



**MINISTRY OF EMPLOYMENT,
PRODUCTIVITY AND INDUSTRIAL
RELATIONS**

"DECENT EMPLOYMENT AND PRODUCTIVITY FOR ALL"



To engage in personal spiritual renewal on a daily basis in accordance with one's belief"

**CHILD LABOUR UNIT
PROGRESS UPDATE ON TACKLING CHILD
LABOUR IN FIJI
REPORT COMPILED FOR THE
UNITED STATES
DEPARTMENT OF LABOUR
FOR THE PERIOD FROM 1/1/14 -31/12/14**

2014

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ACTIVITY REPORT OF CHILD LABOUR UNIT

1. CHILD LABOUR UNITS EFFORT AND COORDINATION AT DISTRICT AND PROVINCIAL LEVEL ON PREVENTING THE WORST FORMS OF CHILD LABOUR IN FIJI INCLUDING CHILD LABOUR IN AGRICULTURE AND SUGAR INDUSTRY

The Fiji Government ratified the UN Convention on the Rights of the Child (CRC) in 1993, and established the National Co-ordinating Committee on Children (NCCC). The NCCC and its seven sub-committees namely: legal, education, health, family welfare, media, Interagency Committee on Child Abuse, neglect and abandonment and child labour committee were established to implement, advice, regulate and monitor the protection of children under the CRC.

Moreover, Fiji ratified the ILO Convention 182 on Worst Forms of Child Labour in 2002 and Convention 138 on Minimum Age in 2003. Through its progressive labour reforms, Fiji has domesticated the fundamental principles and rights of these Conventions into its new labour laws, particularly under the Employment Relations Promulgation 2007 (ERP 2007). Part 10 of the "ERP 2007" specifically covers the worst forms of child labour while Part 8 of the Employment Relations [Administration] Regulations 2008 states the conditions of work. Section 256 of the ERP 2007 set out the penalty for offences committed against children. The gazetting of the hazardous workplace list from 28th of May 2013 has assisted and ensured that children are not involved in any form of child labour in hazardous workplace.

The detailed list for Fiji also criminalises the employment of children under hazardous working condition and also sets out possible prison term for the offenders.

The Inter-Agency Network (IAN) consisting of the Fiji Police Force, the Director of Public Prosecutions Office, Ministry for Woman, Children and Poverty Alleviation, Ministry of Education and the non-government organisations. The agencies came together to assist and develop the procedures in place for the

prevention and assistance to children and their families in assuring that the compulsory education process in Fiji is provided to every school age child.

The free education policy has assisted all children's in Fiji in terms of ensuring that they receive quality and affordable education. The IAN had regular meetings in ensuring that the inter-agency corporation network is taken right to the grass roots level. This includes meeting with the Tikina Councils and Advisory Council Reps in Fiji together with parents, teachers and other community leaders.

The Child Labour Unit conducted its awareness and training programs with the assistance of 63 Labour inspectorate and health and safety inspectors throughout the 7 District Offices in Fiji. These inspectors have been trained in the awareness, child labour withdrawal process with priority on returning the children to the mainstream educational system and also in situations where children are interested more in the technical training than they are referred to the nearest technical vocational training centre. The withdrawal process is properly documented within the procedures set out in the Child Labour withdrawal process and locked in at the child labour database system monitored by the child labour database operators together with the Assistant Director Labour Standard Services with the help of the Divisional Managers.

2. CHILD LABOUR AWARENESS AND TRAINING PROGRAMS WITH THE MINISTRY OF EDUCATION AND DISTRICT TIKINA COUNCIL AND ADVISORY REPRESENTATIVE ON HAZARDOUS WORKPLACE LIST

The child Labour Unit of the Ministry of Employment, Productivity and Industrial Relations conducted Child Labour awareness training program on the hazardous workplace list in the vulnerable areas in Fiji with the assistance of the Ministry of Education. The issue of Child Labour was highlighted including the withdrawal process. Moreover, with the IAN a training program was mapped out for those vulnerable areas to ensure that the problem is arrested at the grass roots level. Parents and guardians are also advised on the pro-longed consequences of the issues related to child labour. A total of 1,125 parents, school students and teachers were trained in this area for the period from 8/5/2014 till 25/9/2014. **(Details attached at appendix 1.0)**

3. CHILD LABOUR TRAINING OF SUGAR INDUSTRY STAKE HOLDERS UNDER EU FAIR TRADE CERTIFICATION PROCESS

The Ministry of Employment, Productivity and Industrial Relations together with Ministry of Sugar, Sugar Cane Growers Council, Fiji Sugar Corporation Limited and the Cane Producer Associations have launched a collective effort in eradicating the problem of child labour from the sugar cane farms and cane belt areas around the Western and Northern division in Fiji. Through this network, the Ministry conducted the training for the following Cane Producer Associations:

(a) Training for Labasa Cane Producer Association, located at Northern Division

The training for the above Cane Sugar Association training was conducted on the *29th and 30th of May 2014*. Relevant officers such as farm inspectors and farmers were appointed by the Fair Trade Association through the Cane Producer Association to attend the training. The then Minister for Labour, Mr. Jone Usamate officiated the official opening of the training with the commitment from Government in terms of ensuring the need for closer work relations between the Cane Producer Association and the Inter-Agency corporation members.

A total of 40 farm Inspectors were appointed by the Cane Producer Association as part of their monitoring programme in the cane belt areas. The Inspectors who are also farmers were trained and they formed part of the Inter-Agency group in the Northern Division of Fiji. The Inter-Agency Group ensures that every case of child labour is taken seriously and the Hazardous Workplace List is taken right to the grass root level. On the 31st of May, 2014 the training program was conducted for farmers at farm levels where officers from Ministry of Labour, Ministry of Education and the Labasa Cane Producer Association members conducted training for 70 farmers on child labour withdrawal process in the area of Tambia, Wainikoro, Wailevu and Daku sectors. These cane sectors were

targeted considering the possible cases of child labour which occurred from these sectors which was resolved at the farm levels.

