



STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Report on the Review of the Child Justice Bill 2024 (Bill No. 4 of 2024)



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CHAIRPERSON'S FOREWORD

The Standing Committee on Justice, Law and Human Rights was referred the Child Justice Bill 2024 in May 2024, to scrutinise and to return a report of its findings to Parliament.

The Child Justice Bill aims to establish a comprehensive, specialised criminal justice system for children and for related matter. At the commencement of the review, the Committee made preliminary deliberations on the Clauses of the Bill and noted that the Child Justice Bill 2024 ('Bill') seeks to repeal the provisions of the Juveniles Act 1973 that deals with children in conflict with the law (formerly known as juveniles). The Bill provides a more comprehensive framework for the special treatment of children at all stages of the child justice process, from the point of their initial contact with the police through to trial, rehabilitation and reintegration into the community and to their families.

Amongst the key changes to the Bill are the new provisions which specifies the following;

- Replaces the term “juvenile” with “child in conflict with the law” as the stigma attached to the use of the term “juvenile” is detrimental to the rehabilitation of an offender who is a child;
- introduces new objectives and guiding principles that require a balanced approach, ensuring that children in conflict with the law are held accountable for their actions as well as supporting their rehabilitation and reintegration into society;
- Raises the minimum age of criminal responsibility from 10 years to 14 years, and clarifies that special juvenile justice procedures apply to all children under the age of 18 at the time the offence was committed.
- A more detailed statement of the role of the Ministry of Women, Children and Social Protection's (MoWCSP) Department of Children and new specialised Child Justice Officers (formerly probation officers) in developing rehabilitation and reintegration services for children, in partnership with other government agencies, NGOs, faith-based organisations and traditional and community leaders.
- New provisions on police conduct toward children, incorporating the Fiji Police Force Standard Operating Procedures for Children in Contact with the Law.
- New provisions on diversion, allowing the police or prosecutor to deal with non serious offences committed by children through cautions, a diversion plan, or referral to a restorative justice process (“community conference”), without sending the child to court.
- New sections on bail for children, in line with the Bail Act but with special considerations for children to reduce the use of remand.
- New provisions on police conduct toward children, incorporating the Fiji Police Force Standard Operating Procedures for Children in Contact with the Law.
- New option for Child Justice Officers to step in earlier and start assisting children at the arrest stage, not just when they get to court.
- The Juvenile Court has been renamed the Child Justice Court, and more detailed guidance is provided on child-friendly court procedures.
- New section requiring Child Justice Officers to prepare social inquiry reports about the child's background and circumstances, and more detailed guidance on the contents of those report and deadline for submitting them.

As part of the review the Committee conducted public consultation in various communities and invitation to the public to provide written submissions. The majority of the public that had participated in the public consultation supported and commended the introduction of the Bill. However, there were some suggestions on how to make further improvements.

Consideration was also given to the impact of the Bill on Fiji's efforts in meeting its targets of the Sustainable Development Goals (SDG). It was encouraging to note that the Bill also ensures Fiji's compliance with our obligations under Article 40 of the Convention on Right of Children (CRC), in relation to the administration of juvenile justice system.

The Committee acknowledges the concerns raised by the submittees and has deliberated at length on concerns raised. The Committee is confident that all issues raised have been addressed and that the Bill is sufficient as it is with some minor amendments. The Committee also felt that a few recommendations need to be considered in order to fully implement this Bill. These are also provided in this Report.

I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input; Hon. Iliesa Vanawalu (Deputy Chairperson), Hon. Lenora Qereqeretabua, Hon. Jone Usamate, and Hon. Mosese Bilitavu. I would also like to acknowledge the former and alternate members of the Committee Hon. Faiyaz Koya, Hon. Ratu Josia Niudamu, Vilame Naupoto, Hon. Taito Rokomatu and Hon. Sashi Kiran who also contributed immensely to the deliberation of the Bill.

I, on behalf of the Committee, commend the *Child Justice Bill (Bill No. 4 of 2024)* to the Parliament and seek support of all the members of this August house for the Bill.



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HON. RATU RAKUITA VAKALALABURE
CHAIRPERSON

COMMITTEE COMPOSITION

The Committee is made up of Members of both the Government and Opposition Members. Members of the Standing Committee are as follows;



Hon. Ratu Rakuita Vakalalabure
(Chairperson)



Hon. Iliesa Vanawalu
(Deputy Chairperson)



Hon. Mosese Bulitavu
(Member)



Hon. Lenora Qereqeretabua
(Member)



Hon. Jone Usamate
(Member)

Committee Secretariat Team

Supporting the Committee in its work is a group of dedicated Parliament Officers who make-up the Committee Secretariat, and are appointed and delegated by the Secretary-General to Parliament pursuant to Standing Order 15 (3)(i). The Secretariat team is made of the following Parliament officers:

- Mr. Jackson Cakacaka – Senior Committee Clerk
- Ms. Alumita Cabealawa – Deputy Committee Assistant

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1.0 INTRODUCTION

1.1 Background

The Standing Committee on Justice, Law and Human Rights, referred to as the ("**Committee**"), was assigned the Child Justice Bill 2024 for review on May, 2024. The Bill was referred to the Committee in accordance with SO 51(2), which tasked the Committee with the examination of the Bill and the responsibility to report on its findings in a subsequent Parliament Sitting.

1.2 Procedure and Program

The Committee has conducted a thorough review of the Child Justice Bill 2024 (Bill No. 4 of 2024). This report outlines the findings, observations, and recommendations of the Committee regarding the Bill, which aims to establish a specialized criminal justice for children.

