

## Human Trafficking in Fiji

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*“Over a period of about 40 years, 62,000 Islanders were brought to Queensland from Melanesia, mainly from the Solomon Islands and Vanuatu, to provide cheap labour for the burgeoning sugar industry. A small number of laborers came from the Polynesian and Micronesian islands such as Samoa, Kiribati and Tuvalu. During this time Fiji also conducted consistent labor recruiting from Vanuatu, Solomon Islands, Rotuma, Gilbert and Ellice Islands.”*

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*“Trafficking in persons is a human right (sic) issue. Traffickers are motivated by greed to take advantage of vulnerable victims. Traffickers use coercive tactics including deception, fraud, intimidation, isolation, threat and use of physical force, and/or debt bondage to control their victims. The victims are generally subjected to degrading forms of exploitation such as forced prostitution, domestic servitude and other kinds of work.”*

Goundar J in State v. Murti HAC 195/2010

### Introduction

The heart of trafficking in human beings is the exploitation. Yet the law in Fiji only recently acknowledged this. The old Penal Code, repealed in February 2010, described offences of selling children into sex work, or of abducting women and children, as offences against morality. The offences of buying and selling children required proof of selling for the purposes of prostitution, and the law failed to criminalize acts of moving people from one place to another by exploiting their vulnerability. If the law does not criminalize the act of deception, or of exploitation, it fails to create sanctions against those who gain from the weakness, poverty and dis-empowerment of human beings. The law must do more than criminalize acts of transportation for the purpose of exploitation. It must also describe the act of exploitation in terms of power relationships. Realistically, in a country where sex work continues to be unlawful, and where English is the official language, how empowered is a young sex worker from China who speaks no English and whose employer has confiscated her passport? The law on trafficking has now been transformed, since the passing of the 2009 Crimes Decree. It creates offences of trafficking in people, of trafficking in

children, of domestic trafficking in people and children, of debt bondage, of sexual servitude, and of people smuggling. It also describes the word “exploitation” in a way which reflects the conduct of likely traffickers who trade in the vulnerable, and the word “deception” in a way which requires an examination of economic and social power relationships. The police and prosecution in Fiji have now laid charges against a number of accused persons for trafficking and for debt bondage. Of those charges, two cases have resulted in convictions and long prison terms. Three cases, two of which involve alleged domestic trafficking in children, are still pending. The judiciary has obviously proved itself equal to the task of presiding over this new type of offence. In both cases already decided by the courts, the High Court has established tariffs for the offences, which reflect the judges’ acceptance that the exploiting of human beings in an organized and mercenary way, is a matter that will lead to deterrent prison terms.

### **The Penal Code**

Offences of abduction, defilement of children, and procuring persons for the purpose of prostitution were all included in the chapter called “Offences against Morality”. There was no specific offence of transporting people, or facilitating their movement from one place to another, for the purpose of exploitation. The closest to trafficking were the offences of abduction and of kidnapping.

Section 248 of the Penal Code provided that;

“ (a) any person who conveys any person beyond the limits of Fiji without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person;

(b) any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

Section 250 provided;

“Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony and is liable to imprisonment for ten years.”

Section 252 of the Penal Code provided;

“ Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony and is liable to imprisonment for ten years.”

Section 257 of the Penal Code provided;

“ Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.”

In *Hemant Chand v. State*[1] the Fiji Court of Appeal held that the definition in section 248 of the Penal Code was not complete in itself. The prosecution had to also prove the intention set out in sections 250,

251 or 252. What did this mean? This meant that the prosecution had to prove the following elements for abduction under section 252;

1. The accused;
2. By force;
3. Compelled or induced by deceit;
4. Any person to go from any place;
5. In order that such person may be subjected to grievous harm, or slavery, or unnatural lust or knowing it to be likely that such person will be so subjected.

The elements did not cover a voluntary moving by a sex worker who already knows that she will be subjected to “unnatural lust”, or a person serving in a security company who is moved to degrading work conditions but which do not constitute grievous harm. The elements of inducing or compelling people to move were a real barrier. Most trafficked individuals agree to the movement. Indeed they may pay traffickers a lot of money to be moved. Similarly, many persons agree to labour in exploitative conditions, because they are desperate. The element of “compelling” a person to labour against his or her will was a barrier to the prosecution of persons who exploit need and poverty to facilitate exploitative labour conditions. What is exploitative should surely be a partly objective test and the consent of the victim should not prohibit a prosecution. It is not surprising in these restrictive circumstances, that there were no prosecutions for inter country abduction cases in Fiji under the Penal Code, and that abduction cases were limited to isolated cases of the abduction of girls for the purpose of rape.

### **International Law on Trafficking**

The United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol) in Palermo in 2000. It entered into force in December 2003, and is an international convention associated with United Nations Convention against Transnational Crime (CTOC)[2]. The Trafficking Protocol adopted a global definition of human trafficking for the first time in the following terms;

“(a)....the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, for the purpose of exploitation. Exploitation shall include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.”

This definition encompasses more than the transportation of victims, it also includes the recruitment, harbouring, transfer and receipt of victims and has an element of deceit or abuse of power or exploitation.

One criticism of the Trafficking in Person Protocol is that it fails to give adequate guidance to sentencing courts on particular factors which aggravate sentence. Article 10(4) provides that persons convicted of offences relevant to the Protocol must be subjected to “effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions”. In contrast the Council of Europe Convention on Action against Trafficking in Human Beings (2005) set out four aggravating factors to be considered in increasing sentence. They are; offence deliberately or by gross negligence endangered the life of the victim, or was committed against a child, or by a person who is a public official and commits the offence in the course of performance of duties, or “within the framework of a criminal organisation.” However, the UNODC’s Framework for Action to Implement the Trafficking in Persons Protocol gives more specific guidance on prosecutions, penalties and sanctions, although it is of course non-binding. In particular the Framework list five indicators to ensure effective sanctions for trafficking;

1. Severity of sanctions imposed for trafficking;
2. The number of sanctions reflecting aggravating circumstances;
3. The number of administrative and non criminal sanctions;
4. The number of penal sanctions applied;
5. Numbers of repeat offenders.

