



Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law	Written	Yes	Single State	Republic

1. INTRODUCTION

1.1. Fiji and Modern Slavery (Human Trafficking)

Fiji is a sovereign democratic State known as the Republic of Fiji.¹ Historically, Fiji was a colony of the United Kingdom. It became independent as a dominion in 1970, and a republic was declared in 1987. Since its independence, Fiji has had four constitutions. The latest constitution was signed into law on September 6, 2013. The current Constitution of the Republic of Fiji (**Constitution**) establishes a parliamentary republic government consisting of the Executive (comprised of the President, Prime Minister and Cabinet) and the Parliament, which is empowered to make laws.² As a result of this history, the laws of Fiji include civil and common law.

The Constitution is the supreme law of Fiji.³ Chapter 2 of the Constitution provides a Bill of Rights that guarantees certain rights and freedoms.⁴ For example, the Bill of Rights gives every individual the right to life and personal liberty, as well as freedom from slavery, servitude, forced labour, and human trafficking.⁵

These rights are enforced through the Constitution and domestic legislation, including the Crimes Decree 2009 (**Crimes Decree**),⁶ the Immigration Act 2003 (**Immigration Act**),⁷ and other supporting laws.

The U.S. Department of State, Trafficking in Persons Report 2021 (**TIP Report**) places Fiji in Tier 2 with respect to the Government's efforts to eliminate human trafficking:

The Government of Fiji does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore Fiji was upgraded to Tier 2. These efforts included including investigating 10 suspected trafficking cases involving 102 potential victims, formally endorsing a national anti-trafficking strategy for 2021–2026, and creating a trafficking case

¹ Constitution of the Republic of Fiji, section 1, available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

² *Id.*, Chapter 3.

³ *Id.*, section 2(1).

⁴ *Id.*, Chapter 2.

⁵ *Id.*

⁶ Crimes Decree 2009, available at: <https://www.steptoec.com/images/content/2/3/v1/2393/3984.pdf>.

⁷ Immigration Act 2003, available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

management coordinator office, which was set to assume responsibility of coordinating victim support. However, the government provided services to only three victims of labor trafficking and did not provide services to any victims of sex trafficking, despite reports that Fijian children continued to be exploited in commercial sex. The government did not convict any traffickers during the reporting period and has only convicted one trafficker since 2014. Some reports suggested official complicity impeded anti-trafficking efforts.⁸

Several types of human trafficking are prevalent in Fiji:

Sex trafficking—“Family members, taxi drivers, foreign tourists, businessmen, crew on foreign fishing vessels, and other traffickers have allegedly exploited victims from Thailand and China, as well as Fijian women and children, in sex trafficking. Traffickers exploit victims in illegal brothels, local hotels, private homes, and massage parlors, and traffickers sometimes utilize websites and cell phone applications to advertise victims for commercial sex ... Traffickers exploit Fijian and Chinese women and children in Chinese-operated massage parlors and brothels, particularly in Suva. In some cases, massage parlor owners arrange for female Fijian employees to engage in commercial sex acts with clients in local hotels and brothels. Anecdotal reports indicated traffickers transported Chinese victims into Fiji on small boats, avoiding ports.”⁹

Domestic servitude of women—“Some Fijian men reportedly marry women from Nepal and Pakistan and subject them to domestic servitude in Fiji.”¹⁰

Labour trafficking—“Labor traffickers exploit workers from South and East Asian countries in small, informal farms and factories, and in construction. Recruitment agencies operating in victims’ home countries, vessel owners, and other crew exploit migrant fisherman from Southeast Asian countries, especially Indonesia, in forced labor on Fijian flagged fishing vessels, or foreign flagged fishing vessels (mainly China- and Taiwan-flagged) transiting Fijian ports and waters. Victims of forced labor experience threats of violence, passport confiscation, debt-based coercion, excessive working hours, and abusive living and working conditions.”¹¹

Sex and labour trafficking of children—“Some Fijian children are at risk of sex and labor trafficking, as families follow a traditional practice of sending them to live with relatives or families in larger cities, where they may be subjected to domestic servitude or coerced to engage in sexual activity in exchange for food, clothing, shelter, or school fees. Fijian children were at risk for forced labor in agriculture, retail, or other sectors. Rising levels of poverty also contributed to increased risks of Fijian children being exploited in commercial sex and forced labor. Economic crisis related to the pandemic, as well as weather-related natural disasters, increased the number of street children compelled to seek incomes to sustain their families; these children are at risk of being exploited in sex trafficking or forced labor. Reports indicated children as young as 12 years old were exploited in sex trafficking. Observers reported a practice where taxi drivers transported Fijian child sex trafficking victims to hotels in popular tourist areas at the request of foreign tourists seeking commercial sex acts. Foreign yacht owners and foreigners hiring locally-owned yachts dock in rural Fijian islands seek young women, usually children, for marriage; some of these women and children subsequently become at risk to forced labor or sex

⁸ U.S. Dep’t of State, Trafficking in Persons Report 236 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>. The U.S. Department of State rankings are based on the minimum standards specified in the U.S. Trafficking Victims Protection Act of 2000, “which are generally consistent with the [UN] Palermo Protocol.” *Id.* at 51.

⁹ *Id.* at 236.

¹⁰ *Id.*

¹¹ *Id.*

trafficking. However, border restrictions related to the pandemic led to a reduction of the number of foreign yachts entering Fiji, subsequently resulting in fewer reports of this practice occurring during the reporting period.”¹²

Several government agencies and organisations monitor, report, and attempt to address human trafficking:

- The Office of the Director of Public Prosecutions (**ODPP**) has primary responsibility for deciding whether to prosecute human trafficking offences. In 2020–2021, the ODPP considered charges in a case involving leaders of a church that allegedly confiscated the passports of its members who worked in various companies owned by the church without pay.¹³ Additionally, since 2010, the ODPP has been involved in training Immigration and Police Officers on Fiji’s anti-human trafficking laws.¹⁴
- The Human Rights and Anti-Discrimination Commission was established by the Human Rights Commission Decree 2009¹⁵ and is enshrined within the Constitution.¹⁶ Its mandate includes: promoting the protection and observance of human rights, monitoring, investigating, and reporting on the observance of human rights, making recommendations to the Government concerning matters affecting the rights and freedoms under the Constitution, receiving and investigating complaints about alleged abuses of human rights, and taking steps to secure appropriate redress of human rights violations.¹⁷
- The Ministry of Women, Children and Poverty Alleviation works in partnership with non-government and civil society organisations, such as the Homes of Hope and Save the Children Fund (Fiji), and other stakeholders in the community to spread awareness of trafficking in Fiji. For example, in 2019, the Ministry held a National Workshop for Human Trafficking and Child Exploitation.
- The National Anti-Human Trafficking Sub-Committee on Legislative Desktop Review reviews and proposes amendments to the Government’s trafficking legal framework.
- The Fiji Police Force, especially the Human Trafficking Unit (**HTU**) that was established in 2019, has primary responsibility for investigating trafficking in persons cases. However, the police have not investigated trafficking cases consistently and, consequently, only one trafficker has been convicted since 2014.¹⁸ The HTU has begun drafting formal standard operating procedures for investigating trafficking cases.¹⁹
- The Fiji Independent Commission Against Corruption (**FICAC**) is responsible for investigating any alleged offences of corruption and bribery by government officials and employees. In 2020, FICAC investigated one allegation of official complicity by immigration officials in a suspected trafficking case.²⁰ However,

¹² *Id.*

¹³ *Id.* at 235.

¹⁴ *Anti-Human Trafficking*, Office of the Director of Public Prosecutions, available at: <https://odpp.com.fj/anti-human-trafficking/>.

¹⁵ The Human Rights Commission Decree 2009, available at: http://www.pacii.org/fj/promu/promu_dec/hrcd2009280.pdf.

¹⁶ Constitution of the Republic of Fiji, section 45, available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

¹⁷ *Id.*, section 45(4).

¹⁸ U.S. Dep’t of State, *Trafficking in Persons Report 235* (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

¹⁹ *Id.*

²⁰ *Id.*

- no prosecutions or convictions of government employees were reported in relation to human trafficking.²¹
- The Ministry of Defense, National Security, and Policing has established a Case Management Coordinator office (**CMC**) in addition to a case management mechanism that created formal procedures for officials to refer victims to the CMC. The CMC is intended to assume responsibility of coordinating victim support and overseeing investigations and prosecutions. However, the CMC has not yet overseen any cases or coordinated victim services, and the case management mechanism has not been implemented in practice.²²
 - The Department of Immigration operates safe houses for foreign individuals awaiting deportation, including trafficking victims.
 - The Interagency Working Group on Human Trafficking (**IWGHT**) facilitates government efforts and strategies in relation to human trafficking. In 2020, the IWGHT convened for the first time since 2012. In 2021, the IWGHT drafted a Fiji Anti-Human Trafficking Strategy and Action Plan, which Parliament accepted.²³
 - The Ministry of Employment, Productivity, and Industrial Relations and its supervising officers administer and enforce the Employment Relations Act 2007, including working conditions.²⁴ Labour inspectors conducted 843 inspections in 2020, a significant decrease compared with 3,562 inspections in 2019, and did not identify any child labour violations.²⁵

1.2. Fiji's Policy and Legal Position

The Constitution is the supreme law of Fiji, and any inconsistent law is void to the extent of the inconsistency.²⁶ Chapter 2 of the Constitution provides a Bill of Rights that guarantees certain rights and freedoms, and any person may seek redress from the High Court for contravention of those rights.²⁷ Domestic laws supplement these constitutional rights.

Fiji has acceded to various United Nations (**UN**) and International Labour Organization (**ILO**) treaties and conventions protecting fundamental human rights.

²¹ *Id.*

²² *Id.*

²³ *Anti-Human Trafficking strategy endorsed*, FBC News, available at: <https://www.fbcnews.com.fj/news/anti-human-trafficking-strategy-endorsed/>.

²⁴ Employment Relations Act 2007, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

²⁵ U.S. Dep't of State, Trafficking in Persons Report 236 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

²⁶ Constitution of the Republic of Fiji, sections 2(1) and 2(2), available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

²⁷ *Id.*, Chapter 2 and section 44.

2. OVERVIEW OF FIJI'S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

2.1. Fiji's Regional and International Law Obligations

2.1.1. Fundamental human rights

Fiji is a party to many UN conventions protecting fundamental human rights. It has ratified or acceded to the International Covenant on Civil and Political Rights (1966),²⁸ the International Covenant on Economic, Social and Cultural Rights (1973),²⁹ the Convention on the Elimination of All Forms of Discrimination against Women (1984),³⁰ and the Convention on the Rights of the Child (1990)³¹ and its Optional Protocols Prohibiting the Use of Children in Armed Conflicts (2002)³² and the Sale of Children, Child Prostitution, and Child Pornography (2011).³³

Fiji has ratified 39 ILO Conventions and one Protocol,³⁴ including the Minimum Age Convention (No. 138),³⁵ the Worst Forms of Child Labour Convention (No. 182),³⁶ and various Worker Compensation Conventions.³⁷

Fiji is a member of the Pacific Islands Forum, but this forum has not yet established any regional treaties directed at fundamental human rights.³⁸

²⁸ International Covenant on Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=en.

