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Introduction

This report is one of 43 country reports which look at whether the laws and policies in countries around the world make it possible for children to access their environmental rights.

We are looking at:
- How the law protects - or fails to protect - children’s environmental rights.
- How children can currently access the courts in environmental cases.
- What courts can do when children’s rights are violated
- How these countries protect - or fail to protect - children’s civil and political rights so that they are able to protest and campaign on environmental issues.

These research reports are just the start to CRIN’s work on this issue. We think it’s important to start with a solid foundation and understanding of what the law says, but we want to build on this in collaboration with others. We want to turn the research into practical tools and resources that organisers and activists (both young and old) from around the world can use.
Methodology

Identifying 43 countries

The country reports look at 43 countries which we chose in consultation with our partners. We aimed to achieve a broadly representative sample that reflected a regional balance as well as the different types of legal systems and legal traditions. We included countries that are established regional or global leaders on children’s rights and environmental law. We also chose some countries that are often excluded from comparative studies in this area.

Developing the questions

The first draft of the research questionnaire was developed based on gaps in our knowledge that we had identified during our previous work on this issue. We then consulted a number of individual experts and organisations working in the field of children’s rights and the environment. Based on their feedback, we amended the questions.

The questions were then passed on to a team of pro-bono lawyers who used these to guide their research and write the reports.

The review process

The country reports were then reviewed and edited by CRIN. The reports were then sent to at least one official state representative and one national expert for the opportunity to provide feedback and comments. The experts included relevant government ministries, State permanent missions to the United Nations, non-governmental organisations, children’s rights lawyers and advocates, environmental rights lawyers and advocates and individual lawyers specialising in the issues covered by the reports. The contributors to the country reports have been credited in the individual country reports, except where the reviewer asked to remain anonymous. To note, for some countries CRIN was unable to find an official state representative or national expert able to give feedback.
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I. NATIONAL LEGAL PROTECTIONS
A. Are environmental rights protected within the national constitution?

The Constitution of the Republic of Fiji (Constitution) was created in 2013 and is the supreme law of the country (section 2).

The Constitution includes specific provisions relating to protection of the environment. Specifically, the preamble states that the people of Fiji “[d]eclare our commitment to justice, national sovereignty and security, social and economic wellbeing, and safeguarding our environment”.

In addition, section 1(h) states that one of the values of the Republic of Fiji is “a prudent, efficient and sustainable relationship with nature”.

The Constitution includes a bill of rights, which includes rights of ownership and protection of iTaukei, Rotuman and Banaban lands, a right to the protection of ownership and interests in land (section 29), a right to receive royalties in respect of the grant by the State of rights to extract minerals from land having regard to “the risk of environmental damage” (section 30) and environmental rights (section 40).

In particular, section 40(1) of the Constitution provides that “[e]very person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures”.

In terms of the specific rights of children, section 41(1) provides that “[e]very child has the right…(b) to basic nutrition, clothing, shelter, sanitation and health care; (c) to family care, protection and guidance…(d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; …” (emphasis added). However, there is no specific provision which recognises the environmental rights of children or which entitles children to a healthy environment.

It is also important to note that management of Fiji’s land and environment is guided by a “dual” legal and governance system that incorporates both a modern legal framework based on English principles of common law and a traditional iTaukei system of law and governance based on the country’s history and customs. In practice, this means that to fully understand the operation and effect of legislation in Fiji, it is necessary to consider both the common law and iTaukei system of law.

Fiji practices much of its customary laws in the local communities. An example of this practice is the “Qoliqoli” rights where chiefs and local leaders have drawn out restricted fishing areas.
B. Have constitutional rights protections been applied by national courts with regards to environmental issues?

Neither section 40(1) of the Constitution nor any of the other constitutional rights protections relating to land or environmental issues appear to have been specifically considered or applied by the national courts with regard to environmental issues.\(^2\)

This may, in part, be due to the fact that Fiji has various legislation in place (see section D. below) which governs environmental issues and compliance.

C. Has the concept of intergenerational equity been applied within national courts? If yes, in what circumstances?

The concept of intergenerational equity is recognised in section 40(1) of the Constitution which provides that “[e]very person has the right to...have the natural world protected for the benefit of present and future generations through legislative and other measures” (emphasis added). However, the concept has not yet been considered or applied by the national courts in Fiji.

As discussed in section B. above, this may, in part, be due to the fact that Fiji has various legislation in place (see section D. below) which governs environmental issues and compliance.

D. What legislation is in place to regulate environmental protection? Are there any proposals for legal reforms currently under review in the national legislature?

Various legislation regulates environmental protection issues in Fiji. Key legislation includes:

1. Climate Change Act 2021
2. Protection of the environment - the Environment Management Act (2005);
3. Protection of endangered and protected species:
   a. the Endangered and Protected Species Act (2002); and

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\(^2\) Based on a search of the key sources of publicly available caselaw in Fiji undertaken in May 2020, namely, www.paclii.org and www.ecolex.org, as well as secondary materials such as the GLOBALEX project maintained by NYU, the Law Library of Congress, Yale Law School, the Environmental Rights Database and the Free Access to Law Movement.
b. the Birds and Game Protection Act (1923) (Chapter 170);

4. Protection of marine life and marine spaces:
   a. the Continental Shelf Act (1970) (Chapter 149);
   b. the Fisheries Act (1942) (Chapter 158);
   c. the Offshore Fisheries Management Decree 2012; and
   d. the Marine Spaces Act 1978 (Chapter 158A);

5. Land development and conservation:
   a. the Land Conservation and Improvement Act 1958 (Chapter 141)
   b. the Land Development Act 1961 (Chapter 142); and
   c. the Forest Decree (1992);

6. Waste management:
   a. the Litter Promulgation (2008);
   b. the Environment Management (Waste Disposal and Recycling) Regulations (2007); and
   c. the Environment Management (Budget Amendment) Act (2019);

7. Air pollution – the Ozone Depleting Substances Act (1998); and

8. Biosecurity legislation:
   a. the Plant Quarantine Act (1982) (Chapter 156);
   b. the Quarantine Act (1965) (Chapter 112); and
   c. the Biosecurity Promulgation (2008).

For clarity, Statutes (or Acts), Decrees and Promulgations all have the force of law in Fiji.³

The legislation referred to above (current as at 26 May 2020) is discussed in further detail below.⁴

**Climate Change Act 2021**

In 2021, Fiji introduced the Climate Change Act 2021⁵, which establishes legal frameworks for regulation and governance of the national response to climate change, to introduce a system for measurement, reporting and verification of greenhouse gas emissions and for related matters.

The Act recognises that Fiji and the Earth are facing a climate emergency.⁶ The Act also establishes a number of bodies with responsibilities related to climate change, including the National Climate Change Coordination Committee, the National Adaptation Plan Steering

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³ Statutes (or Acts) are generally laws enacted under democratically elected governments of Fiji, whereas Decrees and Promulgations were enacted by more recent administrations.
⁴ Electronic copies of most of the legislation referred to above (as well as other relevant legislation) can be found at: https://www.fela.org.fj/environmental-laws.html.
⁶ Climate Change Act 2021, Section 6.
Committee, the Fijian Adaptation Registry, the Fijian Taskforce on the Relocation and Displacement of Communities Vulnerable to the Impacts of Climate Change, the National Ocean Policy Steering Committee, and may establish a private sector advisory committee.