The Committee read through the Bill and did its own deliberation of the Clauses in the Bill. The Committee called for submissions from the public and other interested stakeholders by placing advertisements through the local newspapers on 15 June 2024.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

1.3 Committee Remit

The Standing Committee on Justice, Law, and Human Rights, in accordance with Standing Order 109 of Parliament's Standing Orders, is tasked with several duties. As outlined in Standing Order 110, these include scrutinizing each Bill referred to it by Parliament and review any subordinate legislation presented in Parliament that falls under its purview.

2.0 CHILD JUSTICE BILL (BILL NO. 4) 2024.

2.1 Introduction

The Child Justice Bill replaces the sections of the Juveniles Act (Cap 56) dealing with children in conflict with the law (i.e. children accused of committing a crime). It provides a more comprehensive framework for the special treatment of children at all stages of the criminal justice process, from the point of their initial contact with the police through to trial, rehabilitation and reintegration. The Juveniles Act provision on children in need of protection have been incorporated into a separate Child Care and Protection Bill.

Juveniles Act 1974

The Juveniles Act was first introduced in 1974 and has not been substantially revised since that time. It is now quite outdated and doesn't fully reflect advances Fiji has made in developing the juvenile justice system. In particular, the Juveniles Act is based on the inherited (and now outdated) British approach to juvenile justice that effectively applied the same approach to both juvenile delinquents and children in need of protection, with an emphasis on the power of magistrates to remove neglected, delinquent or "beyond control" children from their parents, and to place them in specialised rehabilitation homes until they turned 18; The Act does not include modern and effective global strategies, such as diversion and restorative justice and Lacks a clear mandate for the Social Welfare Department in leading and coordinating rehabilitation and reintegration services for children in conflict with the law. In fact the Act focuses mainly on the Juvenile Court, with less detailed guidance on arrest, investigation and police conduct towards children and does not guarantee children the right to a lawyer. The Juveniles Act further lacks a statement of guiding principles for sentencing children, and by international standards the sentencing options are quite limited. Additionally, the Act does not acknowledge the important role that parents, extended family, traditional and community leaders, faith-based organisations and NGOs can play in children's rehabilitation and reintegration. More importantly, the Act is not in line with international standards and best practices in which the UN Committee on the Rights of the Child has found that the Juveniles Act does not meet Fiji's obligations under Article 40 of the Convention on the Rights of the Child (CRC).

The Child Justice Bill

The Child Justice Bill therefore legislate current best practices in the handling of children in conflict with the law whereby the principles and approaches for preventing and responding to juvenile crime is more clearly defined. In addition to this, the Bill also encapsulates the following;

- A more detailed guidance on child-sensitive procedures for handling children at all stages of the criminal justice process;
- A stronger legal framework for the development of rehabilitation and reintegration services for children and their families under the leadership of the MoWCSP's new Department of Children, through a collaborative approach with other government agencies, NGOs, faith-based groups, and community leaders; and

- Compliance with Fiji’s commitments under the UN Convention on the Rights of the Child, and to better align the law with international standards and best practices.

In order to clearly signal that children in conflict with the law must be treated differently from adults, the Bill includes a detailed statement of guiding principles. This says that the government’s approach to juvenile justice will be guided by the following;

- Children are entitled to special procedural protections at all stages of the criminal proceedings, and must be treated in a manner appropriate to their age;
- The best interests of the child should be a primary consideration;
- Children should have the opportunity to participate meaningfully in the proceedings;
- Alternatives such as diversion should be used wherever appropriate;
- All procedures should be conducted and completed without unreasonable delay;
- Parents or other appropriate adults should be able to assist children at all stages of the proceedings;
- Any action taken against the child must be proportionate to the circumstances of the child and the nature and seriousness of the offence;
- Measures taken against a child convicted of an offence should seek to hold the child accountable for his or her actions; reinforce respect for societal values, customs and traditions; encourage the repair of harm done to victims and the community; and take the least restrictive form that is appropriate in the circumstances;
- Deprivation of liberty should be used only as a last resort, and for the shortest appropriate period.
- The Bill also provides guidance on special procedures for handling children in conflict with the law at all stages of the process.

Diversion

The Child Justice Bill introduces new provisions on ‘Diversion’, based on the existing international best practices. “Diversion” refers to the process that aims to keep children out of the formal criminal justice system. ‘Diversion’ as recognized as better for long term development of the child, rather than formal processing or incarceration of a child in conflict with the law. Instead of formally charging the child, the offense can be resolved by:

- An informal “on the spot” warning with no further action;
- A formal warning with advice, in the presence of the child’s parents; or
- Requiring the child to complete an agreed diversion plan, with one or more conditions such as:
 - Apologising to the victim, either verbally or in writing;
 - Attending school regularly;
 - Participating in a counselling, rehabilitation, or vocational training programme approved by the Director;
 - Being supervised and guided by an adult or appropriate support person;
 - Making restitution, including return of any item taken or repair of any damage done;

- With the consent of the victim, providing some service to the victim to make amends for the harm caused;
- Doing up to 50 hours of community service work.

The police and public prosecutor can decide on the diversion plan with the child themselves, or refer the child to a “community conference” to develop the plan. A “community conference” is a restorative justice process where the child, his/her parents, the victim, extended family members, traditional, faith-based organization, civil society and community leaders to sit down together to discuss the child’s behaviour and agree on what must be done to hold the child accountable and make amends to the victim. If the child successfully completes the diversion plan, then no further action will be taken against the child and any criminal charge that was laid will be withdrawn. If the child doesn’t comply with the plan, then s/he may be subject to prosecution for the offence. The decision about whether to divert a child will be made by the police or the public prosecutor. The Bill says that both the police and the public prosecutors can divert a child who has committed a “summary offence”. Public prosecutors have discretion to divert most indictable offences, but not very serious crimes such as murder and manslaughter. However, just because a crime can be diverted, doesn’t mean it always will be. The police and public prosecutor will make a decision on a case-by-case basis.