The UNODC’s Model Law against Trafficking in persons recommends penalties of higher than 4 years imprisonment with the following aggravating factors;

- (a) Serious injury or death of a victim;
- (b) Vulnerable victim such as a pregnant woman;
- (c) Exposing the victim to serious illness such as HIV/AIDS;
- (d) Victim is mentally or physically handicapped;
- (e) The victim is a child;

- (f) There is more than one victim;
- (g) The offences were committed within an organised crime organisation;
- (h) Drugs were used in the commission of the offence;
- (i) A child was adopted for the purpose of trafficking;
- (j) The offender is a public official;
- (k) The spouse is married to or a partner of the victim;
- (l) The offender has abused apposition of trust or responsibility;
- (m) The offender is in a position of authority over a child victim.

Much of the work of the United Nations in relation to trafficking in persons law is done by the United Nations Office on Drugs and Crime (UNODC). Its latest edition of the Global Report on Trafficking in persons was published in December 2012[3]. The Report states that 27% of human trafficking victims between 2007 and 2010 were children, and that there was an increase in this figure from the earlier reports. Countries all over the world have experienced trafficked victims from East Asia, and Africa and Asia have experienced more cases of forced labour, while Europe and the American continent experience more cases of sexual exploitation. 16 countries have had some experience with trafficking for the purpose of organ transplant. An interesting finding is that although 154 countries have ratified the Protocol, and although 83% of countries have laws which criminalise trafficking in accordance with the Protocol, conviction rates are still very low. Between 2007 and 2010 16% of reporting countries did not report a single conviction for trafficking.

### **Who are the victims?**

The Global Report states as follows;

“Between 2007 and 2010, women constituted the majority of victims of trafficking in persons detected globally. While the exact share of the total varies somewhat according to year, during the reporting period, between 55 and 60 per cent of the total number of detected victims were women. Even though women comprise the majority of trafficking victims globally, their share of the total decreased somewhat during the reporting period. Over the period 2003- 2006, more than two in three detected victims were women, as reported in the previous Global Report on Trafficking in Persons published in 2009. However, the total share of females of all ages among trafficked persons has not changed dramatically, as the decrease in the number of women victims detected was partially offset by the trafficked girls detected increased through the period 2007- 2010, during which time girls constituted 15-20 per cent of the total number of detected victims. During the same period, the number of trafficked men remained stable or increased slightly: 14-18 per cent of detected trafficking victims were men. The number of boys trafficked was relatively stable over the reporting period. Boys comprised 8-10 per cent of the total number of detected victims. The trafficking of children appears to be increasing. Of the detected victims whose age

profile was known and reported in the period 2007-2010, some 27 per cent were children. To compare, in the period 2003-2006, about 20 per cent were children. However, this trend was not homogenous at the global level.

Many countries reported a marked increase in the share of detected cases of child trafficking between 2003 and 2010, whereas others reported no increase or a decrease in cases. Among the child victims, there were more detected cases of trafficking of girls than of boys: two of every three trafficked children were girls. From region to region, there are significant differences in the gender/age profile of detected victims. While European and Central Asian countries report that 16 per cent of detected victims are children, in Africa and the Middle East approximately 68 per cent were children.”

### **Who are the traffickers?**

The Global report states;

“Information from more than 50 countries shows that of persons prosecuted for and/or convicted of trafficking in persons in the period 2007-2010, roughly two thirds are men. That proportion is nearly identical for prosecutions and convictions. These findings are similar to what was reported in the 2009 Global Report on Trafficking in Persons. Although the majority of trafficking offenders are men, the participation of women is higher for this crime than for most other crimes. Most countries report overall female offending rates below 15 per cent of the total for all crimes, with an average of some 12 per cent; while 30 per cent of trafficking in persons prosecutions and convictions are of women offenders. Statistical analyses show that the involvement of women in trafficking is more frequent in the trafficking of girls. Qualitative studies suggest that women involved in human trafficking are normally founding low-ranking positions of the trafficking networks and carry out duties that are more exposed to the risk of detection and prosecution than those of male traffickers.”[4]

A word of warning must accompany any research or statistics about trafficking. Not all information gatherers are precise about the term “trafficking”, often confusing statistics for sex work and the commercial exploitation of women and girls with trafficking. Sex work and trafficking are often connected but they are not synonymous. Another criticism of trafficking research is that current trends to criminalise trafficking depoliticises migration policies of countries, and makes victims of women who have agreed to travel to another country in poor and exploitative conditions and who do not see themselves as victims at all because they are escaping far worse conditions in their source countries.[5] Certainly, in Fiji there is a danger that issues could become confused because sex work was and is unlawful, and because the word “recklessness” and “exploitation” under the Crimes Decree 2009 require a part objective part subjective analysis which might lead to a judicial determination of what exploitation is rather than the view of the “victim”.

In the investigation and prosecution of trafficking cases, care needs to be given to ensuring that trafficking does not become an illegal migration issue, or a national security issue. Trafficking in persons is fundamentally a human rights issue. It is a law which requires knowledge and sensitivity to social structures, to vulnerabilities suffered by the poor, disabled, women and children, and to the way in which these vulnerabilities are manipulated to capitalise financially from them. Trafficking law must be

implemented to prevent human beings from becoming commodities, from being bought and sold on the market. In this sense, the consent of the victims to prosecution of the traffickers, even if their consent is not required as an element of the offences, would serve to empower them in and through the justice system.

It is interesting that many trafficking cases in developed cases arise, not in the criminal courts but before the Immigration Tribunals. The UNODC Database[6] sets out links to cases on trafficking or alleged trafficking around the world. In the United Kingdom, a case[7] involving the trafficking of a number of Romanian and Moldovan girls for the purpose of sexual exploitation was the subject of criminal prosecution. They had been brought to the United Kingdom after being promised work in bars. The youngest was only 16 years old. The High Court sentenced the offender (a 26 year old man) to a total of 10 years imprisonment for offences ranging from kidnapping, to incitement to rape to living on immoral earnings. The sentence was increased to 23 years by the Court of Appeal. No trafficking charges had been laid as the case predated the UK amendments.

In a recent case of *Queen v. Matyas Pis*[8] in 2012, two Hungarian girls were brought into Northern Ireland to work as prostitutes there. There was no suggestion that they had been taken there by the defendant (also a Hungarian national) against their will. The defendant pleaded guilty to four offences of trafficking for the purpose of sexual exploitation. He was sentenced to a total of three years imprisonment. The case raises an interesting assumption made by the court in Northern Ireland; that consensual or not, all cases of prostitution are cases of sexual exploitation.