The Act also requires the government to develop and implement a National Climate Change Policy until 2030, develop further policies every 10 years. The government must also develop and implement a Transport Decarbonisation Implementation Strategy and a National Ocean Policy.7

**Protection of the environment**

*Environment Management Act (2005)* 8

The Environment Management Act (2005) (EMA (2005)) provides “[f]or the protection of the natural resources and for the control and management of developments, waste management and pollution control and for the establishment of a national environment council and for related matters.”

The purpose of the Act is:

- to apply the principles of sustainable use and development of natural resources; and
- to identify matters of national importance for the Fiji Islands including the preservation of the coastal environment, margins of wetlands, lakes and rivers, the protection of outstanding natural landscapes / natural features and areas of significant indigenous vegetation / fauna, the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures and the protection of human life and health.

The Act establishes the National Environment Council, which is responsible for approving, monitoring and overseeing the implementation of the National Environment Strategy, and overseeing the implementation of international and regional treaties. The Act also subjects a wide range of proposed development activities to an environmental impact assessment process by an ‘approving authority’ and establishes an Environmental Impact Assessment Unit within the Department of Environment. In addition, the Act includes certain waste management and pollution control measures, including a permit scheme. It provides the Department with the power to issue improvement and prohibition notices and also establishes certain pollution and other offences, as well as an Environmental Tribunal for the hearing of appeals under the Act.

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7 Climate Change Act 2021, Section 44 and 81 respectively.
Various regulations and rules have also been enacted under this Act including:

- the *Environment Management (EIA Process) Regulations* (2007);
- the *Environment Management (Waste Disposal and Recycling) Regulations* (2007) (see below for further discussion);
- the *Environment Management Act (2005) – Environment Management (Fees) Regulations* (LN 17) (2013); and

**Protection of endangered and protected species**

**Endangered and Protected Species Act (2002)**

The *Endangered and Protected Species Act (2002)* is an Act “[t]o regulate and control the international trade, domestic trade, possession and transportation of species protected under the Convention of International Trade in Endangered Species of wild fauna and flora (CITES) and for related matters”. The Act establishes a Fiji Islands CITES Management Authority and a Fiji Islands CITES Council to implement the Act. The Act also establishes a permit system for importing and exporting listed fauna and flora and includes provisions relating to transport and shipment of endangered and protected species, and enforcement.

**Birds and Game Protection Act (1923) (Chapter 170)**

The *Birds and Game Protection Act (1923)* regulates the hunting of birds and game in Fiji and establishes a licensing system. The Act also reserves certain areas where it is unlawful to hunt game irrespective of whether a party has a licence to do so. The Act authorises game rangers to inspect and search bags, packages, vehicles and vessels with a view to verifying whether a person has a valid licence or where they suspect upon reasonable grounds that an offence has been committed.

**Protection of marine life and marine spaces**

**Continental Shelf Act (1970) (Fiji) (Chapter 149)**

The *Continental Shelf Act (1970)* provides for “the protection, exploration and exploitation of the natural resources of the continental shelf of Fiji and of areas within the territorial limits...
of Fiji and for matters connected with that purpose”. The Act vests all rights relating to the continental shelf of Fiji in the State and applies current Fijian laws to those areas. ‘Natural resources’ is broadly defined in the Act to include minerals and other non-living resources, as well as living organisms that are sedentary in nature.

**Fisheries Act (1942) (Chapter 158)**

The Fisheries Act (1942) is the primary legislation regulating near shore fisheries in Fiji. The key national implementing agency of the Act and management of marine resources is the Department of Fisheries. The Act establishes a permit and licensing regime for fishing, and the registration of fishing vessels. Licences are granted on an annual basis by licensing officers. The Act also addresses customary fishing rights. Regulations under the Act have been enacted to protect turtles. At the time of writing, a Bill had been proposed that would amend this Act.

**Offshore Fisheries Management Decree (2012)**

The objective of the Offshore Fisheries Management Decree (2012) is “to conserve, manage and develop Fiji fisheries to ensure long term sustainable use for the benefit of the people of Fiji”. The Act contains a number of mechanisms for the conservation, management and development of offshore and commercial fisheries, including the creation of an Offshore Fisheries Advisory Council, which advises the Minister on policy matters relating to fisheries conservation, management and development, and sustainable use. The Act also provides for the establishment of fisheries management plans for designated fisheries and grants the responsible Ministry broad enforcement powers.

**Marine Spaces Act (1978) (Chapter 158A)**

The Marine Spaces Act (1978) demarcates Fijian marine spaces, and declares rights in, and regulates the use of, resources in marine spaces in Fiji. The Act, defines the territorial waters of Fiji (12 nautical miles from the baseline) and the exclusive economic zone (200 nautical miles from the nearest baseline).

The Act further provides that “[t]he sovereignty of Fiji extends beyond its land territory and internal waters over its archipelagic waters and territorial seas and to the airspace thereover.

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13 See the Fisheries (Protection of Turtles) (Amendment) Regulations (2010).
as well as to the seabed and subsoil thereunder” (section 9(1)). The Act also provides that “[w]ithin the exclusive economic zone Fiji has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the seabed and subsoil and the superjacent waters” (section 9(2)). The Act also sets out the rights of foreign fishing vessels, including licencing requirements and stipulates penalties for non-compliance.

**Land Development and Conservation**

**Land Conservation and Improvement Act (1953) (Chapter 141)**

This Act makes provision for the conservation and improvement of land and water resources of Fiji. The Act establishes a Land Conservation Board and provides for the appointment of conservation officers to assist with supervising land and water resources and encouraging the conservation and improvement of such resources. The Board has the power to issue conservation orders and work orders to promote the conservation of land and water resources.

**Land Development Act (1961) (Chapter 142)**

This Act establishes a Land Development Authority which is responsible for promoting and assisting the investigation, formation and carrying out of projects for the development, improvement and settlement of land. The Land Development Authority may, with the approval of the Minister, establish a corporation to carry out and have the charge, conduct and management of any project, in execution of its duty or discharge of its functions under the Act. The Minister may, with the advice of the Land Development Authority, establish local development boards to promote and carry out land development projects.

**Forest Decree (1992)**

This Decree creates a Forestry Board to advise the Minister with respect to forestry policy. The Minister may, upon the recommendation of the Forestry Board, declare State land to be a forest reserve or nature reserve. Forestry can only occur within a declared area. Licences are required for certain activities such as logging (including the payment of fees and royalties), and the Decree specifies offences and penalties for breach. The Act also preserves customary rights with respect to native land subject to certain exceptions.

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Waste management

Litter Promulgation (2008)\textsuperscript{20}

The Litter Promulgation (2008) was introduced “to prohibit and regulate the deposit of litter in the environment of the Fiji Islands and to provide for enforcement and related matters”. The Litter Promulgation repeals the Litter Decree (1991). The Litter Promulgation provides for the appointment of litter prevention officers. Public authorities and commercial facility operators are also responsible for providing and managing receptacles in which litter can be placed. The Litter Promulgation creates offences for different types of littering and specifies penalties for breach.

Environment Management (Waste Disposal and Recycling) Regulations (2007)\textsuperscript{21}

The Environment Management (Waste Disposal and Recycling) Regulations (2007) (made under the EMA (2005)) establishes a permit system for the disposal of solid waste and liquid waste, air pollution, batteries, plastics and landfill and also regulates waste transport, collection and dumping (including recycling). The Regulations also specify various offences and penalties for breach.