(b) Training for Rarawai Penang Cane Producer Association, located at the Western part of Fiji

On the 11th of September 2014 the Honourable Minister for Labour, Industrial Relations and Employment opened a Two Day workshop for the members of above organisation in terms of Child Labour Law awareness and hazardous workplace list training held in the District of Ba.

A total of 33 farm Inspectors who were appointed by the Cane Producer Association together with farmers attended this training with the aim of withdrawal of children from cane farm and admitting them back to school. The awareness training also concentrated on the roles and responsibilities of parents and guardians in ensuring that children remain in school during school hours and after school emphasis by parents in ensuring that children's school work and home work given are completed on time and children are given best care and protection and they return to school the next school day.

(c) Training for Fiji Sugar Corporation Field Workers in Lautoka, Western part of Fiji

The child labour unit with assistance of Ministry of Education and Department for Social Welfare conducted the awareness and training program for the Fiji Sugar Corporation field workers focussing on child labour withdrawal process and awareness to farmers and stake holder agencies. The field officers have formed part of the inter agency network group in reporting of child labour cases from the farm to the Ministry with possible work of withdrawal of children and returning them to school. The Fiji Sugar Corporation (FSC) field workers are in daily contact with the farmers and have taken the awareness programs on child labour right at the farm level. This training was conducted with the total of 27 field officers being trained for a day on 23/5/2014. These successful training

programs has been a result of the collaborating effort by all inter agency stake holders with Ministry of Sugar and the Sugar Cane Growers Council leading the way forward in terms of providing the much needed assistance to the farmers and to industry stake holders. The importance of providing care and protection to children was also disseminated to the field officer who then took the awareness to the farmers, their family members and other stake holders.

(A) LAWS AND REGULATIONS ON PROTECTION OF CHILDREN

1. Constitution of The Republic of Fiji

The Fijian Government introduced a New Constitution in 2014 which has for the first time provided a wide range of rights under the Bill of Rights of Chapter 2 of the Constitution. In particular section 31 of the Constitution provides the Right for Education; *every person has the right to*

A] Early Childhood education

B] Primary and secondary education;

C] Further Education

While section 41 of the constitution under the heading rights of children states:-

(1) Every child has the right-

(a) To be registered at or soon after birth, and to have a name and nationality

(b) To basic nutrition, clothing, shelter, sanitation and health care

(c) To family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child-

(i) Whether or not the parents are, or have ever been, married to each other; and

(ii) Whether or not the parents are living together, have lived together, or are separated;

(d) To be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and

(e) Not to be detained, except as a measure of last resort, and when detained, to be held

(i) Only for such period of time as is necessary; and

(ii) Separate from adults, and in conditions that take account of the child's sex and age

(2) The best interests of a child are the primary consideration in every matter concerning the child.

4. RELEVANT LAWS ENFORCED BY MINISTRY OF EMPLOYMENT, PRODUCTIVITY AND INDUSTRIAL RELATIONS

The following laws have been in place to deal with the issues relating to child abuse and worst forms of child labour.

“Part 10” of the “Employment Relation Promulgation 2007 (ERP 2007)” talks about the worst forms of child labour while Employment Relation [Administration Regulation], Part 8 also states the conditions of work. Section 256 of the ERP 2007 set out the penalty for offences committed against children. The Employment relation law was enacted on the 1st of October 2007 and became effective from 2nd of April 2008.

A list of “*Hazardous Occupations Prohibited to Children under 18 Years of Age*” that defines duties which cannot be performed by the children and has been endorsed by the Tripartite National Occupational Health and Safety Advisory Board on 24th November 2010 through Social Dialogue. This list was further revised considering the latest developments relative to the new hazardous occupations which is now created and developed and the List was Gazetted by the Minister for Labour Industrial Relations and Employment on 28/05/2013 through Government of Fiji Gazette Supplement, Legal Notice No. 30/2013.
(Appendix 2.0)

The awareness training program conducted by the Ministry has focused on the area of hazardous workplace list on the awareness to the stakeholders with parents and children.

5. ASSISTANCE PROVIDED BY MINISTRY OF EDUCATION IN RELATION TO CHILDREN THROUGH EDUCATION POLICIES

The Ministry of Education is providing, as part of the Fijian Governments commitment, compulsory education for all Fijian for 12 years. In addition the Ministry of Education is providing bus fare assistance for the needy children and also food voucher assistance for remote school. The Ministry of Education has also enforced the Child Protection Policy in every school in Fiji. The Ministry also provided free education for all children from Year 1 to Year 13 level with scholarships being provided on academic as well as technical and vocational trainings.

6. RELEVANT LAWS ENFORCED BY MINISTRY OF WOMAN, CHILDREN AND POVERTY ALLIEVIATION

(a) Child Welfare Decree 2010

It provides procedures for professionals such as health professionals, police officers, welfare officers and legal practitioners to do the mandatory reporting of child abuse cases when they become aware of such cases. The decree also emphasizes the duty of care of the professionals in handling cases of possible child abuse and outlining the reporting requirement of such cases in their care. It also protects the confidentiality and integrity of cases and of the professionals handling the case.

(b) Juvenile Act (Cap 56)

This Act provides care and custody of a child in relation to UN convention on the rights of a child (UNCRC). Children who are covered in this Act are those who break the law, those who need residential assistance and those who need care and protection.