²⁹ International Covenant on Economic, Social and Cultural Rights: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4.

³⁰ Convention on the Elimination of All Forms of Discrimination against Women: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4.

³¹ United Nations Convention on the Rights of the Child: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4.

³² Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=en.

³³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en.

³⁴ *Ratifications for Fiji*, International Labour Organization, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103278.

³⁵ C138—Minimum Age Convention, 1973 (No. 138), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ilo_code:C138.

³⁶ C182—Worst Forms of Child Labour Convention, 1999 (No. 182), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

³⁷ *Ratifications for Fiji*, International Labour Organization, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103278.

³⁸ *Treaty Collection*, Pacific Islands Forum, available at: <https://www.forumsec.org/treaty-collection/>.

2.1.2. *Slavery and trafficking*

In 2017, Fiji acceded to the UN Convention against Transnational Organized Crime (2000),³⁹ the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁴⁰ and the related Protocol Against the Smuggling of Migrants by Land, Sea and Air.⁴¹

Additionally, in 2019, Fiji acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁴²

2.1.3. *Effect under Fiji's law*

Section 51 of the Constitution provides that an international treaty or convention binds Fiji after Parliament has approved it.⁴³ This means that an international treaty or convention need not be ratified into domestic law to become binding, rather the Government merely needs to accede to it.

2.2. Human Rights Protections Under Fiji's Law

Chapter 2 of the Constitution sets forth fundamental rights and freedoms, as well as a mechanism to enforce those rights and freedoms.

Sections 6(1) and 6(2) of the Constitution stipulate that the rights and freedoms identified in Chapter 2 bind the legislative, executive, and judicial branches of government at all levels, as well as every person performing the functions of any public office. All such public officials are obligated to respect, protect, promote, and fulfil these rights and freedoms.⁴⁴

Any person may seek redress from the High Court for any contravention of the rights and freedoms under Chapter 2. Section 44 of the Constitution provides that:

1. If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.

³⁹ United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en.

⁴⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18.

⁴¹ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18.

⁴² International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4.

⁴³ Constitution of the Republic of Fiji, section 51, available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

⁴⁴ *Id.*, sections 6(1) and 6(2).

2. The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.⁴⁵

Additionally, a person may lodge a complaint with the Human Rights and Anti-Discrimination Commission for an infringement of such rights and freedoms. Section 45(5) provides that:

Subject to this Constitution, any person has the right to lodge a complaint with the Commission, alleging that a right or freedom in this Chapter has been denied, violated or infringed, or is threatened.⁴⁶

Therefore, Fiji's Constitution, supplemented by domestic legislation, protects human rights. Refer to Section 3.

2.3. Criminalization of Modern Slavery

The Crimes Decree⁴⁷ and the Immigration Act have numerous criminal offences penalizing modern slavery.⁴⁸ Refer to Section 3.

2.4. Supply Chain Reporting

Fiji does not have any government policies or legislation requiring the reporting of human trafficking in supply chains.

2.5. Investigation, Prosecution, and Enforcement

2.5.1. Investigation and prosecution of criminal offenses

The Fiji Police Force investigates criminal offences. The HTU has the specific mandate to investigate trafficking in persons cases. Investigators have expansive search, seizure, and arrest powers.⁴⁹

The Criminal Procedure Decree 2009 (**Criminal Procedure Decree**) applies to all crimes covered within the Crimes Decree and the Immigration Act to the extent that it is consistent with the provisions of these statutes.⁵⁰ Under the Criminal Procedure Decree, the High Court tries human trafficking offences (all of which are indictable).⁵¹ The Magistrate Court will hear offences under the Immigration Act where the potential sentence is imprisonment not exceeding 10 years or a fine not exceeding FJD 15,000; the High Court will hear offences exceeding those thresholds.⁵² However, notwithstanding these thresholds, a judge of the High Court has the discretion to invest a magistrate with jurisdiction to try any offence which, in the

⁴⁵ *Id.*, section 44.

⁴⁶ *Id.*, section 45(5).

⁴⁷ Crimes Decree 2009, Divisions 5 and 6 of Part 12, available at: <https://www.stepto.com/images/content/2/3/v1/2393/3984.pdf>.

⁴⁸ Immigration Act 2003, Part 5, available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

⁴⁹ Criminal Procedure Decree 2009, Part III, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2622>.

⁵⁰ *Id.*, section 3.

⁵¹ *Id.*, section 4(1)(a).

⁵² *Id.*, sections 5(2) and 7(1).

absence of such an order, would be beyond the magistrate’s jurisdiction.⁵³ In such cases, a magistrate still cannot impose a sentence exceeding the Magistrate Court’s thresholds.⁵⁴

2.5.2. Mutual assistance/international cooperation

Fiji is involved in various programmes with other countries and private actors on the UN Sustainable Development Goals initiative. In addition, Fiji also participates in a number of Pacific collaborative and information exchange organisations—for example, the Pacific Immigration Development Community, the Pacific Islands Chiefs of Police, and the Customs Oceania Organisation—for whom human trafficking is a focus. Notably, the Pacific Immigration Development Community has begun developing a regional framework to combat human trafficking and people smuggling.⁵⁵

In addition, the International Organization for Migration has partnered with Fiji’s Homes of Hope, with funding support from the European Union, to take on a project entitled *Empowering Fijian Civil Society in Countering Trafficking in Human Beings* (2020–2022). This project is intended to strengthen measures to prevent human rights violations while protecting the rights of victims who have already experienced human trafficking.

3. FIJI’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

3.1. Overview of Criminal Offenses

In Fiji, the national Government handles offences relating to slavery and human trafficking.



⁵³ *Id.*, section 4(2).

⁵⁴ *Id.*, section 4(3).

⁵⁵ *Immigration watchdog tackles transnational crime in Pacific*, Radio New Zealand, available at: <https://www.rnz.co.nz/international/programmes/datelinepacific/audio/2018683402/immigration-watchdog-tackles-transnational-crime-in-pacific>.

3.2. Slavery Offenses Under the Criminal Code

3.2.1. General

The Crimes Decree prescribes several offences that penalize slavery and slave trading. These offences rely on specific definitions:

Slavery—the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.⁵⁶

Slave trading—the capture, transport or disposal of a person with the intention of reducing the person to slavery, as well as the purchase or sale of a slave.⁵⁷

Section 103(1) provides that a person who,

whether within or outside Fiji, intentionally—

- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership;
- (b) engages in slave trading; or
- (c) enters into any commercial transaction involving a slave; or
- (d) exercises control or direction over, or provides finance for
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave;

commits an indictable offence [that carries] a [p]enalty imprisonment for 25 years.⁵⁸

In addition, section 103(2) provides that a person who,

- (a) whether within or outside Fiji—
 - (i) enters into any commercial transaction involving a slave;
 - (ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or
 - (iii) exercises control or direction over, or provides finance for, any act of slave trading; and
- (b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading,

⁵⁶ Crimes Decree 2009, section 102, available at: <https://www.stepto.com/images/content/2/3/v1/2393/3984.pdf>.

⁵⁷ *Id.*, section 103(3).

⁵⁸ *Id.*, section 103(1).

commits an indictable offence [that carries] a [p]enalty of imprisonment for 25 years.⁵⁹

However, the legislation excludes criminal liability for anyone who engages in the prohibited conduct with the intention of securing the release of a person from slavery.⁶⁰ The defendant bears the legal burden of proving such an intention.⁶¹

3.2.2. *Extraterritorial application*

Section 105 of the Crimes Decree provides for its extraterritorial application to slavery offences:

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.⁶²

3.3. Slavery-Like Offences in Fiji’s Legal Order

3.3.1. *Servitude*

The Crimes Decree prescribes several offences that prohibit sexual servitude. The statute defines the condition of sexual servitude:

Sexual servitude—“the condition of a person who provides sexual services and who, because of the use of force or threats—(a) is not free to cease providing sexual services; or (b) is not free to leave the place or area where the person provides sexual service.”⁶³

Threat—means “(a) a threat of force; or (b) a threat to cause a person’s deportation; or (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.”⁶⁴

Conducting a business—includes “(a) taking any part in the management of the business; (b) exercising control or direction over the business; or (c) providing finance for the business.”⁶⁵

Additionally, these offences become aggravated if they are committed against a person under 18 years of age.⁶⁶ To prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.⁶⁷

Section 106(1) provides that a “person –

- (a) whose conduct causes another person to enter into or remain in sexual servitude; and

⁵⁹ *Id.*, section 103(2).

⁶⁰ *Id.*, section 103(4).

⁶¹ *Id.*, section 103(5).

⁶² *Id.*, section 105.

⁶³ *Id.*, section 104(1).

⁶⁴ *Id.*, section 104(2).

⁶⁵ *Id.*, section 106(3).

⁶⁶ *Id.*, section 108(1).

⁶⁷ *Id.*, section 108(3).

(b) who intends to cause, or is reckless as to causing, that sexual servitude,

commits an indictable offence” that carries a penalty of, in the case of an aggravated offence, 20 years of imprisonment or, in any other case, 15 years of imprisonment.⁶⁸

Section 106(2) provides that a “person –

(a) who conducts any business that involves the sexual servitude of other persons; and

(b) who knows about, or is reckless as to, that sexual servitude,

commits an indictable offence” that carries a penalty of, in the case of an aggravated offence, 20 years of imprisonment or, in any other case, 15 years of imprisonment.⁶⁹

3.3.2. *Forced labor*

3.3.2.1 *Crimes Decree*

Forced labour forms part of the offence prohibiting deceptive recruiting for sexual services (refer to Section 3.3.3.), and is incorporated within the definition of “exploitation” as it applies to trafficking and smuggling offences (refer to Section 3.4.).

Forced labour is defined as “the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

(a) is not free to cease providing labour or services; or

(b) is not free to leave the place or area where the person provides labour or services.”⁷⁰

3.3.2.2 *Immigration Act*

Forced labour is incorporated within the definition of “exploitation” as it applies to the trafficking and smuggling offences (refer to Section 3.4.) and the offence for exploiting persons not legally entitled to work (refer to Section 5.6.1.).

The Immigration Act has no distinct definition of forced labour.

3.3.3. *Deceptive recruiting for labor or services*

The Crimes Decree prescribes an offence penalizing deceptive recruiting for sexual services. In addition to any other relevant definition that has already been stated in this chapter in relation to the Crimes Decree, this offence relies on two definitions:

Deceive—means to mislead as to fact (including the intention of any person) or as to law, by words or other conduct.⁷¹

⁶⁸ *Id.*, section 106(1).

⁶⁹ *Id.*, section 106(2).

⁷⁰ *Id.*, section 123(2).

⁷¹ *Id.*, section 107(4).