Environment Management (Budget Amendment) Act (2019)\textsuperscript{22}

The Environment Management (Budget Amendment) Act (2019) (made under the EMA (2005)) makes it an offence to manufacture, supply, sell or distribute certain types of plastic bags.

Air pollution

Ozone Depleting Substances Act (1998)\textsuperscript{23}

The Ozone Depleting Substances Act (1998) is “[a]n Act to regulate the importation, exportation, sale, storage and use of ozone depleting substances and to give effect to Fiji’s obligations under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, and for related matters”. The Act provides for the phasing out and management of controlled substances that are ozone depleting substances and provides for penalties and enforcement.


**Biosecurity legislation**

**Plant Quarantine Act (1982) (Chapter 156)**

The *Plant Quarantine Act (1982)* is “[a]n Act to consolidate and amend the law relating to plants and plant diseases”. The Act prevents the importation of certain species, noxious and diseased plants and related materials. It also sets out domestic plant quarantine control measures.

**Quarantine Act (1965) (Chapter 112)**

The *Quarantine Act (1965)* establishes a Quarantine Authority. The Act also provides that the Minister may make regulations about quarantine and the Quarantine Authority is entitled to make rules to implement those regulations.

**Biosecurity Promulgation (2008)**

The *Biosecurity Promulgation (2008)* aims to prevent and control the entry and spread of animal and plant pests and diseases in Fiji. The Promulgation establishes a Biosecurity Authority as the body responsible for enforcing the Promulgation and related biosecurity laws. The Promulgation regulates pests and diseases by numerous mechanisms, including by prohibiting certain imports and requiring certain quarantine procedures at ports and other points of entry.

**Key Environmental Policies**

In addition, in recent years Fiji has introduced a range of environmental policies, including the National Biodiversity Strategy and Action Plan, the Green Growth Framework, the Integrated Coastal Management Framework, National Climate Change Policy, National Solid Waste Management Plan, and National Liquid Waste Management Plan, among others. In fact, it has been commented that the legislative framework for the regulation of environmental issues and protection does not appear to have kept pace with the introduction of National Environmental Policies and therefore should ideally be revisited and updated.

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Law reform initiatives

While a number of papers have been written over the years recommending various policy changes and law reform initiatives. Legislation is also being considered to amend the Fisheries Act and in relation to the land rights of indigenous communities.

E. Is there any specific national policy addressing childhood exposure to toxic substances? If so, what is considered a safe level of exposure and what is the process for determining safe levels of exposure?

There is no specific national policy addressing childhood exposure to toxic substances in Fiji.

However, it appears that the issue of childhood exposure to toxic substances may be attracting greater attention. In 2018, a research project commenced to assess the level of exposure of young children residing in greater Suva, Fiji to air pollution, as well as the sources contributing to their exposure. This project will also seek to estimate the burden of childhood disease attributable to air pollution, and how transition to clean energy would mitigate it.

Various studies have also been undertaken over the past 20 years in relation to levels of toxic substances in areas of Fiji, particularly in Suva Harbour, which is located on the south east of the main island and serves as a major commercial centre. These studies have shown concerning levels of toxic substances in sediments and lagoon shellfish in Suva Harbour (such as lead, copper, zinc, iron and arsenic in sediments in Suva Harbour and mercury in lagoon shellfish). There is ongoing concern that levels of toxic substances remain at unacceptably high levels in Fiji and are likely to have increased over time as levels of economic development and tourism have also increased. Accordingly, the issue of childhood exposure to toxic substances appears to be part of a broader issue of concern.

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27 See, for example: The Secretariat of the Pacific Regional Environment Programme (SPREP) and EDO NSW, Review of Natural Resource and Environment Related Legislation, January 2018; James Sloan and Kevin Chand, A Review of Near Shore Fisheries Law & Governance in Fiji, January 2015.


29 iTaukei Land Trust (Budget Amendment) Bill 2021.

30 This project is supported by the National Health and Medical Research Council, Centres of Research Excellence, The Centre for Air pollution, Energy and Health Research Seed Funding Grant and CAR Postdoctoral Fellowship, as well as the Queensland University of Technology. For further information, please see QUT International Laboratory for Air Quality and Health, A new research project commenced in 2018, on children’s exposure to air pollution in Fiji! (Blog post, 4 April 2019) <https://research.qut.edu.au/ilaqh/2019/04/04/a-new-research-project-commenced-in-2018-on-childrens-exposure-to-air-pollution-in-fiji/>.

F. Is the country equipped with pollutant release and transfer registers? If yes, do these registers take into account child specific factors regarding the substances for which data is gathered and the type of data generated?

A pollutant release and transfer register (PRTR) is a publicly accessible database which collects and disseminates information about environmental releases and transfers of hazardous substances from industrial and other facilities. PRTRs typically require facility owners or operators who release chemicals (for example, in such industries as manufacturing and mining) to quantify their releases and to report them to governments on a regular basis.

Under the Pesticides Act (1971) (Fiji), pesticides must be registered prior to being made available for sale. However, Fiji does not appear to have a PRTR in place at this stage and is not a party to the ‘Aarhus Convention’ or the Protocol on Pollutant Release and Transfer Registers.

It appears that steps are being taken towards improving the collection of data in the areas of climate change and waste management in particular across the Pacific region. For example, the European Union funded PacWaste Plus programme (scheduled to run from July 2018 to June 2023) is working with 15 countries in the Pacific region, including Fiji, to improve and enhance waste management activities with due regard for the conservation of biodiversity, reduction of marine litter, health and well-being of Pacific island communities, and climate change mitigation and adaptation requirements.

G. Does the State assert extra-territorial jurisdiction for any environmental issues?

Extra-territorial jurisdiction for environmental issues

As discussed in section D. above, various legislation appears to have extra-territorial effect such as the Marine Spaces Act (1978) and the Off-shore Fisheries Management Decree (2012). However, the State does not appear to have sought to assert extra-territorial jurisdiction specifically in relation to environmental issues.

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32 The complete title of this Convention is the ‘UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters’ and was adopted on 25th June 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference in the ‘Environment for Europe’ process. The Convention entered into force on 30 October 2001. As of 16 October 2017, there were 47 Parties to the Convention.

33 The Protocol entered into force on 8 October 2009. As of 16 October 2017, there were 37 Parties to the Protocol on Pollutant Release and Transfer Registers.

34 For further information, please see: https://www.sprep.org/pacwaste-plus.
International and Regional Conventions

Fiji is also a party to various international and regional conventions relating to the protection of the environment including the Noumea Convention, Waigani Convention and Apia Convention. The Secretariat of the Pacific Regional Environment Programme (SPREP) is the Secretariat for these regional conventions and seeks to promote cooperation in the South Pacific Region in order to protect and improve the environment and to ensure sustainable development for present and future generations. SPREP has 26 Member countries, including Fiji, Australia and New Zealand.

Fiji has also ratified the following international conventions relating to biodiversity and the environment: The Convention on Biological Diversity, the Cartagena Protocol on Biosafety Convention on Wetlands (Ramsar), the World Heritage Convention, the Stockholm Convention, the UNCLOS (Part XII: Protection and Preservation of the Marine Environment) and the UNFCCC – the Kyoto Protocol and the Paris Agreement.

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35 Agreement Establishing the South Pacific Regional Environment Programme (SPREP) (1993), Article 2.
36 The 21 Pacific island member countries and territories of SPREP are: American Samoa, Commonwealth of the Northern Marianas, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Wallis and Futuna. The five metropolitan members of SPREP are: Australia, France, New Zealand, United Kingdom and the United States of America.
II. ACCESSING COURTS
A. How can environmental cases be brought before national courts?