Cases of forced labour are rarer, and legislation in other countries do not always describe with clarity what forced labour might mean. In 2009, in the United Kingdom, section 71 of the Coroners and Justice Act 2009, made slavery, servitude and forced labour punishable with fines and/or imprisonment of up to 14 years imprisonment. In *OOO v. Commissioner of Police*[9] several children, aged 11 and 15 were trafficked to the United Kingdom from Nigeria ostensibly to study. When they arrived there they were forced to work in exploitative conditions and against their will. They reported the matter to the police but no investigation was carried out. Eventually they brought a case against the police under the Human Rights Act for failure to investigate. The Court found that the police had breached the human rights of the victims and awarded compensation. However, it must be noted that the allegations arose from facts which predated the 2009 amendment. Relevant international law on forced labour can be found in the ILO Conventions[10] including the ILO Abolition of Forced Labour Convention 1957 and the ILO Worst Form of Child Labour Convention 1999.[11]

An interesting case from Australia illustrates the relationship between the Trafficking in Person Protocol and domestic law on forced and exploitative labour. In *Aprint Pty Ltd and Another*[12] in 2007, the proprietor of a Melbourne based printing company and recruited four men to work for the company. He made the arrangements through an employment agency in China. The terms of their employment were reasonable, but on arrival in Australia, they were forced to repay their employer the sum of \$200 per week and to live in premises owned by him and to pay him rent. They were paid sums less than what had been agreed to and were not paid overtime. One employee was underpaid by more than \$93,000. Although this case was clearly one of forced or exploitative labour to which the Fiji Crimes Decree would

apply if the facts had arisen here, the employer was not prosecuted. Instead, he was subjected to civil penalties under the Australian legislation, and was ordered to repay the employees the money owed to them.

An interesting Australian case involved the consensual trafficking of girls into sex work in Australia. On arrival the conditions of the sex work were exploitative and degrading. In *McIvor v R, Tanuchit v. R* [13] (2009) the defendants were charged with keeping slaves, and of exercising over a slave powers of ownership. There were no charges of trafficking. However the facts disclose trafficking offences. The victims were Thai women who were brought into Australia and who worked in a brothel in inhumane and degrading conditions. One of the victims finally contacted the Thai Embassy whereupon the investigations and prosecutions commenced. There were two trials. They were sentenced to a period of 11 years imprisonment with a minimum term of 7 years. An interesting discussion in the judgement of the Court of Criminal Appeal of New South Wales was on the meaning of the fault element in the slavery offences under the Criminal Code. It is especially interesting because the definition of slavery and of the slavery offences is identical to sections 102 and 103 of the Crimes Decree in Fiji. Both definitions require evidence of “intentionally possessing a slave or exercising over a slave powers attaching to the right of ownership...” The Court held that the word “intention” related not to circumstance or result but to conduct.

“It follows that as the physical element of section 270.3(1)(a) is a type of conduct (possessing a slave or exercising over a slave powers attaching to the right of ownership) it must be shown that the accused had intention with regard to the conduct of possessing a slave or exercising over a slave powers attaching to the right of ownership. For the purposes of proving the fault element of this section intention with regards to the concepts of circumstance and result does not have to be shown.”

The other cases on the database show that the majority of convictions were for trafficking for the purpose of prostitution, and that few cases were about trafficking offences. Far more popular are charges of procuring for the purpose of sexual exploitation, rape and sexual servitude and immigration offences. Austria is one of the few countries which have preferred charges for transnational trafficking of persons for the purpose of prostitution [14]. Jamaica, which has a specific trafficking in Persons Act has a number of cases which await trial for allegations of trafficking. One is in relation to the trafficking of Indian nationals for the purpose of exploitation (forced labour) [15] which is summarised by UNODC thus;

“In March 18, 2011 police armed with search warrants raided premises to include a number of retail outlets as well as a private residence. The officers found a number of passports mostly belonging to male Indian nationals. These nationals slept in a basement whilst the accused and his family occupied the upper floors. The victims lived in an impecunious state in India and came to Jamaica on the promises of a better life by an agent. Their tickets were paid for and upon arrival in Jamaica their passports were taken by the accused. The victims work in the accused places of business and are paid US\$250 per month. This money is sent directly to their families in India. The victims are not allowed cellular phones, to have girlfriends or go out without the group under escort. Their passports were also confiscated by the accused.”



This was a case which alleges consent to work for the accused, but not to the conditions in which they were kept, nor to the holding of their passports. Another from Jamaica[16] was a case of indecent assault, but in circumstances which constituted a domestic trafficking. A child victim was transported in a school bus driven by the accused who allegedly told her to comply with acts of indecent assault committed by three male children. The children pleaded guilty to indecent assault. The case of trafficking against the adult accused has been the subject of a *nolle prosequi* awaiting the victim's willingness to give evidence.

An interesting discussion in Australia has developed around the High Court of Australia's disapproval of a structured approach to sentencing. In *Wong v The Queen* (2001) 207 CLR, the High Court said that instead of setting out how much weight was put on specific mitigating or aggravating factors, the sentencing court should instead set out all the relevant factors and say that they have all been taken into account when arriving at the end result.[17] Wong has not been specifically disapproved in Fiji, and judges have adopted different approaches to sentencing, some preferring the mathematical approach (I reduce this sentence by three years to take into account your good character) and others preferring the "intuitive synthesis approach" (I take into account all that has been said on your behalf including previous good character, service to the community, remorse and apology to the victim and I sentence you to 5 years imprisonment). However, the mathematical approach is more likely to provide guidance in cases of trafficking, as decisions can be made on how much weight should be put on specific aggravating factors. Sentencing principles develop in a more helpful and coherent way with greater structure and less discretion.

A study of the cases and the law internationally shows that not all countries have adopted a coherent approach to trafficking law. In some countries, slavery, forced labour and trafficking are found in different pieces of legislation. In some countries, although the law is centralised, convictions seem to encounter evidential and procedural hurdles. In other countries evidence of trafficking is led in the course of a civil hearing in an Immigration Tribunal or a human rights case.