Child in conflict with the law – below the age of 14 years

Clause 5(3) states that a child who is under the age of 14 years at the time of the alleged commission of an offence must not be held criminally responsible for the offence.

While there are no provision in the Bill to deal with children under 14 years who commit criminal offence, they may be directed to the Department of Children as a child in need of care and protection and dealt with under the provisions of Child Care and Protection Bill.

Children and the Police

The Bill includes a new section on children and the police providing detailed guidance on special procedures for the arrest, investigation, interrogation and detention of children. This includes the following requirements:

- The police must explain the allegations against the child and the child’s rights in simple language appropriate to the child’s age;
- Minimum use of force and restraint;
- The child’s parent, guardian or other appropriate adult must be notified as soon as possible;
- The Child Justice Officer must be notified within 24 hours;
- To the extent practicable, a child must be questioned by a police officer who has received special training;
- Police can only question a child with a parent, lawyer, Child Justice Officer or some other appropriate adult present;
- Police must not use vulgar, profane or abusing language, or act in a way that embarrasses, shames or humiliates the child;
- Police must ensure, to the extent possible, that children are kept separate from adults and protected from harm whilst in police custody.

The Child Justice Bill also provides the option for Child Justice Officers (probation officers / welfare officers) to be more involved to assist the child at the early stages of the criminal process. Child Justice Officers may:

- Enter any police station, lock-up or any other place of detention to check on a child;
- Be present during the police questioning or interrogation of a child;
- Where requested, make recommendations to the investigating officer or prosecutor with respect to the appropriateness and availability of diversion and possible release of the child into the care of a parent or an appropriate adult; and
- Where requested, make recommendations to the court with respect to releasing the child pending trial.

This allows scope for the Department of Children to gradually extend its involvement in and support to children at the earlier stages of the criminal justice process.

Child Justice Court

The Child Justice Bill renames the Juvenile Court the “Child Justice Court.” As is the case under the Juveniles Act, the Child Justice Court has exclusive jurisdiction to hear all crimes committed by children other than murder and manslaughter. The Bill includes guidance on measure the courts should take to be more child sensitive and to maximise the child’s understanding of and participation in the process:

- The Child Justice Court must sit at a different time or at a different place from the usual criminal courts;
- Where possible, the courtroom furniture should be re-arranged to put the child at ease;
- The court must be closed to the public;
- At the child’s first appearance, the court must explain the charges in simple language and make sure the child understands his/her rights, including the right to a lawyer and the availability of free legal aid.
- The court proceedings must, with due regard to the child’s procedural rights, be conducted in an informal manner with limited legal technicality.
- The court must ensure that the proceedings are fair and that questions put to the child are not unduly hostile, and are phrased in language appropriate to the age and understanding of the child.
- The procedures of the court, and any order made, must be explained to the child in simple language.
- The court must conclude all trials as speedily as possible and must ensure that adjournments are limited in number and duration.

The Bill also includes a statement of guiding principles and factors to consider when deciding what order to impose on a child. These emphasise that children must be held accountable for their actions, but in a way that promotes their rehabilitation and reintegration not just punishment. Wherever appropriate, non-custodial options should be used instead of a custodial order.

The Bill provides a broader range of sentencing options, giving the court more flexibility to tailor the sentence to the child’s individual circumstances and to use the order (or combination of orders) most likely to prevent the child from re-offending.

2.2 Objective of the Bill

The objective of the Bill, which aligns with the government's intention to provide for a special criminal justice system for children:

- (a) establish the basis for the administration of a child justice system designed to reduce offending and re-offending by children in conflict with the law and contribute to safer communities by holding children accountable for their actions, promoting children's rehabilitation and encouraging them to become law-abiding and productive citizens;
- (b) provide for the special treatment of children at all stages of the criminal proceedings;
- (c) prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, diversionary alternatives;
- (d) promote involvement of families, traditional or community leaders, civil society and community members in the rehabilitation and reintegration of children in conflict with the law; and
- (e) promote co-operation between government departments and the civil society to ensure an integrated and holistic approach in the implementation of this Act.

3.0 COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL

3.1 Initial Reading of the Bill and Deliberation by the Committee

The Committee commenced its analysis of the Bill, reading through it, Clause by Clause. From this initial reading, it was noted that the Child Justice Bill 2024 ('Bill') seeks to repeal the Juveniles Act 1974 (Act) that was endorsed by Government in in 1973 as the guiding legislation to deal with juvenile that come into conflict with the law. It was noted that the *Juveniles Act 1973* adopts an old British approach which is now seen as archaic, to treat children who are in need of care the same as children who have offended against the law. This law is now obsolete and indeed frowned upon in England but is still in place in Fiji.

The Committee had extensive discussions on the provisions of the Bill and resolved that it be prudent to firstly hear the views of the public specifically the stakeholders on this very important piece of proposed legislation. This public consultation would then allow the Committee to gauge the public's perspective on the Bill before deliberating further,

whilst also bearing in mind the requirements as set down by Parliament in referring the Bill to the Committee.

Based on the initial reading of the clauses, the Committee identified a few grammatical errors that were sent to the drafters for consideration and amendments. These amendments were sent back to the Committee for affirmation that the changes were correctly included.

