

**Migration Review Tribunal  
AUSTRALIA**

**MRT RESEARCH RESPONSE**

**Research Response Number:** FJI34895  
**Country:** Fiji  
**Date:** 21 May 2009

Keywords: Fiji – Customary adoption – Legal adoption

---

**Questions**

1. **Please provide information on customary adoption in Fiji, with any specific information about grandparents?**
2. **Please advise what the formal (legal) adoption procedures are?**
3. **Please advise whether the formal/legal procedures used or whether customary procedures are often used?**

**RESPONSE**

*Research Response FJI 31992* dated 10 July 2007 provides limited information on adoption in Fiji. Relevant sources from this response have been provided below (RRT Research & Information 2007, *Research Response FJI31992*, 10 July – Attachment 1).

1. **Please provide information on customary adoption in Fiji, with any specific information about grandparents?**

Limited information on customary adoption in Fiji was found amongst the sources consulted so information has also been included on customary adoption in the Pacific Islands.

On 1 August 2007, the State Prosecutor of the Fijian Office of the Director of Public Prosecutions provided the Tribunal with the following advice on traditional adoptions in Fiji:

I can confirm that traditional adoptions in this country are very rarely documented as there is no legislation that actually covers this process. The process itself is an informal one most commonly done within a family unit where there is a situation such as an unwanted pregnancy or a sibling is unable to have children of their own. On some occasions the adoption is preceded by traditional presentations and on some occasions there are none. These adopted children are normally given to the adoptive parents from birth or very soon thereafter. If the parents are able to, formal applications would be made subsequently to amend birth certificates so that the names of the adoptive parents would be recorded rather than those of the biological parents (Kurisaqila, Wilisoni 2007, Email 'Re Customary adoption in Fiji for information request FJI31992', 1 August – Attachment 2).

Save the Children Fiji defines "Informal Adoption" as "the movement of one child from its birth parents to another couple, usually within the same family and usually because the latter are unable to bear children of their own. This is carried out without proper adherence to laws on adoption and registration of new births." According to a 2005 report by Save the Children Fiji, "Informal adoptions are still practiced in Fiji, especially within extended families" (Save the Children Fiji 2005, *The Commercial Sexual Exploitation and Sexual Abuse of Children in Fiji: A Situational Analysis*, Internationaal Informatiecentrum en Archief voor de

Vrouwenbeweging website, p.21

[http://www.iiav.nl/epublications/2005/commercial\\_sexual\\_exploitation\\_and\\_abuse\\_of\\_children\\_in\\_Fiji.pdf](http://www.iiav.nl/epublications/2005/commercial_sexual_exploitation_and_abuse_of_children_in_Fiji.pdf) – Accessed 19 May 2009 – Attachment 3).

A report dated 11 March 2002 by the Fijian Joint Standing Committee on Justice, Law and Order and on Social Services on *The Family Law Bill 2002* states that a “submission was made that the definition of the word *adopted* does not include traditional adoption. Traditional adoption is recognised and accepted in some cultures...therefore, should be recognised in this clause.” The report states that the “Committee was however satisfied with the provision.” According to Section 2(1) of *The Family Law Act 2003*, “*adopted*, in relation to a child, means adopted under the law of any place (whether in or out of the Fiji Islands) relating to the adoption of children” (Joint Standing Committee on Justice, Law and Order and on Social Services 2002, *Report of the Joint Standing Committee on Justice, Law and Order and on Social Services on the Family Law Bill, 2002 (Bill NO. 13 of 2002)*, Parliament of Fiji Islands website, 11 March, <http://parliament.gov.fj/parliament/legislative/bills.aspx?billID=252&viewtype=reports&billnav=bill> – Accessed 21 May 2009 – Attachment 4; and *Family Law Act 2003*, Parliament of Fiji Islands website <http://parliament.gov.fj/legislative/bills.aspx?billID=252&viewtype=acts&billnav=bill> – Accessed 21 May 2009 – Attachment 5).

A book by Mere Pulea of the University of the South Pacific published in 1986 provides information on adoption in the Pacific Islands including Fiji. The relevant extracts on customary and informal adoption follow:

Legal adoptions usually involve total strangers but in the Pacific, parents of the unmarried mother or older relative will often adopt a child born out of wedlock. The position is somewhat complicated by the fact that not all adoptions are legal or statutory: there are also customary and informal adoptions.