The Constitution guarantees the right to access to national courts, as well as a right to a healthy environment. However, no specific provision is applicable to environmental cases. Although the Environmental Management Act (2005) establishes an Environmental Tribunal (EMT) to hear appeals from certain administrative decisions, it does not specifically address the route that an environmental claim should follow. The sections below address EMT, the national courts system, and the regulatory bodies in turn.

The Environmental Tribunal (EMT)

The EMA (2005) established the EMT in 2005, following which the Chief Justice issued the Environmental Management (Tribunal) Rules in 2013 (EMT Rules 2013) to regulate the proceeding of the Tribunal. It appears that the EMT’s activity has been limited to date.

Section 56 of the EMA establishes the EMT, which “may hear and determine any appeal referred to it under this Act or any other written law.” These include:

- appeals made by a person who is aggrieved by a “prohibition notice,” i.e., a notice that is issued by the Director of the Department responsible for Environment in instances where it has reason to believe that an immediate threat or risk to the environment is occurring or may occur in an activity carried out by national or local authorities;
- appeals made by a person who disagrees with a decision of the Environment Impact Assessment Administrator (EIA Administrator) or approving authority; and
- appeals made by a facility disputing a remedial action required to be carried out under Part 5 of the EMA (2005), i.e., waste management and pollution control.

Exercising the power conferred upon it by Section 56(6) of the EMA (2005), the Chief Justices made the EMT Rules 2013. The EMT Rules 2013 aim at ensuring the just treatment of the parties, promoting the fair and efficient disposal of cases, engendering public confidence.

37 Constitution of the Republic of Fiji, dated 16 September 2013, section 15.
38 Constitution of the Republic of Fiji, dated 16 September 2013, section 40: “(1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures. (2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.”
39 EMA (2005), section 56.
40 EMA (2005), section 21(6).
41 EMA (2005), section 21(2).
42 EMA (2005), section 31(4).
43 EMA (2005), section 41.
44 Environment Management (Tribunal) Rules 2013, dated 18 February 2013.
in the EMT, and encouraging the identification of issues between the parties at an early stage. The EMT Rules 2013 suggest that appeals may be made not only under the EMA (2005), but also pursuant to “any relevant law”.45

There was significant delay in the formation of the EMT, “presumably due to a lack of resources.”46 A law firm filed an appeal on behalf of concerned citizens relating to the approval of an Environment Impact Assessment (EIA).47

The EMT has been criticised for its lack of transparency. In 2018, the United Nations Special Rapporteur David R. Boyd stated in this regard that: “[t]he Environmental Management Act 2005 provides for the appointment of an Environmental Tribunal, but there is no publicly available information regarding its members, procedures, or decisions. Rules governing the tribunal were published in 2013, but the absence of other public information makes the process opaque and inaccessible.”48

**The national courts system**

Environmental claims can also follow the “classic” route, i.e., that of the Fiji national courts system. Section 97 of the Constitution provides that “[t]he judicial power and authority of the State is vested in the Supreme Court, the Court of Appeal, the High Court, the Magistrates Court, and in such other courts or tribunals as are created by law.”49 It appears that all of those courts have had to deal with cases involving environmental concerns (in both criminal and civil proceedings).

**Magistrates Courts:**

Magistrates’ Courts are courts of first instance for most civil and criminal cases in Fiji, including juvenile cases. In civil claims, the Magistrates’ Courts have jurisdiction over matters

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45 EMT Rules 2013, Section 3: “appeal’ means the decision, order, notice, declaration or action of a person, statutory office holder, company or any other authority that is appealed by an applicant, under the Act or any relevant law, to the Tribunal”. (emphasis added)


47 Ibid. This claim was reportedly listed as the fifth case of 2019, which suggests that the EMT now has an activity. The United Nations Special Rapporteur David R. Boyd has reported in his that “apparently three cases have been referred to it”. See, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Visit to Fiji, Dated 27 December 2019, No. A/HRC/43/53/Add.1, para. 38 (available at http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20report%202020.pdf (visited on 05.06.2020).


49 Constitution of the Republic of Fiji, dated of 13 September 2013, Article 97.
including personal claims in which the matter does not exceed FJD 50,000. In criminal matters, the Magistrate’s Courts have jurisdiction over criminal offences and misdemeanors that are punishable by maximum sentences of 10 years under the Crimes Act (2009) (Crimes Act).\footnote{Magistrates Court Act (1944), section 17 and Criminal Procedure Act (2009), section 7(1). There is a total of 36 Magistrates’ Courts in 22 towns and population centers (see. http://judiciary.gov.fj/2012/08/24/magistrates-court/ (accessed on 05.06.2020)).}

The Magistrates Courts seem to have jurisdiction over environmental matters. For instance, in 2019, a real estate developer\footnote{The real estate developer goes by the name of “Freesoul Real Estate Development”.} building a resort without the required permits on Malolo Island faced charges over environmental damages after undertaking unauthorized developments and failing to comply with a prohibition notice under the EMA (2005). This case, before the Nadi Magistrates Court,\footnote{Radio New Zealand, ‘Fiji case against Malolo developer adjourned’, Radio New Zealand (online, 4 February 2020) https://www.rnz.co.nz/international/pacific-news/408697/fiji-case-against-malolo-developer-adjourned (visited on 05.06.2020); see also Mereleki Nai, ‘Court Ruling For Free Soul Real Estate Case on March 24’, Fiji Sun (online, 14 March 2020) https://fijisun.com.fj/2020/03/14/court-ruling-for-free-soul-real-estate-case-on-march-24/ (visited on 05.06.2020).} was brought by the adjacent landowners who, according to media reports, alleged the developer had damaged part of their land and caused extensive damage to the foreshore.\footnote{Melanie Reid and Mark Jennings, ‘Fiji revokes big Chinese resort’s rights’, Stuff (online, 9 April 2020) https://www.stuff.co.nz/business/111890924/fiji-revokes-big-chinese-resorts-rights (visited on 05.06.2020).} There has not yet been a final decision.\footnote{As of 04 February 2020. See. Radio New Zealand, ‘Fiji case against Malolo developer adjourned’, Radio New Zealand (online, 4 February 2020) https://www.rnz.co.nz/international/pacific-news/408697/fiji-case-against-malolo-developer-adjourned (visited on 05.06.2020).}

There are other cases concerning environmental harm brought before Magistrates Courts, including: Nasinu Town Council v Khan (2011).\footnote{Nasinu Town Council v Khan, Civil Case No. 592/2010 (27 July 2011), available here https://www.informea.org/sites/default/files/court-decisions/Nasinu%20Town%20Council%20v%20Khan.pdf accessed on 05.06.2020.}

**High Court:**

The High Court has the unlimited original jurisdiction to hear and determine any civil or criminal proceeding under any law, and the power to interpret the Constitution. The High Court is the court of first instance for all civil cases where the plaintiff is claiming more than FJD50,000 in damages. Any citizen has the right to pursue any civil claim exceeding FJD50,000 in the High Court.\footnote{See http://judiciary.gov.fj/2012/08/24/high-court/ (accessed on 05.06.2020).}

It therefore has jurisdiction to hear environmental cases, as did the High Court at Suva in the recent Ramendra Prasad v. Total (Fiji) Limited litigation.\footnote{See below Section II.A.2(c).}
Other civil actions related to environmental harm have been lodged before the High Court in the past, including in *Safari Lodge (Fiji) Ltd v Tiki (Fiji) Ltd* (2014),58 *State v. Lee Lang* (2011),59 *Naqa v Fiji Electricity Authority* (2004),60 and *State v Land Transport Authority, Ex parte Fiji Taxi Union* (2004).61

