision of resources for counseling services and rehabilitation for children and young people. The FLRC's Report on Sexual Offences Against Children recommended that resources be made available for

¹⁴² Ibid

¹⁴³ FLRC's Juvenile Report, page 14

counseling of both victims and accused persons and that treatment centres with trained counselors be established.¹⁴⁴

4.2.6. **Specific Issues**

4.2.6.1. **Amendments to the Juveniles Act**

The Review Team recommends that the Juveniles Act is amended in line with the recommendations made in the FLRC's Juvenile Report and the Beattie Report, to: -

- incorporate child-friendly practices and procedure in the Juveniles court, including the use of screens for child complainants giving evidence;
- provide support for children and young people in hearings;
- amend the definition of a juvenile "in need of care, protection or control" in section 40 to include situations where a juvenile is ill-treated, abused or seriously deprived or where a juvenile has committed offences so as to give serious concern for the well-being of the juvenile;¹⁴⁵
- include family group conferences and a counseling provision in section 41(4);¹⁴⁶
- include drug related offences in relation to children and young people;¹⁴⁷
- amend section 19 to include reference to the principle of the best interests of the child.¹⁴⁸

It is recommended that a review of the Juveniles Act¹⁴⁹ considers recommendations contained in ILO's *Time Bound Programme Manual for Action Planning, 2003*. In particular, provisions relating to "rapid response" interventions should be included as follows:-

- orders for emergency protection;
- orders for maintenance, support and education; and
- orders that determine who is to have care and parental responsibility, or guardianship for a child;
- Courts should be conferred with jurisdiction to make a wide range of orders to remove, protect and make provision for children at risk or in need;
- "The inherent jurisdiction of a court to protect children from harm should be given statutory confirmation and made available

¹⁴⁴ FLRC's Report on Sexual Offences Against Children, page 5

¹⁴⁵ FLRC's Juvenile Report, page 23

¹⁴⁶ FLRC's Juvenile Report, page 30

¹⁴⁷ FLRC's Juvenile Report, page 33

¹⁴⁸ FLRC's Juvenile Report, page 49

¹⁴⁹ In particular, Parts IX- Juveniles in need of care, protection or control and Part X- Care Orders

to any concerned person or organization in emergency situations.”¹⁵⁰

It is recommended that the Director of Social Welfare is the first line of response in relation to emergency protection.

Emergency procedures are recommended in cases where children are removed from the worst forms of child labour such as prostitution.

It is also recommended that **Section 57(7)** of the Juveniles Act is repealed. Section 57(7) states that a parent, teacher or other person having lawful control or charge of a juvenile may administer reasonable punishment to him.

4.2.6.2. **Child Sensitive Court Procedures**

The members of the Fiji Police Force that were interviewed indicated there are inadequate legal provisions and procedures to protect children in court.

Recommendation

It is recommended that the Juveniles Act are reviewed and amended and that the Crimes Bill incorporates child sensitive court procedures. ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, recommends the following procedures are incorporated into legislation:-

- Member States should “ensure that the statutory and administrative measures exist for the provision of assistance and information about court proceedings to victims of the worst forms of child labour and their families...;”¹⁵¹
- “Child-sensitive procedures for investigating and hearing evidence should therefore be introduced and provision made for maintaining privacy and confidentiality during court proceedings;”¹⁵²
- “...measures and procedures should be adopted to protect...” children and other witnesses;¹⁵³
- “Unless there is clear evidence to the contrary, the burden of proving that a victim had attained the age of 18 at the date of the commission of the offence could be placed on the accused;”¹⁵⁴

¹⁵⁰ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 28

¹⁵¹ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 25

¹⁵² ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 26

¹⁵³ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 26

¹⁵⁴ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 27

- “Special measures should be introduced to assist the child in giving evidence in any of the following ways: -
 - their examination through an intermediary;
 - giving of evidence in private;
 - giving evidence in a setting that is appropriate to their age or maturity;
 - use of video recorded evidence-in-chief or cross-examination; and
 - giving of evidence behind screens or by video link.”¹⁵⁵
- Public exclusion procedures should be introduced for court proceedings...;
- Cases should be heard without delay and court-listing procedures should provide for them to be heard as a matter of urgency and priority.”¹⁵⁶

It is also essential that rapid response interventions are accompanied by adequate support services for children removed from the worst forms of child labour. It is recommended that court and police procedures and the Juveniles Act are reviewed to allow a support person to attend hearings with children and that effective counseling is provided to children.

4.2.6.3. **Child Labour Unit**

One of the most significant gaps in the application of ILO Convention No. 138 and No. 182 in Fiji is the lack of enforcement of the provisions of the Conventions. There was no evidence of measures or programmes to eliminate or remove children from the worst forms of child labour¹⁵⁷ or to provide access to free basic education.

ILO Recommendation No. 190 encourages Member States to ensure the authorities who implement national policies and programmes cooperate with each other and co-ordinate their activities.

A recurring comment from the parties interviewed is that there is a lack of co-ordination and co-operation between stakeholders. The Department of Social Welfare advised that referrals are rarely received from schools or the Ministry of Education in relation to abused children.¹⁵⁸ There were no indications of any monitoring or enforcement of compulsory education by the Ministry of Education.

¹⁵⁵ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 27

¹⁵⁶ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, Page 27

¹⁵⁷ As required by Article 7 of ILO Convention No. 182

¹⁵⁸ Interview with Ms Ilisapeci Rokotunidau, Mrs Ana Delana and Ms Arieta Tagivetaua at the Department of Social Welfare on 13 March 2009

Recommendation

ILO's *"Time Bound Programme Manual for Action Planning, 2003"* suggests: -

- a "dedicated child protection unit with expertise in child labour abuse could be established";¹⁵⁹
- "...ongoing training programmes on eliminating the worst forms of child labour for all professional groups working for and with children, including judges, lawyers, law enforcement officials, civil servants, local government officials, teachers, doctors and other health personnel";
- the possibility of specialist judges and magistrates, prosecutors and police who are trained in child labour and child protection issues;¹⁶⁰
- consideration of education inspectors to follow up on absenteeism;
- in terms of international cooperation and assistance, "flexible arrangements should be made for exchanging information, detecting offences, extraditing and prosecuting offenders, registering and seizing the property of perpetrators and recognizing and enforcing foreign judgments";¹⁶¹
- "...there may be room to consider a central coordinating and monitoring agency or body with adequate powers and backed with resources to oversee the government's entire policy and programmes for eliminating the worst forms of child labour."¹⁶²
- "If the proposed child labour authority is to be endowed also with the power to investigate and make determinations on individual complaints, it becomes even more important that it is given a sufficiently independent status."¹⁶³

Although the Ministry of Labour is considering establishing a child labour unit, the unit should be the co-ordinating agency for all types of child labour including "common crimes." The unit should be able to deal with a range of cases including hazardous work, labour in the informal sector and CSEC cases.

Careful consideration should be given to whether the child labour unit should be formed as part of an existing Ministry or whether it should be a stand alone unit with expertise from relevant fields. It is essential

¹⁵⁹ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, page 41

¹⁶⁰ *Ibid*

¹⁶¹ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, page 43, which goes on to say "Indeed, it is difficult to envisage effective implementation of such wide ranging and multi-agency remit in the absence of a central coordinating body or system."

¹⁶² ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, page 44

¹⁶³ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, page 45

that the child labour unit is staffed with qualified and experienced personnel and that adequate resources are committed.

4.2.6.4. **Centralised Child Labour Database**

Recommendation

It is recommended that a centralized child labour database is established, in order to increase access to information. Fiji's legislation, including the ERP, does not contain provisions which would prevent the sharing of such information.

Alerts, including details of convicted sex offenders traveling to Fiji from the Australian Federal police, could be instantly accessed by the relevant Ministries, Departments and Units via a centralized database. This would include the Customs Authority, Immigration Department, the Fiji Police Force (including the Tourism Police and the Child Abuse and Sexual Offences Unit) and the Department of Tourism.

Information technology assistance would be required to establish a centralized child labour database.

4.2.6.5. **Role of Workers' and Employer's Organisations**

ILO's *"Time Bound Programme Manual for Action Planning, 2003"* noted that: -

"One of the most effective ways of preventing the abuse of children at work has been through collective bargain agreements between employers and unions. The strengthening of workers and trade union rights is an important step in the elimination of the worst forms of child labour."¹⁶⁴

Unions can help protect working children by: -

- encouraging children and young people to join unions and enjoy the protection of collective bargaining rights. **Section 94** of the ERP provides that a child over the age of 15 has the right to join a trade union and to vote in trade union elections;
- ensuring that children receive entitlements including minimum wages, social security payments and paid holidays;
- ensuring that registers of children are properly maintained and checked;
- developing action plans to combat child labour as part of corporate social responsibility.

¹⁶⁴ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, page 23

Consideration should be given by employers' organizations on ways to:-

- monitor members' compliance with child labour laws;
- adopt policies and guidelines for members on child labour infringements;
- deal with breaches of child labour laws by members.

Workers and employer's organizations have important roles in consulting with government to: -

- determine the list of hazardous work;
- determine the list of light work;
- report to ILO on the status of the application of ILO Convention No. 138 and No. 182;
- carry out training and awareness campaigns.

