

Office Location
The Solicitor General
Attorney General's Office
First Floor, Taumoepeau Building
Corner of Fatafehi and Salote Roads
Nuku'alofa
KINGDOM OF TONGA



Contact Details:

Postal Address: PO Box 85, Nuku'alofa,

Kingdom of Tonga

Telephone: (676) 24 055 / 24 007

Fax : (676) 24 005

Office Hours: 8:30 am - 4:30 pm, Mon - Fri

Email: sg@crownlaw.gov.to

Website: www.crownlaw.gov.to/cms

Our Reference: AEK 165 /14

3 April 2014

Sulieti Havea
Political Assistant and Translator (Tongan)
U.S Embassy
Suva,
Fiji

Dear Ms. Havea,

Re: Child Labour in Tonga

Please find attached the report endorsed by Solicitor General on Child Labour in Tonga as per requested.

Respectfully,

'Akanesi E Katoa
(Assistant Crown Counsel)

Please note that we have only highlighted and discussed areas that are presently applicable to Tonga.

1. LAWS AND REGULATIONS ON THE WORST FORMS OF CHILD LABOR:

- 1. What, if any, new laws or regulations were enacted during the reporting period in regard to the worst forms of child labor? If applicable, were the changes improvements in the legal and regulatory framework? Note that DOL does not report on governments' expressions of intent to adopt new laws, only laws actually adopted.**
 - a. There were no new laws or regulations enacted during the reporting period with regards to the worst forms of child labor.
 - b. However Tonga has taken steps into recognizing employment issues. The *Employment Relations Bill 2013* is currently under public consultation, and it will be Tonga's first employment relations piece of legislation.
- 2. Did the country have a minimum age for employment? What was it? Did the country have compulsory education? What was the age to which education was compulsory? Did the country have free education? What was the age to which education was free?**
 - a. Tonga does not currently have a minimum age for employment; however the *Employment Relations Bill 2013* provides a minimum age for working. The minimum age of working provided is 14 years of age.¹
 - b. The compulsory school age in Tonga is between 6 years and 13 years.²
 - c. It is compulsory and the parent's duty to have their child/children educated.³ It is an offence for a parent not to take their child/children to school.⁴
 - d. The Tongan Government provides free education for children attending classes 1 to 6 in Government Primary Schools.⁵ Free education is provided for children ages 6 to 11.
- 3. Did the country have a minimum age for employment in hazardous work? What was it? Did laws prohibit children from engaging in the kinds of hazardous work that are common in the country? For example, if working with dangerous tools in agriculture (such as machetes) is a common practice, did the country prohibit children from using such tools? Please specify.**
 - a. Tonga currently does not have any piece of legislation in force to deal with the minimum age for employment in hazardous work. However the *Employment Relations Bill* provides that the minimum age for employment in hazardous work is 18 years of age.⁶
- 4. Did laws prohibit the following crimes against all children up to age 18? Please note whether the law applied equally to girls and boys. If possible, list the specific laws that prohibited the following activities:**
 - a. **forced labor/trafficking/other practices similar to slavery,**
 - i. Slavery and forced labour is prohibited to both girls and boys as provided by the Constitution of Tonga.⁷
 - ii. Trafficking of both young girls and boys are prohibited as provided by the *Transnational Crimes Act*.⁸
 - iii. Abduction of girls is prohibited.⁹
 - b. **child soldiering, and in particular forced recruitment for child soldiering (please note the minimum age for voluntary enlistment and compulsory military recruitment, and the minimum age for engagement in combat),**
 - i. A person under the age of 16 years of age cannot be enlisted in the military services.¹⁰

¹ S.85(1) *Employment Relations Bill 2013*(Tonga).

² S.52 (a) *Education Act* [Cap 86] (Tonga).

³ S.53 *Education Act* [Cap 86] (Tonga).

⁴ S.56 *Education Act* [Cap 86] (Tonga).

⁵ S.33(3) *Education (Schools and General Provisions) Regulations 2002* (Tonga).

⁶ S.87(1) *Employment Relations Bill 2013*(Tonga).