In theory, the constitutional right to a clean and healthy environment is directly enforceable under section 44 of the Constitution, which gives the High Court original jurisdiction to hear applications of actual or anticipated breaches of the Bill of Rights, and under the *High Court Constitutional Redress Rules* (2015).62 However, no national environmental laws have incorporated this right and emphasize it as a fundamental principle.63

### The Court of Appeal

The Court of Appeal has jurisdiction to “hear and determine appeals from all judgments of the High Court.”64

Recently, on 28 February 2020, the Court of Appeal handed down a groundbreaking judgment in *Ramendra Prasad v. Total (Fiji) Limited*.65 Essentially, this judgment upholds the

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58 *Safari Lodge (Fiji) Ltd v Tiki (Fiji) Ltd*, Civil Action No.: HBC 226 of 2013 (10 July 2014) (available here [https://www.informea.org/sites/default/files/court-decisions/Safari%20Lodge%20%28Fiji%29%20v%20Tiki%20%28Fiji%29%20Ltd.pdf](https://www.informea.org/sites/default/files/court-decisions/Safari%20Lodge%20%28Fiji%29%20v%20Tiki%20%28Fiji%29%20Ltd.pdf) accessed on 05.06.2020).

59 *State v Lee Lang*, [2010] FJHC 42 (12 February 2010), reported here [https://www.ecolex.org/details/court-decision/state-v-lee-lang-3651b832-1c63-4af0-8713-0e64951ee1f2?&type=fulltext&xcountry=Fiji&xdate_min=&xdate_max= accessed on 05.06.2020]

60 *Naqa v Fiji Electricity Authority* (14 October 2004), Civil Action No.: HBC0237 of 2002, available here [https://www.informea.org/sites/default/files/court-decisions/Naqa%20v%20Fiji%20Electricity%20Authority.pdf](https://www.informea.org/sites/default/files/court-decisions/Naqa%20v%20Fiji%20Electricity%20Authority.pdf) accessed on 05.06.2020.


63 Implementing this right into environmental legislation has been described as “an important step for Fiji to take”, since “this would contribute to stronger, more sustainable administrative decisions, increase public participation in environmental decision-making, and bolster the implementation and enforcement of environmental laws, regulations and standards”. See, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Visit to Fiji, Dated 27 December 2019, No. A/ HRC/43/53/Add.1, para. 39 (available at [http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20Report%202020.pdf](http://srenvironment.org/sites/default/files/Reports/2020/Fiji%20Report%202020.pdf) visited on 05.06.2020).

64 Constitution of the Republic of Fiji, dated 06 September 2013, Article 99(3).

65 *Ramendra Prasad v Total (Fiji) Ltd* [2020] FJCA 26; ABU 90 of 2018 (28 February 2020). The judgment is available here: [http://www.paclii.org/fj/cases/FJCA/2020/26.pdf](http://www.paclii.org/fj/cases/FJCA/2020/26.pdf) visited on 05.06.2020. In short, the facts were that around July 2008, Mr Prasad, a service station operator, had noticed fuel leaking from the ground and flowing, via a nearby drain, towards the Rewa River. Mr Prasad notified Total (Fiji) as owner of the underground fuel tanks and pipes. Notwithstanding efforts to repair the fuel tanks, the leakages continued and, in November 2008, the Fiji Department of the Environment stopped the supply of fuel to the service station to prevent further environmental damage.
international standard of environmental law and the principle that the “polluter pays”.  

A commentator considers the significance of this judgment to be three-fold:

- Firstly, the Court of Appeal clearly upheld the environmental rule of law in finding Total (Fiji) accountable for the pollution incident as a result of faulty installation and inability to repair its fuel tanks and pipes;
- Secondly, it directly upheld the scientific evidence relating to the importance of the fuel leak and gave an extensive interpretation of the key definitions of ‘land’, ‘pollutant’, ‘pollution incident’ and ‘protecting the environment’ in the EMA; and
- Thirdly, in its consideration of the framework within which the question of damages and economic loss should be considered, the Court of Appeal expressly indicated that this matter should be considered ‘in accordance with Section 50 of the Environment Management Act and, as such, in the context of the polluter pays principle as ‘a deterrent’ whose purpose is to ‘ensure all-round concern for the human life, as well as the environment.’

In summary, the Court of Appeal “sent[ted] a clear message from Fiji’s judiciary as regards its willingness to apply the polluter pays principle, to strictly enforce environmental legislation and to anchor in precedent a deliberately broad interpretation of such legislation that will, in the future, allow as wide as possible a scope of application encompassing a maximum of persons and activities.”

The Supreme Court

The Supreme Court is the final appellate Court. It has exclusive jurisdiction to hear and determine appeals from final judgments of the Court of Appeal, and original jurisdiction to hear and determine constitutional questions referred under Section 91(5) of the Constitution.

To date, the Supreme Court seem to have ruled upon only one case related to the

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66 This principle is enshrined in EMA (2005), Section 50.
environment in *Suva Rural Local Authority v Leylands Ltd* (1978).\(^70\)

**Administrative Authorities**

In at least one reported instance, an administrative body – the Eastern Division Liquor Licensing Authority – has ruled upon questions concerning harm made to the environment.

In *re Irava Bottle Shop* (2013),\(^71\) the case concerned a permit to run a liquor store and complaints from the public. There were several objections made, but the Authority chose to put emphasis on the environmental impact of the opening of the liquor store. The main environmental problem was, according to the Health Inspector, the large number of decomposable beer bottles. The island did not have a recycling system, leading to a large increase in the waste discharged and disposed of on the communal dump.

To deny the license, the Authority relied upon (i) the Rio Declaration and established that the state had agreed that human beings are entitled to a healthy and productive life in harmony with nature; (ii) the EMA (2005); (iii) the United States Declaration of Independence (US 1776), (iv) the Stockholm Declaration, and (v) the special rights of indigenous peoples.

**B. What rules of standing apply in environmental cases?**

The Constitution provides a pathway for enforcing environmental rights. In particular, section 44 provides that if any of a person’s protected rights under Chapter 2 of the Constitution (which includes section 40 – environmental rights) has been, or is likely to be, contravened, that person may apply to the High Court for redress.

In Fiji, the rules of standing derive from common law, and are not prescribed in legislation.\(^72\) It was accepted by the Supreme Court that the general test for standing is that set out in the UK case of *Inland Revenue Commissioners v National Federation of Self-Employed & Small Businesses Ltd* [1982] AC 617, in which Lord Scarman stated that the plaintiff must have a “sufficient interest” in the matter.\(^73\) This is a “mixed question of fact and law; a question

\(^{70}\) *Suva Rural Local Authority v Leylands Ltd* (23 June 1978), Criminal Appeal No. 35 of 1978, available here https://www.informea.org/sites/default/files/court-decisions/Suva%20Rural%20Local%20Authority%20v%20Leylands%20Ltd.pdf visited on 05.06.2020.

\(^{71}\) *Re Irava Bottle Shop* (08 March 2013), No. 01/2012, available here https://www.informea.org/sites/default/files/court-decisions/In%20re%20Irava%20Bottle%20Shop.pdf visited on 05.06.2020.