Recommendation

Consideration should be given to an amendment to the ERP to provide that "...enforceable collective bargaining agreements contain clauses prohibiting the employment of children below the applicable minimum age for employment and protecting workers under 18 from hazardous work."¹⁶⁵

4.2.7. Enforcement

ILO Convention No. 138¹⁶⁶ and No. 182¹⁶⁷ provide that necessary measures must be taken to ensure the effective enforcement of the provisions of both Conventions. Legislative provisions to enforce ILO Convention No. 138 and No. 182 include the provision and application of appropriate penalties and sanctions.

Article 7 of ILO Convention No. 182 which requires the effective implementation and enforcement of penal sanctions and time bound measures to remove and rehabilitate children from the worst forms of child labour has not been applied in Fiji.

4.2.7.1. Enforcement of Labour Laws

Sanctions

The ERP provides sanctions for the employment of children.

¹⁶⁵ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, page 24

¹⁶⁶ **Article 9(1)** of ILO Convention No. 138

¹⁶⁷ **Article 7(1)** of ILO Convention No. 182

Section 91: it is an offence for a person to engage in a prohibited form of child labour;

Section 93: it is an offence for a person to employ a child under the age of 15 years in any capacity other than in accordance with subsection (2);

Section 95(2): it is an offence to employ a child in a mine or in a workplace or employment which has been declared hazardous by the Minister for Labour.

Penalties

The penalty for a breach of the provisions of Part 10 of the ERP relating to children¹⁶⁸ is a fine not exceeding F\$10,000 and/or imprisonment not exceeding 2 years for an individual and a fine not exceeding F\$50,000 for a company.¹⁶⁹ The penalty for a breach of any regulations made under the ERP is a fine of up to F\$20,000 and/or a term of imprisonment.¹⁷⁰

The penalties for a breach of the Health and Safety at Work Act are also significant. The penalty for a breach of section 9 of the HSWA¹⁷¹ is a fine of up to \$100,000 for a company and a fine of up to \$10,000 for an individual.

Although the ERP and HSWA do have significant penalties, proactive investigation and ongoing prosecution of employers is required.

Inspectors' Powers

Section 19 of the ERP provides that labour inspection have powers to:-

- enter, inspect and examine workplaces;
- require employers to produce any worker or any documents or records (including registers of children);
- interview employers and workers;

¹⁶⁸ **Section 256** of ERP lays down penalty for offences where no particular penalty is provided. The penalties in section 256 would be the penalties for breaches of: -

s.91 ERP: prohibition of worst forms of child labour

s.93 ERP: employment of children under 15 years

s.95 ERP: restrictions on employment of children

s.96 ERP: children employed against the wishes of parents/guardians

s.97 ERP: hours of work for children

s.99 ERP: employers of children to keep a register.

¹⁶⁹ Section 256 ERP

¹⁷⁰ **Section 264(3)** of the ERP

¹⁷¹ **Section 9** of the HSWA provides that every employer must ensure the health and safety at work of all his or her workers. Section 9 lists particular duties of the employer, for example to provide and maintain safe plant and systems of work.

- issue a demand notice or fixed penalty notice requiring compliance with a provision.

4.2.7.2. Enforcement of Compulsory Education

The Rotuma (Primary School) Regulations provide that it is the duty of the parent or guardian to ensure that his/her child attends school regularly subject to certain exceptions. The Regulations provide that a parent or guardian may be convicted if he/she does not ensure that his/her child attends school regularly.¹⁷²

The Education Legislation provides that primarily, it is the duty of a parent or guardian to ensure his/her child regularly attends school and receives a suitable and relevant education unless a child has “special circumstances.”¹⁷³

District Education Officers, acting as School Attendance Officers are required to check that compulsory education is being enforced and are expected to encourage and counsel parents and absent students.¹⁷⁴ District Education Officers have powers to enter any house, village or place to make enquiries as to children who are residing or working.¹⁷⁵

The Review Team was advised that in practice, and given resource shortages, District Education Officers do not perform this role. The responsibility for enforcing compulsory schooling lies with individual teachers and schools.¹⁷⁶

The Secretary of the Fiji Teacher’s Union, Mr Agni Deo Singh, noted that it is unlikely the District Education Officers have the capacity to check and follow up on children who are absent from school.¹⁷⁷ The difficulty of monitoring of children who have dropped out or are absent from school is exacerbated by remoteness and transport issues, a shortage of operating costs and lack of capacity in schools to monitor.

The CRC also recognizes the right of the child to education, which includes making primary education compulsory and available free to all and taking measures to encourage regular attendance at schools and to reduce the drop-out rates.¹⁷⁸

¹⁷² **Regulation 4(2)** of the Rotuma (Primary School) Regulations

¹⁷³ **Regulation 4** of the Compulsory Education Regulations, 1997 L.N 23. “Special circumstances” include:

- (a) there is no school within walking distance;
- (b) other arrangements are made which are deemed by the Minister to be suitable and efficient;
- (c) the child has completed the required levels of primary education;
- (d) the child is preventing from attending school by sickness or any other unavoidable cause

¹⁷⁴ **Regulation 2** and **Regulation 7**, Compulsory Education Regulations, 1997

¹⁷⁵ **Regulation 7**, Compulsory Education Regulations, 1997

¹⁷⁶ Interview with Mrs. Viniana Kunabuli, Ministry of Education on 11 March 2009

¹⁷⁷ Interview with Mr. Agni Deo Singh, Secretary for Fiji Teachers Union on 17 March 2009

¹⁷⁸ **Article 28** of the Convention on the Rights of the Child

Practical Difficulties with Enforcement of Compulsory Education

Issues that need to be addressed in order to enable the enforcement of compulsory education include: -

- the inability of families to afford school fees and school-related expenses;
- schools' policies of charging fees and refusing admission or penalizing children for non payment of fees.¹⁷⁹ "Most schools are owned by the communities and other organizations such as religious organizations¹⁸⁰ and the general consensus is that even in non-Government schools, fees are usually charged. "The Ministry seems unable to prevent schools, which are private bodies from charging whatever fees they want."¹⁸¹
- Legislative provisions, including Section 25 of the Education Act which provide that the Minister can prescribe school fees which are payable in Government schools.¹⁸²

The Secretary of the Fiji Teacher's Union's view is that compulsory schooling cannot be enforced unless schooling is free.¹⁸³

A co-ordinated approach is required to enforce the completion of compulsory education up to a consistent age through out Fiji. Currently, the responsibility for enforcement of compulsory education lies with the schools and individual teachers. Increased assistance and co-operation between the police, the Ministry of Labour, the Ministry of Education, the Department of Social Welfare (where applicable) and social partners (including NGO's) is required.

Gaps in the Ministry of Education's policies need to be identified, including a clear policy on child protection.

Recommended Amendments to Education Legislation

It is recommended that a review of the Education Legislation considers:-

¹⁷⁹ Save the Children's Report: *Keeping Children in School, 1998*: "The Ministry provides teach salaries and a per capita grant for each student but many school management boards maintain their schools cannot function without other student fees," Page 8.

¹⁸⁰ "Education for All" *Mid Decade Assessment Report 2008* from the Ministry of Education, page 30

¹⁸¹ Save the Children's Report: *Keeping Children in School, 1998*, page 8.

¹⁸² **Section 25** of the Education Act provides, inter alia, that: -

- prescribed fees, including fees for books, board or medical attention shall be payable in Government schools;
- any pupil with fee arrears may be refused admission or re-admission;
- proceedings may be instituted against payments for non payment of school fees

¹⁸³ Interview with Mr. Agni Deo Singh, Secretary for Fiji Teachers Union on 17 March 2009

- Section 25 of the Education Act and the First Schedule of the Education Act which allows a parent to be prosecuted for non payment of fees;
- the repeal of all provisions which relate to school fees;
- Regulation 4(1)(a) of the Compulsory Education Regulations¹⁸⁴ which states that a parent's duty to enforce compulsory schooling of his/her child may be discharged if certain conditions apply;
- whether legislative provisions should be enacted to hold parents responsible for enforcing compulsory schooling and liable for prosecution for not making an effort to ensure their child attends school.

The review of the Education Legislation should take into account the recommendations in ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, as follows: -

"National laws should target the following key aims: -

- the right to free primary education should be embodied in the statutory law...;
- there should exist a corresponding duty on the central or district authority to provide sufficient schools in number, character and equipment for that purpose;
- financial assistance should be provided to poor families with children of school going age;
- the duty to provide education should be made enforceable by the courts;
- parents' responsibility to send their children to school should be clearly declared, and penalties for not discharging this responsibility could be considered under certain circumstances;
- a system of monitoring children's entry, attendance, and completion of school must be designed and effected, with a mechanism for following up cases of children having dropped out prematurely as many of these may be entering or returning to work;
- consideration could be given to a prohibition of employing children or letting them work in such a way that hinders their compulsory education."¹⁸⁵

4.2.7.3. **Unconditional Worst Forms of Child Labour**

Enforcement of the Penal Code and Juveniles Act

ILO Committee of Experts' Direct Request (2006) on C182 noted big gaps in the enforcement of criminal laws relating to the worst forms of

¹⁸⁴ **Regulation 4(1)(a)(b)** Compulsory Education Regulations, 1997 L.N 23

¹⁸⁵ ILO's "Time Bound Programme Manual for Action Planning, 2003," Page 29

child labour, insufficient legal protection measures and a lack of appropriate resources.¹⁸⁶

There is a lack of enforcement of the provisions of Fiji's Penal Code and Juveniles Act which is required by ILO Convention No. 182.

