INTERNATIONAL LABOUR OFFICE

Governing Body

325th Session, Geneva, 29 October–12 November 2015

GB.325/INS/9(Rev.)

Institutional Section

INS

Date: 4 November 2015
Original: English

NINTH ITEM ON THE AGENDA

Complaint concerning non-observance by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 102nd Session of the International Labour Conference under article 26 of the ILO Constitution

Purpose of the document

The Governing Body is invited to take note of the information and consider the point for decision which will be made available following consideration by its officers.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Policy implications: None.

Legal implications: None.

Financial implications: Depending on the decision of the Governing Body.

Follow-up action required: Depending on the decision of the Governing Body.

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.324/INS/5(Rev.).

1. At its 324th Session (June 2015), when considering the complaint concerning non-observance by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by several Workers' delegates to the 102nd Session (2013) of the International Labour Conference under article 26 of the ILO Constitution, the Governing Body adopted the following decision:

> Recalling the Tripartite Agreement signed by the Government of the Republic of Fiji, the Fiji Trades Union Congress (FTUC) and the Fiji Commerce and Employers' Federation (FCEF) on 25 March 2015 and the Governing Body's request to the Government and the social partners to submit a joint implementation report to the Governing Body at its 324th Session (June 2015) in accordance with that Agreement,
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> Noting the joint communication of 2 June 2015 submitted by the Government of the Republic of Fiji and the Fiji Commerce and Employers' Federation (FCEF), and the separate communication of 2 June 2015 from the Fiji Trades Union Congress (FTUC),
>
> Regretting the failure to submit a joint implementation report as called for in the decision adopted by the Governing Body at its 323rd Session (March 2015),
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> On the recommendation of its Officers, the Governing Body:
>
> (a) urged the Government of Fiji through the Employment Relations Advisory Body to review its labour laws to ensure compliance with ILO core Conventions;
>
> (b) reiterated the request for the submission of a joint implementation report, in accordance with the Tripartite Agreement signed in March 2015, before the 325th Session of the Governing Body (November 2015);
>
> (c) would consider at its 325th Session the establishment of a commission of inquiry. [1]

2. In a communication dated 15 October 2015, the Government of Fiji submitted an implementation report signed jointly by representatives of the Government of the Republic of Fiji, representatives of the employers including the FCEF and a workers' representative (the Fiji Electricity Workers' Association) (see Appendix I). The Government states that there was no agreement by all parties on the joint report that discussed it within the framework of the Employment Relations Advisory Board (ERAB), and that the FTUC absented itself from all meetings. On the same date, the FTUC submitted its own report (see Appendix II), declaring that it is not in a position to sign a joint report, given that the Government only convened at very short notice on 12 October 2015 a meeting of a reconstituted ERAB, which included many new participants appointed by the Government that have no status or were not party to the Tripartite Agreement of 25 March 2015.

3. According to the implementation report submitted by the Government of Fiji, in April 2015, the Government appointed 12 members to the ERAB, of which the worker representatives were nominated by the FTUC and the employer representatives by the FCEF. The ERAB held three meetings in May 2015, at which it endorsed the repeal of the Essential National Industries (Employment) Decree 2011 (ENI Decree) thus bringing all workers and employers as well as the Government within the ambit of the Employment Relations Promulgation (ERP), and discussed the draft Employment Relations (Amendment) Bill prepared by the Government. The worker representatives disagreed with a number of aspects of the draft Bill, and the ERAB decided to record the matters of disagreement and to submit the draft Bill to the Minister on 21 May 2015. The Bill was tabled in Parliament on 22 May 2015, the Parliamentary Standing Committee heard submissions from all stakeholders and the Bill was approved by Parliament and enacted on 14 July 2015 as the Employment Relations (Amendment) Act 2015. Upon the entry into force of the Act on 11 September 2015, the President appointed the Chairperson of the Arbitration Court. In October 2015, the Government appointed 18 additional members to

[1] GB.324/INS/5(Rev.), para. 3.

the ERAB (six to each group), to ensure that all sectors of the social partners are widely represented on the ERAB and following the request of a number of workers' and employers' representatives. The expanded ERAB held three meetings on 12, 13 and 14 October 2015, at which it reconsidered the following matters of disagreement: (i) check-off – the ERAB agreed that check-off has been fully restored in the Government, and would be restored in entities previously under the ENI Decree after seeking from workers confirmation as to their trade union membership and their agreement to have dues deducted directly from their wages; (ii) the scope of essential industries – the ERAB agreed to recommend the reduction of the notice period and to reconsider the list of essential industries with ILO assistance; and (iii) resolution of disputes discontinued by the ENI Decree – the ERAB agreed to recommend the reinstatement of individual grievances that had been pending before the Employment Tribunal so that the cases could be heard and adjudicated on. The ERAB decided to reconvene on a monthly basis to consider the remaining matters of disagreement and all other recommendations made by its subcommittee.