\(^{73}\) See *Vakalalabure v State* [2006] FLR 136, [87].
of fact and degree and the relationship between the applicant and the matter to which the application relates, having regard to all the circumstances of the case.” As such, it is possible under common law for any type of plaintiff, including individuals, groups of individuals and organisations, to have standing, provided they can demonstrate a sufficient interest in the matter.

We were unable to find any Fijian cases or legislation that specifically dealt with issues of standing for matters relating to environmental harm.

C. Do these rules of standing differ when children are the complainants and if so in what way?

In Magistrate’s Courts and under the High Court rules, children are required to be represented by a guardian ad litem or “next friend” when filing a law suit.\(^75\)

In general, a court order is not required to make an appointment for a guardian ad litem or next friend to be able to act on behalf of a child. However, if a person is already representing the minor in another proceeding, a court order would be required to appoint a different next friend or guardian ad litem.\(^76\)

D. What is the burden and standard of proof for allegations of personal injury as a result of toxic exposure?

Section 50 of the EMA (2005) provides that a person who has suffered loss which includes contracting health-related problems as a result of any pollution incident may institute a civil claim for damages in a court. This includes a claim for:

- economic loss resulting from the pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
- loss of earnings arising from damage to any natural resource;
- loss to or of any natural environment or resource; or
- costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

\(^74\) Inland Revenue Commissioners v National Federation of Self-Employed & Small Businesses Ltd [1982] AC 617, 182.

\(^75\) High Court Rules, Order 80, Rules 1, 2 and 3. Available at: http://www.paclii.org/fj/rules/procedural_rules/Fiji%20-%20Fiji%20High%20Court%20Rules%201988.html.

\(^76\) Ibid
In Prasad v Total (Fiji) Pty Ltd (mentioned previously), the plaintiff claimed damages for health problems caused by leaking underground fuel tanks on his premises. The High Court stated that to succeed, the plaintiff needed to “establish by evidence that allowing the underground tanks to remain in his premises caused health related problems and if so the extent of the damage”. At first instance, the High Court went on to find that there was no evidence that there were any health related problems caused by the presence of the underground tanks. This was overturned on appeal, with the Court of Appeal holding that the judge had wrongly ignored the plaintiff’s testimony regarding the health problems and hazards caused by the defendant’s failure to remove the fuel tanks from the plaintiff’s property. It further held that the defendant had been negligent, and awarded damages to the plaintiff accordingly.

The Court of Appeal noted that in applying section 50 of the EMA (2005), “a court must take cognizance of the pollution incident so that the language and the spirit of the protections given under the Act, are effective”. On this basis, the Court considered that the defendant’s negligence in failing to properly monitor the tanks was sufficient to warrant damages, thereby rejecting the more precise causation requirement initially stipulated by the High Court. As such, in a section 50 claim, it may be sufficient for the plaintiff to prove damage under ordinary common law principles of causation.

We could find no other relevant cases involving civil claims under the EMA (2005).

**E. What limitation periods apply in environmental cases?**

A three years limitation period is applicable to all offences under the EMA (2005), which commence from:

- the date on which the offence was committed; or
- the date on which evidence of the offence first came to the attention of the Department, whichever is the later.

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77 Prasad v Total (Fiji) Pty Ltd [2018] FJHC 782 (accessible here: http://www.paclii.org/cgi-bin/sinodisp/fj/cases/FJHC/2018/782.html, [50].


79 Prasad v Total (Fiji) Ltd [2020] FJCA 26, para. 23.

80 EMA (2005), section 42: “No proceedings for an offence under this Act may be commenced 3 years after [a] the date on which the offence was committed; or [b] the date on which evidence of the offence first came to the attention of the Department, whichever is the later.”
F. Is legal aid available in environmental cases? If so, under what circumstances?

The Constitution guarantees the right to access courts or tribunals by providing that “the State, through law and other measures, must provide legal aid through the Legal Aid Commission to those who cannot afford to pursue justice on the strength of their own resources, if injustice would otherwise result.”

Availability of legal aid in general:

Fiji passed a law over 20 years ago, the Legal Aid Act (1996) (LAA), which established a Commission with the duty of providing “legal assistance to impoverished persons”, who are defined as people “unable to reasonably afford the cost of legal services”. The Legal Aid Commission (LAC) can provide legal assistance through a variety of means, including arranging for the services of private legal practitioners, making available the services of the Legal Aid Commission employees, providing for a duty lawyer at courts or tribunals, and educating the public. It appears that this also includes appeals services.

Availability of legal aid in environmental cases

The LAA provides that “[t]he Commission shall from time to time formulate and make available to the public guidelines to be applied […] in determining the types of matters in which legal assistance will be provided”.

We have not been able to confirm whether Legal Aid is provided in specific instances of environmental cases. However, it appears that the Legal Aid Commission “provides legal aid in criminal, family and civil cases” which may include environmental cases.

The LAC’s website confirms that “the Commission provides service in all areas of Family law.
and criminal law. Assistance is provided in civil law matters but these are limited to certain areas of practice only,” 88 without expanding on which areas are included or excluded. In addition, it has been reported that “[f]or Civil Law matters which the Commission does not normally undertake, a further merits test is carried out before a decision is made on whether to grant assistance in that matter and taking into consideration whether injustice would occur if assistance was not granted.” 89

In summary, “the open-ended language in the provisions regulating eligibility have also allowed the Legal Aid Commission to interpret its provisions generously and to be guided by the needs of the people and the interests of justice in deciding on applications.” 90

Therefore, there is a possibility that even if environmental cases were excluded from the scope of the LAC’s reach, an application for legal aid made by an individual (possibly a child) in this context may be granted by the LAC.

**Conditions for obtaining legal aid from the LAC**

The applicant for legal aid may be means tested and may have to satisfy the Commission that she or he has reasonable prospects of success in the matter for which legal assistance is sought. 91 The LAC has set the means test at a net annual income or earnings of FJD 15,000. 92 The UNDP Report states that the means test is flexible for juveniles, and remand and convicted prisoners. 93

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88 https://legalaidfiji.com.fj/ (visited on 05.06.2020)
90 UNDP Report (with EU and HIIL), Justice Needs and Satisfaction in Fiji, October 2019, p. 15.
91 LAA, Articles 8-9.
93 UNDP Report (with EU and HIIL), Justice Needs and Satisfaction in Fiji, October 2019, p. 15.
III. REMEDIES
A. What remedies are courts empowered to impose in environmental cases?

The EMA contains provisions empowering the courts to impose certain remedies in environmental cases, both of criminal and civil nature.

Criminal

Part 6 of the EMA (2005) describes for each offence the penalties that a court may impose in environmental-related cases.

**Offence of undertaking unauthorized developments:** Courts are entitled to impose fines up to FJD750,000 or a term of imprisonment not exceeding 10 years (or both). In addition, the Director of the Department responsible for the Environment may also apply to the court for an order to stop work.94

**Other offences:** This concerns other offences, such as providing false or misleading information or failing to comply with any notice, order, permit, requirement or condition imposed under EMA (2005). In this case, Courts are entitled to impose fines up to FJD10,000 or a term of imprisonment not exceeding 2 years (or both).