Slavery convictions are rare, and the traditional rape/abduction/kidnapping approach is often preferred to the trafficking prosecution. Whether this is because the law on trafficking is still relatively untried, or whether this is because there has been inadequate training of prosecutors and investigators is not known. However, there is no doubt that conviction rates are low, and that a number of cases on the UNODC database are still unresolved, two or three years after the allegations were made. In very few cases have the judges considered the Trafficking in Persons Protocol to help them to interpret the domestic law, or to sentence the offenders.

## **Fiji**

I commence with the Crimes Decree. Fiji has not ratified the Trafficking in Persons Protocol. However its laws in relation to trafficking, including deceptive recruiting, slavery, debt bondage and sexual servitude are identical to Australian law and are compatible with the Protocol. Division 5 of the Crimes Decree deals with Slavery, Sexual Servitude, and Deceptive Recruiting. Section 102 defines "slavery" as "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".[18] Slavery

offences are created under section 103 and requires proof of intentionally (as to conduct) possessing a slave or exercising powers of ownership over a slave, or intentionally engaging in slave trading, or intentionally entering into any commercial transaction involving a slave, or exercising control or direction over slave trade financing. This offence(s) carry maximum sentences of 25 years imprisonment. The lesser offence of recklessness under section 103(2) carries a maximum of 17 years imprisonment.

Section 104 defines the term “sexual servitude”. It is the condition of a person who provides sexual services and who as a result of threats or force, is not free to cease providing sexual services, or is not free to leave the place where the person provides sexual services. There is a further definition of the word “threat”. Section 104(2) provides that “threat” means a threat of force, a threat to cause a person’s deportation, or a threat to cause detrimental action in connection with the provision of sexual services. All offences under Division 5 are triable by the Fiji courts whether or not the conduct occurred in Fiji. The limitation to extra geographical jurisdiction is that the accused must be a Fiji citizen or resident, or must be a corporate body registered in Fiji.[19]

Section 106 sets out the offences of sexual servitude. It provides that a person whose conduct causes another person to enter into or remain in sexual servitude and who intends to cause or is reckless about causing such sexual servitude commits an offence. The sentence is 15 years imprisonment, but where the offence is aggravated under section 108 (where the victim is under the age of 18 and the accused knew the victim’s age or was reckless about the age) the maximum sentence is 20 years imprisonment. Section 106(2) creates an offence of conducting a business that involves sexual servitude. The term “conducting a business” includes taking part in the management of the business, exercising control or direction over the business, or providing finance for the business.

Section 107 creates the offence of deceptive recruiting. This is an interesting offence, because if the prosecutor chooses the subsection wisely, it will be no defence to say that the victim agreed to provide sexual services and cannot complain about the conditions of such service provision. A person who with the intention of inducing another person to enter into an engagement to provide sexual services deceives the other about the fact that sexual services will be provided, or the type of sexual services to be provided, or the extent to which the person is free to leave the place of sexual services, or the extent to which the person is free to cease providing such services, or the extent to which the person is free to leave his or her place of residence, or the extent of any debt owed by the victim, or the fact that the engagement will involve exploitation, debt bondage, or confiscation of travel documents.

What is “deceit”? Section 107(2) requires the court to consider the economic relationship between the accused and victim, the terms of any written or oral contract between the two, and the personal circumstances of the victim including his or her ability to speak, understand and write English, whether he or she is lawfully entitled to stay in Fiji, and the extent of the person’s dependence on the accused. This means, taking vulnerability into account when assessing the alleged level of deceit.

Division 6 of the Crimes Decree sets out offences specifically of trafficking in persons. The words “confiscate”, “deceive” and “threat” are specifically defined under section 111. “Deceive” means “mislead as to fact (including the intention of any person) or as to law, by words or other conduct”, and “threat”

means “ (a) a threat of force; or (b) a threat to cause a person’s removal from Fiji; or (c) a threat of any other detrimental action – unless there are reasonable grounds for the threat of that action”. Section 112 creates the first trafficking offence, of organising or facilitating the entry or proposed entry or receipt of another person into Fiji by force or threats which results in obtaining the other person’s compliance to the entry or receipt. This offence is unlikely to be the source of any prosecution. As is evident from the UNODC database, most victims are willing travellers. The deceit and exploitation are experienced later. Section 112 (2) is identical to section 112(1) except that the travel is out of Fiji. The maximum sentences for both are 12 years imprisonment. Absolute liability exists for the element of “force or threats”. This means that no fault element is required for this element.[20]

The second type of trafficking offence is created by section 112(3). It is the section used in *State v. Kadali Murti* [2010] FJHC 514[21] and it provides that a person commits an offence when he or she facilitates entry (or exit under subsection (4)) or proposed entry or exit or receipt, and is reckless as to whether the victim will be exploited after entry or receipt. Two words need interpretation. One is the word “reckless” which is defined under section 21 of the Crimes Decree. Recklessness can relate to circumstance or result, depending on the wording of the section. The test is; was the accused aware of a substantial risk of a circumstance or result exists or will exist? And, is it justifiable for the person to take that risk? The first question requires a subjective test of what the accused knew. The second is a question of fact for the assessors and is an objective test.

The second word which has a special definition under section 112(3) and (4) is the word “exploitation”. Under section 4 of the Crimes Decree “exploitation” means “ (a) the exploiter’s conduct causes the victim to enter into slavery, forced labour or sexual servitude; or (b) the exploiter’s conduct caused 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.” Thus the offence under section 112(3) and (4) covers two important aspects of the Trafficking in Persons Protocol; that of trafficking for organ removal, and trafficking as a form of forced labour.

Section 112(5) and (6) covers a different scenario, but one which is commonly seen in the international jurisprudence. It is when a person facilitates entry or exit or proposed entry or exit or receipt of persons or a person and he or she deceives the victim about the provision of sexual services or about the exploitation of the victim or about the victim’s debt bondage or the confiscation of the victim’s travel or identity documents. Thus deceit about sexual services is not the only possible deceit under this section. The deceit can also relate to exploitative labour conditions or about the fact that the victim’s passport will be confiscated. An example of how this offence might be committed is as follows;

The accused arranges travel of a sex worker to Fiji. She knows she will work as a sex worker but the accused deceives her about the conditions of work, telling her she will stay in a 5 star hotel and will be free to return to Thailand when she wants to. In fact she works in a basement brothel, and her passport is confiscated on entry. The deceit here is twofold, deceit as to exploitation and deceit as to confiscation of travel documents. A question arises about whether the offence is committed if there is no active deceit, only a failure to tell the truth. The definition under section 111 seems to require evidence of an act of deceit. It seems an omission is not sufficient. This there must be evidence that the accused told the victim

something contrary to what was done in Fiji. This may be a hurdle in cases where the accused simply does not tell the victim that her passport will be seized in Fiji.