⁷ Clause 2 *Act of Constitution of Tonga* [Cap 2] (Tonga).

⁸ S.25 *Transnational Crimes Act 2005* (Tonga).

⁹ S.129 *Criminal Offences Act* [Cap 10.09] (Tonga).

- ii. A person under the age of 18 years of age cannot be enlisted in the military services unless with the consent in writing of the said person's parents or guardians.¹¹
 - c. **Prostitution**
 - i. It is an offence to keep, manage or assist in the management of a brothel in Tonga.¹²
 - ii. Trading in prostitution is prohibited.¹³
 - d. **the use, procuring or offering of a child for the production of pornography or for pornographic performances,**
 - i. Any person who publishes¹⁴, produces¹⁵ or possesses¹⁶ child pornography commits an offence, and is liable to a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years.¹⁷
 - ii. Child pornography includes material that visually depicts a child engaged in sexually explicit conduct; a person who appears to be a child engaged in sexually explicit conduct or images representing a child engaged in sexually explicit conduct.¹⁸
 - iii. Child pornography is prohibited.¹⁹
 - iv. The production of pornographic material in general is prohibited.²⁰
 - v. Sale or hire of pornographic material is prohibited.²¹
 - e. **the use of children by an adult for illegal activities (such as drug trafficking).**
 - i. The *Money Laundering and Proceeds of Crime Act 2000* (Tonga) deals with drug trafficking issues. However the *Employment Relations Bill 2013* (Tonga) provides for the prohibition of procuring or offering of a child for illicit activities²² and for the production or trafficking of illegal drugs.²³
 - ii. The sale of intoxicating liquor to persons under the age of 18 years is an offence.²⁴
 - iii. A person under the age of 18 years who attempts to purchase intoxicating liquor is also guilty of an offence.²⁵
 - iv. The manufacture or sales of tobacco products designed to appeal to young people under 18 years is prohibited.²⁶
5. **If there were prohibitions against the worst forms of child labor, what were the penalties? Were penalties sufficient or insufficient to serve as deterrents?**

Please note the source that identified the penalties as sufficient or insufficient:

- a) the government
- b) international organizations (please list, i.e. ILO-IPEC)
- c) NGOs (please list)
- d) post observation and/or conclusion

¹⁰ S.25(3) *His Majesty's Armed Forces Act 1992* (Tonga).

¹¹ S. 25(2) *His Majesty's Armed Forces Act 1992* (Tonga).

¹² S.80 *Criminal Offences Act* [Cap 18] (Tonga).

¹³ S.81 *Criminal Offences Act* [Cap 18] (Tonga).

¹⁴ S.115A (1)(a) *Criminal Offences Act* [Cap 18] (Tonga).

¹⁵ S.115A (1)(b) *Criminal Offences Act* [Cap 18] (Tonga).

¹⁶ S.115A (1)(c) *Criminal Offences Act* [Cap 18] (Tonga).

¹⁷ S.115A (1)(i-ii) *Criminal Offences Act* [Cap 18] (Tonga).

¹⁸ S.115 A (3) *Criminal Offences Act* [Cap 18] (Tonga).

¹⁹ S.115A *Criminal Offences Act* [Cap 18] (Tonga).

²⁰ S.4 *Pornography Control Act 2002* (Tonga).

²¹ S.5 *Pornography Control Act 2002* (Tonga).

²² S.88(1)(h) *Employment Relations Bill 2013* (Tonga).

²³ S.88 (1)(i) *Employment Relations Bill 2013* (Tonga).

²⁴ S.65 (1) *Intoxicating Liquor Act* [Cap. 84] (Tonga).

²⁵ S.65 (2) *Intoxicating Liquor Act* [Cap. 84] (Tonga).

²⁶ S.9B *Tobacco Control Act 2002* (Tonga).

e) other (please specify)

Tonga is currently working on enacting a piece of legislation (*Employment Relations Bill 2013*) to deal with this issue. Hence we cannot comment on the sufficiency of penalties.