The Juveniles Act provides that it is an offence: -

Section 57: for a person who has custody, charge or care of a juvenile to assault, ill-treat, neglect, abandon or expose such juvenile to unnecessary suffering or injury to health;

Section 58: for a parent or caregiver to cause or procure a child to beg;

Section 59: to give intoxicating or spirituous liquor to a child;

Section 60: to sell intoxicating liquor to persons under the age of 18;

Section 10 of the Tobacco Control Act 1998 provides that it is an offence to sell or supply tobacco to a person under the age of 18;

Section 61 of the Liquor Act 2006 provided that it was an offence to sell or supply liquor to any person under the age of 21 years. The Liquor Act was recently amended to decrease the minimum drinking age at 18 years.¹⁸⁷

Section 12 of the Tobacco Control Act 1998 prohibits smoking in certain public places. Consideration may be given to a new or amended provision under the Tobacco Control Act or the Juveniles Act which creates an offence for persons under the age of 18 to smoke in public places.

The Fiji Police Force is responsible for enforcing the provisions of the Penal Code and Juveniles Act. The practical difficulties they face, including a shortage of resources and operating costs need to be addressed before ILO Convention No. 182 can be fully enforced.

There are few reported cases relating to the prosecution of a worst form of child labour. The Fiji Police Force has advised that there is ongoing

¹⁸⁶ ILO Committee of Experts' Direct Request (2006) on C182: "The Committee also noted that the Committee on the Rights of the Child, in its Concluding Observations (CRC/C/15/Add.89, 24 June 1998, paragraphs 17 and 25), expressed concern at the insufficient awareness of and lack of information on child abuse, including sexual abuse, and the insufficient legal protection measures and appropriate resources," page 4.

¹⁸⁷ Decree No. 13/2009 decreased the minimum drinking age from 21 to 18 years

prosecution of CSEC cases,¹⁸⁸ but there are no programmes or co-ordinated measures in place to tackle child labour or remove children from the worst forms of child labour. Active investigation and ongoing prosecution by the police is required, particularly in cases of CSEC and sex tourism.

Penalties

The Penal Code and Juveniles Act have penalties of varying severity. For example, the penalties for: -

- Unlawfully and carnally knowing a girl under the age of 13 is life imprisonment, with or without corporal punishment;¹⁸⁹
- Keeping and managing a brothel is a fine not exceeding F\$100,000 and/or 5 years imprisonment;¹⁹⁰
- Pornography is a fine of up to F\$25,000 and/or a term of imprisonment not exceeding 14 years for a first offence and a fine of up to F\$50,000 and/or life imprisonment for a second or subsequent offence.¹⁹¹

ILO's *"Time Bound Programme Manual for Action Planning, 2003"* noted that:

- "The penalties for offending should be severe enough to have a deterrent affect and minimum mandatory sentences should be considered;
- The younger age of a child victim should be regarded as an aggravating feature and attract stiffer penalties.
- Courts should be empowered to confiscate and forfeit the proceeds of offences.
- There should be established a Register containing the names and details of convicted offenders, which may be consulted by appropriate government agencies."¹⁹²

Recommendation

It is recommended that the penalties contained in the Crimes Bill and Juveniles Act are reviewed in consultation with key stakeholders and amended where necessary.

¹⁸⁸ Interview with Sergeant Moi Moi and Inspector Linieta in the Child Abuse and Sexual Offences Unit of the Fiji Police Force on 8 April 2009. The Review Team was not provided with confidential case details, in the interests of protecting the exploited children.

¹⁸⁹ Section 155 of the Penal Code

¹⁹⁰ Section 170 of the Penal Code

¹⁹¹ Section 62A of the Juveniles Act

¹⁹² ILO's *"Time Bound Programme Manual for Action Planning, 2003,"* Page 17

5. SUMMARY OF RECOMMENDATIONS

5.1. Policy

In order to comply with ILO Convention No. 138, Fiji must formulate a national policy on child labour.

There is currently a child labour subcommittee (“**Subcommittee**”) of the NCCC.

Consideration should be given to: -

- whether a new committee on child labour policy should be formulated;
- whether the Subcommittee should be primarily responsible for formulating a national policy on child labour;
- the current role of the NCCC and whether its mandate should be widened to include the implementation of ILO Convention No. 138 and No. 182; and
- the co-ordination of existing programmes to address child protection issues, national child protection work plans and frameworks.

Wide consultation with stakeholders from relevant Ministries and Departments who are not members of the child labour subcommittee is essential. Stakeholders who should be involved include: -

- Ministry of Labour;
- Ministry of Education;
- Department of Social Welfare;
- Fiji Police Force;
- Ministry of Health;
- Attorney General’s Chambers;
- Director of Public Prosecutions;
- Department of Immigration;
- Customs Authority;
- Department of Tourism;
- Bureau of Statistics;
- Representatives of Employers’ and Workers’ organizations;
- NGO’s and other social partners;
- Ministry of Foreign Affairs.

5.2. Hazardous Work

The ERP provides the legislative framework for determining hazardous work for children under the age of 18. A list of hazardous work needs to

be determined, in consultation with the Health and Safety Board, employers and workers' representatives and other key stakeholders.

5.3. Light Work

The ERP provides that light work is acceptable for 13 to 15 year children in certain circumstances, provided it is not harmful to their health or development and does not prejudice their attendance in schools or vocational or training programmes. A list of the types of work that constitute "light work" for 13 to 15 year olds needs to be determined, in consultation with key stakeholders.

5.4. Artistic Performances

Fiji's legislation is silent on artistic performances by children. The general consensus is that artistic or cultural performances by children are not on a large commercial scale and do not affect children's education. However, further research and tripartite consultation is recommended to determine the scale of children under the age of 18 who are involved in cultural performances, particularly in the tourism industry and the need for regulation of such activities.

It is recommended that a provision is included in the ERP relating to artistic performances. The provision could either allow an individual permit to be granted for children to participate in artistic or cultural performances, or establish an equivalent system.

5.5. Education

Fiji's Education Legislation is inconsistent with the ERP which sets the minimum working age at 15 years. The minimum age for completing compulsory education in the Education Legislation varies from 12-15 years, depending on different districts through out Fiji. The Education Legislation should be amended to increase the age for completion of compulsory education consistently to the age of 15 through out Fiji.

A review of the Education Legislation should consider: -

- the repeal of provisions which state that school fees can be prescribed and proceedings instituted against parents for non payment;
- a consideration of the regulations which state a parent's duty to enforce compulsory schooling may be discharged if certain conditions apply;
- the introduction of a provision to hold parents liable for prosecution for not ensuring their child attends school.

A full list of recommended amendments to the Education Legislation is outlined at Annexure 1, Schedule B.

A review of the Ministry of Education's policies, programmes and practices is required. There are complex and serious issues that need to be addressed before compulsory education can be enforced. These include the funding of education and resource issues.

5.6. Minimum Age for Employment in Industry Specific Legislation

It is recommended that the Mining Act and Quarries Regulations are amended to increase the minimum age for such work to 18 years, as it constitutes hazardous work.

The tripartite consultation to determine the types of hazardous work should consider whether work on a vessel is hazardous work for children. If it is, the Marine Act should be amended to increase the minimum working age to 18 years.

5.7. Harmonisation of definition of “child” in legislation

Various pieces of legislation define the age of a “child” differently. It is recommended that the definition of a “child” in the Interpretation Act is amended to mean a person under the age of 18 years. The effect of an amendment to Section 2 of the Interpretation Act is that in every written law and in public documents enacted, a child will be universally defined as a person under the age of 18.

For uniformity, consideration may be given to amending legislation to define a child consistently as a person under the age of 18 years. Such legislation would include: -

- The Factories Act which defines a “child as a person under the age of 15 years and a “young person” under the age of 18. It is recommended that regulations are passed under the HSWA in order to repeal the Factories Act;
- The Juveniles Act. A commencement date for the Prisons and Corrections Act No. 2 of 2006 should be gazetted to increase the definition of a “juvenile” in the Juveniles Act from 17 to 18 years;
- Section 12 of the Marriage Act which should be amended to increase the age of consent for a female from 16 to 18 years;
- The Penal Code. The age thresholds in the Penal Code should be amended so that age thresholds below 18 are repealed and are replaced with new offences against children under the age of 18

years. Some sections¹⁹³ in the Penal Code should reduce the age threshold from 21 to 18 years.

5.8. Worst Forms of Child Labour

Recommended amendments to the Penal Code (to be known as the Crimes Bill) and Juveniles Act are outlined at Annexure 1, Schedules C and D.

Consideration should be given to whether amended or new provisions should be included in either the Crimes Bill or the Juveniles Act.

For example, it is recommended that the pornography provisions are moved from the Juveniles Act to the Crimes Bill.