Section 112(7) and (8) create another type of trafficking offence; that of facilitating entry or exit and making arrangements for sex work in Fiji or out of Fiji and deceiving the victim about the nature of sexual services to be provided, or the extent to which she is free to move around or the extent to which she is free to cease providing sexual services, or if there is a debt owed to the accused, then deceit as to the quantum or existence of the debt owed. What conduct is caught by this section? If the accused tells the sex worker that he has arranged travel to Fiji to work in a brothel but that she must work free of charge for 8 months because she owes him \$40,000 for airfares from China to Fiji, he has committed an offence. If the accused facilitates travel to Fiji of sex workers on the basis that they will work from 8pm to 8am and thereafter will be free to move around, but on arrival locks them up in the brothel, he commits an offence. The maximum sentence under section 112 is 12 years imprisonment.

Section 113 creates the offence of aggravated trafficking, for which the maximum sentence is 20 years imprisonment. Aggravated trafficking is committed when the trafficker intends that the victim will be exploited after entry or exit, or subjects the victim to cruel, inhumane or degrading treatment, or where the trafficker engages in conduct which gives rise to a danger of death or serious harm to the victim, and is reckless as to that danger. Section 113(2) allows convictions to be entered for the lesser offence of plain trafficking if the prosecution has not proven aggravated trafficking.

Section 114 creates the offence of trafficking in children. Under this section it is an offence to organise entry or exit or receipt of children under the age of 18 intending either sexual services to be provided by the child or intending that the child will be otherwise exploited. The offence can also be committed recklessly. Since the word "exploitation" includes forced labour, this section in effect protects children from being trafficked for the purpose of forced labour. The maximum sentence is 25 years imprisonment. The words "sexual services" are defined under subsection (3) as; "the use or display of the body of the person providing the service for the sexual gratification of others". Thus trafficking for the use of children in child pornography is an offence under section 114(1) and (2).

Section 115 duplicates section 112 except that it is about the domestic trafficking of persons. The physical element is organising or facilitating transportation or proposed transportation of persons from one place in Fiji to another. This section was the basis of charges in *State v. Phanat Laojindamane, Lum Bing, Zhang Yong and Jason Zhong*.<sup>[22]</sup> The maximum sentence is 12 years imprisonment and the offences are aggravated on the same evidential basis as for international trafficking. Similarly the domestic trafficking in children has the same elements as for international trafficking, except for the physical element. The maximum sentence for domestic trafficking in children is 25 years imprisonment.

Section 118 creates the offence of debt bondage, defined as being committed when "the person engages in conduct that causes another person to enter into debt bondage,; and the person intends to cause the other person to enter into debt bondage." The maximum sentence is 12 months imprisonment. The term "debt bondage" itself is defined by section 4 in the following terms:

“..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 towards the liquidation of the debt or purported debt; or (iii) the length and nature of those services are not respectively limited and defined.”

Thus where a person from Fiji arranges for security guards to be employed in Iraq, and pays for their travel and accommodation in advance to the amount of F\$4000, and that amount is paid back by each Guard over 40 months at the rate of \$100 per month to the person in Fiji, this is probably not debt bondage. The more uncertain the arrangements are for the initial debt and the way, in which the debt is to be repaid by personal services, the more likely it is that this is a debt bondage situation. When the victim is under the age of 18, the offence is of aggravated debt bondage. The maximum sentence is 2 years imprisonment.

Offences under sections 112 to 114 and 118 to 119 have extended geographical jurisdiction. Domestic trafficking does not have extended jurisdiction. However, under section 7 of the Crimes Decree, even standard geographical jurisdiction is capable of covering conduct which has an effect in Fiji.

Division 7 of the Crimes Decree creates offences of people smuggling. People smuggling is quite different from trafficking. It is the movement of people across borders in breach of immigration laws for a benefit. There is no element of deceit, although where a person smuggles others and intends exploitation or cruel or inhumane or degrading treatment, or creates the danger of serious harm or death or is reckless as to death or serious harm, this is aggravated people smuggling. Ultimately the offence of people smuggling is an offence against a country's immigration laws. Trafficking is an offence against human rights.

### **Fiji's jurisprudence**

The Crimes Decree came into effect in February 2010. It was followed by intensive training of police officers and prosecutors on general offences and specifically, on human trafficking. At the time this article is written, three human trafficking workshops have been conducted for police officers, and one for the Office of the DPP, with another planned for early 2013.[23] The judiciary had general Crimes Decree training in 2010 and specific human trafficking training at a criminal law workshop in 2011. The first human trafficking prosecution[24] was brought by the Office of the DPP in 2010, the same year that the Crimes Decree came into force. The second was brought in late 2012. Both cases were heard quickly by the courts, apparently because the victims were in Fiji waiting to give evidence while the case was pending. Both resulted in convictions and robust sentences. The Murti case set the first sentencing tariff for trafficking by economic exploitation cases. At the time of writing this article three more trafficking cases were waiting to be disposed of in the High Court. It appears that they will also be given court priority because of the need to hear the evidence of the victims quickly. In a very short time, Fiji has developed jurisprudence on trafficking cases.

In Murti, the accused was an Indian national, who organised the travel of seven Indian men to New Zealand, claiming to organise work for them on a farm in New Zealand. Four of the men were married.

They all wanted to go and work in New Zealand for financial reasons. They were vulnerable because of their economic need. The accused showed them documents purporting to be employment offer letters from the farm in New Zealand. The victims each paid about 150,000 rupees to the accused. He made all the travel arrangements for them, but not for travel to New Zealand. They travelled to Fiji. His plan was to leave them in Fiji. He told the victims that Nadi was part of New Zealand. On arrival in Fiji, the immigration authorities were suspicious and detained the victims and the accused. The accused was charged<sup>[25]</sup> with one count of trafficking under section 112(3) of the Crimes Decree, and seven counts of obtaining by deception, also under the Crimes Decree. An interesting feature of the case was that the offences were committed in India, but the victims were trafficked to Fiji. The trafficking count had extra territorial jurisdiction, but the deception counts did not. However, the test for standard territorial jurisdiction is whether the result of an act occurs in Fiji. In that case, the fact that the victims were to travel to Fiji as a result of the deception, gave the Fiji courts standard geographical jurisdiction.