3.2 Bill Summary

By way of consensus, the Committee agreed that it would be prudent to include the necessary issues that the proposed law intends to address. This would readily give the reader of this Report with the aforementioned information regarding the Bill, which is summarized below;

Clause 1: This clause provides for the short title and commencement. If passed by Parliament, the new legislation comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Clause 2: This clause provides for the interpretation of terms used throughout the Bill.

Clause 3: This clause provides for the objectives of the Bill which includes the establishment of a child justice system that is designed to reduce offending and re-offending while holding children in conflict with the law accountable for their actions, providing for specialised treatment of children at all stages of criminal proceedings, preventing children from being exposed to the adverse effects of the formal criminal justice system and promoting involvement of families and the wider community in the rehabilitation and reintegration of children.

Clause 4: This clause provides for the principles that a court or a person exercising a function under the Bill must be guided by when performing any function under the Bill. These include ensuring that the best interests of the child remains the primary consideration in action taken in relation to children, that children must be provided with the opportunity to participate in proceedings that will affect them, expediting procedures taken in relation to children and so forth.

Clause 5: This clause provides for the application of the Bill and that children under the age of 14 years cannot be held criminally liable for the commission of an offence.

Clause 6: This clause makes provision for the determination of a person's age who is alleged to have committed an offence, and where there is doubt as to whether the person is under the age of 18 years.

Clause 7: This clause abolishes the words "conviction" and "sentence" in relation to children in conflict with the law.

Clause 8: This clause provides for the powers and duties of the Director of the Department of Children (**'Director'**) and these include encouraging a collaborative and multi-sectoral approach in the development of diversion, rehabilitation and reintegration services for children, developing training programmes for the training of child justice officers, community-based corrections officers and community volunteer supervisors. This provision also mandates the Director to monitor and assess the services provided in the Bill and provided by other organisations, groups and individuals.

Clause 9: This clause makes provisions to allow for the Director to delegate his or her powers to any officer of the Department of Children and to also revoke this delegation of power at any time such delegation revocation must be made in writing.

Clause 10: This clause provides for the duties of child justice officers who will be empowered to *inter alia* conduct timely assessments of a child's background and circumstances, provide advice and recommendations where requested in relation to diversion, bail and orders for the finding of guilt of a child.

Clause 11: This clause establishes the Register of Approved Child Justice Agencies and Organisations which is to be maintained and kept by the Director. This provision also provides for the process of registration of approved agencies and the circumstances that would necessitate the removal of the mentioned agencies.

Clause 12: This clause provides for the objectives of diversion which in principle is to deal with children outside the formal criminal justice system.

Clause 13: This clause makes provisions for children who may be considered for diversion and the persons who may divert a child. The provision also provides the circumstances where diversion may not be considered such as where a child denies participation or involvement in the commission of an offence or where the child expressly wishes to have his or her matter dealt with by a court.

Clause 14: This clause makes provisions for diversion plans and that a diversion plan must be agreed to and signed by the child and his or her parents, be appropriate to the age and maturity of the child amongst other things be proportionate to the offence. The provision also provides that diversion plans may include conditions such as the issuance of an oral or written apology, regular attendance at school, supervision by an appropriate adult and so forth.

Clause 15: This clause allows for the referral to a community conference for the purpose of developing a diversion plan and includes the classes of people who may be present once a community conference is covered.

Clause 16: This clause provides for the effect of a diversion plan, that is, if successfully completed, no other action will be taken against the child in respect of the offence to which the diversion plan relates.

Clause 17: This clause makes provisions as to how a child under the age of criminal responsibility is to be dealt with, if the police suspect that the child has committed an offence. Under this provision, a police officer must hand over the child to his or her

family members and notify a child welfare officer that the child may be in need of care and protection.

Clause 18: This clause mandates that before initiating criminal proceedings against a child for a summary offence, a police officer may consider other prescribed alternatives such as the issuance of informal or formal warnings.

Clause 19: This clause provides for the procedures of arrest in relation to a child which include advising a child that he or she is under arrest, explaining to the child the nature of allegations brought against him or her and the availability of free legal aid.

Clause 20: This clause provides for the procedure to be followed where a police officer is not certain as to the age of a person suspected of having committed an offence but has reasons to believe that the person may be under the age of 18 years.

Clause 21: This clause provides that where a child has been arrested police, the police must immediately notify the child's parents or other person having care of the child, and if these persons cannot be located, the notification must be made to an appropriate adult nominated by the child or a child justice officer.

Clause 22: This clause also mandates the police, when arresting a child, to notify the child justice officer in whose jurisdiction the child was arrested, of the arrest.

Clause 23: This clause provides for the roles of the child justice officers upon the arrest or detention of a child.

Clause 24: This clause outlines the procedures to be followed when questioning and taking statements from a child in conflict with the law and provides that to the extent practicable, the child must be questioned by a police officer who has received special training in child justice matters.

Clause 25: This clause contains provisions relating to the conduct that must be followed by police in relation to children in conflict with the law.

Clause 26: This clause provides that the police must not take fingerprints or photographs of a child while in custody except through a court order.

Clause 27: This clause provides for the procedures relating to the release of a child who has been arrested without a warrant for any offence other than murder or attempted murder and who cannot be brought before a court. Subject to certain conditions, such as the likelihood of the child attending his or her next court dates, the police officer must release the child into the care and custody of a parent or other appropriate adult.

Clause 28: This clause makes provisions for the procedures to be followed where a child cannot be released in accordance with clause 27 of the Bill.