It is also recommended that provisions relating to child-friendly court procedures are incorporated in both the Crimes Bill and the Juveniles Act.

5.8.1. Amendments to the Penal Code

A review and amendment of the Penal Code is urgently required. The Review Team understands that a draft Crimes Bill has been drafted.

It is recommended that a review of the draft Crimes Bill should consider: -

- a review of the age thresholds to be consistently set at 18 years;
- the use of gender neutral language to protect boys;
- the definition of “rape” should be widened;
- the introduction of a new provision of “indecent dealings against children under the age of 18 years”;
- the introduction of new provisions relating to the CSEC of children under the age of 18;
- a revision and updating of terminology. Archaic terms such as “carnal knowledge” and “defilement” should be updated;
- references to corporal punishment should be removed;
- a new pornography provision should be included;
- criminal compensation for victims should be considered;
- a revision of the offences in a way that does not rely on the willingness of the victim to testify;
- a new provision which targets the user or customer not the exploited child;
- penalties should be revised.

¹⁹³ For example, section 157 relating to procurement

5.8.2. Amendment to Juveniles Act

Amendments to the Juveniles Act are recommended, in line with the FLRC's Juvenile Report. The recommended amendments should include: -

- the repeal of Section 62A (relating to pornography), which should be revised and incorporated in the Crimes Bill;
- new provisions prohibiting the sale and supply of drugs and dangerous or prohibited substances to children under the age of 18 and using or procuring children to manufacture, sell and traffick in drugs and prohibited substances;
- child-friendly procedures for giving evidence in court, including the use of screens;
- the definition of a juvenile "in need of care, protection or control" should be amended;
- the repeal of section 10 of the Juveniles Act, which required corroboration of unsworn evidence of children;
- reference to family group conferences;
- a counseling provision;
- specific rules to regulate practice and procedure in the Juveniles Court;
- Penalties should be reviewed.

5.8.3. Hotel Licensing Process

The Solicitor-General's Office currently oversees the issue of hotel licences.

It is recommended that consideration is given to the Department of Tourism taking over responsibility for the issue of hotel licences. The Department of Tourism is in a better position to liaise with key stakeholders in the tourism industry, including the Tourism Police, and put in place measures to combat sex tourism. Under the provisions of the Hotel and Guests Act, the Hotel Licensing Board could either cancel or refuse a renewal application for a hotel licence where it is established that sex tourism offences against children have been perpetrated in a hotel.

5.8.4. Amendments to the Adoption of Infants Act

It is recommended that the Adoption of Infants Act is reviewed and it is considered whether: -

- the term "infant" should be replaced with the term "child";
- the age threshold for an "infant" should be decreased from 21 to 18 years;

- gender neutral language should be used in relation to adoptions by sole applicants;
- “Resident” should be defined;
- the Act should make reference to inter-country adoption (and additional safeguards) as a last resort;
- the Act should prohibit any financial gain for any adoptions with penalties;
- Informal adoptions should come within the scope of the Act.

5.8.5. Amendment to the Marriage Act

It is recommended that the age of consent to marriage by a female is increased from 16 to 18 years.

5.8.6. Forced Recruitment

Recruitment into the army in Fiji is by application and is not forced or compulsory. The Commander has a discretion to recruit a person under the age of 18 who has applied for recruitment.

It should be considered whether the RFMF Act should be amended to repeal the Command’s discretion to recruit young people under the age of 18. This would be consistent with the Employment Relations (Administration) Regulations 2008 which provides that a child must not be employed in situations of direct hostilities.

5.9. Increased Co-operation

In order to effectively enforce ILO Convention No. 138 and No. 182, increased co-operation and co-ordination is required between interested stakeholders. In order to effectively enforce compulsory education, there needs to be collaboration between schools, the Ministry of Education, Ministry of Labour, the Fiji Police Force, the Department of Social Welfare and social partners.

ILO’s *“Time Bound Programme Manual for Action Planning, 2003”* states that a central co-ordinating body is critical in implementing a comprehensive programme of action.¹⁹⁴

Training on child labour and child protection issues in a Fiji context is also recommended.

Consideration should be given to the best vehicle for co-ordinating and implementing policies and programmes relating to the elimination of

¹⁹⁴ ILO’s *“Time Bound Programme Manual for Action Planning, 2003”*, stated “The absence of a central mechanism to co-ordinate the implementation of the Convention would make it difficult to achieve a comprehensive and coherent programme of action,” page 44

child labour. The child labour unit will need to deal with a range of cases which will encompass children working in a range of industries and occupations and CSEC cases. The powers and role of the child labour unit should also be considered and whether it is preferable for the unit to be part of an existing Ministry or a stand alone unit. The unit may have powers to investigate and make determinations on individual complaints and would require comprehensive legal powers for its tasks and it would be important for it to be given a sufficiently independent status.¹⁹⁵

5.10. Centralised Child Labour Database

It is recommended that a centralized child labour database is established, in order to increase access to information. Currently, the dissemination of information is not co-ordinated. There are gaps in reporting and referrals and important alerts from police in other jurisdictions are not shared between Ministries and Departments.

Information technology assistance would be required to establish a centralized child labour database.

¹⁹⁵ ILO's "Time Bound Programme Manual for Action Planning, 2003", page 45

ANNEXURE 1: LIST OF RECOMMENDED AMENDMENTS TO LEGISLATION

Schedule A: Recommended Amendments to the Labour Legislation

A review of the ERP and related subsidiary legislation should consider: -

- the determination and gazetting of a list of hazardous work;
- the determination of a list of light work and the incorporation of a list of light work in the Labour Legislation;
- a new provision which provides that the list of hazardous work should be periodically examined and revised following consultation;
- the establishment of procedures for the verification of the age of the persons under 18 prior to their being engaged in employment;
- a new provision for the emergency removal of children from situations of hazardous labour to a place of safety;
- Section 99 of the ERP which should be widened to require the name, address, and date of birth of every person appearing to be under 18 employed, the type of work performed and the hours of work performed;
- the possible inclusion of powers for labour inspectors and police officers to enter and search any premises where there are reasonable grounds to believe that a child is involved in prohibited hazardous behaviour;¹⁹⁶
- whether further regulations relating to children's working conditions, hours of work and a prohibition of overtime should be included (where they have reached the minimum working age, or permitted to carry out light work);
- whether regulations should be passed to ensure that such children: -
 - receive fair remuneration;
 - have limited working hours in a week and that overtime is prohibited;
 - are granted a minimum of 12 hours' night rest;
 - are granted an annual holiday with at least four weeks paid leave and, in any case, not shorter than that granted to adults;
 - are covered by social security schemes.
- an amendment to the Fiji National Provident Fund Regulations to lower the age of a person who is eligible to make voluntary contributions to the fund from 16 to 15 years.

¹⁹⁶ ILO's *Time Bound Programme Manual for Action Planning, 2003*, page 34

Schedule B: Recommended Amendments to the Education Legislation

It is recommended that a review of the Education Legislation consider:-

- Regulation 3(2) of the Education Regulations (which sets the compulsory school age at Class 8 or Form 2 level) which should be amended to increase the minimum age for completing compulsory education to 15 years;
- Compulsory Education Orders for all districts in Fiji, to raise the compulsory school age for all children in Fiji to 15 years;
- Regulation 4(1) of the Rotuma (Primary School) Regulations, to increase the age of compulsory education to 15 years and Regulation 6 of the Rotuma (Primary School) Regulations relating to school fees;
- Section 25 of the Education Act and the First Schedule of the Education Act which states that the Minister can prescribe fees and that proceedings may be instituted against a parent who does not pay fees;
- the repeal of all provisions which relate to school fees;
- Regulation 4(1)(a) of the Compulsory Education Regulations which states that a parent's duty to enforce compulsory schooling of his/her child may be discharged if certain conditions apply;
- Whether legislative provisions should be enacted to hold parents responsible for enforcing compulsory schooling and liable for prosecution for not making an effort to ensure their child attends school;
- whether provisions should be included: -
 - which provide a right to free primary education;
 - impose a duty on the central or district authority to provide sufficient schools in number, character and equipment for that purpose;
 - states financial assistance should be provided to poor families with children of school going age;
 - which makes the duty to provide education enforceable by the courts;
 - that establishes a system of monitoring children's entry, attendance, and completion of school, with a mechanism for following up on cases of children who have dropped out or are absent.

Schedule C: Recommended Amendments to the Penal Code

It is recommended that the amendments contained in the FLRC's Report on Sexual Offences Against Children are adopted in the new Crimes Bill.