Sexual service—“means the commercial use or display of the body of the person providing the service for the sexual gratification of others.”⁷²

Additionally, this offence becomes aggravated if it is committed against a person under 18 years of age.⁷³ To prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.⁷⁴

Section 107 provides that a “person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about –

- (a) the fact that the engagement will involve the provision of sexual services; or
- (b) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
- (c) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
- (d) the extent to which the person will be free to cease providing sexual services; or
- (e) the extent to which the person will be free to leave his or her place of residence; or
- (f) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
- (g) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents;

commits an indictable offence” that carries a penalty of, in the case of an aggravated offence, nine years of imprisonment or, in any other case, seven years of imprisonment.⁷⁵

In determining whether a person has been deceived about any of these prohibited matters, a court may consider several factors that are highly prevalent within cases of human trafficking, including:

- (a) the economic relationship between the person and the alleged offender;
- (b) the terms of any written or oral contract or agreement between the person and the alleged offender;
- (c) the personal circumstances of the person, including but not limited to:
 - (i) whether the person is lawfully entitled to be in Fiji; and
 - (ii) the person’s ability to speak, write and understand English or the language in which the deception or inducement occurred; and

⁷² *Id.*

⁷³ *Id.*, section 108(1).

⁷⁴ *Id.*, section 108(3).

⁷⁵ *Id.*, section 107(1).

- (iii) the extent of the person’s social and physical dependence on the alleged offender.⁷⁶

3.3.4. *Early and forced marriage*

Fiji has no offence against forced marriage.

However, the Marriage Act 1978 makes it an offence to willfully and unlawfully marry a person under the age of 21 years, who has not been previously married, without obtaining the required consent to the marriage, or to induce or endeavor to induce any marriage officer or other person to solemnize the marriage of a person known to be under age without such consent, or to abet or assist any such act or endeavor knowing it to be illegal.⁷⁷ This offence carries a penalty not exceeding FJD 200, two years of imprisonment, or both.⁷⁸

3.3.5. *Debt bondage*

The Crimes Decree prescribes an offence penalizing debt bondage. Section 4 defines debt bondage as the status or condition that arises from a pledge by a “person—

- (a) of his or her personal services; or
- (b) of the personal services of another person under his or her control;

as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if—

- (i) the debt owed or claimed to be owed is manifestly excessive; or
- (ii) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or
- (iii) the length and nature of those services are not respectively limited and defined.”⁷⁹

Section 118 provides that a person commits a summary offence of debt bondage if the person:

- (a) “engages in conduct that causes another person to enter into debt bondage; and”
- (b) “intends to cause the other person to enter into debt bondage.”⁸⁰

⁷⁶ *Id.*, section 107(2).

⁷⁷ Marriage Act 1978, section 31, available at: http://www.pacii.org/fj/legis/consol_act_OK/ma85/.

⁷⁸ *Id.*

⁷⁹ Crimes Decree 2009, section 4, available at: <https://www.stepto.com/images/content/2/3/v1/2393/3984.pdf>.

⁸⁰ *Id.*, section 118(1).

This offence will become aggravated if it is committed against a person under 18 years of age.⁸¹ To prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.⁸²

This offence carries a penalty of, in the case of an aggravated offence, two years of imprisonment or, in any other case, 12 months of imprisonment.⁸³

In determining whether a person has been deceived about any prohibited matter, a court may consider the same factors listed in Section 3.3.3.⁸⁴

3.3.6. *Any other relevant offenses*

Fiji has no other relevant slavery-like offences.

3.3.7. *Extraterritorial application of the offenses*

The Crimes Decree provides for its extraterritorial application to offences of sexual servitude and debt bondage:

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.⁸⁵

3.4. Human Trafficking/Smuggling-Related Criminal Offenses

3.4.1. *International and domestic trafficking/smuggling of people*

3.4.1.1 *Crimes Decree*

The Crimes Decree prescribes several offences penalizing international and domestic trafficking and smuggling in people. In addition to any other relevant definition previously provided in this chapter from the Crimes Decree, these offences use three definitions:

Confiscate—“in relation to a person’s travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.”⁸⁶

Threat—means:

- (a) a threat of force; or
- (b) a threat to cause a person’s removal from Fiji; or

⁸¹ *Id.*, section 119(1).

⁸² *Id.*, section 119(2).

⁸³ *Id.*, sections 119(1) and 118(1).

⁸⁴ *Id.*, section 118(2).

⁸⁵ *Id.*, sections 105 and 120.

⁸⁶ *Id.*, section 111.

- (c) a threat of any other detrimental action—
unless there are reasonable grounds for the threat of that action.⁸⁷

Exploitation—“of one person (the victim) by another person (the exploiter), occurs if –

- (a) the exploiter’s conduct causes the victim to enter into slavery, forced labour or sexual servitude; or
- (b) the exploiter’s conduct causes an organ of the victim to be removed and—
 - (i) the removal is contrary to law; or
 - (ii) neither the victim nor the victim’s legal guardian consented to the removal, and it does not meet a medical or therapeutic need of the victim.”⁸⁸

The Crimes Decree also prescribes several offences for people smuggling.

International trafficking in persons

Section 112(1) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and
- (b) the first person uses force or threats; and
- (c) that use of force or threats results in the first person obtaining the other person’s compliance in respect of that entry or proposed entry or in respect of that receipt.”⁸⁹

Section 112(2) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
- (b) the first person uses force or threats; and
- (c) that use of force or threats results in the first person obtaining the other person’s compliance in respect of that exit or proposed exit.”⁹⁰

Section 112(3) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and

⁸⁷ *Id.*

⁸⁸ *Id.*, section 4.

⁸⁹ *Id.*, section 112(1).

⁹⁰ *Id.*, section 112(2).

(b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.”⁹¹

Section 112(4) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
- (b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.”⁹²

Section 112(5) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and
- (b) the first person deceives the other person about the fact that the other person’s entry or proposed entry, the other person’s receipt or any arrangements for the other person’s stay in Fiji, will involve the provision by the other person of sexual services or will involve the other person’s exploitation or debt bondage or the confiscation of the other person’s travel or identity documents.”⁹³

Section 112(6) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
- (b) the first person deceives the other person about the fact that the other person’s exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Fiji or will involve the other person’s exploitation or debt bondage or the confiscation of the other person’s travel or identity documents.”⁹⁴

Section 112(7) provides that a “person (the first person) commits an offence of trafficking in persons if –

- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and
- (b) there is an arrangement for the other person to provide sexual services in Fiji; and
- (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;

⁹¹ *Id.*, section 112(3).

⁹² *Id.*, section 112(4).

⁹³ *Id.*, section 112(5).

⁹⁴ *Id.*, section 112(6).

- (iii) the extent to which the other person will be free to cease providing sexual services;
- (iv) the extent to which the other person will be free to leave his or her place of residence;
- (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.”⁹⁵

Section 112(8) provides that a “person (the first person) commits an indictable offence of trafficking in persons if –

- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
- (b) there is an arrangement for the other person to provide sexual services outside Fiji; and
- (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.”⁹⁶

All offences relating to international trafficking in persons carry a penalty of 12 years of imprisonment, unless the offence becomes aggravated, in which case the penalty is 20 years of imprisonment. A “person (the first person) commits an aggravated offence of international trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the victim) and any of the following applies:

- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:
 - (i) if the offence of trafficking in persons is an offence against sub-section 112(1), (3), (5) or (7) —after entry into Fiji; and
 - (ii) if the offence of trafficking in persons is an offence against sub-section 112(2), (4), (6) or (8) —after exit from Fiji;
- (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (c) the first person, in committing the offence:

⁹⁵ *Id.*, section 112(7).

⁹⁶ *Id.*, section 112(8).

- (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
- (ii) is reckless as to that danger.”⁹⁷

Domestic trafficking in persons

Section 115(1) provides that a “person (the first person) commits an indictable offence of domestic trafficking in persons if –

- (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Fiji to another place in Fiji; and
- (b) the first person uses force or threats; and
- (c) that use of force or threats results in the first person obtaining the other person’s compliance in respect of that transportation or proposed transportation.”⁹⁸

Section 115(2) provides that a “person (the first person) commits an indictable offence of domestic trafficking in persons if –

- (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Fiji to another place in Fiji; and
- (b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.”⁹⁹

Section 115(3) provides that a “person (the first person) commits an indictable offence of domestic trafficking in persons if –

- (a) the first person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and
- (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person’s exploitation or debt bondage or the confiscation of the other person’s travel or identity documents.”¹⁰⁰

Section 115(4) provides that a “person (the first person) commits an indictable offence of domestic trafficking in persons if –

- (a) the first person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and
- (b) there is an arrangement for the other person to provide sexual services; and
- (c) the first person deceives the other person about any of the following:

⁹⁷ *Id.*, section 113(1).

⁹⁸ *Id.*, section 115(1).

⁹⁹ *Id.*, section 115(2).

¹⁰⁰ *Id.*, section 115(3).

- (i) the nature of the sexual services to be provided;
- (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
- (iii) the extent to which the other person will be free to cease providing sexual services;
- (iv) the extent to which the other person will be free to leave his or her place of residence;
- (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.”¹⁰¹

All offences relating to domestic trafficking in persons carry a penalty of 12 years of imprisonment, unless the offence becomes aggravated, in which case the penalty is 20 years of imprisonment. A “person (the first person) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the victim) and any of the following applies –

- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;
- (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (c) the first person, in committing the offence –
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.”¹⁰²

International smuggling in persons

Section 122 provides that a person (the first person) commits an indictable offence of people smuggling if:

- (a) the first person organises or facilitates the entry of another person (the other person) into a foreign country (whether or not via Fiji); and
- (b) the entry of the other person into the foreign country does not comply with the requirements under that country’s law for entry into the country; and
- (c) the other person is not a citizen or permanent resident of the foreign country; and
- (d) the first person organises or facilitates the entry –
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or

¹⁰¹ *Id.*, section 115(4).

¹⁰² *Id.*, section 116(1).

- (ii) with the intention of obtaining (whether directly or indirectly) a benefit.¹⁰³

The offence of people smuggling carries a penalty of 500 penalty units, 10 years of imprisonment, or both.

Section 123 provides that a person (the first person) commits an indictable aggravated offence of people smuggling if the first person commits the offence of people smuggling in relation to another person (the victim) and:

- (a) the first person commits the offence intending that the victim will be exploited after entry into the foreign country (whether by the first person or another);
- (b) in committing the offence, the first person subjects the victim to cruel, inhuman or degrading treatment;
- (c) in committing the offence, the first person's conduct –
 - (i) gives rise to a danger of death or serious harm to the victim; and
 - (ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.¹⁰⁴

The aggravated offence of people smuggling carries a penalty of 1,000 penalty units, 20 years of imprisonment, or both.

3.4.1.2 *Immigration Act*

The Immigration Act prescribes several offences penalizing international and domestic trafficking in people. These offences rely on three definitions:

Trafficking in persons—“means the recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation.”¹⁰⁵

Exploitation—“includes forced labour or services, slavery or practices similar to slavery, servitude, removal of organs, sexual servitude, exploitation of another person's prostitution or any other form of exploitation whether sexual or otherwise.”¹⁰⁶

Unlawful means—are defined to mean:

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;

¹⁰³ *Id.*, section 122.