4. According to the report submitted by the FTUC, from June to October 2015, the parties have not met nor has the Government taken any action to comply with the Tripartite Agreement of 25 March 2015. The Government only convened a meeting of a reconstituted expanded ERAB at very short notice on 12 October 2015, in an attempt to make the members sign a joint report to the Governing Body. The new Board appointed by the Government comprised many participants that have no status or were not party to the Tripartite Agreement, including representatives of two bargaining units. The FTUC immediately advised that it would not be a party to the ERAB meetings and will not be in a position to sign a joint report. With respect to the Employment Relations (Amendment) Act 2015, the FTUC raises the following concerns: (i) lack of remedy for trade unions that were deregistered and collective agreements that were abrogated under the ENI Decree; (ii) promotion of non-union "bargaining units" as an alternative to trade unions; (iii) lack of reinstatement of disputes pending before the Arbitration Tribunal and courts that were discontinued by the ENI Decree; (iv) expansion of the list of essential industries to include, in addition to the activities previously covered by the ENI Decree, all government-owned commercial enterprises including the sugar industry and the fishing industry; (v) near impossibility of exercising the right to strike; and (vi) non-existence of the institutions established under the amended ERP, such as the Arbitration Court to which disputes of interest are to be reported. Moreover, the FTUC denounces: (i) the non-existence in practice of collective bargaining in the public sector and in the private sector where the industry or company is classified as "essential services"; (ii) the failure to restore check-off in government-owned enterprises; (iii) the denial of trade union access to the workplace in government-owned enterprises coupled with acts of harassment and intimidation of union members; and (iv) the failure to address other issues raised by the ILO supervisory bodies (for example, relating to assaults against trade union leaders, Public Order Amendment Decree, Fiji Political Parties Decree, etc.).

Draft decision

5. ***Regretting the continuing failure to submit a joint implementation report to the Governing Body in accordance with the Tripartite Agreement signed by the Government of the Republic of Fiji, the Fiji Trades Union Congress (FTUC) and the Fiji Commerce and Employers' Federation (FCEF) on 25 March 2015, and as requested by the Governing Body at its 324th Session (June 2015), the Governing Body decides:***

(a) to call on the Government of Fiji to accept a tripartite mission to review the ongoing obstacles to the submission of a joint implementation report and consider all matters pending in the article 26 complaint;

(b) that, if the tripartite mission did not take place in time for a report to the 326th Session of the Governing Body (March 2016), then the 326th Session should take a decision on the appointment of a commission of inquiry under article 26; and

(c) to place this question on the agenda of its 326th Session.

Appendix I

PERMANENT MISSION OF THE REPUBLIC OF FIJI TO THE UNITED NATIONS OFFICE AND OTHER INTERNATIONAL ORGANISATIONS AT GENEVA.
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58/15

Ref : 1//10/1

The Permanent Mission of the Republic of Fiji to the United Nations and other International Organisations at Geneva presents its compliments to the International Labour Organisation and has the honour to refer to the tripartite agreement signed by the Government of Fiji and its social partners on 25th March 2015, and the decisions of the Governing Body at 323rd Session in March 2015 and the Governing Body at its 324th session in June 2015, which requested a joint implementation report by Government and its social partners.

In this respect, the Permanent Mission of the Republic of Fiji has the further honour to advise that multiple meetings of the Employment Relations Advisory Board were held in October, during which robust discussions were conducted on employment relations among social partners. Despite a process marked by willingness to engage on the part of all Parties, there was no agreement by all Parties present on a joint report. In particular, the Fiji Trade Unions Congress (FTUC) absented itself from all meetings of ERAB.

The attached report, signed by representatives of the Government and Employers and the Fiji Electricity Workers Association is submitted for consideration. The signed Joint Implementation Report reflects major concessions made by the Government of Fiji specifically on the check off system, on the scope and breadth of essential industries, and on the reinstatement of all employment grievances pending at the time of the passing of the Essential National Industries Decree.

The Government of Fiji and its social partners will continue to make all efforts to have a Joint Implementation Report signed by all social partners, and will continue to engage in dialogue with each other through the ERAB mechanism.

The Permanent Mission of the Republic of Fiji avails itself of this opportunity to renew to the International Labour Organisation the assurances of its highest consideration.