Such recommendations include: -

- the definition of “rape” should be widened to include rape by other body parts and by objects or instruments and that the rape of other body orifices be included;
- “Sexual intercourse” should be defined in the Penal Code and the definition should consider all forms of penetration, including penetration by body parts, objects and instruments;
- Terminology should be updated. The term “carnal knowledge” should be replaced by the term “sexual intercourse”;¹⁹⁷ and the term “defilement” should be replaced by “indecent dealings.”¹⁹⁸
- Consideration should be given to the repeal of Sections 155, 156,¹⁹⁹ 157, 158, 159, 160 and 171, which could be replaced by a new provision of “indecent dealings with children under the age of 18”;²⁰⁰
- Sections 159 and 160 should be redrafted into one offence. The age threshold in section 159 should be repealed and the age threshold in section 160 amended to 18 years;
- References to corporal punishment should be removed;²⁰¹
- Sections 162 and 163 should be retained but redrafted and linked to other sexual offences in the Penal Code;²⁰²
- A new provision of “indecent dealings with children under 18 years” should be introduced. The FLRC's Report on Sexual Offences Against Children recommended wording of the provision which is a modified version of section 210 of the Queensland Criminal Code. It is also recommended that the new provision of indecent dealings incorporate and widen the pornography provision currently contained in Section 62A of the Juveniles Act;
- a new offence of “Sexual Interference” should be introduced into the Penal Code;²⁰³
- consideration of whether section 168 which targets the prostitute, not the customer, should be retained. The Fiji Law Reform Commissions' *Discussion Paper in relation to Sexual Offences against Children (1999)* recommended consideration of whether the definition of prostitution should be amended and consideration of children's issues. The Crimes Bill could consider a provision which targets the customer, not the exploited child;

¹⁹⁷ FLRC's Report on Sexual Offences Against Children, page 10

¹⁹⁸ FLRC's Report on Sexual Offences Against Children, page 11

¹⁹⁹ FLRC's Report on Sexual Offences Against Children, page 16

²⁰⁰ FLRC's Report on Sexual Offences Against Children, page 25

²⁰¹ FLRC's Report on Sexual Offences Against Children, page 25

²⁰² FLRC's Report on Sexual Offences Against Children, page 26

²⁰³ FLRC's Report on Sexual Offences Against Children, page 18

- A revision of penalties and age thresholds. The Fiji Law Reform Commission recommended “the penalties should be increased for offences involving rape and indecent dealings, particularly where the child is under the age of 12 years. Penalties should be higher where persons who are in positions of trust over a child (parents and guardians) buy or sell children for the purposes of illegal sexual acts.”²⁰⁴

The Review Team recommends further consultation and consideration of: -

- Gender neutral language to protect boys;
- Whether a “child” should be defined as a person under 18 years;
- Provisions requiring corroboration of victim’s testimony in sexual offences being repealed;
- Whether it should be an offence for an adult to have sexual intercourse with a child below a certain age (for example, the age of puberty.) Consultation should determine whether provisions with age thresholds should be retained or whether a new provision should be introduced making it an offence for an adult to have sexual intercourse with a child below a certain age. The consultation should consider the appropriate age to be designated in the provision;
- Section 157 (Procuration) should be amended as follows: -
 - the words “not being a common prostitute or of known immoral character” should be deleted;
 - the age threshold should be reduced from 21 years to 18 years;²⁰⁵
 - the following proviso should be repealed: “Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.”
- Section 158 (Procuring defilement of a woman by threats of fraud or administering drugs) should be amended to:-
 - use gender neutral language to protect boys;
 - remove the words “not being a common prostitute or of known immoral character” from section 158(1)(b);
 - remove the words “unlawful carnal connection” and replace with “sexual intercourse”;
 - repeal the following proviso: “Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.”
- Section 161 (Detention with intent or in a brothel) should be amended to: -
 - use gender neutral language to protect boys;

²⁰⁴ FLRC’s Report on Sexual Offences Against Children, page 26

²⁰⁵ FLRC’s Report on Sexual Offences Against Children, page 25

- remove the words “be unlawfully and carnally known by any man” and replace with the words “have sexual intercourse with any man;”
- remove the reference to corporal punishment;
- the age of minors in sections 162 and 163 (selling and buying minors under the age of sixteen for immoral purposes) should be increased from 16 to 18;
- the words “with intent” should be removed from sections 162 and 163;
- section 163(2)²⁰⁶ should be repealed;
- Section 171 (Conspiracy to defile) should be amended to remove references to “unlawful carnal knowledge” and corporal punishment;
- Section 175(a) and (c) (Unnatural offences by a male person) should be repealed;
- Section 254 (child stealing) should be amended to increase the age of a child from 14 to 18 years;
- Section 255 (abduction of girls under the age of sixteen) should be amended to increase the age of a child from 16 to 18 years and the reference to the word “unmarried”²⁰⁷ should be deleted;
- the defence that a person “had reasonable cause to believe and did in fact believe that the girl was above the age of 16” in sections 156, 159 and 160 is removed;
- a new offence should be created “...for any person in a position of authority or trust in relation to a child (such as relatives, guardians, custodians, teachers, doctors) who knows or suspects that any offence has been, is being, or is about to be committed to fail to report it to an officer of a law enforcement authority;”
- offences in the Crimes Bill should be framed “...in a way that does not rely on the willingness of the victim to testify;”
- new offences should be introduced relating to people who: -
 - buy the sexual services of a child under 18;
 - recruit, induce or compel a child under 18 into commercial sexual exploitation;
 - participate, facilitate, advertise or allow the commercial sexual exploitation of a child under 18; and
 - receive money or other reward, favour or compensation for the sexual exploitation of a child.
- a new provision allowing criminal compensation for victims should be introduced;
- the provisions of the Crimes Bill should be drafted in a way that does not rely on the willingness of the victim to testify;

²⁰⁶ Section 163(2) of the Penal Code: Any common prostitute or other person of known immoral character who buys, hires or otherwise obtains possession of a minor under the age of sixteen years shall, until the contrary is proved, be deemed to have obtained possession of such minor with the intent mentioned in this section.”

²⁰⁷ Section 255 of the Penal Code: “Any person who unlawfully takes or causes to be taken any **unmarried** girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, is guilty of a misdemeanor.”

- a new provision which targets the “user” or “customer” should be considered;
- penalties should be reviewed, particularly where perpetrators are in a position of trust over a child or buy or sell children for the purposes of illegal sexual acts;²⁰⁸
- a new offence should be introduced “...for any person in a position of authority or trust in relation to a child (such as relatives, guardians, custodians, teachers, doctors) who knows or suspects that any offence has been, is being, or is about to be committed to fail to report it to an officer of a law enforcement authority.”²⁰⁹

²⁰⁸ FLRC’s Report on Sexual Offences Against Children, page 26

²⁰⁹ ILO’s “*Time Bound Programme Manual for Action Planning, 2003*”, page 16

Schedule D: Recommended Amendments to the Juveniles Act

A review of the Juveniles Act should take into account the following considerations: -

- An amendment of Section 7 of the Juveniles Act to allow either a parent, guardian *or support person* to be present in court;
- Section 10 of the Juveniles Act, which required corroboration of unsworn evidence of children, should be repealed;²¹⁰
- Section 13 should be amended to provide that screening should be introduced for children and young people complainants while giving evidence;²¹¹
- There should be reference in the Juveniles Act to the principle of the “best interests of the child;”
- Section 40 relating to the definition of a “juvenile in need of care, protection or control” should be amended to include situations where a juvenile is ill-treated, abused or seriously deprived or where a juvenile has committed offences so as to give serious concern for the well-being of the juvenile;
- Section 41(4) should be amended to include family group conferences²¹² and a counseling provision;²¹³
- Specific rules should be considered for the regulation of practice and procedure in the Juveniles Court;²¹⁴ and
- New offences relating to the manufacture, sale and supply of drugs and prohibited substances to children and using children to traffick in drugs and prohibited substances should be included in the section on offences against children;²¹⁵
- Section 62A of the Juveniles Act should be repealed and included in the new provision of Indecent Dealings in the Penal Code. It is recommended that the pornography provision is widened to cover access to and the viewing of pornography websites and the use of the Internet or other media in all its forms;²¹⁶
- Penalties should be reviewed. For example, the penalty for procuring a child to beg (section 58) is a F\$50 fine and/or three months imprisonment.
- Offences should be reframed “...in a way that does not rely on the willingness of the victim to testify;”
- Part IX²¹⁷ and Part X²¹⁸ should be reviewed and consideration given to the inclusion of rapid response interventions including: -

²¹⁰ In any event, *State v A.V.*, HAC192 of 2008 held that section 10 of the Juveniles Act is unconstitutional and discriminatory on the basis of age and that “section 10 of the Juveniles Act must be considered stricken from the said Act.”

²¹¹ FLRC’s Report on Sexual Offences Against Children, page 52

²¹² FLRC’s Report on Sexual Offences Against Children, page 30

²¹³ FLRC’s Report on Sexual Offences Against Children, page 31

²¹⁴ FLRC’s Report on Sexual Offences Against Children, page 50

²¹⁵ FLRC’s Report on Sexual Offences Against Children, page 33

²¹⁶ FLRC’s Report on Sexual Offences Against Children, page 34

²¹⁷ Part IX relates to Juveniles in need of care, protection or control

- orders for emergency protection, with the Director of Social Welfare being the first line of response;
- orders for maintenance, support and education; and
- orders that determine who is to have care and parental responsibility, or guardianship for/of a child;
- Courts should be conferred with jurisdiction to make a wide range of orders to remove, protect and make provision for children at risk or in need;
- The inherent jurisdiction of a court to protect children from harm should be given statutory confirmation and made available to any concerned person or organization in emergency situations;²¹⁹
- A repeal of Section 57(7) of the Juveniles Act which states that a parent, teacher or other person having lawful control or charge of a juvenile may administer reasonable punishment to him;
- New provisions relating to: -
 - the provision of assistance and information about court proceedings to victims and their families;
 - child-sensitive procedures for investigating and hearing evidence and provision for maintaining victim's privacy and confidentiality during court proceedings;
 - the protection of children and witnesses;
 - the burden of proof that a victim had attained the age of 18 at the date of the commission of the offence could be placed on the accused;
 - Child-sensitive means of giving evidence via an intermediary, in private, via video or video link;
 - The hearing of cases without delay and court-listing procedures for cases to be heard as a matter of urgency and priority.