(c) Family Law Act 2003

This act provides to establish family divisions of the high court and the magistrates' court, to make fresh provisions relating to dissolution of marriage, spousal and child support, parenting responsibility and spousal property, to provide for marriage counselling and reconciliation, and for related matters.

(d) Child Welfare Decree 2010

- (a) Ensure the mandatory reporting of cases of possible, likely or actual harm in relation to events discovered by a professional to be affecting the health and welfare;
- (b) Emphasis the duty of care of the professional in handling cases of possible child abuse and outlining the reporting requirements of such cases in their care; and
- (c) To protect the confidentiality and integrity of cases and of the professionals handling these cases

7. THE FUNTION AND ESTABLISHMENT OF THE CHILD LABOUR UNIT (CLU) WITHIN THE MINISTRY OF EMPLOYMENT, PRODUCTIVITY AND INDUSTRIAL RELATIONS

The Fijian Government fully funded the Child Labour Unit in terms of its operations and Human resources. The Child Labour Unit is managed by the Assistant Director Labour Standards Services with the assistant from 3 District Managers and 38 inspectorate staff members. The Health and Safety Service also has the inspectors conducting in child labour duties and creating awareness on hazardous workplace list. A total of 63 inspectors have been appointed in the year 2014 to investigate cases related to child labour with providing awareness training to employers and stakeholders. A total of 7 Data Operators have been appointed to manage the child labour data base with guidance and support from the Information Technology Unit of the Ministry.

8. PROSECUTION OF EMPLOYERS IN VIOLATION OF CHILD LABOUR LAWS

The Child Labour Unit [CLU] of the Ministry of Employment, Productivity and Industrial Relations [MEPIR] has successfully prosecuted a case of child being employed for more than 10 hours per day by an Employer. The case was registered in the Employment Tribunal as Criminal Case No. 14/14 where the Employer was charged for two counts under the Employment Relations Promulgation 2007 (ERP 2007).

The decision was handed down by the Resident Magistrate Mr. Andrew J See on 05/12/14 where the Employer was fined a total of \$8,600.00 for employment of a child outside the provisions of the ERP 2007. This is the first Child Labour prosecution case in the history of Fiji where the Employer has been given a hefty fine in the area of child labour. **(Copy of the Penalty decision attached on Appendix 3).**

The other two cases of Child Labour prosecution namely Case Number 39/12 (***Labour Officer vs. Delta Timber Supplies Limited***) and Case Number 45/12 (***Labour Officer vs. S Lal Construction Limited***) are before the Employment Relations Tribunal for hearing in 2015. **(Annexure 4 provides the copy of the charges laid against the Employers)**

In total the MEPIR has registered 3 cases in the Employment Relations Tribunal of which one has being finalised while the other two are still before the Tribunal.

9. IMPROVEMENT OF THE CHILD LABOUR UNITS SYSTEM AND PROCESS ALLIGNED TO ISO 9001:2008 STANDARDS.

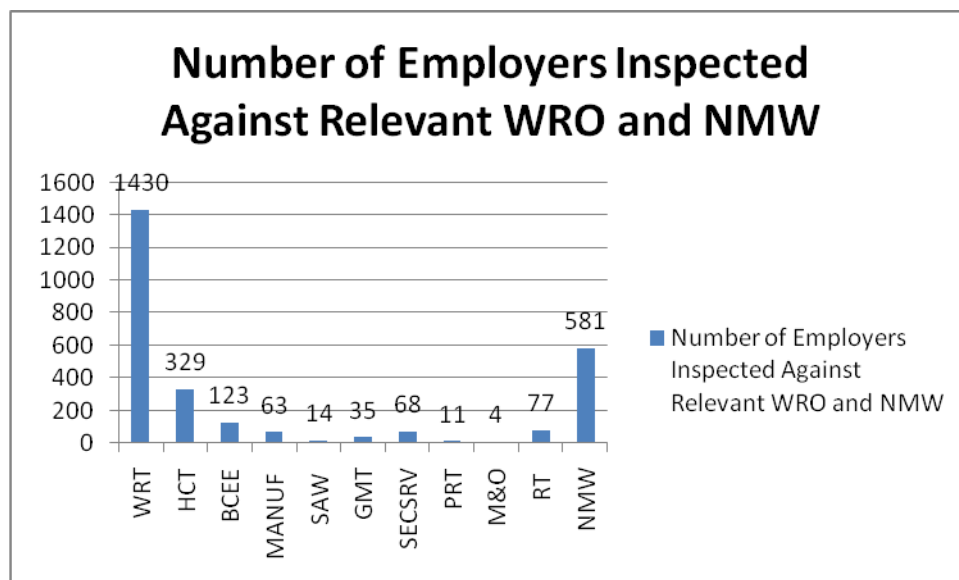
The CLU has conducted specialist training to the Inspectorate staff members on preparation of Child Labour reporting process in line with the ISO 9001:2008 standards reporting process from the 19th to the 23rd of August 2014.

This activity was undertaken with the intent to ensure that the work carried out is within the bounds of the set guidelines and standard practice. A total of 24 officers from the 7 Districts around Fiji attended this training which ensured the tracking down of each and every case of child labour from withdrawal to school and monitoring standards to be applied while children in school.

