

FIJI ISLANDS

IMMIGRATION ACT 2003

Part 5 - TRAFFICKING AND SMUGGLING OF PERSONS

Relevant TiP information. Act amended in 2008, but none of the amendments are connected to TiP legislation.

Interpretation

17. (1) In this Part, unless the context otherwise requires-

"arms and ammunition" have the meanings given to them in the Arms and Ammunition Act;

"border of the Fiji Islands" means the outer limits of the exclusive economic zone prescribed under the Marine Spaces Act;

"child" means a person under the age of 18 years;

"commercial carrier" includes a company, or the owner, operator or master of any means of transport, that engages in the transport of goods or persons for commercial gain;

"company" means an entity that is not an individual, but that has a legal personality;

"enter", without prejudice to the definition of enter in section 2, includes a person who arrives into the Fiji Islands in a ship but is transferred to another ship within the territorial waters or exclusive economic zone before disembarking;

"exploitation" includes forced labour or services, slavery or practices similar to slavery, servitude, removal of organs, sexual servitude, exploitation of another persons prostitution or any other form of exploitation whether sexual or otherwise;

"fraudulent travel or identity document" means a travel or identity document that-

(a) has been made, or altered in any way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country;

(b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(c) is being used by a person other than the lawful holder;

"illegal entry" means crossing the borders of the Fiji Islands or any other country without complying with the requirements for lawful entry of that country;

"material benefit" includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

"receiving country" means a country into which a trafficked person is brought as part of an act of trafficking in persons;

"smuggling of migrants" means the arranging or assisting of an unauthorised migrants illegal entry into any country;

"trafficked person" means a person who is subject to trafficking in persons;

"trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation;

"unauthorised migrant", for a country, means a person who is not a citizen of the country or is not in possession of all the documents required by the law of the country for that persons lawful entry;

"unlawful employee", for an employer, means a person whom the employer knows is not entitled under any written law to undertake employment in the employers service;

"unlawful means" means any of the following means-

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power or of a position of vulnerability;
- (g) giving or receiving payments or benefits to achieve the consent of a person having control over another person;

"terrorist act" means an act or omission in or outside the Fiji Islands that-

- (a) constitutes an offence within the scope of a counter terrorism convention mentioned in Schedule 1; or
- (b) is mentioned in subsection (2);

"terrorist group" means-

- (a) an entity that has as one of its activities or purposes committing, or facilitating a terrorist act;
- (b) a specified entity; or
- (c) an organisation that is prescribed by regulation.

(2) For paragraph (b) of the definition of terrorist act, the act or omission-

(a) must-

- (i) involve serious bodily injury to a person;
- (ii) involve serious damage to property;
- (iii) endanger a persons life;
- (iv) create a serious risk to the health or safety of the public or a section of the public;
- (v) involve the use of arms or ammunition; or

(vi) involve releasing into the environment or distributing or exposing the public to any-

(A) dangerous, hazardous, radioactive or harmful substance;

(B) toxic chemical; or

(C) microbial or other biological agent or toxin; or

(vii) be designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial institution, transportation or other essential infrastructure;

(viii) be designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or

(ix) involve prejudice to national security or public safety;

(b) must be intended, or by its nature and context, reasonably be regarded as being intended-

(i) to intimidate the public or a section of the public; or

(ii) to compel a government or an international organization to do, or refrain from doing, any act;

(c) must be made for the purpose of advancing a political, ideological, or religious cause.

(3) An act is not a terrorist act if-

(a) it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subparagraph (i), (ii), (iii) or (iv) of subsection (2); or

(b) it occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

Application of this Part

18. This Part applies to conduct constituting an offence under this Part that took place in or outside the Fiji Islands in the following circumstances-

(a) if the Fiji Islands is the receiving country or the exploitation occurs in the Fiji Islands; or

(b) if-

(i) the receiving country is another state, other than the Fiji Islands; and

(ii) the offence of trafficking in persons or smuggling of migrants originates in the Fiji Islands or transits the Fiji Islands; or

(c) if the person who engages in the offence of trafficking in persons or smuggling of migrants is a citizen or permanent resident of the Fiji Islands.