²¹⁸ Part X relates to Care Orders

²¹⁹ ILO's *"Time Bound Programme Manual for Action Planning, 2003"*, Page 28

ANNEXURE 2: ORIGINAL TERMS OF REFERENCE

Overall Programme Title: Tackling Child Labour Through Education (TACKLE)

Project: Review of Legislative and Policy Framework with Regard to Child Labour and Education in Fiji

1 Introduction

The ILO's International Programme on the Elimination of Child Labour (IPEC) was created in 1992 with the overall goal of the progressive elimination of child labour, which was to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour. IPEC currently has operations in 88 countries, with an annual expenditure on technical cooperation projects that reached over US\$74 million in 2006. It is the largest programme of its kind globally and the biggest single operational programme of the ILO.

The number and range of IPEC's partners have expanded over the years and now include employers' and workers' organizations, other international and government agencies, private businesses, community-based organizations, NGOs, the media, parliamentarians, the judiciary, universities, religious groups and, of course, children and their families.

IPEC's work to eliminate child labour is an important facet of the ILO's Decent Work Agenda. Child labour not only prevents children from acquiring the skills and education they need for a better future, it also perpetuates poverty and affects national economies through losses in competitiveness, productivity and potential income. Withdrawing children from child labour, providing them with education and assisting their families with training and employment opportunities contribute directly to creating decent work for adults.

ILO-IPEC, in agreement with the Committee of Ambassadors of the ACP Group of States and with financial support from the European Union (EU) has launched a major new project aimed at tackling child labour through education (TACKLE) in 11 countries across Africa, the Caribbean and the Pacific.

The project has been developed in the context of a strategic partnership signed in 2004 between the ILO and the European Commission (EC) aimed at implementing their common mission to reduce poverty and improve labour conditions in developing countries. The overarching purpose is to accelerate efforts against increasing poverty towards the achievement of the Millennium Development Goals

2 Background

The overall objective of TACKLE is to contribute towards poverty reduction by providing equitable access to basic education and skills development to children involved in child labour or at risk of being involved in child labour.

The project purpose is to strengthen the capacity of the national and local authorities in the formulation, implementation and enforcement of policies to fight child labour in coordination with social partners and civil society.

One of the first steps that countries must take to effectively implement ILO Child Labour Convention 138 (1973), establishing the minimum age for entry into work, and Convention 182 (1999), on the Worst Forms of Child Labour, is to bring national laws into harmony with the Conventions. The purpose of the work described in these Terms of Reference is to assess the Fijian legal framework with a view to identifying any gaps or inconsistencies with regard to ILO Conventions 138 and 182. In particular, the review may point to the need to strengthen the coherence between education and labour legislation, and to improved harmonization of all areas of legislation that refer to children's rights, particularly the right to education.

Establishing a coherent legal framework with regard to child labour will do little to end the problem in and of itself. Laws must be accompanied by policies and programmes to ensure their effective implementation; enforcement is key to achieving a real impact. Therefore, an analysis of implementing policies and programs is important as well. Fiji currently does not have a National Action Plan against child labour though the elimination of child labour was identified as a priority in the National Plan of Action on Decent Work. The country's enforcement of its child labour laws, in addition to other relevant legislation such as laws against trafficking, has been deemed lacking by outside parties including the U.S. Department of State. The review should highlight existing weakness and indicate areas in which TACKLE could assist in terms of both legislation and implementation.

Fiji has a minimum age of employment of 15 years but currently the legislation includes provisions for children under 15 to work that may be not in accordance with Convention 138. Education is compulsory through grade 8, normally 13 years of age, or until the child is 15. The country has not elaborated a list of hazardous child labour as required by Convention 182.

There are also other international agreements which are important in fighting child labour such as the UN Convention on the Rights of the Child (CRC). Fiji has ratified the CRC but not the Optional Protocol on the involvement of children in armed conflicts, the Optional Protocol on the sale of children, child prostitution and child pornography, or the UN Trafficking in Persons Protocol. Further details regarding the legislative framework, which will serve as an input into the work contemplated in this Terms of Reference, can be found in Annex 1.

3 Scope of work

The project is seeking to **commission a legal or public policy expert(s)** to conduct the following review:

Overall Objectives

- 1.1. Review the existing legal/regulatory framework in view of facilitating the legislative process that can lead to an elaboration and expansion of a legal framework that is in accordance with ILO's Child Labour Conventions 138 and 182. Particular focus should be placed on the harmonization of education and labour legislation.
- 1.2. Assess existing policies and programmes intended to implement the relevant legal/regulatory framework
- 1.3. Make recommendations regarding areas where ILO can assist Fiji in strengthening the legislative and policy framework on child labour and education.

Specific duties to include:

- Examine existing legislation, legal frameworks, policies and strategies impacting on child labour, including the Constitution, Penal Laws, National policies on Children, Labour and Employment Laws (including laws on occupational health and safety and labour inspection), Family and Child Care Laws (including laws on marriage and adoption), Child Rights and Welfare Laws, Trafficking and Commercial Sexual Exploitation of Children laws, Customary Laws, Laws of Compensation, Evidence and Procedure Laws, Education Laws, administrative laws, laws governing international movement, cooperation and assistance, and other laws deemed relevant.
- Review existing programmes and strategies of key government ministries in relation to the welfare of children.
- Recommend strategies for legislative harmonization to promote a more co-operative approach and co-ordinated strategy to tackling child labour.
- Formulate a consolidated reference list with *hyperlinks* to the documents and data collected during this Review.
- Develop a report on the legislative and policy review and findings and include recommendations to strengthen legislation to protect children from child labour, the worst forms of child labour and hazardous work.
- Work in consultation with designated project committee represented by the Labour and Education Ministry, workers and employers organizations, and other project stakeholders, and present initial findings and final report to committee.
- Identify planned changes of or scheduled reviews of relevant legislation with a view to identifying opportunities for TACKLE to provide advisory services or technical assistance.

- Identify ministries, government departments and programmes that have a role fighting child labour in the country and/or have potential but are being underutilized.
- Identify all international agreements relevant to child labour that have been ratified or otherwise adopted.
- Ensure that the findings of the desk review are incorporated into the final report.

4 Structure of Report

The consultant will produce a report in the following format:

1. Title Page, Table of Contents, Acronyms
2. Preface
 - Project title
 - Dates
 - Purpose of the review
 - Authors, stating specific roles
3. Executive Summary
 - Brief project description
 - Overview of the review proceedings
 - Principle findings, relating to project goals/targets
 - Key recommendations; specific lessons learned
4. Main Report
 - Project description
 - Goals and targets
 - Project stakeholders and beneficiaries
 - Overview of review
 - Brief description of methodologies used
 - Review findings: legislation and policy
 - Constraints and problems encountered; capacity building requirements
 - Recommendations
5. Annexes
 - Original TOR
 - Timetable
 - List of legislations and policies reviewed
 - List of people interviewed
 - Review guidelines developed
 - Other relevant documents

5 Confidentiality

All information and reports associated with the contracted services are strictly confidential and the property of ILO. They are to be returned at the conclusion of the assignment.

6 Consultancy

The commissioned legal consultant/s shall ensure that the Review is carried out with due diligence, efficiency and economy in accordance with the terms of this Commission. The Review must include where necessary the use of consultative, participatory methods with sound management and technical practices that comply with professional consulting standards and best practices recognized by relevant professional bodies.

7 Stakeholders

It is important that all relevant stakeholders are consulted. The extent and form this takes will depend on the arrangements by the Consultant/s with support from the contracting agency during the course of the assignment.

Annex 1: Fiji – Desk Review Findings- 23 September 08

CHILD LABOUR SITUATION

Background

Children work in agriculture in Fiji, including in the tobacco sector. Children also work in the informal sector, in family businesses, and on the streets. Children shine shoes, repair cars, and work as domestics in homes. Children are sexually exploited through prostitution, pornography, and child sex tourism.

Education

In Fiji, education is compulsory until age 15 and there is free public education though students must pay for school supplies and related items which prohibit some children from attending school. The net primary enrolment rate in 2004 was 96%. As of 2003, 99% of primary school entrants were likely to reach grade 5. Primary education is accessible to almost all children in Fiji, but secondary education is less accessible due to the higher costs involved and the geographical distribution of schools.

LEGAL FRAMEWORK

The Constitution prohibits forced labour. The Employment Relations Bill outlines the provisions of the Convention, and explicitly prohibits any form of child labour. The country is currently in the process of elaborating a new Employment Relations Bill that would replace existing labour laws and would make relevant changes so as to harmonize the legislation with the Convention.