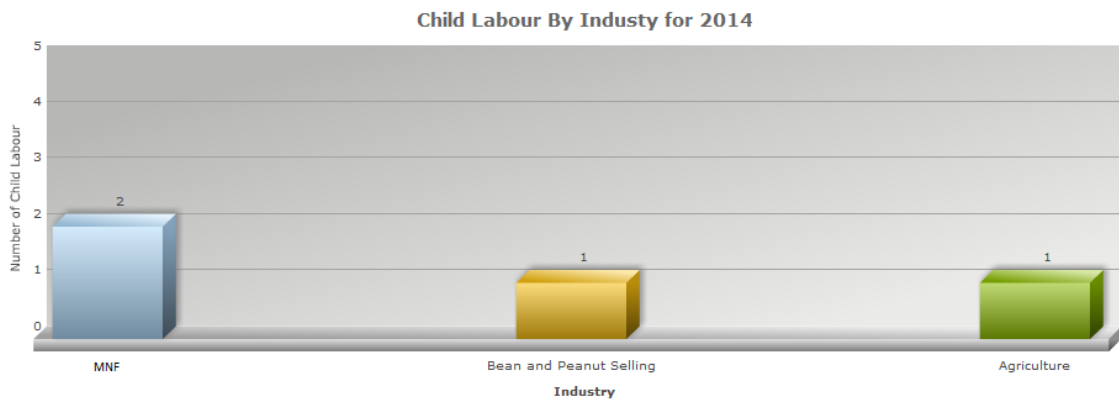
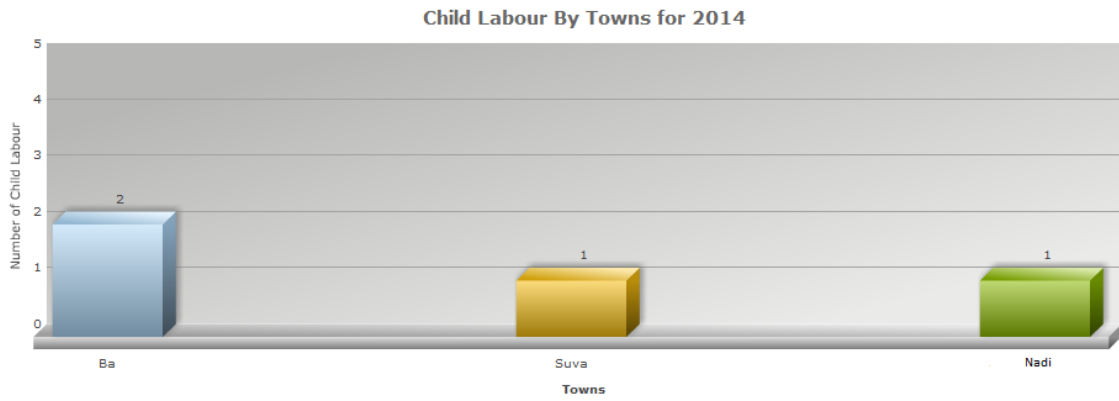
The procedures and forms developed were mainly on the child Labour reporting and data base management system in terms of management of child labour cases throughout the Districts and Divisions in Fiji.

10. ENFORCEMENT AND COMPLIANCE THROUGH LABOUR INSPECTION SERVICE

The Inspectorate officers of the Ministry of Employment, Productivity and Industrial Relations (MEPIR) have conducted employer awareness and enforcement inspection throughout the reporting period in which the Labour Inspectors have conducted door to door inspection in the 11 Districts in Fiji (Suva, Sigatoka, Nadi, Lautoka, Ba, Tavua, Rakiraki, Labasa, Savusavu, Levuka and Taveuni). The Enforcement program centred on the area of 10 Wages Regulation Orders (WRO) and the National Minimum Wage (NMW) (***Annexure 5.0 provides abbreviation and details of the Regulation Orders and the National Minimum Wage***). A total of 2,735 Labour Inspection was conducted by the Enforcement team of MEPIR throughout the mentioned Districts and Divisions as given below:-



2014 statistics from Child Labour Database



A total of 4 children were withdrawn from child labour by the Inspectorate staff of MEPIR together with the Inter-Agency corporation members. Three (3) children were put back into the mainstream education system while 1 Child was placed into the Technical and Vocational Training Program. A total of \$2,038.38 cents was recovered as arrears of wages and was paid to the child who was employed in the Manufacturing Sector on light work.

11. CELEBRATION OF WORLD DAY AGAINST CHILD LABOUR COORDINATED BY THE MINISTRY OF EMPLOYMENT, PRODUCTIVITY AND INDUSTRIAL RELATIONS WITH FIJI TRADE UNION CONGRESS (FTUC) AND FIJI COMMERCE, EMPLOYERS FEDERATION (FCEF) WITH THE INTERNATIONAL LABOUR ORGANISATION SOUTH PACIFIC OFFICE (ILO)

2014 Theme: SOCIAL PRODUCTION AND THE FIGHT AGAINST CHILD LABOUR

The World Day against Child Labour was celebrated on 12th June, 2014 at the Civic Centre in Suva with the Tri-Partite partners (Employers and Workers) and the Ministry of Education at the various schools. This one day event comprises of Oratory Contest and Drama Competition on the theme. A total of 10 schools took part with 91 students and 20 teachers as listed below:-

No.	Name of School	No. of Students Took Part	No. of Teachers Took Part
1	Lami High School	15	2
2	William Cross College	10	2
3	Nabua Secondary School	7	2
4	John Wesley College	14	2
5	Nakasi High School	7	2
6	Pt. Vishnu Deo Memorial Primary School	7	2
7	St. Marcellin Primary School	7	2
8	Bishop Kempthorne Memorial School	10	2
9	Chauhan Memorial School	7	2
10	Rishikul Nadera Primary School	7	2
TOTAL		91	20

12. FINANCIAL ASSISTANCE PROVIDED BY THE INTERNATIONAL LABOUR ORGANISATION

A total of 30,000 FJD was given by the ILO Office for Suva and South Pacific in terms of carrying out the actions and the programs on elimination of Child Labour training programs. The assistance provided was basically used in the training and capacity building of Inspectorate staff and community members in terms of eradicating child labour problems in Fiji.