2. GOVERNMENT TASK FORCES OR COMMISSIONS ON THE WORST FORMS OF CHILD LABOR:

- 1. Did the government either establish for the first time during the reporting period, or continue to have from previous periods, any task forces, commissions or agencies to serve as the lead or to coordinate government efforts on issues of the worst forms of child labor? Or, did the government either establish for the first time during the reporting period, or continue to have from previous to the period, any such bodies to focus on a particular worst form of child labor, such as child trafficking? For any such coordinating body:
 - a. indicate whether it was new during the period or previously existing,**
 - b. describe its composition, how it functioned in practice, and whether it was active. If it was active, please provide a list of activities carried out.****

The government conducted an investigation after the child labor allegations made by the USDOL report in 2011. Its investigations included the following activities:

- a) Re-visiting of the NGOs and undertake face to face consultation meetings to discuss the issues.²⁷
- b) Consultation meeting with relevant government departments (especially Ministry of Police, Ministry of Education and Training) to verify any findings from phase 1 and update the current registered data.²⁸
- c) This issue (Child Labour) was later transferred to the Ministry of Internal Affairs.²⁹ The Ministry of Internal Affairs conducted a SPOT SURVEY from 6 December 2012 to 4 January 2013 to investigate the allegations.³⁰ The *Report of a spot survey on the worst forms of child labour in Tonga* was conducted by the Crisis Intervention Desk of the National Forum of Church Leaders in Tonga for the Ministry of Internal Affairs. This report is still in its draft stage, but it will be endorsed with Cabinet later on in the year.
- d) The *Employment Relations Bill 2013* was also endorsed and it is currently under public consultation. This Bill is also tabled in the Parliament's legislative programme for this year.

There have been difficulties faced during investigations and this is due to the following:

- a) There are speculated activities in relations to the issue but few are registered and recorded.³¹
- b) There are confidentiality and cultural constraints in freely discussing and providing information of this nature to other personnels.³²

²⁷ Savingran B/81 (Vol 1) - Dated 09 October 2012) – From : Ministry of Commerce, Tourism and Labour , Re: Child Labour.

²⁸ Savingran B/81 (Vol 1) - Dated 09 October 2012) – From : Ministry of Commerce, Tourism and Labour , Re: Child Labour.

²⁹ Halaevalu 'Aleamotu'a, Legal Advisor to the Ministry of Commerce, Tourism and Labour (Tonga) (Phone call , dated 15 January 2014).

³⁰ Email from Lopeti Senituli, Chief Executive Officer of the Ministry of Internal Affairs (Tonga) (16 January 2014).

³¹ Savingran B/81 (Vol 1) - Dated 09 October 2012) – From : Ministry of Commerce, Tourism and Labour , Re: Child Labour.

3. INSTITUTIONS AND MECHANISMS FOR EFFECTIVE ENFORCEMENT OF LABOR LAWS ON CHILD LABOR AND HAZARDOUS CHILD LABOR:

Note: Since enforcement information often takes time to compile, if information is provided outside of the 2012 reporting period, please make this clear and indicate the time period the information covers. In cases in which information is not available, please indicate whether the government does not collect the information or whether information is collected, but the government was unwilling to provide it.

- 1. Has the government created and implemented an effective mechanism for filing and responding expeditiously to complaints about child labor? If so, please describe.**

Complaints about child labour can be made to the Tonga Police and the Ministry of Commerce, Tourism and Labour.

- 2. What agency or agencies was/were responsible for the enforcement of laws relating to child labor and/or hazardous child labor. If multiple agencies were responsible for enforcement, were there mechanisms for coordinating enforcement actions? If yes, please describe. At a minimum, did countries have systems for referring children found during inspections to appropriate social services?**

There is no specific responsible for the enforcement of laws in relations to child labour, but the following agencies look after issues as discussed in the legislations above:

- Tonga Police
- Ministry of Internal Affairs
- Ministry of Commerce, Tourism and Labour

Tonga is still taking steps to establishing a specific agency to look after this issue.

- 3. How many inspectors did the government employ to enforce laws against child labor? Was the number of inspectors adequate? Please note the source that identified the number of inspectors as adequate or inadequate:**

- the government
- international organizations (please list, i.e. ILO-IPEC)
- NGOs (please list)
- post observation and/or conclusion
- other (please specify)

Tonga is still taking steps to establishing inspectors to enforce laws against child labour.