The effective enforcement of the Convention through inspections is primarily ensured by labour officers and labour inspectors authorized by the Permanent Secretary, which, pursuant to section 8 of the Employment Ordinance, may institute proceedings in respect of any offence committed by any person against any of the provisions of this Act. Section 5 of the Employment Ordinance provides for the appointment of a Permanent Secretary of Labour for the purposes of the administration of this Act. Section 99 of the Employment Ordinance provides for penalties of a fine and imprisonment for an offence committed against this Act. The Government's has stated that there are no court or tribunal rulings to date, because of the compliance by employers and the strict enforcement by labour inspectors. However, the U.S. Department of State has reported that the country's child labour laws and enforcement mechanisms are insufficient because

of the lack of a comprehensive child labour policy and of resources to investigate reports of child labour.

Definition of Child Labour

Under the new Employment Relations Bill, a child will now be defined as a person under the age of 18 years. The current law states that no child under 12 years shall be employed in any capacity whatsoever and sets guidelines for the employment of “children”, defined previously as 12 to 15, and “young persons” as 15 to 18. Children may not work more than 6 hours a day, and young persons more than 8 hours a day. Children may not work in any industrial undertaking, and neither children nor young persons may be employed in dangerous working conditions or during the night.

Minimum Age

Section 92 of the draft Employment Relations Bill sets the minimum age for admission to employment or work at 15 years. Persons between the ages of 15 and 17 may be employed in certain occupations not involving heavy machinery; however, they must be given specified hours and rest breaks. Currently, there is no law on the minimum age of conscription into the military. The minimum age for voluntary military service is 18 years.

According to section 59 of the Employment Ordinance, no child under the age of 12 years shall be employed in “any capacity whatsoever”, however it stipulates that this provision shall not apply to any child employed in light work suitable to his capacity in an agricultural undertaking which is owned and operated by the family of which he is a member. Therefore, the Employment Ordinance permits light work by children below the age of 12 years. Children between ages 12 and 15 may be employed on a daily wage basis in non-industrial work not involving machinery, provided they return to parents or guardian every night. According to section 93(2) of the draft Employment Relations Bill, only children between 13 and 15 years may be employed in light work in compliance with the Convention.

Ratification of Relevant Conventions

Fiji ratified Convention 138 in 2003 and 182 in 2002. The Convention on the Rights of the Child was ratified in 1993.

Education

Tuition-free education is provided in primary schools for all children aged 6-13. Education is compulsory for children through Grade 8 (usually age 13) or at the end of the year when the child turns 15 per the Compulsory Education Order. While primary school children do not pay tuition fees as such, schools levy fees which prevent some children from going to school. Fiji relied in large part on community involvement in schools allowing schools to take in local needs and challenges.

WFCL

There is no existing programme of action as such to eliminate the WFCL, “although the Government and social partners and non-governmental organizations and civil societies do oversee their own actions on the elimination of the WFCL”.

Section 91(a) of the Employment Relations Bill prohibits all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict. Section 256 of the Employment Relations Bill outlines a general penalty for these offences, including fines and imprisonment. Section 91(b) of the Employment Relations Bill prohibits the use, procuring or trafficking of a child for illicit activities, in particular for the production and trafficking of drugs, as defined in relevant international treaties. However, there appear to be no provisions in the Penal Code prohibiting the involvement of children in drug production and trafficking. Section 58 of the Juveniles Act punishes anyone who causes or procures any child (defined as under the age of 14) or, having the custody or care of such a child, allows him to be in any street, premises or place for the purpose of begging.

Hazardous Work

Under the terms of section 61 of the Employment Ordinance, no child (defined as a person under the age of 15) or young person (defined as a person over the age of 15 but under the age of 18) shall be employed in any work which, in the opinion of the proper authority, is injurious to health, dangerous or otherwise unsuitable. However, the national legislation does not determine the types of hazardous work pursuant to section 61 of the Employment Ordinance. Legislation does specify some work which children are prohibited from participating in. Section 95(2) of the Employment Relations Bill provides that the Minister of Labour may declare any employment or workplace to be a prohibited or restricted employment or workplace on the ground that it is injurious to health or is hazardous, dangerous, or unsuitable. Section 95(1) of the Employment Relations Bill prohibits the employment of children underground in mines. Section 63 of the Employment Ordinance restricts the employment of children in industrial undertakings and in any undertaking in attendance on machinery for health and safety reasons. However, under this Ordinance, the term “child” means a person who has not attained the age of 15 years.

Commercial Sexual Exploitation of Children

Fiji boys and girls are victims of CSEC by Fiji citizens, foreign tourists, and sailors on foreign fishing vessels. Local hotels procure underage girls for commercial sexual exploitation by foreign guests.

The law prohibits the forcible procurement of women and girls into prostitution within and outside the borders of Fiji, as well as the sale, purchase, or hiring of minors less than 16 years for prostitution, illicit sexual intercourse or any unlawful immoral purpose. It also prohibits the production and possession of obscene materials depicting both adults and children. The Penal Code has extensive provisions prohibiting the procurement and use of girls under 18 for prostitution but does not include the same protection for boys under 18. Section 91(c) of the Employment Relations Bill explicitly prohibits the use, procuring or offering of a child under the age of 18 for prostitution, for the production of pornography or for pornographic performances. The Act to amend the Juveniles Act of 1997 imposes specific penalties if a person is convicted for recording pornographic material involving juveniles but the Act applies only to juveniles under the age of 17.

Penalties for those violating these statutes range from 2 to 5 years of imprisonment, with the possibility of corporal punishment.

Trafficking

Fiji is a source country for children trafficked for the purpose of CSEC. Some Fiji children are informally adopted or given to other families to raise—a tradition of child placement that can facilitate trafficking in persons.

The law criminalizes trafficking in persons. Fiji prohibits sex and labour trafficking through its Immigration Act of 2003, which prescribes punishments that are sufficiently stringent. Fiji laws, including those pertaining to trafficking in persons and sexual assault, apply to Fiji citizens deployed abroad as part of peacekeeping missions. The Penal Code prohibits parents or custodians of children under 16 from selling or leasing for unlawful or immoral purposes, including prostitution. It also prohibits anyone from buying or leasing children for these purposes. The Penal Code prohibits the kidnapping, purchase or trafficking of children under the age of 16 for the purposes of slavery, grievous harm or sexual exploitation. However, the Convention requires all forms of sale and trafficking in children to be prohibited irrespective of the purpose. Although there are prohibitions in place in Fiji with respect to children under 16, the Convention applies to all children under the age of 18.

Violators of trafficking legislation can be punished with a maximum sentence of 20 years in prison, as well as fines. However, the government has demonstrated no action to investigate or prosecute traffickers, assist victims, or participate in public awareness campaigns to prevent trafficking. The government has not developed or implemented a process to refer identified victims to institutions that could provide care. The Republic of Fiji Military Forces provided anti-trafficking training for soldiers in advance of their being deployed abroad on international peacekeeping missions.

Fiji has not ratified the 2000 UN Trafficking in Persons Protocol.

According to the US Department of State report, *Trafficking in Persons Report 2008*, “The Government of Fiji does not fully comply with the minimum standards for the elimination of trafficking and it is not making significant efforts to do so.” The country was ranked in Tier 3 in the 2008 U.S. Trafficking in Persons Report.

Sources:

CEACR: Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138) Fiji (ratification: 2003) Submitted: 2007

CEACR: Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138) Fiji (ratification: 2003) Submitted: 2006

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) Fiji (ratification: 2002) Submitted: 2007

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) Fiji (ratification: 2002) Submitted: 2006

Fiji: Country Reports on Human Rights Practices - 2007. Released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008

The EFA 2000 Assessment: Country Reports: Fiji. UNESCO. World Education Forum. http://www.unesco.org/education/wef/countryreports/fiji/rapport_2_1.html

Trafficking in Persons Report 2008. U.S. Department of State. www.state.gov/g/tip/rls/tiprpt/2008/

ANNEXURE 3: LIST OF LEGISLATION AND POLICIES REVIEWED

Schedule A: Legislation Reviewed

1. Adoption of Infants Act, Cap. 58
2. Cinematographic Films Act, Cap. 271
3. Civil Evidence Act 2002
4. Community Work Act 1994
5. The Constitution of the Republic of Fiji 1997
6. Cooperatives Act 1996
7. Dangerous Drugs Act, Cap. 114
8. Education Act, Cap. 262
 - Compulsory Education Regulations 1997 (Legal Notice 23)
 - Compulsory Education Order 1997 (Legal Notice 22)
 - Compulsory Education Order 1998 (Legal Notice 28)
 - Education (Establishment and Registration of Schools) Regulations 1966
 - Rotuma (Primary School) Regulations
9. Employment Relations Promulgation 2007
 - Employment Relations (Administration) Regulations 2008 (Legal Notice 52)
 - Employment Relations (Labour-Management Consultation and Cooperation Committees) Regulations 2008 (Legal Notice 53)
 - Employment Relations (Employment Agencies) Regulations 2008 (Legal Notice 58)
 - Code of Good Faith for Collective Bargaining 2008 (Legal Notice 54)
10. Examinations Act, Cap. 262A
11. Extradition Act 2003
12. Factories Act, Cap. 99
13. Family Law Act 2003
 - Family Law Regulations 2005 (LN. 49)
14. Health & Safety at Work Act 1996
 - Health and Safety at Work (Administration) Regulations 1997 (Legal Notice 170)
 - Health and Safety at Work (General Workplace Conditions) Regulations 2003 (Legal Notice 25)
 - Health and Safety at Work (Control of Hazardous Substances) Regulations 2006 (Legal Notice 130)
15. Hotel and Guests Act (Cap. 195)
16. Illicit Drugs Control Act 2004
17. Immigration Act 2003
 - Immigration Regulations 2007
18. Interpretation Act, Cap. 7
19. Juveniles Act, Cap. 56
 - Boarding Out of Juveniles Regulations
20. Juveniles (Amendment) Act No. 29 of 1997
21. Marine Act 1986