Offence of trafficking in persons

19. A person who engages in trafficking in a person knowing that the persons entry into the Fiji Islands or any other state was arranged by unlawful means commits an offence.

Offence of trafficking in children

20. A person who engages in trafficking in a person who is a child regardless of whether the child's entry into the Fiji Islands or any other state was arranged by unlawful means commits an offence.

Exploitation of persons not legally entitled to work

21. (1) An employer who, while allowing an unlawful employee to undertake employment in the employers service, takes an action with the intention of preventing or hindering the employee from-

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

commits an offence.

(2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection-

- (a) taking or retaining possession or control of a persons passport, any other travel or identity document, or travel tickets;
- (b) preventing or hindering a person from
 - (i) having access to a telephone or any other means of telecommunication available;
 - (ii) using a telephone or any other means of telecommunication available;
 - (iii) using a telephone or any other means of telecommunication privately;
 - (iv) leaving premises; or
 - (v) leaving premises unaccompanied; or
- (c) preventing or hindering a labour officer or inspector from entering or having access to any place or premises to which the person is entitled to have access under any written law.

(3) For this section, an employer must be treated as knowing that an employee is not entitled under any written law to undertake any particular employment if, at any time within the

preceding 12 months, the employer has been informed of that fact in writing by an immigration officer.

Consent of trafficked persons

22. For sections 19, 20 and 21, it is not a defence-

- (a) that the trafficked person or unlawful employee consented; or
- (b) that the person charged believed consent was given.

Offence of smuggling of migrants

23. A person who engages in the smuggling of an unauthorised migrant either knowing or being reckless as to the fact that the persons entry into the Fiji Islands is illegal, in order to obtain a material benefit commits an offence.

Aggravated offence of smuggling of migrants

24. (1) A person who knowingly engages in the smuggling of migrants in one or more of the following circumstances-

- (a) the unauthorised migrant is, or is intended to be, subject to exploitation;
- (b) the unauthorised migrant is subjected to torture or to any other cruel, inhuman or degrading treatment;
- (c) the life or safety of the unauthorised migrant is, or is likely to be, endangered,

commits an offence of aggravated smuggling of migrants.

(2) Subsection (1) applies whether or not the unauthorised migrant arrives in the receiving country.

Offence to facilitate stay of unauthorised migrants

25. (1) A person who knowingly facilitates the continued presence of an unauthorised migrant in a receiving country-

- (a) by any unlawful means; and
- (b) in order to obtain a material benefit, commits an offence.

(2) For subsection (1), "unlawful means" means any of the following means-

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud, including producing, providing or procuring fraudulent travel or identity documents for the unauthorised migrant;
- (e) deception.

Offence related to fraudulent travel or identity documents

26. A person who makes, obtains, gives or sells or possesses a fraudulent travel or identity document for the purposes of facilitating-

- (a) trafficking in persons; or
- (b) smuggling of migrants,

commits an offence.

Aiding, abetting, etc

27. (1) A person who intentionally aids, abets, counsels or procures the commission of an offence under this Part by another person is taken to have committed the offence and is punishable as if the offence had been committed by that person.

(2) A person does not commit an offence of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person

- (a) terminated that persons involvement; and
- (b) took all reasonable steps to prevent the commission of the offence.

Incitement to commit an offence

28. (1) A person who intentionally urges or incites the commission of an offence under this Part commits an offence.

(2) A person commits an offence under subsection (1) even if committing the offence incited is impossible.

Conspiring to commit an offence

29.-(1) A person who conspires with another person to commit an offence under this Part commits the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

(2) A person does not commit the offence of conspiracy if, before the taking of action under the agreement, the person-

- (a) withdrew from the agreement; and
- (b) took all reasonable steps to prevent the commission of the offence.

(3) A person does not commit the offence of conspiracy if-

- (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or
- (b) that person is a person for whose benefit or protection the offence exists.

Attempting to commit an offence

30. A person who attempts to commit an offence under this Part commits the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed, provided that the persons conduct is more than merely preparatory to the commission of the offence.