APPENDIX: 1.0 - Ministry of Employment, Productivity and Industrial Relations – Inter-Agency Training for Community Members on the Area of Child Labour and Enforcement of Hazardous Workplace List

No	Date	Location of Training	Targeted Groups	Number of Participants	Training Program & Feedback
1	8/5/2014 and 9/5/2014	Lawaqa park, Sigatoka	Nadroga Navosa Provincial youth group	300	The Training conducted for this group was to create awareness within the youth population in this province in the area child labour prevention awareness on hazardous work and danger of drug use in particular marijuana.
2	4/7/2014	Novotel house, Lami	Building and civil contractors	85	Awareness was created on the hazardous workplace list for employers in the building and civil construction area
3	9/7/2015	Veikoba settlement, valelevu Nasinu	School teachers and Parents	4	They were a total of 4 parents who were targeted on the child labour withdrawal process considering their children were involved with child labour minor works sometime during or after school in the village community area
4	10/7/2014	Wakanisila settlement, kalabu Nasinu	Parents for children attending kalabu primary school	51	The parents of this school were targeted in this awareness program organised by teachers in terms of ensuring that parents from this area understand about the importance of children being sent to school and not to be involved in child labour

					activities
5	10/7/2014	Fiji Medical Council Building, toorak Suva	Primary and Secondary school teachers with community leader on education	49	The training was conducted for school teachers and school management on the issue of child labour laws and the hazardous workplace list
6	12/7/2014	Dilkusha High School, Nausori Suva	Primary and Secondary school teachers	17	The professional development training was conducted for teachers in terms of ensuring that more is taught in schools on the area of child labour
7	5/9/2014	Makolia village hall, solevu Bua	Village tikina council representative and parents	48	The training was targeted in this area in terms of providing awareness of parents and village tikina council reps on prevention of child labour
8	22/9/2014	Immaculate Conception College	Students and teachers	120	The target of this training was to get as many teachers and children as possible in terms of ensuring the laws related to child labour are taken to the grass roots level
9	22/9/2014	Cavaqa village hall, Solevu Bua	Village community members	36	In this training to these particular village members the importance of sending children to school and the area of hazardous workplace list advised and discussed.
10	23/9/2014	Nawaicoqo village hall, Solevu Bua	Village community members	71	In this training to these particular village members the importance of sending children to school and the area of hazardous workplace list advised and discussed.

11	24/9/2014	Nawailevu village hall Cama Bua	Village community members	21	The purpose of this training was to educate people on child labour and agriculture and how to possibly eradicate the problem
12	24/9/2014	Makolei village hall, Solevu Bua	Parents and students	60	Target was made for the parents and children to ensure that they understand about issues related to child labour and the importance of education
13	25/9/2014	Vuya village hall, Bua	Parents and students	80	Target was made for the parents and children to ensure that they understand about issues related to child labour and the importance of education
Total				1,225	

APPENDIX: 2.0 HAZARDOUS OCCUPATIONAL PROHIBITED TO CHILDREN UNDER 18 YEARS

EXTRAORDINARY GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 18

TUESDAY, 28th MAY

2013

[LEGAL NOTICE No. 30]

EMPLOYMENT RELATIONS PROMULGATION 2007
(PROMULGATION No. 36 OF 2007)

Hazardous Occupations Prohibited To Children Under 18 Years of Age Order 2013

In exercise of the powers conferred upon me by section 95(2) of the Employment Relations Promulgation 2007 and after consulting the National Occupational Health and Safety Advisory Board, I hereby make the following Order—

Short title and commencement

1. This Order may be cited as the *Hazardous Occupations Prohibited to Children Under 18 Years of Age Order 2013*, and shall come into force on the date of its publication in the *Gazette*.

Interpretation

2. In this Order, unless the context otherwise requires—

“hazardous work” means a subset of child labour and the worst form of child labour, being work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

List of hazardous occupations

3. For the purposes of section 95(2) of the Employment Relations Promulgation 2007, the following occupations or workplaces are prohibited occupations or workplaces for a child—

- (a) all occupations in the processing and preparation of drugs and chemical products involving exposure to dangerous chemicals;
- (b) all occupations in the manufacturing, handling, and transporting of explosives, toxic, corrosives, poisonous and noxious components and flammable liquids in bulk;
- (c) all activities in any work-room, building, premises, or any place where radium is stored, kept or processed or used in the manufacture of self-luminous compounds or other radioactive substances;
- (d) craftsman, production process and related occupations—
 - (i) spinners and winders (textile);
 - (ii) fiber and plastic preparers;
 - (iii) bleacher, dyer and finisher of textiles using chemicals;
 - (iv) tool maker, machinist, plumber, welder, flame cutter and plater;
 - (v) installer and repairer of telephone and telegraph;