### **Customary adoption**

Customary adoption has long been practised in most Pacific societies in a variety of forms to strengthen family and clan ties. It has also helped relatives who were unable to care for their children properly, and it has been a source of support of the childless and the aged. For practical purposes, the only drawback is that the child adopted by custom is in an inferior position to the legally adopted child where succession to land is concerned...

...In Fiji, contrary to common belief, customary adoptions are not given legal recognition. Only an adoption order granted under the Adoption of Infants Act is valid. More than a little confusion and some near tragedies have resulted. Sometimes, if the adoptive parents cannot afford the legal expenses involved they will return the child to the natural parents. A 1978 review of the Adoption of Infants Act recommended a new procedure whereby legal recognition could be given to Fijian customary adoptions.

### **...Informal adoptions**

The word ‘adoption’ is used very loosely to describe a widespread system of child care, usually within the extended family system. Children so adopted could be legitimate and range from those of near relatives to those of friends or members of the same clan. The children are in many cases staying with relatives or family friends in town while attending school or even working there, but they could just be living as part of the extended family. Their surrogate

parents normally have no legal status in relation to the child without recourse to the adoption laws or proper care proceedings. Informal adoptions amount to a family welfare service through which children are able to maintain links not only with their natural parents but also with the wider family (Pulea, Mere 1986, 'XI Adoption and Illegitimacy', *The Family, Law and Population in the Pacific Islands*, Institute of Pacific Studies, University of the South Pacific, pp.140-142 – Attachment 6).

According to the 1993 book entitled *South Pacific Islands Legal Systems*, "Although customary adoptions, without legal proceedings, are common in Fiji as elsewhere in the Pacific, such adoptions are not recognized in law. In 1978, an Adoption Review Committee recommended a new procedure, under which legal recognition could be given to Fijian customary adoption, but this recommendation has never been acted upon" (Ntomy, Michael A. (ed.) 1993, *South Pacific Islands Legal Systems*, University of Hawaii Press, Honolulu, p.63 – Attachment 7).

*The Pacific Islands – an encyclopedia* published in 2000 provides information on adoption in the Pacific Islands. The encyclopedia reports that "Adoption and fostering of children is a social institution in many Pacific societies". The encyclopedia continues:

Its purpose was to strengthen extended family ties, to enable adults to have children of the needed age and sex in their households; and in some cases, to maximize the social standing and rank of a family. An adopted child was usually referred to as a 'made child'. Adoption was almost always among kin, so that a child developed an expanded rather than a new family identity, and retained knowledge of and some degree of interaction with its natural parents.

...The predominance of unilineal systems of descent in Melanesia and Micronesia, where group membership rights were transferred through only one parent (rather than both parents, as was common in Polynesia), influenced practices of adoption in the case of orphaned children; ideally such children were adopted by relatives of the parent from whom they inherited rights. ...Generally the rights and status of adopted children were little different to those of children raised by their natural parents, since adoption was usually amongst kin (Lal, Brij V. & Fortune, Kate (eds.) 2000, *The Pacific Islands – an encyclopedia*, University of Hawaii Press, Honolulu, p.414 – Attachment 8).

Lamont Lindstrom, Professor of Anthropology at the University of Tulsa writes on social relations in the Pacific Islands in the 1999 book entitled *The Pacific Islands – Environment & Society*. According to Lindstrom, "adoption and fosterage are common in almost all Pacific societies". Lindstrom continues:

A person's membership in this or that kin-group depends on local cultural notions of descent and relatedness. Although all islands cultures recognize "blood" and other shared substances as meaningful for the creation of kin identities, these ideologies of shared substance may be less important than they are in the West (see Linnekin and Poyer 1990). Children also become related to parents through acts of exchanges or environmental influences as much as they do by virtues of their birth. I may become a member of my father's lineage because people believe that I have inherited his blood, or bones, or some other natural substance from that man. But I may also become a member of that group if he has nurtured me, or named me, or if I have grown up on his land. These acts of exchange, in fact, make me into his son as they make him my father.