Immunity from prosecution

31. A trafficked person, unlawful employee or an unauthorised migrant, as the case may be, is not liable to criminal prosecution for-

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

Predicate offences for money laundering, etc

32. The offences set out in this Part are-

- (a) predicate offences for the purposes of Proceeds of Crime Act;
- (b) extraditable offences for the purposes of Extradition Act;
- (c) offences in respect of which mutual assistance in criminal matters may be granted under Mutual Assistance in Criminal Matters Act.

Obligation of commercial and private carriers

33. (1) A commercial or private carrier that transports a person into a receiving country and, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country, commits an offence.

(2) Without prejudice to section 16, commercial or private carrier does not commit an offence under subsection (1) if-

- (a) the commercial or private carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country;
- (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
- (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial or private carrier.

(3) A commercial or private carrier convicted of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

Boarding, search and detention of aircraft or ship

34. (1) A immigration officer may stop and board an aircraft or ship within the Fiji Islands in any of the circumstances mentioned in subsection (2) if the immigration officer has reasonable grounds to suspect the aircraft or ship is being used to commit an offence against this Part.

(2) The circumstances are that the aircraft or ship-

- (a) is in the Fiji Islands;
- (b) is in the exclusive economic of the Fiji Islands; or
- (c) is registered in the Fiji Islands and is outside the territorial sea or airspace of another country.

(3) The immigration officer may, when necessary for the exercise of his functions, do one or more of the following-

- (a) direct the aircraft or ship to be taken to a suitable place in the Fiji Islands for the purpose of search;
- (b) search and detain the aircraft or ship, anyone on it and anything on it;
- (c) question any person on board the aircraft or ship;
- (d) require the production of any document relating to the aircraft or ship or any travel or identity document of a person on the aircraft or ship;
- (e) take a copy of any document produced;
- (f) seize and detain anything found on the aircraft or ship that appears to him to be evidence of an offence against this Act;
- (g) remain on the aircraft or ship for as long as it is necessary for the purpose of boarding and searching the aircraft or ship.

(4) If an aircraft or ship fails to stop at the request of a immigration officer, the immigration officer may pursue it into international waters and take any action that is reasonably necessary to stop the aircraft or ship.

(5) The immigration officer may require the master, a member of the crew or any person on board to take any action as may be directed by that officer.

(6) The master or commander of the aircraft or ship must give any immigration officer who remains on board the aircraft or ship proper and sufficient food and suitable accommodation without charge.

(7) A master, commander or any person who contravenes this section commits an offence.

Liability of companies

35. (1) This Part applies to a company in the same way as it applies to an individual and a company may be found guilty of an offence under this Part, in addition to the liability of any person for the same offence.

(2) For the purposes of offences under this Part, the conduct or state of mind of an employee, agent or officer of a company is taken to be attributed to the company if that person is acting-

- (a) within the scope of that persons employment; or
- (b) within the scope of that persons actual or apparent authority; or

(c) with the consent or agreement (express or implied) of a director, employee or agent of the company, and giving that consent is within the actual or apparent authority of the director, employee or agent.

(3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the persons reasons for that intention, opinion, belief or purpose.

Information relating to persons entering or leaving the Fiji Islands

36. (1) The Permanent Secretary may, subject to regulations made under this Act, provide to the competent authority in a another country any information in his possession relating to persons entering or leaving the Fiji Islands and that is required by the laws of that country.

(2) Any information under subsection (1), subject to regulations made under this Act, is taken not to be a contravention of any provision of law prohibiting the disclosure of the information.

(3) No information provided to the Permanent Secretary under subsection (1) may be used or disclosed by or on behalf of the Permanent Secretary except for the purpose of protecting national security or public safety.

Power to prevent entry and order the removal of persons

37. (1) An immigration officer must not grant an endorsement or other authority permitting a person to enter the Fiji Islands if the immigration officer has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.

(2) If the Permanent Secretary has reasonable grounds to suspect that a person in the Fiji Islands has been, is or will be, involved in the commission of a terrorist act, Permanent Secretary must exercise the powers under section 15 to remove the person from the Fiji Islands.