**Pollution offences:** This concerns offences committed by a person who causes or contributes to the discharge of a waste or pollutant. In these instances, Courts are entitled to impose fines up to FJD250,000 (or FJD750,000 for a second or subsequent offence) and to a term of imprisonment not exceeding 3 years (or 10 years for a second or subsequent offence) (or both). The maximum fine is FJD1,000,000 and the term of imprisonment up to life if the pollution offence is intentional and harm human health or causes severe damage to the environment. All these penalties can be multiplied by 5 where a corporate body is convicted.95

**General penalties:** A person who commits an offence against the EMA (2005) for which no penalty is specifically provided is liable on conviction to a fine not exceeding FJD5,000 or to a term of imprisonment not exceeding 12 months or both.96

**Other orders:**

In addition to any penalty imposed, the Court may additionally make an order:

94 EMA (2005), section 43.
95 EMA (2005), section 45
96 EMA (2005), section 46.
1. prohibiting the person from doing any act or engaging in any activity or undertaking that may result in the continuation or repetition of the offence;
2. to stop work temporarily or permanently, on any activity or undertaking on a development proposal;
3. for the restoration of the area on which any activity or undertaking on a development proposal is taking place, to as near to its original condition with the cost to be borne by the proponent;
4. requiring the person to carry out of improvement or remediation work on the area with the cost to be borne by the proponent;
5. directing the person to pay the costs and other expenses associated with any inspection, audit or investigation undertaken in respect of the offence;
6. directing the person to pay a refundable security for costs to ensure compliance with an order made under (section 48); and
7. directing the seizure and forfeiture of any vessel, aircraft or thing used in the commission of an offence; or requiring the person to comply with any other condition the court considers appropriate in the circumstances.  

In addition, the court may order the convicted person to pay to the person aggrieved (i) compensation for loss or damage to property or income proved to have been suffered by that person, or (ii) the cost of any preventative or remedial action proved to have been reasonably taken or caused to be taken by that person. 

Civil

A person who has suffered loss, which includes contracting health-related problems as a result of any pollution incident, may institute a civil claim for damages in a court, which may include a claim for:

8. economic loss resulting from the pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
9. loss of earnings arising from damage to any natural resource;
10. loss to or of any natural environment or resource; and
11. costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

B. What remedies have courts ordered in environmental cases to date?

To date we have been unable to identify any cases where fines or a term of imprisonment has been imposed upon an individual or a corporate body for environmental damages.

However, for almost all the cases referred to in the above sections, interim measures such as

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97 EMA [2005], section 47(1).
98 EMA [2005], section 47(2).
99 EMA [2005], section 50.
injunctive orders have been granted by the courts.\textsuperscript{100}

In the recent Ramendra Prasad v. Total (Fiji) Limited case, the Court of Appeal granted damages to the appellant for contamination of land but remanded the matter to the High Court for determining the quantum.\textsuperscript{101}

In Fiji, subject to section 43(1) of the Environment Management Act, no person is allowed to carry out any development activity which is subject to the Environmental Impact Assessment without an Environmental Impact Assessment report.

The recent case of State v Freesoul Real Estate Development [2021] has been described as a ‘watershed moment for environmental prosecutions’ in Fiji.\textsuperscript{102} In this case Freesoul Real Estate were found guilty of two counts of intentionally carrying out development activity which was subject to the Environmental Impact Assessment, namely the clearing of mangroves along the foreshore facing Qalilawa and the digging of an artificial channel along Wacia, without an approved Environmental Impact Assessment report.\textsuperscript{103} This case has been transferred to the High Court for sentencing.

\textbf{C. Are there any administrative authorities empowered to act on environmental complaints and if so, how are they empowered to respond to complaints?}

It appears that some regulatory bodies are empowered to respond to complaints. This was for instance the case of the Eastern Division Liquor Licensing Authority in Re Marieta Irava Bottle Shop (2013).\textsuperscript{104} But we are not able to find further information on this issue

\begin{thebibliography}{99}
\bibitem{100} See e.g. Nasinu Town Council v Khan, Civil Case No. 592/2010 (27 July 2011), available here https://www.informea.org/sites/default/files/court-decisions/Nasinu%20Town%20Council%20v%20Khan.pdf accessed on 05.06.2020.
\bibitem{101} Ramendra Prasad v Total (Fiji) Ltd [2020] FJCA 26; ABU 90 of 2018 (28 February 2020), [35].
\bibitem{102} https://www.theguardian.com/world/2021/apr/09/fiji-reef-battle-judge-finds-china-linked-developers-guilty-in-landmark-case
\bibitem{103} http://www.paclii.org/cgi-bin/sinodisp/fj/cases/FJMC/2021/22.html?stem=&syonyms=&query=freesoul
\bibitem{104} Re Irava Bottle Shop (08 March 2013), No. 01/2012, available here https://www.informea.org/sites/default/files/court-decisions/In%20re%20Irava%20Bottle%20Shop.pdf visited on 05.06.2020. See above at paras. 28-29.
\end{thebibliography}
IV. CIVIL AND POLITICAL RIGHTS
Freedom of peaceful assembly

A. How is children’s right to engage in peaceful assembly, including protests, protected in national law?

The Constitution protects the right to peaceful assembly “for every person”, though does not specifically mention children. Section 18(1) provides that every person has the right to assemble, demonstrate, picket and present petitions peaceably and unarmed.\(^\text{105}\) Section 41 of the Constitution, which deals with children’s rights, does not address the right to peaceful assembly.\(^\text{106}\)

In 1993, Fiji ratified the Convention on the Rights of the Child (CRC). Article 15(1) of the Convention provides that the State recognises the rights of a child to freedom of association and peaceful assembly. Furthermore, Article 15(2) provides that “no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

B. Are there any legal limitations on the right of children to engage in peaceful assemblies?

While there are no constitutional limitations that specifically apply to children, section 18 of the Constitution generally provides that the right to peaceful assembly may be limited, to the extent that is necessary, in the interests of protecting the interests of national security/public safety, protecting the rights and freedoms of others and imposing restrictions on the holders of public offices.\(^\text{107}\)

Section 28 of the Education Act (1966) (Education Act) allows the Education Minister to require children in a certain area or all areas of Fiji, and of such or all ages, to attend school.\(^\text{108}\) However, the Act does not specify any offences for not attending compulsory education.

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\(^\text{105}\) Constitution of Fiji, s. 18(1). The Constitution can be viewed here: https://www.laws.gov.fj/ResourceFile/Get/?fileName=2013%20Constitution%20of%20Fiji%20(English).pdf

\(^\text{106}\) Constitution of the Republic of Fiji, dated 16 September 2013, , section 41.

\(^\text{107}\) Constitution of the Republic of Fiji, dated 16 September 2013, Section 15, section 18.