¹⁰⁴ *Id.*, section 122.

¹⁰⁵ Immigration Act 2003, section 17(1), available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

¹⁰⁶ *Id.*

- (e) deception;
- (f) abuse of power or of a position of vulnerability; [or]
- (g) giving or receiving payments or benefits to achieve the consent of person having control over another person.¹⁰⁷

The Immigration Act also prescribes several offences for smuggling. In addition to any other relevant definition set out above, these offences define an “unauthorised migrant” as “a person who is not a citizen of the country or is not in possession of all the documents required by the law of the country for that person’s lawful entry.”¹⁰⁸

International trafficking in persons

Section 19 provides that a “person who engages in trafficking in a person knowing that the person’s entry to Fiji or any other state was arranged by unlawful means commits an offence.”¹⁰⁹ The offence carries a penalty of FJD 750,000 or 20 years of imprisonment.¹¹⁰

It is not a defence to this offence that the trafficked person consented to the offending conduct or that the accused person believed that the trafficked person consented.¹¹¹

A person who intentionally aids, abets, counsels, procures, urges, or incites the commission of this offence commits an offence against the Immigration Act.¹¹² This offence carries a penalty of FJD 5,000 or two years of imprisonment.¹¹³ A person who conspires with another person to commit this offence or otherwise attempts to commit this offence commits an offence that is punishable as if the offence to which the conspiracy or attempt relates had been committed.¹¹⁴

Smuggling in persons

Section 23 provides that a “person who engages in the smuggling of an unauthorised migrant either knowing or being reckless as to the fact that the person’s entry into Fiji is illegal in order to obtain a material benefit commits an offence.”¹¹⁵ This offence carries a penalty of FJD 750,000 or 20 years of imprisonment.¹¹⁶

Section 24 provides that a person who knowingly engages in the smuggling of migrants, whether or not the migrant arrives in the receiving country, when:

- (a) the unauthorised migrant is, or is intended to be, subject to exploitation;

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, section 19.

¹¹⁰ *Id.*, Schedule 2

¹¹¹ *Id.*, section 22.

¹¹² *Id.*, sections 27 and 28.

¹¹³ *Id.*, Schedule 2

¹¹⁴ *Id.*, sections 29 and 30.

¹¹⁵ *Id.*, section 23.

¹¹⁶ *Id.*, Schedule 2.

(b) the unauthorised migrant is subjected to torture or to any other cruel, inhuman or degrading treatment; [or]

(c) the life or safety of the unauthorised migrant is, or is likely to be, endangered,

commits an offence of aggravated smuggling of migrants and is liable to a penalty of FJD 100,000 or life imprisonment.¹¹⁷

A person who intentionally aids, abets, counsels, procures, urges, or incites the commission of this offence commits an offence against the Immigration Act.¹¹⁸ This offence carries a penalty of FJD 5,000 or two years of imprisonment.¹¹⁹ A person who conspires with another person to commit this offence or otherwise attempts to commit this offence commits an offence that is punishable as if the offence to which the conspiracy or attempt relates had been committed.¹²⁰

3.4.2. *International and domestic trafficking in children*

Both the Crimes Decree and the Immigration Act prescribe offences penalizing international and domestic trafficking in children.

3.4.2.1 *Crimes Decree*

The Crimes Decree prescribes several offences prohibiting international and domestic trafficking in children, all of which carry a penalty of 25 years of imprisonment.¹²¹

International trafficking in children

Section 114(1) provides that a “person (the first person) commits an indictable offence of trafficking in children if –

(a) the first person organises or facilitates the entry or proposed entry into Fiji, or the receipt in Fiji, of another person; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that entry or proposed entry, or that receipt, the first person –

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.”¹²²

Section 114(2) provides that a “person (the first person) commits an indictable offence of trafficking in children if –

¹¹⁷ *Id.*, section 24 and Schedule 2.

¹¹⁸ *Id.*, sections 27 and 28.

¹¹⁹ *Id.*, Schedule 2.

¹²⁰ *Id.*, sections 29 and 30.

¹²¹ Crimes Decree 2009, sections 114 and 117, available at: <https://www.stepto.com/images/content/2/3/v1/2393/3984.pdf>.

¹²² *Id.*, section 114(1).

- (a) the first person organises or facilitates the exit or proposed exit from Fiji of another person; and
- (b) the other person is under the age of 18; and
- (c) in organising or facilitating that exit or proposed exit, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.”¹²³

Domestic trafficking in children

Section 117 provides that a “person commits an indictable offence of domestic trafficking in children if –

- (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and
- (b) the other person is under the age of 18; and
- (c) in organising or facilitating that transportation, the first-mentioned person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.”¹²⁴

3.4.2.2 Immigration Act

The Immigration Act prescribes an offence of trafficking in children that carries a penalty of FJD 750,000 or 20 years of imprisonment.¹²⁵ Section 20 provides that a person who engages in trafficking “a child regardless of whether the child’s entry into Fiji or any other state was arranged by unlawful means commits an offence.”¹²⁶

It is not a defence to this offence that the trafficked person consented to the offending conduct or that the accused person believed that the trafficked person gave consent.¹²⁷

A person who intentionally aids, abets, counsels, procures, urges, or incites the commission of this offence will commit an offence against the Immigration Act.¹²⁸ This offence carries a penalty of FJD 5,000 or two years of imprisonment.¹²⁹ A person who conspires with another person to commit this offence or otherwise

¹²³ *Id.*, section 114(2).

¹²⁴ *Id.*, section 117.

¹²⁵ Immigration Act 2003, Schedule 2, available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

¹²⁶ *Id.*, section 20.

¹²⁷ *Id.*, section 22.

¹²⁸ *Id.*, sections 27 and 28.

¹²⁹ *Id.*, Schedule 2.

attempts to commit this offence commits an offence that is punishable as if the offence to which the conspiracy or attempt relates had been committed.¹³⁰

3.4.3. Victim harboring

3.4.3.1 Crimes Decree

The Crimes Decree has no general offences that apply to victim harbouring. However, the harbouring of stolen children (defined as persons under 18 years of age) is an offence that could apply in the context of human trafficking.

Section 284(3) provides that a person commits a summary offence carrying a penalty of seven years of imprisonment if the person receives or harbours any child, knowing the child to have been led, taken, decoyed, enticed away, or detained by force or fraud.¹³¹ However, to be guilty of this offence, the person must have intended:

- (a) to deprive any parent, guardian, or other person having the lawful care or charge of such child, or the possession of such child; or
- (b) to steal any article upon or about the person of the child.¹³²

In addition, section 284(4) provides that “[n]o person who:

- (a) claims in good faith any right to the possession of such child; or
- (b) is the mother; or
- (c) claims to be the father of the child as an illegitimate child –

is liable to be prosecuted under this section, on account of the getting possession of such child, or taking such child out of the possession of any person having the lawful charge of the child.”¹³³

3.4.3.2 Immigration Act

Victim harbouring is captured in the definition of “trafficking in persons.”¹³⁴

Section 64(1)(n) also generally provides that a person who “harbours or assists any other person whom he or she knows or has reasonable cause to believe to be a person whose presence in Fiji is unlawful” commits an offence that carries a penalty not exceeding FJD 2,000 or two years of imprisonment.¹³⁵

3.4.4. Extraterritorial application of human trafficking and smuggling offenses

The Crimes Decree provides for its extraterritorial application to human trafficking offences:

¹³⁰ *Id.*, sections 29 and 30.

¹³¹ Crimes Decree 2009, section 284(3), available at: <https://www.steptoelaw.com/images/content/2/3/v1/2393/3984.pdf>.

¹³² *Id.*, section 284(2).

¹³³ *Id.*, section 284(4).

¹³⁴ Immigration Act 2003, section 17(1), available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

¹³⁵ *Id.*, sections 64(1)(n) and 65(3).

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.¹³⁶

The Immigration Act provides for its extraterritorial application to human trafficking offences that took place in or outside Fiji:

- (a) if Fiji is the receiving country or the exploitation occurs in Fiji; or
- (b) if—
 - (i) the receiving country is another state, other than Fiji; and
 - (ii) the offence of trafficking in persons or smuggling of migrants originates in Fiji or transits Fiji; or
- (c) if the person who engages in the offence of trafficking in persons or smuggling of migrants is a citizen or permanent resident of Fiji.¹³⁷

3.5. Online Exploitation of Children Offenses

The Crimes Decree does not provide any offence penalizing the online exploitation of children. However, this area is addressed in part throughout other areas of Fiji’s legislative framework.

3.5.1. *Employment Relations Act*

Section 91 of the Employment Relations Act 2007 (**Employment Relations Act**) provides that the “use, procuring or offering of a child ... for the production of pornography or for pornographic performances” carries a penalty of FJD 10,000, two years of imprisonment, or both.¹³⁸ However, this section does not explicitly state how the offence operates in an online environment.

3.5.2. *Juveniles Act*

The Juveniles Act 1973 (**Juveniles Act**) offence uses these definitions:

Juvenile—“a person who has not attained the age of 18 years ...”¹³⁹

Records—“includes film, audio-visual work, microfilm, video, computer or software programme or game or interactive game, compact discs, e-mail, internet, books, journals, photographs, or records on communication or telecommunication networks of whatever type, method, or technology.”

Media—“includes television, newspapers, radio, or any publication disseminating information, comment, or entertainment ...”

¹³⁶ Crimes Decree 2009, section 120, available at: <https://www.stepto.com/images/content/2/3/v1/2393/3984.pdf>.

¹³⁷ Immigration Act 2003, section 18, available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

¹³⁸ Employment Relations Act 2007, sections 91(c) and 256, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

¹³⁹ Juveniles Act 1973, section 2, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2415>.

Pornographic activity—“includes activity which is either indecent or obscene, or in any way judged by the standards of the time, is of a sexual nature and offensive ...”¹⁴⁰

Section 62A(1)(a) penalizes a person who, whether in public or in private, “records from, reproduces, places onto, views, or accesses on or from, media or records of pornographic activity directly or indirectly involving juveniles, or persons who look like juveniles whether they are or not.”¹⁴¹ The Section further prohibits the production, participation in, viewing, dissemination, selling, and purchasing of media or recording of pornographic activity directly or indirectly involving juveniles, or individuals who look like juveniles whether they are or not.¹⁴² Both actions are offences and carry a penalty not exceeding FJD 25,000, 14 years of imprisonment, or both. For a person’s second or subsequent offence, the penalty is increased to FJD 50,000, life imprisonment, or both.¹⁴³ Should this offence be heard in the Magistrates Court, the magistrate is permitted to impose a penalty of up to FJD 25,000 (for a first-time offence) or FJD 50,000 (for a second-time or subsequent offence), 10 years of imprisonment (irrespective of whether it is a first or subsequent offence), or both.¹⁴⁴

The Director of Public Prosecutions must approve a prosecution for this offence.¹⁴⁵

3.5.3. *Online Safety Act*

The Online Safety Act 2018 (**Online Safety Act**) makes it a crime to post an “intimate visual recording” (which does not include audio recordings) of an individual without consent.¹⁴⁶ The Act qualifies that the requirement of consent does not include the consent of a child,¹⁴⁷ and a child is defined as an individual who has not reached 18 years of age.¹⁴⁸ Accordingly, posting an intimate visual recording of a child is prohibited under any circumstances. This offence carries a penalty of up to FJD 20,000, five years of imprisonment, or both.¹⁴⁹

3.6. Child Sex Tourism Offenses

Fiji has no applicable laws.