- (vi) electrical and electronic fitter;
 - (vii) linemen and cable joiner;
 - (viii) sawyer and woodworking machine setter and operator;
 - (ix) furnace and oven workers in brick making;
 - (x) furnace man and kilnman in the manufacture of glass and ceramics;
 - (xi) brewer and wine maker;
 - (xii) distiller of alcoholic beverages;
 - (xiii) tanner;
 - (xiv) blacksmith, hammersmiths, forge man;
 - (xv) slaughtering and killing birds and animals;
 - (xvi) extraction of lard and oil;
- (e) farming, fishing, hunting, logging, and related occupations—
- (i) deep sea and offshore fishing;
 - (ii) divers of marine organisms or products of marine organisms, including but not limited to, sponge, sea cucumber, pearl and shell;
 - (iii) logging (cutter, stripper, cable installer, feller);
 - (iv) farming activities including but not limited to, sugarcane cutting, sugarcane loading and chemical spraying;
 - (v) workers on commercial vegetable farming;
- (f) mining, quarrying and related occupations—
- (i) operators of drilling and blasting machines, stone crushing equipment, conveyor, compressor, steam boiler, air receiver, gas cylinder, acetylene generator;
 - (ii) firing (with fuse, electricity);
 - (iii) stone splitter;
- (g) service, sports and related work—
- (i) fire-fighters and guards;
 - (ii) ship stewards; (iii) airline hostesses; (iv) bartenders;
 - (v) bus conductors and conductresses;
 - (vi) masseurs and masseuses;
 - (vii) taxi-dancers;
 - (viii) entertainers (strip teasers, burlesque, dancers);
 - (ix) bath house attendants;
 - (x) escorts for men or women;
 - (xi) personal service of males or females in bars, cocktail lounges, motels, hotels, massage clinics, and other drinking places;
 - (xii) janitors in bawdy houses;
 - (xiii) lifeguards in swimming pools and resorts;
 - (xiv) jockeys and horse trainers;
 - (xv) contact sport instructor; (xvi) embalmers and undertakers;

- (xvii) dealers, croupiers, bookies and bet takers;
- (xviii) lifting, carrying, handling and moving heavy loads;
- (xix) security officers;

(A) transport, communication and navigational occupations—

- (i) firemen;
- (ii) drivers or operators of bulldozer, crane, pile driving equipment, trailer, road roller, tractor lifting appliances, scaffold winch, hoist, excavator, loading machine, trucks, buses and taxis;
- (iii) tillers and greasers of heavy machineries;
- (iv) traffic controller and dispatchers;
- (v) servicemen and garage workers in transport company;

(i) other hazardous work including but not limited to—

- (i) bottle collecting;
- (ii) scrap metal collecting.

Employer shall be liable

4. Any employer who, after being served with this Order, continues to employ a child in the prohibited occupation or workplace, commits an offence and shall be liable under the provisions of the Employment Relations Promulgation 2007.

Made this 24th day of May 2013

J. USAMATE Minister for Labour,
Industrial Relations and Employment

APPENDIX: 3.0 - PROSECUTION OF EMPLOYERS IN VIOLATION OF LABOUR LAWS

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL



Penalty Decision

Section 256 *Employment Relations Promulgation 2007*

Title of Matter:	LABOUR OFFICER (Complainant) v BRIAN NITIN NAIDU REUBEN Trading as CYBER CITY (Defendant)
Section:	Sections 97 (1)(a),(b); 97(4); and 99(1)(a),(b) <i>Employment Relations Promulgation 2007</i>
Subject:	Hours of Work for Children; Requirement to keep register of hours for children.
Matter Number(s):	ERT Criminal Case 14/2014
Appearances:	Mr A Kumar, for the Complainant Ms S Colavanua, for the Offender
Date of Hearing:	5 December 2014.
Before:	Mr Andrew J See, Resident Magistrate
Date of Decision:	5 December 2014

OFFENCES – Sections 97; 99; 256 *Employment Relations Promulgation 2007*;

Background

1. On 26 November 2014, the Defendant was found guilty of the following offences under the *Employment Relations Promulgation*:
 - (i) That he did employ a child for in excess of eight hours per day, in contravention of Section 97(1)(a) of the *Promulgation*;

1.

- (ii) That during some or all of those occasions, the child was not given at least 30 minutes paid rest for every continuous 4 hour period, in contravention of Section 97(1)(b) of the Promulgation;
- (iii) That during the period from July 2012 to 7 August 2012, the Defendant did not keep a register of children employed in his workplace, in contravention of Section 99(1)(a) of the Promulgation; and
- (iv) That on or around 17 January 2013, he was unable to produce the record for inspection when required by a Labour Officer, in contravention of Section 99(1) (b) of the Promulgation.

Submissions of the Prosecutor

2. Mr Kumar has submitted that this is the first child labour case to be prosecuted under the Promulgation. He argues that the case should be used as a strong deterrent to other persons who seek to engage the services of a child in contravention of the law. He asks that the Offender be given a six month custodial sentence in relation to each offence, though makes no submission as to whether such sentence should be imposed cumulatively or concurrently. In addition, he is claiming \$200 costs to be awarded to the child, as compensation for loss of earnings, travel and related matters associated with his assistance in the investigation and attendance during proceedings. Mr Kumar also sought the further sum of \$200 to meet the investigation costs of the Labour Office.

Submissions on behalf of Defendant

3. Counsel for the Defendant appeared at the hearing on a pro bono basis. Her submissions rely on several factors. First, that the severity of the offences committed should be viewed at the lower end of the penalty spectrum, having regard to the facts and circumstances of the case. Secondly, that the Defendant is the operator of a business that is still developing and where work is intermittent. Thirdly, that the Defendant is relying on his wife's primary income in support of loan commitments relating to business start up and home improvements. And finally, that as a measure of character, the Defendant is involved in various youth organizations supporting and assisting young persons in the local area. Ms Colavanua says that any penalties imposed should be at the lower end of the spectrum and that if a period of imprisonment be imposed, that it be fully suspended based on the good behavior of the Defendant for a period of 12 months.