Clause 29: This clause provides provision relating to children in police custody, that is, they must be kept separate from adult detainees at all times, they must be treated in a manner that takes into account their age, gender and any special needs and they must be

permitted to privately communicate with their parents, family, legal representative and a child welfare officer.

Clause 30: This clause provides for the presumption in favour a child's release and the factors that a court must take into account before releasing a child on bail.

Clause 31: This clause provides conditions in relation to a child who has been released in accordance with clause 30 of the Bill.

Clause 32: This clause makes provisions relating to the placement of children in approved remand homes.

Clause 33: This clause mandates that where a child has been remanded in custody, the court must take such steps as are reasonably practicable to expedite the completion of the proceedings so as to minimise the length of time the child must spend in custody.

Clause 34: This clause provides for the establishment of Child Justice Courts and other matters relevant to it.

Clause 35: This clause allows for the Chief Justice to make rules of court to regulate the practice and procedures under the Bill.

Clause 36: This clause provides for the jurisdiction of Child Justice Courts.

Clause 37: This clause provides that where a child has been jointly charged with an adult, they must be tried separately unless it is in the interests of justice to join the trials.

Clause 38: This clause provides for the procedures that a court must follow upon a child's first appearance and during such inquiry, the same must be conducted informally by asking questions to the child, his or her parents, the public prosecutor or any other person the court deems relevant.

Clause 39: This clause provides that a court may, on being satisfied that the child acknowledges responsibility for the offence and without recording a conviction, adjourn proceedings for a period of up to 6 months and release the child upon the child giving an undertaking to comply with specified conditions. The court may order that a community conference to provide recommendations to the court.

Clause 40: This clause provides that if it appears during the course of any proceedings under the Bill that the child is a child in need of care and protection as defined under the Child Care and Protection Act 2024 and that it is desirable to deal with the child under the Child Care and Protection Act 2024, the court may suspend the proceedings and order that the matter be referred to the Family Division for a child protection hearing.

Clause 41: This clause makes provisions as to how courts must conduct proceedings where a child has been charged with an offence, this includes conducting proceedings with as little formality as the case permits, ensuring that proceedings are fair and that proceedings are conducted in a manner that is appropriate to the understanding of the child.

Clause 42: This clause provides that the presence of a child's parent during court proceedings may be dispensed with.

Clause 43: This clause provides that every child is entitled, at all stages of proceedings, to have legal representation and if a child appears in a court without legal representation, the court must advise the child of his or her right to obtain counsel and adjourn the matter to allow the child to do so.

Clause 44: This clause provides that the trials of a child charged with an offence must be concluded expeditiously and that adjournments must be limited in number and duration.

Clause 45: This clause provides that an appeal against conviction or sentence must be governed by the Criminal Procedure Act 2009 and any other written law, with necessary modifications.

Clause 46: This clause provides that any court that has found a child guilty of an offence must impose an order on the child in accordance Part 7.

Clause 47: This clause provides for the purpose and principles of imposing an order under Part 7. It also provides for the considerations that must be taken into account when determining the type of order to impose on a child.

Clause 48: This clause makes provisions relating to social inquiry reports and that this must be completed within 21 days. The provision also mandates the type of information that must be contained in a social enquiry report and these include information about the maturity, background and behaviour of the child, his or her background and home environment, the views of a victim, any plans by the child's family to address offending behaviour and so forth. The provision also allows for questioning of the child justice officer on the contents of the social inquiry report he or she compiled.

Clause 49: This clause makes provisions to allow for the convening of a community conference for the purpose of making recommendations to the court on an appropriate order to be imposed on a child. Upon receipt of the recommendations from a community conference, a court may confirm the recommendations or amend them. If the court does not agree with such recommendations, this must and recorded in the record of proceedings along with the reasons for deviating from the recommendations.

Clause 50: This clause provides for the methods of dealing with children who have been found guilty of an offence and this includes the dismissal of a charge, discharge of a child, reprimanding a child, issuing a good behaviour order, counselling, issuing a guidance order and so forth.

Clause 51: This clause provides that where the court issues an order against a child in conflict with the law for an offence, he or she is entitled to an explanation of the order.

Clause 52: This clause provides the limits in instances where the court issues a community work order on a child in conflict with the law.

Clause 53: This clause provides for the conditions relating to community-based correction orders or intensive community-based corrections order.

Clause 54: This clause provides for the restrictions on the use of custodial orders and such order may only be issued if a court has determined the custodial order is justified because of the seriousness of the offence or the previous failure of the child to respond to a non-custodial order.

Clause 55: This clause makes provisions relating to the placement of children subject to a custodial order. For instance, no child must be subject to imprisonment or committed to a corrections centre for adults.

Clause 56: This clause prohibits certain forms of punishment on children such as the issuance of a fine, being subjected to corporal punishment or being ordered to a term of life imprisonment.

Clause 57: This clause provides for the purpose of custodial facilities set aside for children a such facilities must provide for the safe, fair and humane custody and supervision of children and assist in the rehabilitation and integration of children into the community as law abiding citizens.

Clause 58: This clause provides that the Minister may, by notice in the Gazette, approve any premises or a part of any premises to be a remand home or rehabilitation centre and that a child must not be detained in any institution other than a facility approved under Part 8 of the Bill.

Clause 59: This clause makes provisions relating to remand homes.

Clause 60: This clause makes provisions relating to rehabilitation centres for children Rehabilitation centres which must be used for the care, custody, rehabilitation and reintegration of a child in conflict with the law who is subject to a custody order.