It follows, then, that adoption and fosterage are common in almost all Pacific societies (see Brady 1976). ...An exchange of children among families functions to distribute people over sometimes limited landscapes. It also deepens political relations between relatives and neighbours who adopt or foster each other's children. Adoption is facilitated by cultural beliefs that nurture – not just nature – creates kinship (Rapaport, Moshe (ed.) 1999, *The Pacific Islands – Environment & Society*, Bess Press, Hawaii, p.199 – Attachment 9).

For information on kava please see page 412 of *The Pacific Islands – an encyclopedia* which notes that “Kava retains important religious, political, and economic functions in all societies [including Fiji] in which it is used...Kava drinking also signals good fellowship” (Lal, Brij V. & Fortune, Kate (eds.) 2000, *The Pacific Islands – an encyclopedia*, University of Hawaii Press, Honolulu, p.414 – Attachment 8).

## **2. Please advise what the formal (legal) adoption procedures are?**

The 1993 book entitled *South Pacific Islands Legal Systems* provides a useful summary of legal adoption in Fiji:

The Adoption of Infants Act 1944 (Chapter 58) authorizes a married couple of an unmarried person to adopt an infant, provided at least one of the applicants is aged twenty-five or over and is at least twenty years older than the infant, or is aged twenty-one and is a relative of the infant.

...The consent of the biological parents or guardians of the infant to a proposed adoption is required, unless such persons cannot be found; they are incapable of giving consent; their consent is unreasonably withheld; or the biological parent or guardian has abandoned, neglected, or persistently ill treated the infant, made no contribution to its maintenance for over five years, or persistently neglected or refused to contribute to the maintenance of the infant when liable to do so. A consent given by the biological mother earlier than six weeks after birth is not valid.

Before making an adoption order, the court is required to satisfy itself that every person whose consent is necessary has consented and understands the effect of an adoption order, that the adoption will be for the welfare of the infant, and that the applicant has not received any payment in consideration of the adoption except as the court has approved. The act also provides that an adoption order shall not be made if the solo applicant is a male and the infant is a female, unless there are special justifying circumstances, and that an adoption order shall not be made in favor of an applicant who is not resident in Fiji not concerning an infant who is not resident. Regardless of when consent is given, an adoption order shall not be made until the infant has been continuously in the care and possession of the applicant for a probationary period of at least three consecutive months.

An adoption under the act extinguishes all parental rights and duties on the part of the natural parents and vests such rights and duties in the adopting parent. The adopted child is to be treated as the child of the adopting parent for purposes of inheritance (Ntummy, Michael A. (ed.) 1993, *South Pacific Islands Legal Systems*, University of Hawaii Press, Honolulu, p.63 – Attachment 7).

For more information please see *The Adoption of Infants Act* and *The Adoption of Infants Act – Subsidiary Legislation* which are included as Attachment 10 and Attachment 11 (*Adoption of Infants Act [Cap 58]* (In force: 1 May 1945), Pacific Islands Legal Information Institute (PacLII) website, source: University of the South Pacific [http://www.paclii.org/fj/legis/consol\\_act/aoia202/](http://www.paclii.org/fj/legis/consol_act/aoia202/) – Accessed 19 May 2009 – Attachment 10; and *The Adoption of Infants Act – Subsidiary Legislation [Cap 58]* (In force: 1 April 1946), Pacific Islands Legal Information Institute (PacLII) website, source: University of the South Pacific – Attachment 11).

**3. Please advise whether the formal/legal procedures used or whether customary procedures are often used?**

Limited information on the number of legal and customary adoptions in Fiji was found amongst the sources consulted.

The Census of Population and Housing undertaken by the Fiji Islands Bureau of Statistics took place on 16 September 2007. Question 2 requires all people in the household to define their relationship to the head of the household. There are 10 options including Adopted Son/Adopted Daughter. Unfortunately the results of this question have not been published to date ('Census 2007' 2006, Fiji Islands Bureau of Statistics website [http://www.statsfiji.gov.fj/Census2007/census07\\_index.htm](http://www.statsfiji.gov.fj/Census2007/census07_index.htm) – Accessed 22 May 2009 – Attachment 12; 'Census questionnaire page 1' (undated), Fiji Islands Bureau of Statistics website [http://www.statsfiji.gov.fj/Census2007/2007censusquestion\\_pg1.pdf](http://www.statsfiji.gov.fj/Census2007/2007censusquestion_pg1.pdf) – Accessed 22 May 2009 – Attachment 13; and 'Census07\_Codes' (undated), Fiji Islands Bureau of Statistics website [http://www.statsfiji.gov.fj/Census2007/Census07\\_codes.pdf](http://www.statsfiji.gov.fj/Census2007/Census07_codes.pdf) – Accessed 22 May 2009 – Attachment 14).