³² Savingran B/81 (Vol 1) - Dated 09 October 2012) – From : Ministry of Commerce, Tourism and Labour , Re: Child Labour.

4. What amount of funding was provided to agencies responsible for inspections? Was this amount adequate? Did inspectors have sufficient office facilities, transportation, fuel, and other necessities to carry out inspections? Please note the source that identified the funding levels as adequate or inadequate and resources as sufficient or insufficient:

- a) the government
- b) international organizations (please list, i.e. ILO-IPEC)
- c) NGOs (please list)
- d) post observation and/or conclusion
- e) other (please specify)

Tonga is still taking steps to establishing a funding to provide to agencies responsible for inspections.

5. Did inspectors receive training on laws and enforcement of laws relating to child labor and/or hazardous child labor? Was this training adequate?

Please note the source that identified the training as adequate or inadequate:

- a) the government
- b) international organizations (please list, i.e. ILO-IPEC)
- c) NGOs (please list)
- d) post observation and/or conclusion
- e) other (please specify)

Tonga is still taking steps to training officers on laws and enforcement of laws relating to child labour.

6. How many inspections for the purpose of enforcing child labor laws were carried out? Were inspections carried out in sectors in which children work? Was the number of inspections adequate?

Please note the source that identified the number of inspections carried out as adequate or inadequate:

- a) the government
- b) international organizations (please list, i.e. ILO-IPEC)
- c) NGOs (please list)
- d) post observation and/or conclusion
- e) other (please specify)

Tonga is still taking steps to do this.

7. How many violations of child labor laws were found?

NOT APPLICABLE

8. How many children were removed/assisted as a result of inspections?

NOT APPLICABLE

9. How many penalties or citations for child labor law violations were issued? Was this number adequate compared to the size of the problem? Please note the source that identified the number of child labor law violations issued as adequate or inadequate:

- a) the government
- b) international organizations (please list, i.e. ILO-IPEC)
- c) NGOs (please list)
- d) post observation and/or conclusion
- e) other (please specify)

NOT APPLICABLE

10. In cases in which penalties were applied, such as fines, were the fines collected?

NOT APPLICABLE

4. GOVERNMENT POLICIES ON THE WORST FORMS OF CHILD LABOR:

1. During the reporting period, did the government establish any policies or plans such as those listed below, and/or continue to support any such policies or plans that had been established prior to the reporting period? Note that DOL does not report on governments' expressions of intent to adopt new policies, only policies actually adopted. Did the government establish and/or continue:

- a policy or plan that specifically addressed the worst forms of child labor or any one of the worst forms of child labor?

NO

- a poverty reduction, development, educational or other social policy, such as Poverty Reduction Strategy Papers, etc., that explicitly incorporated the worst forms of child labor as an issue to be addressed?

NO

- a poverty reduction, development, educational or other social policy, such as Poverty Reduction Strategy Papers, etc., that did not explicitly address the worst forms of child labor or any one of the worst forms of child labor, but that might have had an impact on them?

NO

Note: Questions 6.2 through 6.5 apply to each policy and/or plan listed in 6.1.

2. When was the policy or plan established? If applicable, when will it end/expire?

NO

3. If the country established any of the plans listed above, did it designate responsible agencies, establish actions to be taken, timelines, and other concrete measures?

NO

4. For each plan listed above, note if it was or was not carried out during the reporting period. If not, please provide any available information as to why it was not carried out.

NO

5. Have any studies been conducted to assess the impact of the policy and/or plan on the worst forms of child labor?

There has been one study to date on worst forms of child labour- *The Report of a Spot Survery on the Worst Forms of Child Labour in Tonga* 2013. However this report is yet to be endorsed with the Tongan Cabinet. The report suggests that we still need awareness and prevention campaign in the community regarding this issue.³³

³³ *Report of A Spot Survery on the Worst Form of Child Labor in Tonga draft* [6 December 2012 – 4 January 2013] page12.