C. What penalties can be imposed on children for engaging in school strikes?

There are no offences or penalties for the act of engaging in a school strike. However, depending on their conduct, striking students could be liable for a number of offences.

a. Section 31 of the Education Act makes it an offence to maliciously disturb any school, or to insult or abuse any teacher in the presence or hearing of children assembled in school or the school grounds. This is punishable by a fine of up to FJD200 or imprisonment of up to two months. 109

b. If a striking student fails to comply with an order issued by police, the Minister or the Court, they could be guilty disobeying a lawful order under section 202 of the Crimes Act.110 The penalty for this offence is usually two years’ imprisonment (but note the restrictions under the Juveniles Act on the criminal punishment of children, discussed below).

c. If striking students assemble, they will be subject to the Public Order Act (1969) (Public Order Act). The Public Order Act requires a permit for any meeting or procession in a public place.111 Any person who participates in a public meeting or procession for which no permit has been issued, that is in violation of a permit condition or that has been prohibited by the Minister is guilty of an offence punishable by a fine of up to FJD10,000, imprisonment of up to five years, or both.112 Furthermore, any person who organises, assists in organising or incites participation in an unlawful assembly is guilty of an offence punishable by the same penalty.113 Finally, any person who, in any public place or at any meeting uses threatening, abusive or insulting words or behaves with intent to provoke a breach of the peace, or fails to comply with a police order to disperse or maintain order is guilty of an offence punishable by up to three years’ imprisonment, a fine of up to FJD5,000, or both.114

In respect of children, the above penalties (and others throughout this document) are regulated by the Juveniles Act (1973) (Juveniles Act), which regulates the criminal punishment of children.115 It distinguishes between “children”, who are defined as persons who have not reached the age of 14, and “young persons”, who are defined as persons who have reached the age of 14 but are not yet 17.116 Section 29 of the Juveniles Act provides that no child under the age of 10 can be guilty of any offence, while a child between 10 and 12

111 Public Order Act (1969), section 8(1).
112 Public Order Act (1969), section 10(1).
113 Public Order Act (1969), section 10(2).
114 Public Order Act (1969), section 14
115 The Act can be viewed here: https://www.laws.gov.fj/Acts/DisplayAct/2415
116 Juveniles Act (1973), section 2.
is not criminally responsible for an act or omission, unless it is proved that at the time of doing
the act or making the omission he or she had the capacity to know that he or she ought not
do the act or make the omission.\textsuperscript{117} Similar provisions regarding the criminal responsibility of
children exist in the Crimes Act at sections 26 and 27 respectively.\textsuperscript{118}

Section 30 of the Juveniles Act places restrictions on the imprisonment of children. A child
may not be imprisoned for any offence.\textsuperscript{119} A young person may not be imprisoned for an
offence, or committed to prison in default of payment of a fine, damages or costs, unless
the court certifies that the young person is of so unruly a character that he or she cannot be
detained in an approved institution, or is of so depraved a character that he or she is not fit to
be detained.\textsuperscript{120} A young person may not be imprisoned for more than two years.\textsuperscript{121}

**Freedom of expression**

**A. How is children’s right to freedom of expression protected in national law? Are there any protections within the national constitution, legislation or developed through case law?**

Section 17 of the Constitution provides that every person has the right to freedom of
speech, expression, thought, opinion and publication. This expressly includes the freedom
to seek, receive and impart information, freedom of the press, freedom of imagination and
creativity and academic freedom.\textsuperscript{122} However, it expressly does not protect war propaganda,
iccitement to violence or insurrection against the Constitution or advocacy of hatred on the
basis of a prohibited ground of discrimination, or otherwise that constitutes incitement to
cause harm.\textsuperscript{123} Section 41 does not address the freedom of expression.\textsuperscript{124}

The *Human Rights and Anti-Discrimination Commission Act 2009* (HRADC Act) specifies
age as a prohibited ground of discrimination.\textsuperscript{125} The Act makes it unlawful, in specified
circumstances, to differentiate adversely against or harass any person by reason of

\textsuperscript{117} Juveniles Act (1973), section 29.
\textsuperscript{118} Crimes Act (2009), sections 26 & 27.
\textsuperscript{119} Juveniles Act (1973), section 30(1).
\textsuperscript{120} Juveniles Act (1973), section 30(2)
\textsuperscript{121} Juveniles Act (1973), section 30(3)
\textsuperscript{122} Constitution of the Republic of Fiji, dated 16 September 2013, section 17(1).
\textsuperscript{123} Constitution of the Republic of Fiji, dated 16 September 2013, section 17(2).
\textsuperscript{124} Constitution of the Republic of Fiji, dated 16 September 2013, section 41.
Civil and Political Rights

These include the provision of trade training or qualifications, membership in a trade or professional organisation, access to a public place, and access to, and participation in, education. A person who has been subject to unlawful discrimination may lodge a complaint with the HRADC, which may in turn institute proceedings for damages or other remedies on the person’s behalf.

Article 13(1) of the CRC protects the freedom of expression of children, providing that “this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice”.

B. Are there any legal limits or restrictions on the right to freedom of expression that specifically apply to children?

There are no legal limits or restrictions on this right that specifically apply to children. However, section 17 of the Constitution provides that the right to freedom of expression may be limited, to the extent that is necessary, in the interests of:

a. national security/public safety;

b. protection and maintenance of the reputation, dignity, rights or freedoms of other persons, including freedom from hate speech and the right to have defamatory reporting corrected;

c. preventing the disclosure of confidential information;

d. preventing attacks on the dignity of individuals, groups and offices in a manner likely to promote ethnic/religious conflict, discrimination or oppression;

e. maintaining the authority and independence of the judiciary;

f. imposing restrictions on the holders of public offices;

g. regulating the technical administration of telecommunications; and

h. enforcing media standards for the regulation, registration and conduct of media organisations.

Article 13(2) of the CRC permits some restrictions on children’s freedom of expression, but only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security, public order, or public health and morals.

129 Constitution of the Republic of Fiji, dated 16 September 2013, section 17(3).
Freedom of association

A. How is children’s right to freedom of association protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Section 19 of the Constitution provides that every person has the right to freedom of association. This right may be limited, to the extent that is necessary, on the basis of protecting the interests of national security/public safety, protecting the rights and freedoms of others, imposing restrictions on the holders of public offices, regulating trade unions, regulating collective bargaining processes and regulating essential services and industries in the interests of the national economy.

Section 41 of the Constitution does not address the freedom of association.

Article 15(1) of the CRC provides that the State recognises children’s rights to freedom of association.

B. Are there any legal limits or restrictions on the right to association that specifically apply to children?

There are no legal limits or restrictions on this right that specifically apply to children. As discussed above, it is unlawful to discriminate by reason of a person’s age in relation to membership in a trade or professional association.

Article 15(2) of the CRC prohibits restrictions on children’s rights to freedom of association, “other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

130 Constitution of the Republic of Fiji, dated 16 September 2013, section 19(1).
131 Constitution of the Republic of Fiji, dated 16 September 2013, section 19(2).
Access to information

A. How is children’s right to access information protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Section 25 of the Constitution provides that every person has the right to access information held by any public office as well as information held by another person that is required for the exercise or protection of any legal right.\(^{132}\) Information held by a public agency may be requested under the Information Act (2018).\(^{133}\)

Section 41 of the Constitution does not address access to information.

Article 17 of the CRC provides that the State “shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”.

B. Are there any legal limits or restrictions on the right to access information that apply specifically to children?

There are no legal limits or restrictions on this right that apply specifically to children. However, it is relevant to note that the Online Safety Act (2018) makes it an offence to post an electronic communication that causes harm to an individual, whether intentionally or otherwise.\(^{134}\) This is punishable by a fine of up to FJD20,000 or up to five years’ imprisonment.\(^{135}\) Where the aggrieved individual is a child, their parent, legal guardian or school principal may bring proceedings under the Act on their behalf.\(^{136}\) In determining whether posting that electronic communication would cause harm to an individual, the court may take into account any factor it considers relevant, including the age and characteristics

\(^{132}\) Constitution of the Republic of Fiji, dated 16 September 2013, section 25(1).


\(^{135}\) Online Safety Act (2018), section 24(2).

\(^{136}\) Online Safety Act (2018), section 17(b) & (d).
of the individual concerned.137

C. Does the national curriculum for schools include environmental education?

It is not clear whether the national curriculum for schools includes environmental education, as the curriculum is not publicly available.

137 Online Safety Act (2018), section 24(2)(b)