According to the Fijian Department of Social Welfare, 6 children were available for adoption in 2007, while 34 were available in 2006 (Fiji Islands Bureau of Statistics 2008, *Fiji Facts and Figures As at 1<sup>st</sup> July 2008* <http://www.statsfiji.gov.fj/FFF08.pdf> – Accessed 22 May 2009 – Attachment 15).

The Special Rapporteur on the sale of children, child prostitution and child pornography visited Suva and Nadi from 11 to 16 October 1999. According to the Special Rapporteur, "Many adoptions take place in Fiji, but these are usually within the child's extended family" (UN Commission on Human Rights 1999, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos*, 27 December, E/CN.4/2000/73/Add.3, Paragraph 14 <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/4aeb5780d6b8516e802568960053e092?Op=OpenDocument> – Accessed 19 May 2009 – Attachment 16).

According to the 1993 book entitled *South Pacific Islands Legal Systems*, "Fewer than 100 adoptions a year are registered under the Adoption of Infants Act" (Ntunmy, Michael A. (ed.) 1993, *South Pacific Islands Legal Systems*, University of Hawaii Press, Honolulu, p.63 – Attachment 7).

Pulea in the 1986 book entitled *The Family, Law and Population in the Pacific Islands* provides information on the number adoptions in the Pacific Islands including Fiji:

The number of adoptions registered in the countries under study is small. This is, as noted probably because many single parents are keeping their babies or because children are being cared for within the extended family, rather than being the result of a shortage of suitable couples wishing to adopt. Other contributing factors could be contraceptive use, resort to abortions (even though illegal) and in some country the lack of an officially-recognised confidential adoption service. Fiji is the only country under this study to have children's homes where unwanted children can be placed pending adoption. In 1968, 43 adoption orders were granted in Fiji; in 1973 there were 69, while in 1977 the figure fell to 55. A 1978 Fiji survey showed that over the ten year period between 1968-1977, 46% of adoptions were by relatives and only 17% natural parent and step-parent. In most cases relatives would be caring for the child already and would continue to do so whether or not they legally adopted it. The same survey revealed that out of 500 adoptions over the same period, 296 (59.2%) were of children of single mothers. A relatively high proportion of mothers – 204 or 40.8% – were classified as 'married'; this could be misleading because 'married' describes the mother's status at the child's birth and takes no account of any subsequent change in status through widowhood or divorce (Pulea, Mere 1986, 'XI Adoption and Illegitimacy', *The Family, Law and Population in the Pacific Islands*, Institute of Pacific Studies, University of the South Pacific, p.145 – Attachment 6).

## List of Sources Consulted

### Internet Sources:

#### **Government Information & Reports**

Fiji Islands Bureau of Statistics <http://www.statsfiji.gov.fj/>

Immigration and Refugee Board of Canada [http://www.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=search](http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=search)