Clause 61: This clause makes provisions relating to children in custody and the entitlements that a child is entitled to when remanded in a remand home or committed to a rehabilitation centre.

Clause 62: This clause provides that where a child is committed to custody for a period exceeding 2 years, the Director must cause the child to be brought before a court without delay at the end of every 2 year period from the date the order was imposed, and the court must review the order.

Clause 63: This clause provides that any child who runs away from a remand home or rehabilitation centre, or who at the expiry of any temporary leave of absence from such centre, fails to return by the due date, the child may be apprehended without a warrant and brought back to that remand home or rehabilitation centre.

Clause 64: This clause makes provisions relating to the reintegration of a child into the family or community and the actions that must be undertaken to support and promote the child's reintegration.

Clause 65: This clause places restrictions on the publication of information that has the effect of identifying a child who is dealt with under the Bill.

Clause 66: This clause makes provisions relating to the criminal record of a child. Clause 67 of the Bill provides that records in relation to a child dealt with under the Bill are considered privileged and confidential.

Clause 68: This clause provides for the Minister's powers to make regulations.

Clause 69: This clause repeals Parts 1 to 5 and 13 to 16 of the Juveniles Act 1973.

Clause 70 and 71: These clauses provide for the savings and transitional provisions, respectively.

Clause 72: This clause provides for the consequential amendments as specified in the Schedule.

3.3 In-depth Analysis of the Clauses of the Bill

The Committee then had extensive discussions on the Clauses and identified certain provisions that merit proper consideration.

These discussions resulted in the identification of a few issues, which the Committee placed as priority issues to be further discussed and deliberated on with the representatives from the Ministry and the drafters. Some of the main issues noted from these discussions are as follows:

- **Clause 6 (3):** The Committee noted that the Court must have regard to any available information to determine the age of child who is charged or alleged to have committed an offence and claims to be under the age of 18 years. The Committee further notes that there was no clear specification whether the provision of age determination is optional or compulsory.
- **Clause 12 (g):** The Committee recommended that the clause (g) be positioned at the beginning of the sub-clause as it would clearly define the purpose and objectives of '*Diversion*'.
- **Clause 13(4)(b):** The Committee noted that the wording provided as read '*the child in conflict with the law may be diverted by in the case of indictable offense, other than murder and attempted murder*' be clarified by the drafter to ensure that it does not undermine the overall purpose of '*Diversion*'. In addition, the Committee recommended that a provision should be included to allow parents or guardians to make decisions on behalf of the child.

- **Clause 14(3)(f):** The Committee recommended that any measures involving the victim must be undertaken with the victim's consent. The Committee further recommends that the monitoring be undertaken should this clause be approved to be in the Bill.
- **Clause 14 (3)(g):** The Committee noted that a specific condition of the diversion for the child is to work for up to 50 hours of community service work. It was thoroughly discussed on how does the total hours were determined and whether it complies with the child labor laws and the specification of work involved.
- **Clause 19(c):** The Committee resolved that is essential that the child is represented, and police must not question the without legal representation, which should be mandatory and not optional.
- **Clause 21:** In a case where a child is arrested by a police officer, the Committee suggested that the Child Justice Officer be present in the absence of parents and legal guardians,.
- **Clause 23 (a)(b)(c):** The Committee suggested adding the words 'can', 'must' and 'can' respectively at the beginning of sentences of sub-clauses (a), (b) and (c). The committee was of the view that the suggested words would imply a mandatory action for the child Justice Officer to undertake his/her role in a case of an arrest or detention of child.
- **Clause 26:** The Committee noted that the Police can only proceed in taking fingerprints or photographs of a child in conflict with the law through a court order. The Committee had reservation on the granting consent provided in the clause and suggested that prior approval must be obtained from parents of the child before the police, or any other entity can proceed with the necessary measures.
- **Clause 27(6):** The Committee sought clarification on the duration of arrest whilst suggest reducing to 12 hours.
- **Clause 29 (1)(c):** The Committee noted that a child who is arrested or detained at a police station or in the custody of a police officer must be provided with adequate food, water and bedding. The Committee therefore suggested that clothing be also included to fulfill the humanitarian grounds of the provision.
- **Clause 29 (1)(e):** The Committee suggested that the word '*without delay*' be replaced with 'immediately' to allow the child in police custody to communicate with his or her parents, family members or other appropriate adults.

- **Clause 34:** The Committee noted that the Ministry will continue to use the magistrate court until such time a special court system will be established to deal with child offenders.
- **Clause 65(2):** The Committee noted that the offence imposed to person(s) publicizing or make public information that has an effect of identifying a child is too lenient and suggest a minimum of 2 years imprisonment as a penalty. The penalty would prevent individuals from publicizing information and at the same time protects the identity of the child in conflict with the law.

The Committee was concerned on the lack of appropriate facilities for child placements and this was also provided to the Ministry for clarification. Additionally, the Committee noted that there was an urgent need for child justice and protection measures, emphasizing on the importance of consultation with the Minister for Education regarding facilities for continued education in incarceration.

Following discussion with the Ministry responsible, it was suggested that consideration be given to the ‘No Drop’ policy to a child in conflict with the law for cases of minor theft and other summary offences such receiving stolen property, assault, trespassing and common nuisance.

3.4 Submission received via public consultation

All the submissions received during the public consultation were considered and deliberated on extensively. The main points and issues noted from the submissions are summarised below.

Submissions received provided a range of comments and suggestions, which cover various issues pertaining to certain Clauses of the Bill.

Propose Age of Child 14 to 21

There was proposal to increase the age of teenagers from 18 to 21. This adjustment was perceived that it could reflect level of understanding and responsibility, acknowledging that individuals may not fully develop the necessary skills and judgement until a person reach 21 years of age.