The case went to trial on pleas of not guilty. The seven victims gave evidence. The assessors found that the accused was guilty. The judge agreed<sup>[26]</sup> and convicted him, holding that the act of abandoning the victims here without funds and without a job was an act of recklessness as to exploitation. In sentencing the accused the judge said;

“<sup>[18]</sup> The Crimes Decree 2009, which came into effect on 1 February 2010, creates a number of offences designed to fulfil Fiji’s obligations under the United Nations Convention Against Transnational Organised Crime and two of its three Protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol), and the Protocol Against the Smuggling of Migrants by Land, Sea and Air (the Migrant Protocol).

<sup>[19]</sup> Although Fiji has not signed these international conventions, by criminalising human trafficking and smuggling under the domestic law, Fiji has shown commitment to effectively address this global problem.

<sup>[20]</sup> Trafficking in persons is a human rights issue. Traffickers are motivated by greed to take advantage of vulnerable victims. Traffickers use coercive tactics including deception, fraud, intimidation, isolation, threat, and use of physical force, and/or debt bondage to control their victims. The victims are generally subjected to degrading forms of exploitation such as forced prostitution, domestic servitude and other kinds of work.”

The case is interesting for another reason. It shows how cases on trafficking from other countries can be used to identify appropriate sentencing guidelines for Fiji. The judge referred to the case of *A-G’s Reference* (No. 6 of 2004) <sup>[2004]</sup> ALL ER (D) 312 in his sentencing remarks. In that case<sup>[27]</sup> the accused was sentenced to ten years imprisonment for bringing young girls into the United Kingdom and forcing them into prostitution. The sentence was increased on appeal to 23 years. However the maximum terms in the United Kingdom and the offences on the indictment were different from the *Murti* case. Similarly the case of *Maka* <sup>[2005]</sup> EWCA Crim 3365, was of limited assistance in Fiji. There the offender was sentenced to a total of 18 years imprisonment on five counts of trafficking women for sexual exploitation. He also referred to *R v Saini*; *R v. Kalyan*; *R v Deo* <sup>[2004]</sup> EWCA Crim 1900, a case of the facilitation of the illegal entry into the United Kingdom of migrants, *R v Feng Lin* <sup>[2001]</sup> 119 A Crim R 194 (CA NSW) a case

of people smuggling, and *Chechelnitski v R* [2004] NZCA 208, also a case of people smuggling which carries a maximum term of 20 years imprisonment in New Zealand, and said that they were of little assistance. Firstly the accused in all cases were charged with different offences, ranging from rape, to illegal migration, to people smuggling to kidnapping. Where offences are committed for the purpose of trafficking but prosecutors do not lay trafficking charges, it is difficult to develop a tariff from those cases. Secondly, different countries provide different maximum terms for different trafficking related offences. It is impossible to draw much guidance from a country whose judges' sentences range from 18 years to 25 when our maximum term for non-aggravated trafficking is 12 years imprisonment. Thirdly, many trafficking cases arise not from the criminal jurisdiction of the courts but from the Immigration Tribunals or the civil human rights courts. The only useful guidance to be drawn from cases on the UNODC database and other countries is information about prevalence, information about the Trafficking in Persons Protocol as a relevant factor in sentence and judgement, and information about how seriously other countries consider trafficking offences to be. The UNODC Framework and Model Law can also be relied on for general guidance.

In *Murti*, the judge considered that the case was not the worst type of trafficking case. He said that there was no evidence of physical exploitation. He commenced at 6 years imprisonment, and after taking into account age, remand period, marital status, and family, he arrived at a sentence of 6 years imprisonment with a non parole period of 4 years, on each count. There was no appeal.

The second case to be concluded in Fiji's courts was *State v. Phanat Laojindamanee and Others*[28]. The Information had six counts, two of aggravated trafficking in persons contrary to sections 112(5) and 113(1)(a) (i) of the Crimes Decree (against two accused), two counts of domestic trafficking in persons contrary to sections 115(3) of the Crimes Decree (against one accused), and two counts of sexual servitude contrary to section 106(1) of the Crimes Decree (against one accused). The accused pleaded not guilty and were found guilty. However on counts 1 and 2 the two accused were found guilty of the lesser offence of trafficking. The maximum penalty on Counts 1, 2, 3, and 4 is 12 years imprisonment. On Counts 5 and 6 (sexual servitude) the maximum penalty is 15 years imprisonment.

The facts were that two Thai girls aged 23 were sharing a flat in Bangkok. In September 2012, they were brought to Fiji by the first two accused. They were promised work in resorts as masseurs. However on arrival here they were told that they owed the accused \$1,900 and that this debt would be enforced if they did not work as prostitutes. On arrival the fourth accused arranged for their transport to Suva from Nadi. It was evident that this was part of an organised crime ring which exploited credulous young women in Thailand and forced them into prostitution. They were forced to work as prostitutes from the 9th to the 12th of September 2012. During this time, one of the girls managed to text a local lawyer whom she had met at a restaurant. She asked for help. He contacted the Director for Immigration. He directed a raid at the Peninsula Hotel on the 13th of September 2012, and the victims were rescued. The accused were arrested by the Immigration Department.

The State prosecutor[29] suggested that English cases would be helpful since the Sexual Offences Act 2003 had a maximum term of 14 years imprisonment for trafficking for sexual exploitation. This she said was comparable to our maximum of 12 years imprisonment. She referred to the Guidelines issued by the

Sentencing Guidelines Council in the United Kingdom, which suggest a starting point of 6 years imprisonment and a tariff of 4 to 9 years imprisonment for cases of arranging the travel into the United Kingdom of persons knowing or intending that a sexual offence will be committed. Where there is coercion on a victim to enter sex work, the starting point should be 6 years. Where there is no coercion, the starting point should be 2 years imprisonment. Other aggravating factors are;

1. Large scale commercial operation;
2. High degree of planning or sophistication;
3. Large number of people trafficked;
4. Substantial financial gain (more than £5000);
5. Fraud;
6. Financial extortion of the victim;
7. Deception;
8. Use of force, threats of force or other forms of coercion;
9. Threats against the victim or family of victim;
10. Abduction or detention;
11. Restriction of victim's liberty;
12. Inhumane treatment;
13. Confiscation of victim's passport.