Parliament of Fiji Islands <http://parliament.gov.fj/>

US Department of State <http://www.state.gov/>

#### **United Nations (UN)**

UNHCR <http://www.unhcr.org/cgi-bin/texis/vtx/rsd>

#### **International News & Politics**

*Fiji Sun* <http://www.sun.com.fj/>

*Fiji Times* <http://www.fijitimes.com/>

*Fijilive* <http://www.fijilive.com/>

*Pacific Islands Report* <http://pidp.eastwestcenter.org/pireport/>

*Radio New Zealand International* <http://www.rnzi.com/>

*Scoop* <http://www.scoop.co.nz/>

#### **Legal Sites**

Pacific Islands Legal Information Institute (PacLII) <http://www.pacalii.org/>

#### **Search Engines**

Google <http://www.google.com.au/>

Google Books <http://books.google.com/>

### Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

## RRT Library Catalogue

### List of Attachments

1. RRT Research & Information 2007, *Research Response FJI31992*, 10 July.
2. Kurisaqila, Wilisoni 2007, Email 'Re Customary adoption in Fiji for information request FJI31992', 1 August.
3. Save the Children Fiji 2005, *The Commercial Sexual Exploitation and Sexual Abuse of Children in Fiji: A Situational Analysis*, Internationaal Informatiecentrum en Archief voor de Vrouwenbeweging website  
[http://www.iiav.nl/epublications/2005/commercial\\_sexual\\_exploitation\\_and\\_abuse\\_of\\_children\\_in\\_fiji.pdf](http://www.iiav.nl/epublications/2005/commercial_sexual_exploitation_and_abuse_of_children_in_fiji.pdf) – Accessed 19 May 2009.
4. Joint Standing Committee on Justice, Law and Order and on Social Services 2002, *Report of the Joint Standing Committee on Justice, Law and Order and on Social Services on the Family Law Bill, 2002 (Bill No. 13 of 2002)*, Parliament of Fiji Islands website, 11 March  
<http://parliament.gov.fj/parliament/legislative/bills.aspx?billID=252&viewtype=reports&billnav=bill> – Accessed 21 May 2009.
5. *Family Law Act 2003*, Parliament of Fiji Islands website  
<http://parliament.gov.fj/legislative/bills.aspx?billID=252&viewtype=acts&billnav=bill> – Accessed 21 May 2009.
6. Pulea, Mere 1986, *The Family, Law and Population in the Pacific Islands*, Institute of Pacific Studies, University of the South Pacific. (pp.140-146. The book is also located in the Sydney & Melbourne MRT-RRT Library.
7. Ntomy, Michael A. (ed.) 1993, *South Pacific Islands Legal Systems*, University of Hawaii Press, Honolulu, p.63. (MRT-RRT Library)
8. Lal, Brij V. & Fortune, Kate (eds.) 2000, *The Pacific Islands – an encyclopedia*, University of Hawaii Press, Honolulu, pp.412 & 414. (MRT & RRT Library)
9. Rapaport, Moshe (ed.) 1999, *The Pacific Islands – Environment & Society*, Bess Press, Hawaii, pp.195, 199 & 428. (MRT-RRT Library)
10. *Adoption of Infants Act [Cap 58]* (In force: 1 May 1945), Pacific Islands Legal Information Institute (PacLII) website, source: University of the South Pacific  
[http://www.pacii.org/fj/legis/consol\\_act/aoia202/](http://www.pacii.org/fj/legis/consol_act/aoia202/) – Accessed 19 May 2009.
11. *The Adoption of Infants Act – Subsidiary Legislation [Cap 58]* (In force: 1 April 1946), Pacific Islands Legal Information Institute (PacLII) website, source: University of the South Pacific.
12. 'Census 2007' 2006, Fiji Islands Bureau of Statistics website  
[http://www.statsfiji.gov.fj/Census2007/census07\\_index.htm](http://www.statsfiji.gov.fj/Census2007/census07_index.htm) – Accessed 22 May 2009.

13. 'Census questionnaire page 1' (undated), Fiji Islands Bureau of Statistics website  
[http://www.statsfiji.gov.fj/Census2007/2007censusquestion\\_pg1.pdf](http://www.statsfiji.gov.fj/Census2007/2007censusquestion_pg1.pdf) – Accessed 22 May 2009.
14. 'Census07\_Codes' (undated), Fiji Islands Bureau of Statistics website  
[http://www.statsfiji.gov.fj/Census2007/Census07\\_codes.pdf](http://www.statsfiji.gov.fj/Census2007/Census07_codes.pdf) – Accessed 22 May 2009.
15. Fiji Islands Bureau of Statistics 2008, *Fiji Facts and Figures As at 1<sup>st</sup> July 2008*  
<http://www.statsfiji.gov.fj/FFF08.pdf> – Accessed 22 May 2009.
16. UN Commission on Human Rights 1999, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, 27 December, E/CN.4/2000/73/Add.3*  
<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/4aeb5780d6b8516e802568960053e092?Opendocument> – Accessed 19 May 2009.