Criminal Acts by Person with Disability

Concerns were raised on the intersection of criminal responsibility and disabilities which raises complex legal and ethical questions. It was noted that individuals with disabilities may face challenges in understanding the nature of their actions which can have impact in criminal cases. Legal system must carefully consider these factors to ensure that justice is served while also recognizing the circumstances of those with disabilities. Additionally, there was suggestion that children, including those with disabilities recognized as minors are incorporated within the legal frameworks and are provided with appropriate accommodations in the event of a conviction.

Strengthening Capacity for Child Justice Officers

The proposed Child Justice Bill suggest a transition from corrections officers to Child Justice Officers which reflects a shift in focus towards specialized roles in handling juvenile cases. Currently there is no remand centre for children in Lautoka, with only one facility located in Suva. In island Police post, there are custody challenges as children may be unable to identify their parents and efforts should be made to connect them with family members on the mainland, or to have Social Welfare represent their interest. Challenges were also noted by communities, particularly concerning street-dwelling children who repeatedly commit minor offences which highlights the urgency of parental involvement and responsibility.

Strengthening legal frameworks

Suggestions were made from the western division that the Department of Children should establish a legal framework that includes legal training for professionals and law enforcement to effectively manage cases involving children in conflict with the law. It was also suggested that a review of the Bill is needed to evaluate the current needs and available resources to operationalise the functions of the proposed Act. Furthermore, it was noted that the relationship between orders issued under the Child Welfare Act and the care and treatment plans outlined in the Child Care Protection Bill be clearly demarcated.

A copy of the oral and written submission can be obtained from the online Appendices of the Report, which can be accessed via the Parliament website: www.parliament.gov.fj

3.5 SDGs Impact Analysis

Consideration was placed on the SDG 5 which focuses on gender equality and SDG 16 which focuses to promote the rule of law at the national and international levels and ensure equal justice to all¹.

SDG 5.1.1 “*Legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex*”. The Committee noted that matters pertaining to gender were considered with regard to the impact and benefit on children.

SDG 16.3.2 “*Unsentenced detainees as a proportion of overall prison population*”. The Committee noted that Part 3 of the Bill addresses the above SDG indicator which in principle is to deal with children outside the formal criminal justice system.

In regard the Committee following its review of the Bill, fulfilled its obligation as prescribed under Section 110(2) of the Standing Orders of Parliament.

¹ [THE 17 GOALS | Sustainable Development \(un.org\)](https://www.un.org/sustainabledevelopment/)

3.6 Outcome of Deliberation

The pertinent issues identified during the review were discussed at length by the Members of the Committee and considered with the assistance of the drafting team, so as to ensure that all these relevant issues were appropriately addressed and that the objective of the Bill was preserved. The following key provisions were amended as follows.

Clause 6(3)(a): The Committee noted a grammatical error and recommends that the sub-clause be amended to remove ‘*the*’ before the word ‘*birth*’ to read as follows:

“the person’s birth certificate”

Clause 12(c): The Committee noted a grammatical error on clause 12(c) and recommends that the sub-clause be amended to remove ‘*are*’ before the word ‘*victim*’ to read as follows:

“encourage a child in conflict with the law to acknowledge and repair the harm caused to ~~are~~ victim and the community”

Clause 12(f): The Committee noted a grammatical error and recommends that the sub-clause be amended to separate the word ‘*lawbe*’ to read as follows:

“encourage the parents, family and traditional or community leaders of a child in conflict with the ~~lawbe~~ law be directly involved in holding the child accountable and providing opportunities for the child to correct his or her offending behaviour”

Clause 14(3)(c): The Committee recommends that the sub-clause be amended to remove ‘*or*’ before the word ‘*vocational*’ and add the words ‘*or skills*’ before the word ‘*training*’ to read as follows:

*“participation in a counselling, rehabilitation, ~~or~~ vocational *or skills* training programme approved by the Director”*

Clause 14(3)(d): The Committee suggest that an ‘adult’ may be classified as someone who is 18 years and still in need of proper care which can affect their ability to provide proper support to a child. On the other hand, A peer mentor who is not related to the child might unintentionally cause harm due to a lack of experience or understanding. Therefore, finding the right appropriate support person is essential to ensure the child's well-being and development. The Committee recommends that the sub-clause be amended to remove ‘*adult or peer mentor*’ and add the words ‘*support person*’. to read as follows:

*“supervision and guidance by an appropriate *support person* ~~adult or peer mentor~~”*

Clause 15(1): The Committee recommends that sub-clause be amended to include the word ‘*faith-based*’ to read as follows:

*“A person exercising authority under this Act to divert a child may convene, or cause to be convened through a child justice officer or a welfare officer or a traditional, **faith-based** or community leader, a community conference for the purpose of developing a diversion plan”*

Clause 29(e): The Committee suggest that when a child is taken into custody by a police officer it is very important that they are allowed to talk privately with their parents right away. This communication helps the child feel safe and supported during a stressful time. Parents can provide comfort and guidance which is essential for the child’s emotional well-being. Allowing this private conversation also ensures that the child understands their rights and the situation they are in. Overall immediate contact with parents is a crucial step in protecting the child’s interests which cannot be delayed. The Committee recommends that sub-clause be amended to remove the words ‘*without delay*’ before the word ‘*permitted*’ and be replaced by ‘*immediately*’ to read as follows:

*“permitted **immediately** to communicate in private with”*

Clause 29(1)(e)(i): As per suggestion provided under Clause 14(3)(d), the Committee recommends that sub-clause be amended to remove the words ‘*adult*’ and be replaced by ‘*support person*’ to read as follows:

*“his or her parents, family members or other appropriate **support person**”*

Clause 29(2): The Committee noted a grammatical error and recommends that sub- be amended to add the word ‘*custody*’ before the word ‘*police*’ to read as follows:

*“The Commissioner of Police must make arrangements, as far as practicable, that any child, while in police **custody** or while being conveyed to or from any court is prevented from associating with an adult who is charged with an offence other than an offence with which the child is jointly charged.”*

Clause 30(2)(b): The Committee noted a grammatical error and recommends that sub-clause be amended ‘*be*’ before the word ‘*would*’ to read as follows:

*“there is a substantial risk that the child may be a danger to any other person if he or she **is** released”*

Clause 30(5): The Committee noted a grammatical error and recommends that sub-clause be amended to remove ‘*be*’ before the word ‘*would*’ to read as follows:

“The court must release a child without sureties and without deposit of money or other security, unless the court is satisfied it would ~~be~~ not be appropriate in all the circumstances to do so.”

Clause 47(3)(h): For consistency with clause 15, the Committee recommends that sub-clause be amended to add ‘*faith-base*’ after the word ‘*traditional*’ to read as follows:

“any proposals that the child, his or her parents or a traditional, ~~faith-based~~ or community leader may put forward for the future improvement of the child, including the outcome of any community conference arranged in accordance with section 49”

Clause 48(5): for consistency with heading of the clause, the Committee recommends that sub-clause be amended to add ‘*report*’ after the word ‘*inquiry*’ to read as follows:

“If a social inquiry ~~report~~ is submitted to the court in writing, the court must cause a copy of the report to be given to-”

Clause 49(2): For consistency with clause 15, the Committee recommends that sub-clause be amended to add ‘*faith-base*’ after the word ‘*traditional*’ to read as follows:

“Where no child justice officer is available, the court may request that a traditional, ~~faith-base~~ or community leader convene a community conference”

Clause 53(1)(i): For consistency with clause 14(3)(d), the Committee recommends that the sub-clause be amended to remove ‘*adult*’ before the word ‘*or appropriate*’ and be replaced by ‘*support person*’ to read as follows:

“that the child reside with a parent or other appropriate ~~adult~~ ~~adult~~ ~~adult~~ support person who agrees to take responsibility for the care and supervision of the child”

Clause 63(3): The Committee recommends that sub-clause be amended to raise the penalty fine from \$5,000 to \$10,000 to read as follows:

“A person commits a summary offence and is liable on conviction to a fine not exceeding ~~\$5,000~~ \$10,000 or imprisonment for a term not exceeding 2 years or both, if the person—”

Clause 65(2): The Committee suggest that raising a penalty fine for the publication of children’s images is justified for both individuals and directors of organizations. Such a measure helps protect the privacy and safety of children in a world where their images can be easily shared and misused. By increasing the financial consequences for violations sends a strong message that society values the well-being of children. Individuals and organizations must understand the seriousness of this issue and the potential harm that can come from careless publication. This change will encourage greater responsibility and accountability for those who handle children’s images.

The Committee recommends that sub-clause 65(2) be amended to remove *of the words ‘ to a fine not exceeding to ’* and amending sub-clauses(a) and (b) as follows;

“A person who contravenes this section commits a summary offence and is liable on conviction ~~to a fine not exceeding~~—

(a) in the case of an individual, a fine not exceeding ~~\$5,000~~\$10,000 or imprisonment for a term not exceeding 3 years or both; or

(b) in the case of a body corporate, for a director, to a fine not exceeding \$15,000 or imprisonment for a term not exceeding 2 years or both”.

4.0 RECOMMENDATIONS

The Committee would like to make a few specific recommendations for the successful implementation of the Bill.

Capacity Building

- The Committee notes that Child Justice Officers will play a crucial role in protecting the rights and well-being of children involved in the Justice System. It is recommended that proper training be conducted to ensure that child justice officers are equipped with the knowledge and skills needed to support children effectively and promote justice. Through training, staff will learn how to handle sensitive situations with care and understanding and help them make better decisions when working with children and their families.

Translation of Bill

- The Committee recommends the translation of the Bill as it would be crucial for communities to fully understand its implications. The Committee is of the view that when the Bill is translated into local languages, more people can access and comprehend its contents and eventually advocate for the best interest of children ensuring that they benefit from the protections and provisions outlined in the legislation.

Adequate Budget

- The Committee recommends an adequate budget to the ministry for the successful implementation of the Bill. The proposed legislation aims to improve the treatment of children within the Justice System ensuring their rights are respected and protected. Sufficient funding will enable the Ministry to establish necessary programs for staff and create friendly facilities for children. Moreover, a well-planned budget will create a more supportive environment for vulnerable children in our society.

5.0 CONCLUSION

As highlighted above in its deliberations, the Committee has conducted extensive public consultations and consulted independent legal experts in the Solicitor-General's Office for the purpose of improving the current draft of the Bill.

At the conclusion of the review, the Committee believes the Bill in its current amendments is sufficient in fully realising its objectives.

The Committee through this report commends the *Child Justice Bill (Bill No. 4 of 2024)* to the Parliament.

MEMBERS SIGNATURE


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HON. RATU RAKUITA VAKALALABURE


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HON. ILIESA VANAWALU


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HON. LENORA QEREQERETABUA


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HON. JONE USAMATE


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HON. MOSESE BULITAVU

Date: 02/12/24