Mitigating factors are;

1. Coercion of the offender by a third party;
2. No evidence of personal gain;
3. Limited involvement.

Using these guidelines, the sentencing judge on each of the trafficking counts would have started at 6 years imprisonment. Since there are more than 4 of the aggravating factors present in the facts, the sentence should increase to 11 years imprisonment. There are no mitigating factors except for good character for three of the accused. This should leave the court with 9 to 11 years imprisonment according to the United Kingdom Sentencing Guidelines. Similar sentences would be appropriate for the sexual servitude offences.



What did the judge do in this case? Firstly he made the following findings of fact to guide him in the sentencing process;

“The evidence shows some very important factors to be considered in sentencing of the first and second accused, the transportation (or trafficking) of the girls was a well planned operation;

both the first and second accused did acts to facilitate or otherwise assist that trafficking;

neither the first or second accused could have been as unwitting of the circumstances as they claim to be;

this criminal enterprise had all the hallmarks of international organized crime as the State submit in their very comprehensive and helpful submissions: “It is apparent that [the 1st accused and the 2nd accused] were responsible for representing and protecting the interests of an organized crime boss out of Bangkok, Thailand.”

He said that previously decided cases did not give a clear guidance on starting points and tariffs as the facts were very different. However he found that all courts globally took trafficking very seriously and imposed heavy custodial terms for them. He then said;

“[24] For this offence of trafficking I take a starting point of six years imprisonment. I regard the following as highly aggravating features:

the victims were vulnerable from poor families and had little command of the language and customs of their new “host” country;

they were brought into isolated and not particularly pleasant accommodation;

they were immediately forced into prostitution against their will.

[25] For those features and of the matters I refer to in paragraphs 20, 21 and 22, I add five years to the sentence making an interim total of eleven years.

[26] Neither the first accused, nor the second accused have much to offer in the way of mitigation. They have both shown a distinct lack of remorse at trial, saying in the light of overwhelming evidence against them that they were innocent dupes in the scheme of arrangement.

[27] Both accused submit that they are but unsophisticated players with no previous criminal history and they were unwittingly caught in this net of international trafficking. The first accused pleads his advanced age in mitigation. Such people are nearly always used by organized crime syndicates as the “foot soldiers.” There is no evidence of the fact, but it is almost certain that they would have been offered rewards either in cash or advantages to so facilitate the entry of the girls to Fiji. No sympathy can be extended to persons who do so assist in this nefarious trade and the fact that they regard themselves as innocent dupes cannot be reflected in a discount on sentence.

[28] Both have spent a little over 4 months in custody awaiting trial and both have difficult family circumstances in their respective home countries.

[29] From an interim total of eleven years, I deduct one year to reflect their mitigation, their time spent in remand and their clear records in Fiji.

[30] For the first count both the first and second accused will spend ten years in prison, and they will serve a concurrent term of imprisonment of the same amount for the second count. Each will serve a minimum term of nine years before being eligible for parole.”

He then turned to the third and 4th accused persons. In relation to the third accused he chose a starting point of 5 years imprisonment for domestic trafficking. After considering all aggravating and mitigating circumstances, he was sentenced to 8 years imprisonment with a minimum term of 7 years. In relation to the 4th accused, the facts disclosed that he was an important cog in the human trafficking wheel. In his sentencing remarks, the judge set out what that role was;

“When the group having arrived in Nadi from Thailand, were taken to Suva by the third accused, they were taken immediately to a Chinese restaurant in the City where they were introduced to the fourth accused as “the boss in Fiji.” The party was then taken to the Holiday Inn where Jason checked them in. Before going to their rooms, he (the fourth accused) told the ladies that they don’t have to worry, he is the boss in Fiji and he has “friends, money and power.” He visited the girls the following day (8th September) and on the 9th September they were asked to check out of the Holiday Inn and were taken to another Chinese restaurant at Walu Bay. Above this restaurant was a massage parlour and the ladies were taken up there with their luggage. They rested there a while until one of the girls (“Nikki”) came back from what they had thought to be massage duties and told the other two that they were expected to offer sexual services as well as massage. The two ladies who gave evidence said they were upset and crying and wanted to go home. They went to talk to Jason (the fourth accused) who was there and told him they wanted to go but he got angry, banged the table and said that if they wanted to go they had to repay \$1,900 (currency unspecified) for the cost of the tickets. The girls had some money but nowhere near this sum, so they felt helpless and had no option but to stay and prostitute themselves.”

In 2005, the 4th accused had been convicted of the manufacture of a large amount of methamphetamine whilst connected to an Asian crime ring. This deprived him of any leniency he may have received had he been a first offender, but it also showed that this was the second time he had worked in connection with organized crime, first in relation to drugs, and second in relation to human trafficking. The judge found sentences for sexual servitude in Australia to be lenient and distinguishable. He decided to set a tariff for Fiji.

He said;

“To keep a woman (or a man for that matter) in sexual servitude completely denies the victim the right to choose whatever she or he does with her or his body. It is the ultimate denial of a basic human right and reduces the victim to a deplorable and degrading condition depriving her or him of a basic right to human dignity and freedom of choice. When that deprivation is coupled with international organized crime activity then a harsh sentence is expected by the community and warranted in sending a signal abroad that Fiji will not tolerate being an end destination for any organized crime trafficking be it in drugs, money or human beings.”

He started at 8 years imprisonment, and found few mitigating factors. He arrived at a sentence on each count of 11 years and 9 months with a minimum term of 10 years imprisonment. The sentences were to be served concurrently. In total, the first two accused are serving 10 years for trafficking, the third accused is serving 8 years for domestic trafficking and the 4th accused is serving 11 years and 9 months for sexual servitude. Compared with the Sentencing Guidelines Council's Guidelines in the United Kingdom, these sentences are very similar to a sentence which might have been passed in the United Kingdom pursuant to the Guidelines. It is also evident that the judge in Fiji preferred a structured approach to sentencing, by implication rejecting the "intuitive synthesis" approach of the Australian High Court. In doing so, the case provides good guidance for future courts in sentencing for cases of trafficking and sexual servitude.