4. FIJI’S SUPPLY CHAIN REPORTING LEGISLATION

Fiji does not have any government policies or legislation requiring reporting of human trafficking in supply chains.

¹⁴⁰ Juveniles Act 1973, section 62A(12), available at: <https://www.laws.gov.fj/Acts/DisplayAct/2415>.

¹⁴¹ *Id.*, section 62A(1)(a).

¹⁴² *Id.*, section 62A(1)(b).

¹⁴³ *Id.*, section 62A(1)(c).

¹⁴⁴ *Id.*, section 62A(3).

¹⁴⁵ *Id.*, section 62A(6).

¹⁴⁶ Online Safety Act 2008, sections 2 and 25(1), available at: <https://laws.gov.fj/Acts/DisplayAct/2462>.

¹⁴⁷ *Id.*, section 25(4).

¹⁴⁸ *Id.*, section 2.

¹⁴⁹ *Id.*, section 25(1)(a).

5. FORCED LABOR: OVERVIEW OF FIJI’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

The Employment Relations Act governs the labour relations between employers and workers in Fijian workplaces.¹⁵⁰ This includes workers in the Fijian Government, Fijian Government entities, local authorities, statutory authorities, and the sugar industry, but excludes members in the Fiji Military, Police Forces, and Corrections Service.¹⁵¹

Operation of the Employment Relations Act relies on three definitions:

Worker—“means a person who is employed under a contract of service, and includes an apprentice, learner, domestic worker, part-time worker, and casual worker.”¹⁵²

Contract of service—“means a written or oral contract, whether expressed or implied, to employ or to serve as a worker whether for a fixed or indefinite period, and includes a task, piecework or contract for service determined by the tribunal as a contract for service.”¹⁵³

Wages—“means all payments made to a worker for work done in respect of the worker’s contract of service.” Notable exclusions to this include the value of accommodation and the payment of a travelling allowance.¹⁵⁴

The Employment Relations Act creates three institutions responsible for the regulation of disputes concerning employment entitlements:

the Employment Relations Court, a Division of the High Court, whose mandate includes hearing and determining offences and actions for the recovery of penalties under the Employment Relations Act;¹⁵⁵

the Employment Relations Tribunal, a subordinate court to the Employment Relations Court, whose jurisdiction includes hearing “employment grievances” and “employment disputes” (discussed below) and issuing binding decisions in relation to those hearings, as well as adjudicating actions under the Employment Relations Act for lost wages;¹⁵⁶ and

a Mediation Unit which, on the referral of the Employment Relations Tribunal or the Permanent Secretary of the Ministry of Employment, Productivity and Industrial Relations, provides a broad range of mediation services to resolve disputes between employers and employees.¹⁵⁷

¹⁵⁰ Employment Relations Act 2007, section 3(1), available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

¹⁵¹ *Id.*, sections 3(1) and 3(2).

¹⁵² *Id.*, section 4.

¹⁵³ *Id.*, section 4.

¹⁵⁴ *Id.*, section 4.

¹⁵⁵ *Id.*, sections 192 and 220.

¹⁵⁶ *Id.*, sections 202 and 211.

¹⁵⁷ *Id.*, sections 193 and 194.

Two dispute resolution mechanisms are available to resolve disputes between an employer and an employee.

First, a worker is entitled to pursue an employment grievance under section 111(1). The Employment Relations Tribunal will hear the grievance or refer it to the Mediation Unit. However, the definition of “employment grievance” indicates that this mechanism is only available for “workers”:

employment grievance means a grievance that a worker may have against the worker’s employer or former employer because of the worker’s claim that—

- (a) the worker has been dismissed;
- (b) the worker’s employment, or one or more conditions of it, is or are affected to the worker’s disadvantage by some unjustifiable action by the employer;
- (c) the worker has been discriminated within the terms of Part 9;
- (d) the worker has been sexually harassed; or
- (e) the worker has been subject to duress in the worker’s employment in relation to membership or non-membership in a union.¹⁵⁸

Alternatively, where an employer, registered trade union, or employee has a dispute that does not fit within the definition of “employment grievance,” these entities may report an “employment dispute” to the Permanent Secretary of the Ministry of Employment, Productivity and Industrial Relations.¹⁵⁹ Should the Permanent Secretary accept the dispute, the Permanent Secretary must refer the employment dispute to the Employment Relations Tribunal if the dispute relates to the interpretation, application, or operation of an employment contract, or in any other case refer the employment dispute to a Mediation Unit.¹⁶⁰

The Employment Relations Court may hear any case transferred to it from the Employment Relations Tribunal.¹⁶¹

Accordingly, unless victims of forced labour can be classified as workers or have received wages pursuant to a contract for services, then the Employment Relations Act would not protect them, and any civil remedies under that Act may not be available.

5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

Section 6(2) of the Employment Relations Act provides that “[n]o person shall be required to perform forced labour.”¹⁶² “Forced labour” is defined as “all work or service that is exacted from any person under the

¹⁵⁸ *Id.*, section 111(1).

¹⁵⁹ *Id.*, section 169(1).

¹⁶⁰ *Id.*, section 170(4).

¹⁶¹ *Id.*, section 220(1).

¹⁶² *Id.*, section 6(1).

threat of any penalty and is not offered voluntarily.”¹⁶³ Section 6(7) provides that any term within an employment contract that requires the performance of forced labour is void.¹⁶⁴

However, the Employment Relations Act does not have an offence for forced labour. Although, section 247 establishes an offence for an employer’s failure to pay wages to an employee, this offence only applies in circumstances where there exists a contract of service.¹⁶⁵ In the absence of a contract of service, this offence does not apply to forced labour or human trafficking.

Additionally, as discussed in Section 5.1., a victim of trafficking or forced labour will not have the protection of the Employment Relations Act if they do not fulfil the statutory definition of “worker.”

5.3. Statutory Rights

5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

The Employment Relations (National Minimum Wage) Regulations 2015 (Minimum Wage Regulations) have set the current minimum wage in Fiji at FJD 2.68 per hour.¹⁶⁶ Where an employment contract provides for the payment of an hourly wage rate or an equivalent rate less than the national minimum wage, that contract is null and void to the extent of the inconsistency, and the minimum wage shall have effect.¹⁶⁷ The Minister of Employment, Productivity and Industrial Relations, in consultation with the Employment Relations Advisory Board and other stakeholders, can revise the national minimum wage.¹⁶⁸

If the Employment Relations Tribunal or Employment Relations Court determines that there is a contravention of the national wage standard, regulation 5(3) provides that:

the tribunal or the court may order the employer to pay such sum as is found by the tribunal or the court to represent the difference between the amount which ought to have been paid during that period to the worker by way of remuneration, if the provisions of these Regulations had been complied with, and the amount actually paid to the worker.¹⁶⁹

Furthermore, an employer or any other person authorised or acting on behalf of an employer who fails to comply with the national minimum wage standard commits an offence with a penalty not exceeding FJD 20,000, two years of imprisonment, or both.¹⁷⁰

In addition, section 247 of the Employment Relations Act makes it an offence for an employer to fail to pay appropriate wages:

An employer who—

¹⁶³ *Id.*, section 4.

¹⁶⁴ *Id.*, section 6(7).

¹⁶⁵ *Id.*, section 247(1).

¹⁶⁶ Employment Relations (National Minimum Wage) Regulations 2015, regulation 4, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

¹⁶⁷ *Id.*, regulation 5(1).

¹⁶⁸ *Id.*, regulation 8.

¹⁶⁹ *Id.*, regulation 5(3).

¹⁷⁰ *Id.*, regulation 5(2).

- (a) fails to pay wages in accordance with the worker’s contract of service, except where the employer proves that he or she acted in good faith or took reasonable steps to pay the wages;
 - (b) upon demand in writing by the Permanent Secretary, a labour officer or a labour inspector, fails within 7 days of the demand to pay any wages due to a worker;
 - (c) if the employment contract—
 - (i) provides for the payment of wages at the end of the contract period; or
 - (ii) where a worker’s employment is being terminated under this Act,
 fails to pay all wages due to a worker after a demand has been made within 24 hours of the termination of the contract or after expiry of the notice required under this Act;
 - (d) pays or agrees to pay the wages of a worker other than in the currency which is legal tender at the place where the wages are paid;
 - (e) makes a deduction from the wages of a worker in the nature of a fine, or due to poor or negligent work;
 - (f) imposes conditions upon the expenditure of the worker’s wages;
 - (g) except where expressly permitted by this Act or any other law, makes a deduction or makes an agreement or contract with a worker for a deduction from the wages to be paid by the employer to the worker, or for a payment to the employer by the worker;
 - (h) pays a worker on a piece-work basis which results in the worker receiving less than the rate of wages prescribed in the applicable employment contract,
- commits an offence and is liable on conviction—
- (i) for an individual, to a fine not exceeding [FJD] 20,000 or to a term of imprisonment not exceeding 5 years or both; or
 - (ii) for a corporation to a fine not exceeding [FJD] 100,000.¹⁷¹

The Employment Relations Act also establishes entitlements to paid vacations, sick leave, public holidays, and hours of leave:

Annual leave—an employer must give a worker paid annual holidays.¹⁷² “After each year of employment with an employer, a worker must be given 10 working days holiday and must be paid in respect of such holiday the wages the worker would have been paid for the time the worker would normally have worked during that period.”¹⁷³ In addition, “the employer must permit the worker to take the annual holiday in one unbroken period or, at the request of the worker, in 2 or more periods, one of which must be a continuous period of one week.”¹⁷⁴ However, “a worker is not entitled to the paid annual holidays in respect of any year during which the worker attended work if the worker has been absent from work for more than 20 normal working days during that year, except where the absence has been due to sickness certified by a

¹⁷¹ Employment Relations Act 2007, section 247, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

¹⁷² *Id.*, section 58(1).

¹⁷³ *Id.*, section 59(1).