- Marine (Masters and Seamen) Regulations 1990 (Legal Notice 821)
- 22. Marriage Act, Cap. 50
- 23. Mining Act, Cap. 146
- 24. Mutual Assistance in Criminal Matters Act of 1997
- 25. Penal Code, Cap. 17
 - Criminal Procedure Code, Cap 21
- 26. Police Act, Cap. 85
- 27. Prisons & Correction Act 2006 (not effective as a commencement date has not been gazetted)
- 28. Public Service Act, 1999
- 29. Quarries Regulations
- 30. Republic of Fiji Military Forces Act , Cap. 81
 - Cadet Units Regulations (Legal Notice 159 of 1977)
- 31. Social Justice Act 2001
- 32. Shop (Regulations of Hours and Employment) Act, Cap.100
- 33. Training and Productivity Authority of Fiji Act, Cap. 93
- 34. Workmen's Compensation Act, Cap. 94

Schedule B: Policies Reviewed

1. Sustainable Economic and Empowerment Development Strategy (SEEDS) 2008 – 2010;
2. National Policy on Sexual Harassment in the Workplace 2008 (LN. 56);
3. Ministry of Education’s policies, codes and guidelines on: -
 - “Education For All”, Mid-Decade Assessment Report 2008, from the Ministry of Education;
 - Occupational Health and Safety in Schools;
 - Selection and Purchasing of Library Resources;
 - Standards Monitoring in Schools;
 - Information – Privacy and Security;
 - Fiji Junior Certificate Assessment;
 - Behavioural Management;
 - Excursions (Off-School Site Activities);
 - Enterprise Education;
 - Technical Vocational Education & Training;
 - Schools Information Management System;
 - Skills Training for Employment Policy;
 - Codes of Ethics of the Teaching Profession;
 - Early Childhood Education;
 - Drugs and Substance Abuse in Schools;
 - Curriculum Assessment and Reporting.

ANNEXURE 4: LIST OF PEOPLE INTERVIEWED

- Mr S. Ramagimagi- Director of Labour Compliances, Ministry of Labour
- Vani Verea, Acting Principal Technical Officer, Occupational Health and Safety Unit, Ministry of Labour;
- Ms. Ilisapeci Rokotunidau- Director of Social Welfare
- Mrs. Viniana Kunabuli- Director Curriculum Advisory Services, Ministry of Education;
- Mrs Naiyaga- Deputy Secretary for the Ministry of Education;
- Mr Beniamino Salacakau, Director of Policy, Ministry of Education;
- Mr. Agni Deo Singh- General Secretary, Fiji Teachers Union
- Ms. Jyotika Sharma- Education & Training Officer/ Centre Manager- Fiji Trades Union Congress
- Ms. Mere Ratunabuabua- Director Culture & Heritage, Ministry of Education, National Heritage, Culture and Arts
- Navnita Chand- FEF representative- Senior Human Resources Officer, FTIB
- Mr. Jonetani Tonawai- FEF representative- Fiji Industries Ltd
- Mr. Manoa Malani, Department of Tourism, Acting Director of Tourism
- Iris Low-McKenzie, Save the Children Fiji
- Edwina Kotoisuva, Fiji Women’s Crisis Centre
- Ms. Vani Verea, Acting Principal Technical Officer, Occupational Health and Safety Unit, Ministry of Labour
- Sergeant Mereani Moi Moi and Inspector Linieta Navonu in the Child Abuse and Sexual Offences Unit of the Fiji Police Force
- Inspector Bhag Wati Goundar and Romeo Nasila, in the Juvenile Unit of the Fiji Police Force
- M. Ravula, Department of Immigration, Ministry of Defence, National Security & Immigration

Note:

1. 55 stakeholders representing various government departments, workers, employers and civil society including NGOs, academia and media personnel, participated in the one- day National Stakeholder Dialogue held on June 10th in Suva to examine and endorse the Final Draft Legislative Review Report
2. In addition, feedback into the various drafts of the report was received by various stakeholders via email over a period of 6-8 weeks.

ANNEXURE 5: REFERENCE LIST

- The Desk Review Findings of the ILO TACKLE team in Geneva dated 23 September 2008 in relation to Fiji's compliance with Conventions 138 and 182, in particular the ILO Committee of Experts' Direct Request (2006) to Fiji on the application of C138 and C182;
- the informal Comparative Analysis of law and practice in Fiji in light of Convention 138 made by IPEC Geneva, dated 27 July 2005;
- the informal Comparative Analysis of law and practice in Fiji in light of Convention C182 made by IPEC Geneva, dated 5 February 2005 in Fiji
- ILO publication: "Modern Policy and Legislative Responses to Child Labour," 2007;
- ILO publication: "Time Bound Programme Manual for Action Planning," 2003;
- ILO's Publication on "Child Labour, A Textbook for University Students," 2004
- "Review of Child Labour Laws of Barbados", Report, Clive Pegas, June 2005
- UNHCR 2007 Findings on the Worst Forms of Child Labour for Fiji (Publisher- United States Department of Labour): Publication Date: 27 August 2008
- US Department of State Country Report on Human Rights Practices in Fiji- 11 March 2008
- US Department of State, "Trafficking in Persons Report- June 2008, Fiji"
- Save the Children Fiji Report, "The Commercial Sexual Exploitation and Sexual Abuse of Children in Fiji: A Situational Analysis," 2006
- Report on the mission of the Special Rapporteur to the Republic of Fiji on the issue of commercial sexual exploitation of children (11-16 October 1991)
- UNICEF "Report on Violence Against the Girl Child in the Pacific Islands Region;"
- Report on Pacific Regional Workshop on Combating Poverty & CSEC (2003)
- Fiji Law Reform Commission- Discussion paper on Sexual Offences against Children in Fiji (1999)
- Fiji Law Reform Commission's *Report on Sexual Offences Against Children*, (May 2000)
- "Education For All", Mid-Decade Assessment Report 2008, from the Ministry of Education, National Heritage, Culture and Arts;
- Ministry of Education's Taskforce Proposed Project Submission for ILO Child Labour (TACKLE) Project, December 2008;
- Save the Children's Report: Keeping Children in School
- Sustainable Economic and Empowerment Development Strategy (SEEDS) 2008 – 2010
- Fiji Islands Bureau of Statistics- 2007 Census of Population and Housing

- The People's Charter for Change, Peace and Progress;
- The Department of Social Welfare's *Standard Operating Procedures*
- Memorandum of Understanding between the Fiji Police and the Ministry of Education and Technology, May 1998;
- Protocol between the Fiji Police and the Ministry of Health regarding the Provision of Medical Services, May 1998;
- Protocol between the Fiji Police and the Department of Social Welfare regarding protective services for children and young people in Fiji, May 1998.

Cases

- *State v Mutch* [1999] FJHC 149
- *McCoskar v The State* [2005] FJHC 500
- *In re S (an Infant)* [1997] FJHC 182; Hbk0059j.1997s (24 November 1997)
- *Social Welfare Officer v Marshall* [2008] FJHC 283; HBA11.2006 (7 March 2008)
- *Lakhan v Lata* [1994] FJHC 26; Hbc0585j.93s (22 March 1994)
- *State v A.V.* [2008] HAC 19 of 2008

Treaties, Optional Protocols and Recommendations

- ILO Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- ILO Rights of Association (Agriculture) Convention, 1921 (No. 11)
- ILO Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
- ILO Underground Work (Women) Convention, 1935 (No. 45)
- ILO Labour Inspection Convention, 1947 (No. 81)
- ILO Freedom of Association and Protection of the Right to Organize Convention, 1949 (No. 87)
- ILO Seafarers' Identity Documents Convention, 1957 (No. 108)
- ILO Minimum Age Convention, 1973 (No.138)
- ILO Minimum Age Recommendation, 1973 (No. 146)
- ILO Occupational Safety and Health Convention, 1981 (No. 155)
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
- ILO Worst Forms of Child Labour Recommendation 1999 (No. 190)
- ILO Safety and Health in Agriculture Convention, 2001 (No.184)
- United Nations Convention on the Rights of the Child 1989;
- Convention on the Civil Aspects of International Child Abduction 1980;
- International Convention for the Suppression of Trafficking in Women & Children 1921;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000;
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000.