Geneva, 15 October 2015

To: International Labour Organisation
4 route des Morillons
CH-1211 Genève 22
Switzerland

REPUBLIC OF FIJI

EMPLOYMENT RELATIONS ADVISORY BOARD

JOINT IMPLEMENTATION REPORT TO ILO GOVERNING BODY

Background

1. A Tripartite Agreement ("**Agreement**") was signed by the Minister for Employment, Productivity & Industrial Relations, Honourable Jioji K. Konrote for and on behalf of the Government of the Republic of Fiji, Mr Nesbitt D. F. Hazelman, the Chief Executive Officer of the Fiji Commerce and Employers Federation for and on behalf of the employers, and Mr Felix Anthony General-Secretary of the Fiji Trade Union Congress, for and on behalf of the workers, at the International Labour Organisation ("**ILO**") Head Quarters on 25 March 2015, in Geneva, Switzerland.

2. The Parties agreed that the Employment Relations Promulgation 2007 ("**ERP**") shall be the primary legislation governing labour management relations in Fiji and that the review of labour laws including ERP be conducted through the Employment Relations Advisory Board ("**ERAB**") mechanism and ensure compliance with ILO core Conventions.

3. The Agreement also stated that any further issues and recommendations identified by any of the Parties in respect of the review shall only be raised and negotiated through the ERAB mechanism.

4. The Agreement also stipulated that ERAB should vet any Bill that addresses the issues highlighted by ILO before it is presented to Cabinet and Parliament no later than August 2015, and that the Bill once approved by Parliament, be implemented no later than the end of October 2015.

5. Moreover, the Agreement stipulated that Government restore the check-off facilities.

6. Lastly, the Agreement stated that the Parties submit a Joint Implementation Report to the June 2015 Session of the ILO Governing Body.

7. At the June 2015 session of the ILO Governing Body, unfortunately the Parties were not able to submit a Joint Implementation Report which resulted in the Government and the Employers representatives submitting a Joint Implementation Report, whilst the Workers representative submitted a separate Implementation Report.

8. In its decision at the June 2015 session, ILO Governing Body reiterated its request for a Joint Implementation Report before the November session of the IIO Governing Body.

9. In October 2015, ERAB reconvened to consider a joint implementation report for submission to the ILO Governing Body. In accordance with the Agreement, the Government, Employers and Workers, as members of ERAB, wish to submit this Joint Implementation Report to the ILO Governing Body for its consideration.

ERAB Meetings and Decisions

10. In April 2015, the Minister of Employment, Productivity and Industrial Relations appointed the following members to ERAB –

Chair:

Mr Sharvada Sharma, Solicitor-General (as the delegate of the Permanent Secretary for Employment, Productivity and Industrial Relations).

Workers Representatives:

(a) Mr Felix Anthony;
(b) Mr Agni Deo Singh;
(c) Mr Daniel Urai; and
(d) Mr Rohit Singh.

Employers Representatives:

(a) Mr Nesbitt Hazelman;
(b) Mr Harvie Probert;
(c) Mr Rajesh Punja; and
(d) Mr Brian Kirsch.

Government Representatives:

(a) Mr Shaheen Ali, Permanent Secretary for Industry, Trade and Tourism and Public Enterprises;
(b) Mr Filimoni Waqabaca, Permanent Secretary for Finance; and
(c) Mr Naipote Katonitabua, Permanent Secretary, Office of the Prime Minister.

11. The Workers representatives appointed to ERAB were nominated by the Fiji Trade Unions Congress ("**FTUC**") and the Employers representatives appointed to ERAB were nominated by the Fiji Commerce and Employers Federation ("**FCEF**").

12. ERAB held its first meeting on 12 May 2015 and thereafter, ERAB had two more meetings on 20 and 21 May 2015.

13. At its first meeting on 12 May 2015, ERAB discussed and endorsed Government's proposal that the Essential National Industries (Employment) Decree 2011 ("**ENI Decree**") and the Employment Relations (Amendment) Decree 2011 (which removed Government workers from the ERP) will both be repealed and all workers and employers under the ENI Decree as well as the Government will be brought within the ambit of the ERP, in order to ensure that workers in these industries are provided with the full freedom of association to form and join trade unions, with the full right to engage in collective bargaining, and that any disputes arising out of collective bargaining would be resolved by an independent Arbitration Court which will be made of a Chair and representatives selected by both the workers and employers.

14. The Parties agreed that those sections of the ERP and other laws which have been referred to in the reports of the ILO Committee of Experts should also be addressed first, whilst all other recommendations made by the ERAB Sub-committee in the previous years which were not raised by the ILO Committee of Experts or not deemed to be in breach of ILO core conventions will be considered by ERAB in detail from the third week of June 2015 (on a date convenient to all the ERAB members) after the conclusion of the 2015 ILO Conference, in addition to any outstanding or new matters.