¹⁷⁴ *Id.*, section 59(3).

medical practitioner, or the worker is excused from work by the employer or is prevented from attending work by any other cause acceptable to the employer.”¹⁷⁵

Sick leave—“where a worker who has completed more than 3 months continuous service with the same employer and who is incapable of work because of sickness or injury, the worker is entitled to paid sick leave of not less than 10 working days during each year of service.”¹⁷⁶ “For a worker to be entitled to sick leave, the worker must—(a) as soon as reasonably practicable notify the employer of his or her absence and the reason for it; and (b) produce, if requested by the employer, a written certificate signed by a registered medical practitioner, certifying the worker’s incapacity for work.”¹⁷⁷

Bereavement leave—a “worker who has completed more than 3 months continuous service with the same employer is entitled to 3 days paid bereavement leave in a year, in addition to any other leave entitlement.”¹⁷⁸

Public holidays—a worker must be paid for “each public holiday for the number of hours (exclusive of overtime) which the worker would normally have worked on that day had it not been a public holiday.”¹⁷⁹ However, this “does not apply to a worker unless (a) the worker worked for the employer during the last working day preceding the public holiday; and (b) the worker presents himself or herself for work on the first working day after the public holiday.”¹⁸⁰ This requirement “is deemed to have been complied with if the worker is excused from work by the employer or is prevented from attending work by sickness or injury verified by a medical certificate, or is prevented from attending work by any other cause acceptable to the employer.”¹⁸¹

Hours of work—an employment contract must not fix more than 48 as the maximum number of hours (exclusive of overtime) for a worker to work in a week. However, there are certain qualifications on this requirement.¹⁸² If the number of hours (exclusive of overtime) fixed by an employment contract is in excess of 48, the parties to the contract “must fix the daily working hours so that those hours are worked on not more than 6 days of the week.”¹⁸³ Alternatively, if the maximum number of hours (exclusive of overtime) fixed by an employment contract is not more than 45, “the parties to the contract must fix the daily working hours so that those hours are worked on not more than 5 days of the week.”¹⁸⁴ Furthermore, this requirement “does not apply to workers employed in managerial or executive positions” or “to a contract of service made between an individual worker and an individual employer which fixes a rate of remuneration that is special to that worker by reason of special qualifications, experience, or other qualities possessed by that worker and does not involve discrimination in relation to that worker or any other worker.”¹⁸⁵

¹⁷⁵ *Id.*, section 59(2).

¹⁷⁶ *Id.*, section 68(1).

¹⁷⁷ *Id.*, section 68(3).

¹⁷⁸ *Id.*, section 69.

¹⁷⁹ *Id.*, section 67(1).

¹⁸⁰ *Id.*, section 67(3).

¹⁸¹ *Id.*, section 67(4).

¹⁸² *Id.*, section 72(1).

¹⁸³ *Id.*, section 72(2).

¹⁸⁴ *Id.*, section 72(3).

¹⁸⁵ *Id.*, section 73.

Apart from these requirements, no single regulation sets out the entitlements of workers across all industries in Fiji. Most industries have their own applicable regulations that govern specific entitlements and award levels. In general, those regulations commonly stipulate that nine-hour days, five days a week, or eight-hour days, six days a week, are the standard hours of a work week. In some industries, any hours worked in excess of the specified periods require overtime payments.

5.3.2. Claims available in relation to misrepresentations and “sham” arrangements

Fiji does not have any laws penalizing misrepresentations and “sham” arrangements.

5.3.3. Claims available in relation to unlawful deductions, loans, and debt bondage

Section 47(1) of the Employment Relations Act specifies the circumstances in which deductions from a worker’s wages are authorised:

An employer may –

- (a) deduct from the wages of a worker an amount due by the worker in respect of any tax or deduction imposed by law or ordered by a court;
- (b) with the written consent of the worker, deduct an amount due by the worker as a contribution to a provident fund, school fund, pension fund, sports fund, superannuation scheme, life or medical insurance or medical scheme, credit union, trade union, co-operative society or other funds or schemes of which the worker is a member and must on behalf of the worker pay the amount so deducted to the person empowered to collect amount or entrusted with the management of the fund, scheme, trade union or cooperative society;
- (c) make deductions from the wages of a worker to the extent of an over payment made during the immediately preceding 3 months by the employer to the worker by the employer’s mistake; or
- (d) make deductions at the request in writing of the worker –
 - (i) in respect of articles or provisions purchased on credit by the worker from the employer;
 - (ii) in respect of charges for the cost of accommodation, fuel or light supplied by the employer and used by the worker; or
 - (iii) in respect of food or victuals cooked, prepared and eaten on the employer’s premises.¹⁸⁶

However section 47(1) has several important qualifications:

- Section 47(3) provides that the “total deduction in respect of accommodation, boarding, fuel and light must not exceed 15% of the worker’s wages in respect of one wage period, and 5% for accommodation or Board.”¹⁸⁷

¹⁸⁶ *Id.*, section 47(1).

¹⁸⁷ *Id.*, section 47(3).

- Section 47(4) establishes the requirements for loan deductions by an employer:

If—

- (a) an employer makes a loan to a worker;
- (b) the total amount of the loan has been paid by the employer to the worker in cash or by cheque; and
- (c) a memorandum of the transaction has been made and signed by or on behalf of both employer and worker providing for the repayment of the loan by one or more instalments,

the employer may deduct from the wages due to the worker the instalments at the times set out in the memorandum.¹⁸⁸

- Section 47(5) establishes a maximum amount of deduction per wage period:

“With the exception of deductions in respect of life or medical insurance or a medical scheme, any deductions made under subsection (1) and other deductions permitted by this Act must not be, in a wage period, more than 50% of the wages due to the worker in respect of the wage period except for housing purposes from an approved lender, where the deductions permitted may be up to 75%.”¹⁸⁹

A worker may seek redress for a wrongful deduction as an “employee grievance” through the Employment Relations Tribunal or the Employment Relations Court.

5.3.4. Remedies

The Employment Relations Tribunal and Employment Relations Court can provide civil remedies for employment grievances and employment disputes.

The Employment Relations Tribunal has broad powers that include ordering the employer to comply with the Employment Relations Act¹⁹⁰ and recovering wages from an employer.¹⁹¹

The Employment Relations Court has the power to order compliance with the Employment Relations Act or make any other order available to it under that Act.¹⁹² These orders can have any terms, conditions, or time period as the court sees fit.¹⁹³ This court also has the ability to hear cases founded in tort that relate to the Employment Relations Act.¹⁹⁴

However, if a victim of trafficking does not meet the definition of “worker” under the Employment Relations Act, then these remedies are not available.

¹⁸⁸ *Id.*, section 47(4).

¹⁸⁹ *Id.*, section 47(5).

¹⁹⁰ *Id.*, section 212.

¹⁹¹ *Id.*, section 214.

¹⁹² *Id.*, section 221.

¹⁹³ *Id.*, section 221(4).

¹⁹⁴ *Id.*, section 220(1)(m).

5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness

The primary legislation governing workplace safety is the Health and Safety at Work Act 1996 (**Health and Safety at Work Act**). It sets the standards and duties expected of employers for maintaining a safe workplace.¹⁹⁵

Section 9 prescribes employers' duties to employees:

- (1) Every employer shall ensure their workers' health and safety at work.
- (2) In addition, employers contravene this section if they fail:
 - (a) to provide and maintain plant and systems of work that are safe and without risks to health;
 - (b) to make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant and substances;
 - (c) to provide, in appropriate languages, such information, instruction, training, and supervision as may be necessary to ensure the health and safety at work of his or her workers and to take such steps as are necessary to make available in connection with the use at work of any plant or substance adequate information in appropriate languages –
 - (i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or
 - (ii) about any research, or the results of any relevant tests which have been carried out, on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used;
 - (d) as regards any workplace under the employer's control –
 - (i) to maintain it in a condition that is safe and without risks to health; or
 - (ii) to provide and maintain means of access to and egress from it that are safe and without any such risks;
 - (e) to provide and maintain a working environment for his or her workers that is safe and without risks to health and adequate as regards facilities for their welfare at work; or
 - (f) to develop, in consultation with workers of the employer, and with such other persons as the employer considers appropriate, a policy, relating to health and safety at work, that will –

¹⁹⁵ Health and Safety at Work Act 1996, available at: <https://www.laws.gov.fj/Acts/DisplayAct/454>.

- (i) enable effective cooperation between the employers and the workers in promoting and developing measures to ensure the worker’s health and safety at work; and
- (ii) provide adequate mechanisms for reviewing the effectiveness of the measures or the redesigning of the said policy whenever appropriate.

(3) For the purposes of this section, any plant or substance is not to be regarded as properly used by a person where it is used without regard to any relevant information or advice relating to it’s (sic) use which has been made available by the person’s employer.

(4) Any employer who contravenes or fails to comply with any provision of this section shall be guilty of an offence and shall be liable to a fine of not more than [FJD] 100,000 in the case of a corporation or [FJD] 10,000 in any other case.¹⁹⁶

Proceedings for an offence under section 9(4) require the written consent of the Chief Health and Safety Inspector.¹⁹⁷

Inspectors of the Health and Safety Inspectorate have powers under the Health and Safety at Work Act to investigate any contraventions and to enforce the provisions of this Act.¹⁹⁸

The Accident Compensation (Employment Accidents) Regulations 2018 provide compensation to workers by their employers in the event of injury or death in the course of employment:

If a worker suffers any personal injury as a result of an accident arising out of and in the course of employment, the worker’s employer must pay the worker a weekly payment of two-thirds of the weekly earnings which the worker was earning at the time of the accident provided that—

- (a) The aggregate of the weekly payments must not exceed the lump sum compensation which would be payable in the case of permanent or partial incapacity; and
- (b) The maximum duration of weekly payments under this regulation must not exceed 260 weeks.¹⁹⁹

An employer’s failure to comply with this obligation is an offence that carries a penalty of FJD 10,000 for individuals or FJD 100,000 for corporations.²⁰⁰ Disputes regarding accident compensation are “employment disputes” that the Permanent Secretary of Ministry of Employment, Productivity and Industrial Relations can approve for referral to the Employment Relations Tribunal.²⁰¹

¹⁹⁶ *Id.*, section 9.

¹⁹⁷ *Id.*, section 69.

¹⁹⁸ *Id.*, section 43.

¹⁹⁹ Accident Compensation (Employment Accidents) Regulations 2018, regulation 6, available at: <https://www.laws.gov.fj/Acts/DisplayAct/3043>.

²⁰⁰ *Id.*, regulation 11.

²⁰¹ *Id.*, regulation 7.

5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Human trafficking victims have significant challenges in accessing justice. Inherent challenges face the Fijian government in assisting victims (for example, remoteness, connectivity issues, and scantily populated villages scattered across islands). Victims also would benefit from more enforcement and legal services provided by Fiji's Government.

Fiji's Government has prosecuted only one trafficker since 2014.²⁰² Similarly, the number of investigations conducted by labour inspectors (including those relating to labour law violations) has decreased.²⁰³ Accordingly, although Fiji's Government appears to be increasing its efforts to investigate human trafficking, prosecution is not a major deterrence.