Currently there are two further trafficking cases awaiting trial in Fiji, and the two cases which have already been decided will undoubtedly give excellent guidance if the accused are convicted and sentenced.

What we learn from the convictions and sentences in the two cases already decided in the Fiji courts, are that the courts have different sentencing guidelines for trafficking for sexual exploitation and trafficking for labour exploitation, that the courts are willing to dispose of trafficking cases quickly so that the victims can return to their homes and lead an ordinary life, that the starting point for sexual servitude is higher than the starting point for trafficking (which is contrary to the trend in other countries), that our judges correctly see trafficking and sexual servitude as human rights breaches and as the exploitation of the vulnerable, that our courts are able to effectively work with overseas case authorities whilst distinguishing them on the basis of different laws and maximum penalties, and that our prosecutors are able to analyse, prosecute and make sentencing submissions trafficking cases which are usually complex and administratively challenging. Prosecuting with witnesses who speak no English, who have no home here and have to be kept in safe houses, and with witnesses, who have to admit to working as sex workers, is not an easy matter for prosecutors. They are required to be sensitive to the plight of victims, whilst being knowledgeable about the laws on trafficking, both domestic and international.

## **Conclusion**

There is nothing new about slavery or trafficking in human beings or exploiting human beings by forcing them to work in degrading conditions. Trafficking is as old as slavery, black birding and the girit. What is new is that there are now global initiatives to identify trafficking as a criminal act and to attempt some sort of uniformity of approach to such cases around the world. These initiatives have experienced some success, even where specific domestic laws are not compatible with international law or with the laws of other countries. There is a judicial recognition in most countries of the world that trafficking is a serious offence, that it feeds off human vulnerability, and that it requires a systematic approach to sentencing. Training initiatives with police and prosecution have been successful in raising awareness about hurdles to successful prosecutions. Although conviction rates are still very low, there have been some positive changes to the attitudes of border control agencies. However, trafficking law is essentially a human rights issue, a justice issue. It requires a committed prosecutorial response, and an appropriate judicial response on the conviction of offenders. It requires an understanding of the kinds of vulnerabilities which might

make human trafficking a popular financial concern. Whether such vulnerabilities arise from poverty and desperation, or from the subordination of women in our largely patriarchal societies, the justice system must not become a further barrier to justice for these victims. Just as trafficking is a breach of human rights because it objectifies human beings, justice too can be guilty of the same offence. Fiji has made a positive start to the implementation of laws related to trafficking. However continuous awareness and training, of law enforcement officials and the judiciary, is the key to a continuing impetus.

## End notes

[1] Per Ward P Wood and Ford JJ [2005] AAU0058/04

[2] <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

[3] [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf)

[4] Global Report, Pages 9 and 10.

[5] See Laura Augustin (2005) *The Cultural Study of Commercial Sex, Sexualities*, Vol 8(5) 681 -695

[6] <http://www.unodc.org/cld/index.jsp>

[7] [http://www.unodc.org/cld/case-law/gbr/2004/criminal\\_case\\_2004\\_ewca\\_crim\\_1275.html](http://www.unodc.org/cld/case-law/gbr/2004/criminal_case_2004_ewca_crim_1275.html)

[8] [http://www.unodc.org/cld/case-law/gbr/2012/queen\\_v.\\_matyas\\_pis.html](http://www.unodc.org/cld/case-law/gbr/2012/queen_v._matyas_pis.html)

[9] [http://www.unodc.org/cld/case-law/gbr/2011/o.o.o.\\_and\\_others\\_v\\_commissioner\\_of\\_police\\_for\\_the\\_metropolis.html](http://www.unodc.org/cld/case-law/gbr/2011/o.o.o._and_others_v_commissioner_of_police_for_the_metropolis.html)

[10] [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105)

[11]

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182)

[12] [http://www.unodc.org/cld/case-law/aus/aprint\\_pty\\_ltd\\_anor\\_2007.html](http://www.unodc.org/cld/case-law/aus/aprint_pty_ltd_anor_2007.html)

[13] [http://www.unodc.org/cld/case-law/aus/2009/mcivor\\_v\\_r\\_tanuchit\\_v\\_r\\_2009\\_nswcca\\_264\\_.html](http://www.unodc.org/cld/case-law/aus/2009/mcivor_v_r_tanuchit_v_r_2009_nswcca_264_.html)

[14] [http://www.unodc.org/cld/case-law/aut/2007/15os4007g\\_2007.html](http://www.unodc.org/cld/case-law/aut/2007/15os4007g_2007.html)

[15] R v. R.G [http://www.unodc.org/cld/case-law/jam/r\\_v\\_r.g..html](http://www.unodc.org/cld/case-law/jam/r_v_r.g..html)

[16] R v. D.G [http://www.unodc.org/cld/case-law/jam/2008/r\\_v\\_d.j..html](http://www.unodc.org/cld/case-law/jam/2008/r_v_d.j..html)

[17] See “Intuitive Synthesis or the Structured Approach” Hon Justice Mildren (2006) *International Journal of Punishment and Sentencing* 1; and “Instinctive Synthesis, Structured Reasoning, and Punishment

Guidelines: Judicial Discretion in the Modern Sentencing Process” Terry Hewton, (2010) 31(1) Adelaide Law Review 79.

[18] This definition is almost identical to the definition of slavery in the Slavery Convention 1926, but defines slavery as the condition of a person and not of slavery of chattels. Fiji has adopted the definition of slavery in the Australian Criminal Code.

[19] Section 8 Crimes Decree

[20] Section 112(9).

[21] Decision of the High Court of Fiji at Suva, per Goundar J, 17th November 2010.

[22] Criminal Case 323/12,325/12, 324/12 and 364/12 High Court of Fiji at Suva, per Madigan J

[23] 8th March 2013.

[24] State v. Kadali Murti ibid

[25] The prosecutor was Ms Salote Tagivakatini of the Office of the DPP.

[26] Goundar J, High Court at Suva.

[27] Ibid Footnote 7.

[28] Ibid Footnote 22

[29] Ms Seini Puamau, Principal Legal Officer, Office of the DPP, Lautoka.