Penalty

4. In determining this matter, the Tribunal has taken into consideration the relevant provisions of the *Sentencing and Penalties Decree 2009*.
5. Specifically, Section 4(1) of the Decree provides:

The only purposes for which sentencing may be imposed by a court are —

- (b) to protect the community from offenders;*
- (c) to deter offenders or other persons from committing offences of the same or similar nature;*
- (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
- (e) to signify that the court and the community denounce the commission of such offences; or*
- (f) any combination of these purposes.*

6. Further, Section 4(2) of the Decree, sets out the matters that a Court or Tribunal must have regard to when sentencing an offender. These are:-

- (a) the maximum penalty prescribed for the offence;*
- (b) current sentencing practice and the terms of any applicable guideline judgment;*
- (c) the nature and gravity of the particular offence;*
- (d) the offender's culpability and degree of responsibility for the offence;*
- (e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;*
- (f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;*
- (g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;*
- (h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;*
- (i) the offender's previous character;*
- (j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and*
- (k) any matter stated in this Decree as being grounds for applying a particular sentencing option.*

7. The general penalty provision provided under Section 256 of the Promulgation is as follows:

- A person who commits an offence under this Promulgation for which no particular penalty is provided, is liable on conviction—*
- (a) for an individual, to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both;*
 - (b) for a company or corporation or trade union, to a fine not exceeding \$50,000; and*
 - (c) where applicable, to disqualification from holding a post as an officer of a trade union for 5 years from the date of conviction for the offence.*

8. As identified above, the limits imposed on a Tribunal Member, are provided for within Section 211(3) of the Promulgation. The offences can each be looked at as distinct breaches of the statutory obligation. A child must not be employed for more than 8 hours in a day. She or he is entitled to at least a 30 minute break after four hours continuous work. When employing a child, the employer is required to keep a separate register of employment, containing details of the worker's age, date of commencement and termination, nature of employment and prescribed conditions. That register should be made available to a Labour Officer or Labour Inspector upon demand. On this occasion the employer has not met any of these obligations. He may be of the

belief that this was not required in the special circumstances of this case, but such a view is incorrect.

9. Children need to be protected, so that they are not exploited in the workplace. They lack the same capacity to negotiate terms and conditions of employment and in most cases, are unaware of their rights and entitlements at law. It is for that reason, that in imposing a penalty, the fines imposed should be meaningful in the circumstances. That is, in accordance with Section 4(1) of the *Sentencing and Penalties Decree 2009*, a penalty or sentence should act as a deterrent and as an expression of denouncement. In either case though, the penalty or sentence must remain proportionate to the circumstances of the case. That is, it must be just in the circumstances of the case. In undertaking this task, I have considered the nature of the employment arrangement, the physical work environment and the fact that health and safety risks may not have been as pronounced as in other possible scenarios. For example, where children are engaged to undertake strenuous physical activity or work at heights; with plant and machinery; with hazardous substances; live power and the like.
10. During the trial of the substantive hearing, the Defendant did not appear overly remorseful, nor at any stage did he provide any indication to the Tribunal, that he was intending to make good any shortfalls owed to the child, as a result of the payment arrangement in place. It is also uncontested, that the Defendant was convicted in the Suva Magistrates Court on 15 January 2013, for causing the assault against the child, at a time on or around the relevant period of employment. That situation whilst already dealt with by the Court, is an aggravating factor that needs to be taken into consideration, within the circumstances of this case.

Conclusions

11. For each offence, I fine the Defendant the sum of \$2000.00, making a total penalty payment of \$8,000.00. While these individual penalties are at the lower end of the fine continuum, the cumulative effect serves as a warning to the Defendant, that any breach of Fijian Employment law has serious consequences. A person, who seeks to operate a business and engage individuals in whatever capacity, must do so in accordance with the law. There is an obligation to know what the prevailing employment laws require and to ensure that their terms are complied with. If an employer cannot do that, it needs to evaluate whether or not, it should conduct a business in the first place. The cost of labour, particularly where there are statutory requirements to be met, is a factor that needs to be built into the operating costs of a business. Ordinarily, if an Employer cannot meet those costs, then it is likely that it should not be conducting the business. A business cannot be made profitable through the unlawful underpayment of wages to its workers, or by prescribing unlawful conditions of employment that are harsh and oppressive.
12. In relation to whether or not a term of imprisonment should be imposed, the Tribunal is guided by Parts IV and V of the Decree. Again having regard to the circumstances of this case, there would appear to be justification for assessing the severity of the breaches at the lower end of the spectrum.¹ In part this is a function of the fact that the evidentiary issues were such in the case of the length of hours worked, that there is some doubt as to on how many occasions work in excess of eight hours took place. The case of whether a break was provided after the four hour period, is a similar case in point.

¹ I am of the view, that in the case of a first offence, that no period of imprisonment would be appropriate in relation to offences committed under Section 99 of the Promulgation.

13. For that reason and on this occasion, I am unwilling to impose a sentence of imprisonment, though having said that would recognize that in many other scenarios, particularly where the health and safety of the child was at risk, may give rise to the justification of a period of confinement. Should the Defendant commit similar offences under this Promulgation, the situation may be quite different. I nonetheless intend to impose a restriction on the Defendant, that he not be allowed to engage any child for employment purposes, for a period of 24 months, effective from today's date.²

14. In relation to the request by Mr Kumar that the child be paid some costs arising out of the investigation and trial, I consider in the circumstances that this is warranted and order that the amount of \$150 be paid. It is noted that Mr Kumar was also seeking compensation for the child in the amount of \$1294, being claimed as the entitlement for arrears in wages, outstanding annual leave etc. While I have indicated to Mr Kumar that I am not prepared to entertain that application, based on the evidence and the fact that no parallel application for recovery was made, it is nonetheless noted that the time limitation imposed by virtue of Section 262 of the Promulgation does not allow any such application be made beyond the 18 month window. On that basis and having regard to the evidence of all parties, I will award a further amount of \$250 to be paid to the worker, as a global assessment of the underpaid entitlements arising out of the relevant period.

ORDER

The Tribunal orders that the Conviction against the Defendant be recorded and the following penalties imposed:-

Charge 1

- (a) in relation to the first count, that the Defendant did employ a child for in excess of eight hours per day, in contravention of Section 97(1) (a) of the Promulgation, the Defendant is fined the sum of \$2000.00, to be paid within 60 days.