However, Fiji generally provides legal assistance to victims of crime. The Constitution directs the Fijian Government to provide adequate resources to the Legal Aid Commission.²⁰⁴ As a result, Fiji has a relatively high ratio of legal aid lawyers per capita (1:10,229) and "out of capital" coverage (with 15 district offices across the country) when compared to other states in the Pacific region.²⁰⁵ However, while the Government has provided these services to victims of human trafficking in some circumstances, the law does not mandate the provision of such services to human trafficking victims, and the Government has not allocated funds specifically for this purpose.²⁰⁶ Accordingly, victims often rely on non-government organisations for services.²⁰⁷

Several other government agencies and organisations assist victims of human trafficking.

- The Ministry of Women, Children and Poverty Alleviation works in partnership with non-government and civil society organisations, such as the Homes of Hope and Save the Children Fund (Fiji), and other stakeholders in the community to spread awareness of trafficking in Fiji. For example, in 2019, the Ministry held a National Workshop for Human Trafficking and Child Exploitation.
- The CMC established by the Ministry of Defense, National Security, and Policing is intended to assume responsibility of coordinating victim support and overseeing investigations and prosecutions. However, the CMC has not yet overseen any cases or coordinated victim services, and the case management mechanism has not been implemented in practice.²⁰⁸
- The Department of Immigration operates safe houses for foreign individuals awaiting deportation, including trafficking victims.

²⁰² U.S. Dep't of State, Trafficking in Persons Report 234 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

²⁰³ *Id.* at 236.

²⁰⁴ Constitution of the Republic of Fiji, section 118(9), available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

²⁰⁵ Situation Analysis of Pacific Legal Aid Systems, Pacific Judicial Strengthening Initiative, at 6, available at: <https://www.fedcourt.gov.au/pjsi/reports/technical-reports/PJSI-Situation-Analysis-of-Pacific-Legal-Aid-Systems.docx>.

²⁰⁶ U.S. Dep't of State, Trafficking in Persons Report 236 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

5.6. Interaction Between Employment Law and Migration

5.6.1. *Employment rights affected where employment is unlawful under migration law*

Victims of human trafficking who can be classified as workers can bring employment law claims. The Immigration Act also penalizes the exploitation of persons not legally entitled to work in Fiji.²⁰⁹

Section 21(1) provides that an employer who, while allowing an unlawful employee to undertake employment in the employer's service, acts with the intention of preventing or hindering the employee from:

- (a) leaving Fiji;
- (b) ascertaining or seeking that person's entitlement under the law of Fiji; or
- (c) disclosing to any person the circumstances of that person's employment by the employer,

commits an offence carrying a penalty of FJD 750,000 or 20 years of imprisonment.²¹⁰

For the purposes of section 21(1), "an employer must be treated as knowing that an employee is not entitled under any written law to undertake any particular employment if, at any time within the preceding 12 months, the employer has been informed of that fact in writing by an immigration officer."²¹¹

It is not a valid defence to a violation of section 21(1) that the unlawful employee or trafficked person consented or that the charged person believed that the unlawful or trafficked person had consented.²¹²

Section 31 provides that a "trafficked person, unlawful employee or an unauthorised migrant, as the case may be, is not liable to criminal prosecution for –

- (a) the offence of smuggling migrants, by reason only of the fact that the person is the victim of, or object of, an act of smuggling migrants;
- (b) the act of trafficking in persons or being a party to an offence of trafficking in persons;
- (c) the person's illegal entry into Fiji, if Fiji is the receiving country;
- (d) the person's period of unlawful residence in Fiji, if Fiji is the receiving country; or
- (e) the person's procurement or possession of any fraudulent travel or identity documents which that person obtained, or with which that person was supplied, for the purpose of entering the receiving country."²¹³

²⁰⁹ Immigration Act 2003, available at: <https://laws.gov.fj/Acts/DisplayAct/3170>.

²¹⁰ *Id.*, section 21(1).

²¹¹ *Id.*, section 21(3).

²¹² *Id.*, section 22.

²¹³ *Id.*, section 31.

5.6.2. *Rights/remedies available under applicable migration law and regulations*

The Immigration Act specifies no remedies for victims of human trafficking.

Refer to Section 7 for the rights and remedies that can be sought for victims of offences under the Crimes Decree or violations of fundamental rights under Chapter 2 of the Constitution.

5.7. Employment Laws and Child Labor

As stated at Section 2.1.1., Fiji has ratified several international treaties that protect children’s labour rights. The U.S. Department of Labor also notes that, though Fiji’s Government has made efforts to combat child labour, children are still being exploited for the worst forms of child labour, particularly in the agricultural sector.²¹⁴

The Employment Relations Act regulates child employment and labour. A “child” for purposes of this Act is any person under the age of 18 years.²¹⁵ All the offences discussed in this section carry a penalty of FJD 10,000 or two years of imprisonment for individuals, and a penalty not exceeding FJD 50,000 for a corporation or trade union.²¹⁶

The minimum age of employment is 15 years of age.²¹⁷ Section 93(1) provides that an employer who employs a child under 15 years of age commits an offence.²¹⁸ However, section 93(2) provides an exception to this offence:

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 at school, participation in vocational orientation or training programmes approved by a competent authority or capacity of the child to benefit from the instruction received.²¹⁹

The U.S. Department of Labor notes that this “light-work” exception is “not specific enough to prevent children from being involved in child labor.”²²⁰

Section 91 prohibits several forms of child labour:

²¹⁴ *Fiji: 2020 Findings on the Worst Forms of Child Labor*, U.S. Dep’t of Labor, available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/fiji>.

²¹⁵ Employment Relations Act 2007, section 4, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

²¹⁶ *Id.*, section 256(a) and 256(b).

²¹⁷ *Id.*, section 92.

²¹⁸ *Id.*, section 93(1).

²¹⁹ *Id.*, section 93(2).

²²⁰ *Fiji: 2020 Findings on the Worst Forms of Child Labor*, U.S. Dep’t of Labor, available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/fiji>.

- (a) all forms of labour 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;
- (b) 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; or
- (c) the use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances,

and a person who engages a child in such prohibited form of child labour commits an offence.²²¹

The Employment Relations Act also prescribes certain workplaces in which children cannot be employed. Section 95(1) prohibits the employment of children underground in a mine.²²² Furthermore, section 95(2) allows the Minister of Employment, Productivity and Industrial Relations to declare certain workplaces as unsuitable for children:

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 or 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.²²³

The Hazardous Occupations Prohibited to Children Under 18 Years of Age Order 2013, issued pursuant to section 95(2), lists occupations and workplaces that are prohibited for children, such as workplaces and occupations that involve the preparation of chemical products and consequent exposure to dangerous chemicals.²²⁴

Upon being served with an order prohibiting employment of children, an employer is not permitted to continue employing children in the specified workplace, and violating such an order is an offence.²²⁵ If a child's employment is discontinued pursuant to such an order, the child must be paid any outstanding wages or any other entitlement the child may have earned up to the date of the discontinuance under the terms of the contract of service.²²⁶

Children are not permitted to work more than eight hours per day and must be given 30-minute paid rests for every four hours worked.²²⁷ Children must also not be employed "during a period when the child is required to attend school or for a period which prejudices the child's educational participation."²²⁸

²²¹ *Fiji: 2020 Findings on the Worst Forms of Child Labor*, U.S. Dep't of Labor, available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/fiji>.

²²² Employment Relations Act 2007, section 95(1), available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

²²³ *Id.*, section 95(2).

²²⁴ *Id.*

²²⁴ Under 18 Years of Age Order 2013, regulation 3, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

²²⁵ Employment Relations Act 2007, sections 95(3) and 95(4), available at: <https://www.laws.gov.fj/Acts/DisplayAct/2910>.

²²⁶ *Id.*, section 95(4).

²²⁷ *Id.*, section 97(1).

²²⁸ *Id.*, section 97(2).

An employer is also required to keep a separate register of all children employed that includes their ages, dates of commencement and termination, conditions and nature of their employment, and any other relevant particulars.²²⁹ Failure to keep such a register or failure to produce such a register when required is an offence.²³⁰

6. GOVERNMENT PROCUREMENT RULES

The Procurement Regulations 2010 (**Procurement Regulations**) was created pursuant to the Financial Management Act 2004 (**Financial Management Act**).²³¹ The Procurement Regulations established the Fiji Procurement Office (**FPO**) and Government Tender Board (**GTB**) also empowered Fiji's Permanent Secretary for Finance to establish procurement guidelines for the tendering process and evaluation criteria that apply to government procurement.²³² The most recent procurement guidelines were established in August 2010 (**Procurement Guidelines**).²³³

These pieces of legislation and regulation operate on three levels:

- At the broadest level, the Financial Management Act sets the financial management framework for the whole of Fiji's Government.
- At the second level, the Procurement Regulations set the procurement policy framework for Fiji's Government. The Procurement Regulations lay out guiding principles based on policies of value for money, the ethical use of government resources, fair competition, and accountable and transparent procedures.²³⁴ All agencies must comply with both the Financial Management Act and the Procurement Regulations. Breaches of the legislative financial management framework, including in relation to procurement, may lead to criminal, civil, or administrative remedies, including under the Financial Management Act.²³⁵
- At the third, most prescriptive, level are the Procurement Guidelines. Government departments or agencies that believe that certain tenders should deviate from the Procurement Guidelines must seek clarification and assistance from the FPO.²³⁶

Together, this framework provides the applicable rules for the award, execution, and control of "procurement contracts," defined as a contract between the procuring agency and the contractor resulting from the tender process.²³⁷ The GTB must approve procurement contracts valued at FJD 30,001 or more.

²²⁹ *Id.*, section 99(1)(a).

²³⁰ *Id.*, section 99(3).

²³¹ Procurement Regulations 2010, available at: <https://laws.gov.fj/Acts/DisplayAct/2969>.

²³² *Id.*, sections 4, 9, and 25.

²³³ Procurement Guidelines, available at: <http://www.fpo.gov.fj/index.php/for-agencies/guide-to-sourcing>.

²³⁴ *Id.*, section 3.

²³⁵ Procurement Guidelines: The Procurement Policy Framework of August 2010, sections 1.1. and 2.1.2., available at <http://www.fpo.gov.fj/index.php/for-agencies/guide-to-sourcing>.

²³⁶ *Id.*, section 2.1.3.

²³⁷ Procurement Regulations 2010, section 2(1), available at: <https://laws.gov.fj/Acts/DisplayAct/2969>.

One of the Permanent Secretaries (as listed at section 10 of the Procurement Guidelines) or their delegates must approve contracts valued at FJD 30,000 or less.²³⁸

Regulation 3 of the Procurement Regulations provides that the guiding principles of government procurement are:

- (a) value for money;
- (b) maximise economy and efficiency and the ethical use of Government resources;
- (c) promote open and fair competition amongst suppliers and contractors;
- (d) promote the integrity of (sic) fairness and public confidence in the procurement process; and
- (e) achieve accountability and transparency in the procedures relating to procurement.²³⁹

Part 3 of the Procurement Guidelines examines these principles in more detail.²⁴⁰ However, these principles do not account for the criminal history of a tenderer or its adherence to human rights.