- (b) in relation to the second count, that the child was not given at least 30 minutes paid rest for every continuous 4 hour period, in contravention of Section 97(1)(b) of the Promulgation, the Defendant is fined the sum of \$2000.00, to be paid within 60 days.

Charge 2

- (a) in relation to the first count, that during the period from July 2012 to 7 August 2012, the Defendant did not keep a register of children employed in his workplace in contravention of Section 99(1) (a) of the Promulgation, the Defendant is fined the sum of \$2000.00, to be paid within 60 days.

² See Section 15(k) of the Sentencing and Penalties Decree 2009 and Section 212 of the Employment Relations Promulgation 2007.

Further Orders

The Tribunal further orders that:-

- (a) The Defendant whether acting as an individual or through any business entity, not be allowed to employ any child in employment, for a period of 24 months, effective from today's date.
- (b) The Defendant pay the Complainant on behalf of the child, costs in the amount of \$150, payable within 14 days.
- (c) The Defendant pay the Complainant on behalf of the child, compensation in the amount of \$250, payable within 14 days.
- (d) The Defendant pay the Complainant the investigations costs in the amount of \$200, payable within 14 days.

A handwritten signature in black ink is written over a red circular official stamp. The stamp contains the text "EMPLOYMENT RELATION TRIBUNAL" around the perimeter and "OFFICIAL" in the center.

Mr Andrew J See
Resident Magistrate
5 December 2014

APPENDIX: 4.0 CHARGES LAID AGAINST THE EMPLOYERS

C.P.C. FORM No. 5



CRIMINAL PROCEDURE DECREE 2009

(Section 57)
SUMMONS

In the Employment Relations Tribunal in Suva

FJI

CC Case No. 39/2012

To (a) **Delta Timber Supplies Limited** (b) being an employer in the Eastern Division
You are hereby commanded to appear at 9am o'clock in the morning of the 1st day of November, 2012 at the Employment Relations Tribunal, Suva there to answer the following charge(s) made on the complaint of (a) **Labour Officer** of (b) **Suva**.

COUNT 1

Statement of Offence (a)

Employing a child contrary to Employment Relations (Administration) Regulations 2008 section 40 (1) (b) (c) and (2) and Section 256 (b) of the Employment Relations Promulgation 2007.

Particulars of Offence (b)

Delta Timber Supplies Limited being an employer in the Eastern Division employed a child, Sonal Aman Kumar for the period from 29th of November, 2011 till 8th of December, 2011. Therein, employing an under aged child contrary to the Employment Relations Promulgation 2007 and Employment Relations (Administration) Regulations 2008 thus committing an offence.

and be dealt with according to law.

Dated this 15th day of October, 2012



- (a) Full name, and father's name if Indian.
(b) Full address, and occupation.
(c) Brief statement of offence with Act and section contravened.
(d) Brief particulars of offence in ordinary language.

CRIMINAL PROCEDURE DECREE 2009
(Section 56)
In the Employment Relations Tribunal at Lautoka
CHARGE
(Complaint by Public Officer)
First Count

Statement of Offence

Employing a child contrary to Employment Relations Promulgation 2007 section 93 (2) (b) and Section 256 (b) and Employment Relation (Administration) Regulation 2008 section 40 (1)(b)(c) & (2).

Particulars of Offence

Slal Construction Limited of 1st floor Sharmars Building, Main Street, Nadi being an employer in the Western Division employed the children named Pranesh Ram, Lalendra Nath and Ashendra Nath for the period from September 2011 till 22nd October, 2012. Therein, employing a child contrary to the Employment Relations Promulgation 2007 and Employment Relations (Administration) Regulations 2008 thus committing an offence.

Second Count

Statement of Offence

Employing a child contrary to section 99 (1) (a) and subsection (2) & (3) and section 256(b) of the Employment Relation Promulgation 2007.

Particulars of Offence

Slal Construction Limited of 1st floor Sharmars Building, Main Street, Nadi being an employer in the Western Division employed the children named Pranesh Ram, Lalendra Nath and Ashendra Nath for the period from September 2011 till 22nd October, 2012. Therein, employing a child contrary to the Employment Relations Promulgation 2007 and Employment Relations (Administration) Regulations 2008 thus committing an offence.



LABOUR OFFICER

(d)

Sworn before me (e)

Tribunal:

Date:

- (a) Offence with Act and section.
- (b) Name or names of accused persons and brief particulars of offence in ordinary language.
- (c) Add further counts as necessary
- (d) Signature of complainant with rank.
- (e) Strike out if not made on oath.

Note. - This form is for use when there is more than one count. If a second Sheet is necessary the signatures will appear at bottom of second sheet only.

APPENDIX: 5.0 – PROVIDES ABBREVIATION OF 10 WAGES REGULATION ORDERS AND 1 NATIONAL MINIMUM WAGE

<u>Number</u>	<u>Abbreviation</u>	<u>Wages Regulation Order Names</u>
1	WRT	(Wholesale and Retail Trades) Order 2012
2	HCT	(Hotel and Catering Trades) Order 2012
3	BCCE	(Building and Civil and Electrical Engineering Trades) Order 2012
4	MANUF	(Manufacturing Industry) Order 2012
5	SAW	(Sawmilling and Logging Industry) Order 2012
6	GMT	(Garment Industry) Order 2012
7	SECSRV	(Security Services) Order 2012
8	PRT	(Printing Trades) Order 2012
9	M&Q	(Mining and Quarrying Industry) Order 2012
10	RT	(Road Transport) Order 2012
11	NMW	National Minimum Wage

The End