Section 3.4.1 of the Procurement Guidelines indicates that designation of the selection criteria which is to apply in relation to tenders occurs on a case-by-case basis (with different criteria potentially applying to each separate tender), with such designation being the responsibility of the FPO or the department/agency who is submitting the tender.²⁴¹ However, when evaluating a bid, the Procurement Regulations stipulate that the overall criterion is value for money, which may not necessarily be the bid offering the lowest price.²⁴²

For tenders with a value of FJD 30,000 or less, the only requirement is that the Government obtain a minimum of three competitive quotes.²⁴³ For tenders with a value over FJD 30,000, the Procurement Regulations stipulate that open tendering shall be the preferred method used, unless the nature or complexity of the tender justifies that the procuring agency use two-stage tendering, prequalified tendering, selective tendering, or single source procurement.²⁴⁴ Section 3.4.1 of the Procurement Guidelines indicates that the FPO or the department or agency which is submitting the tender is responsible for selecting the procurement method.²⁴⁵

Tenderers must meet four qualifications to obtain GTB's approval:

- (a) that they have the legal capacity to enter into the contract;
- (b) that they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other

²³⁸ *Id.*, sections 10 and 27(1).

²³⁹ Procurement Regulations 2010, section 3, available at: <https://laws.gov.fj/Acts/DisplayAct/2969>.

²⁴⁰ Procurement Guidelines, Part 3, available at: <http://www.fpo.gov.fj/index.php/for-agencies/guide-to-sourcing>.

²⁴¹ *Id.*, section 3.4.1.

²⁴² Procurement Regulations 2010, section 42, available at: <https://laws.gov.fj/Acts/DisplayAct/2969>.

²⁴³ *Id.*, section 29(1).

²⁴⁴ *Id.*, sections 29(1) and 31(1).

²⁴⁵ Procurement Guidelines, section 3.4.1, available at: <http://www.fpo.gov.fj/index.php/for-agencies/guide-to-sourcing>.

physical facilities, managerial capability, reliability, experience and reputation and the personnel to perform the contract;

(c) that they are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not subject of legal proceeding for any of the foregoing or otherwise which in the event of an adverse finding might cause the bidder to cease business;

(d) that they have evidence of a business relationship in the form of a partnership agreement, joint venture agreement, supply contracts or like documentation, if bidding in conjunction with another person, that would necessitate the demonstration to fulfil the contract.²⁴⁶

The Financial Management Act, Procurement Regulations, and Procurement Guidelines do not mention human trafficking laws. At most, the Procurement Regulations require the Director of the FPO to periodically inspect and carry out compliance checks on the procurement procedures of government departments and agencies.²⁴⁷ Following such an inspection, the Director may withdraw a tender if there has been evidence of collusion or improper tender practices.²⁴⁸ However, no specific provisions require any tenderer to covenant that its business does not use trafficked workers, it does not use goods made by trafficked workers, or it does not otherwise act in violation of human trafficking laws.

7. RESTITUTION AND VICTIM COMPENSATION

7.1. Criminal Procedure Act and Sentencing and Penalties Decree

The Criminal Procedure Act and the Sentencing and Penalties Decree 2009 (**Sentencing and Penalties Decree**)²⁴⁹ provide a regime under which victims of criminal offences could claim compensation. However, Fiji's Parliament has not passed a regulation to establish this regime.

Section 151(1)(b) of the Criminal Procedure Act 2009 provides that “[a]ny court may order the whole or any part of any fine imposed or money found on or in the possession of a convicted person to be applied towards ... the payment to any person of compensation for any loss or injury caused by the offence pursuant to an order made under the Sentencing and Penalties Decree 2009.”²⁵⁰

Section 51(1) of the Sentencing and Penalties Decree provides that “[r]egulations made under this Decree may empower courts to make orders for compensation to be paid by offenders to persons who suffer any loss, damage or injury as a direct result of the offence for which the offender who is found to be guilty or is convicted.”²⁵¹ However, Fiji's Parliament has not passed such a regulation.

²⁴⁶ Procurement Regulations 2010, section 36(1), available at: <https://laws.gov.fj/Acts/DisplayAct/2969>.

²⁴⁷ *Id.*, section 8(1)(e).

²⁴⁸ *Id.*, section 47(b).

²⁴⁹ Sentencing and Penalties Decree 2009, available at: <https://www.laws.gov.fj/Acts/DisplayAct/2787>.

²⁵⁰ Criminal Procedure Act 2009, section 151(b), available at: <https://www.laws.gov.fj/Acts/DisplayAct/2622>.

²⁵¹ Sentencing and Penalties Decree 2009, section 51(1), available at: <https://www.laws.gov.fj/Acts/DisplayAct/2787>.

The Sentencing and Penalties Decree also allows courts to impose restitution orders, but only for offences involving stolen goods or property.²⁵²

7.2. Constitution

Any person against whom a breach of Chapter 2 of the Constitution has been or is likely to be contravened—such as a breach of human rights in connection with human trafficking—may apply to the High Court for civil redress.²⁵³

In such proceedings, the High Court may award damages against the defendant for:

- (a) pecuniary loss suffered or expense incurred by the complainant or the aggrieved person as a result of the conduct complained of;
- (b) expenses reasonably incurred by the complainant or the aggrieved person in seeking redress for the conduct complained of;
- (c) loss of any benefit, whether or not of a monetary kind, which the complainant or the aggrieved person might reasonably have been expected to obtain but for the conduct complained of;
- (d) humiliation, loss of dignity and injury to feelings of the complainant or the aggrieved person.²⁵⁴

In addition to damages, the High Court may also may grant other remedies:

- (a) a declaration that the defendant has engaged in unfair discrimination or has contravened human rights;
- (b) an order restraining the defendant from continuing or repeating the conduct complained of or causing or permitting others to engage in conduct of the same kind or of any similar kind specified in the order;

* * *

- (d) an order that the defendant perform any act specified in the order with a view to redressing any loss or damage suffered by the complainant or the aggrieved person or to preventing conduct of a similar kind in the future;
- (e) a declaration that a contract requiring performance of anything that constitutes unfair discrimination or contravenes human rights is void and unenforceable;
- (f) such other relief as the High Court thinks fit.²⁵⁵

²⁵² *Id.*, section 49(1).

²⁵³ Constitution of the Republic of Fiji, section 44(1), available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

²⁵⁴ Human Rights Commission Decree 2009, section 41(1), available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FJI/INT_CEDAW_ADR_FJI_24461_E.pdf.

²⁵⁵ *Id.*, section 40(2).

Additionally, a Commissioner of the Human Rights and Anti-Discrimination Commission has the power to investigate alleged abuses of human rights under Chapter 2 of the Constitution.²⁵⁶ These investigations may be commenced by a complaint of an aggrieved person or of a class of persons on the Commission's own volition.²⁵⁷ A Commissioner has the powers equivalent to the High Court with regard to requiring persons to attend examinations and to produce all required documents relevant to the investigation.²⁵⁸ At the end of an investigation, the Commission may recommend that an aggrieved person or class of persons apply to the High Court for civil redress against the offender (see above) or request that the Proceedings Commissioner established under the Human Rights Commission Decree 2009 commence such proceedings on behalf of the aggrieved person or class of persons.²⁵⁹

Where the Proceedings Commissioner has recovered damages by a decision of the High Court, the Commission must pay these damages to the complainant or the aggrieved person on whose behalf the proceedings were brought.²⁶⁰ However, where the complainant or the aggrieved person is an unmarried minor or determined by the Proceedings Commissioner to be of unsound mind, the Proceedings Commissioner has the discretion to pay the damages to the Public Trustee or to any person or trustee corporation acting as the trustee of the property of that person.²⁶¹

8. FIJI'S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

Several government agencies, organisations, and non-government organisations cooperate to monitor, report, and attempt to address human trafficking:

- Since 2010, the ODPP has been involved in training Immigration and Police Officers on Fiji's anti-human trafficking laws.²⁶²
- The Human Rights and Anti-Discrimination Commission was established by the Human Rights Commission Decree 2009²⁶³ and is enshrined within the Constitution.²⁶⁴ The Commission is comprised of a Judge and four other members, appointed by the President on the advice of the Constitutional Offices Commission.²⁶⁵ These members are often prominent figures within Fijian Government and civil society, for example, the most recent commissioners included the national president of the Catholic Women's League and the Chief Executive Officer of Fiji Airports. The Commission's mandate includes:

²⁵⁶ Constitution of the Republic of Fiji, section 45(4), available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

²⁵⁷ *Id.*, sections 45(4)(e) and 45(4)(e).

²⁵⁸ Human Rights Commission Decree 2009, sections 34(1) and 34(2), available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FJI/INT_CEDAW_ADR_FJI_24461_E.pdf.

²⁵⁹ *Id.*, sections 36 and 38.

²⁶⁰ *Id.*, 41(2).

²⁶¹ *Id.*, 41(3).

²⁶² *Anti-Human Trafficking*, Office of the Director of Public Prosecutions, available at: <https://odpp.com.fj/anti-human-trafficking/>.

²⁶³ Human Rights Commission Decree 2009, available at: http://www.pacii.org/fj/promu/promu_dec/hrcd2009280.pdf.

²⁶⁴ Constitution of the Republic of Fiji, section 45, available at: https://www.constituteproject.org/constitution/Fiji_2013.pdf?lang=en.

²⁶⁵ *Id.*, section 45(2).

promoting the protection and observance of human rights; monitoring, investigating, and reporting on the observance of human rights; making recommendations to the Government concerning matters affecting the rights and freedoms under Chapter 2 of the Constitution; receiving and investigating complaints about alleged abuses of human rights; and taking steps to secure appropriate redress if human rights have been violated.²⁶⁶

- The Ministry of Women, Children and Poverty Alleviation works in partnership with non-government and civil society organisations, such as the Homes of Hope and Save the Children Fund (Fiji), and other stakeholders in the community to spread awareness of trafficking in Fiji. For example, in 2019, the Ministry held a National Workshop for Human Trafficking and Child Exploitation.
- The Ministry of Defense, National Security, and Policing has established the CMC in addition to a case management mechanism that created formal procedures for officials to refer victims to the CMC. The CMC is intended to assume responsibility of coordinating victim support and overseeing investigations and prosecutions. However, the CMC has not yet overseen any cases or coordinated victim services, and the case management mechanism has not been implemented in practice.²⁶⁷
- IWGHT facilitates government efforts and strategies to prevent human trafficking. In 2020, the IWGHT convened for the first time since 2012. In 2021, the IWGHT drafted a Fiji Anti-Human Trafficking Strategy and Action Plan, which Parliament accepted.²⁶⁸

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²⁶⁶ *Id.*, section 45(4).

²⁶⁷ U.S. Dep't of State, Trafficking in Persons Report 235 (2021), available at: <https://www.hsdl.org/?abstract&did=855864>.

²⁶⁸ *Anti-Human Trafficking strategy endorsed*, FBC News, available at: <https://www.fbcnews.com.fj/news/anti-human-trafficking-strategy-endorsed/>.