15. Based on this general understanding, ERAB members agreed that Government would prepare a draft Bill which ERAB members would consider in detail at its next meeting.

16. A draft Bill was circulated to all the members of the ERAB at its meeting on 20 May 2015. ERAB members discussed individual clauses of the draft Bill and proposed a number of amendments, which were incorporated or noted as disagreements for negotiations. The amendments were proposed by all the members including Workers representatives as well as Employers representatives.

17. At its meeting on 21 May 2015, ERAB members discussed the proposed amendments to the draft Bill, after which Government proposed that the draft Bill be referred to the Minister.

18. Whilst the Government and Employers representatives agreed with the draft Bill, the Workers representatives raised a number of disagreements with the draft Bill which were noted by ERAB. In particular, the Workers representatives disagreed with Government and Employers representatives on the following issues with respect to the Bill:

    (a) The right to strike
    (b) The option for workers to remain part of Bargaining Units
    (c) The scope of essential services and industries;
    (d) Reinstatement of collective agreements that existed prior to the ENI Decree;
    (e) Resolution of disputes which were discontinued by the ENI Decree;
    (f) Exclusion of prison officers from the Draft Bill; and
    (g) The reinstatement of trade unions registration that was cancelled by the ENI Decree.

19. It was agreed by ERAB that the matters of disagreement highlighted by the Workers representatives will be noted and recorded by ERAB whilst the draft Bill should be considered for tabling in Cabinet and Parliament.

20. ERAB members also agreed that ERAB will reconvene on a date convenient to all the members to consider in detail all the other recommendations made by the ERAB Sub-committee in the previous years which were not raised by the ILO Committee of Experts or not deemed to be in breach of ILO core conventions, as well as any other outstanding or new matters.

21. Based on the above, ERAB submitted the draft Bill to the Minister on 21 May 2015.

22. On 22 May 2015, the Attorney-General tabled the Employment Relations (Amendment) Bill 2015 ("**Bill**") in Parliament. Parliament has referred this Bill to the Parliamentary Standing Committee on Law, Justice and Human Rights, with directions that the report of the Parliamentary Standing Committee be presented back to Parliament in the July sitting of Parliament, when Parliament will debate and vote on the Bill.

23. The Parliamentary Standing Committee met and heard submissions on the Bill from all stakeholders, including Government, Workers and Employers, as well as a representative from ILO.

24. In the July sitting of Parliament, the Parliamentary Standing Committee submitted its report on the Bill to Parliament.

25. In its July sitting, Parliament considered the report of the Parliamentary Standing Committee and after debating on the Bill, Parliament approved the Bill. On 14 July 2015, His Excellency the President provided his assent to the Bill, and the Bill was enacted as the Employment Relations (Amendment) Act 2015 ("**Act**").

26. In summary, the Act addresses the following –

(a) Repeals the ENI Decree, Employment Relations (Amendment) Decree 2011 and the Public Service Amendment Decree 2011;

(b) Brings all essential services and industries and Government under the ambit of the ERP;

(c) Expressly provides that all workers in essential services and industries have the full right to freedom of association, namely the right to either continue to organise themselves as Bargaining Units or to form Bargaining Units if they so choose, or to join an existing trade union, or to register itself as a trade union;

(d) Makes provisions to enable all workers and employers to freely engage in collective bargaining;

(e) Provides for a resolution of all disputes of interest arising out of collective bargaining by an independent and tripartite Arbitration Court and for the resolution of disputes of rights to be determined by the Employment Tribunal under the ERP;

(f) Establishes the Arbitration Court, which is made up of a Chair appointed by the President of the Republic of Fiji and panel members selected by both the Workers representatives and Employers representatives;

(g) Provides the Arbitration Court will all necessary powers and jurisdiction to expeditiously adjudicate on all disputes of interest in essential services and industries;

(h) Provides the same processes and mechanisms for strike and lockouts in essential services and industries, which had previously existed under the ERP; and

(i) Amends a number of sections of the ERP, namely sections 75, 78, 79, 80, 119, 122, 125, 127, 128, 170, 177, 180, 181, 241, 250 and 264.

27. With respect to the sections of ERP amended by the Act, as outlined in paragraph *(i)* above, the Act amends the sections of ERP in line with the issues raised by the ILO Committee of Experts and following discussions by ERAB at its meetings. These include:

(a) Section 75 – the Act expands the grounds on which in discrimination is prohibited in the employment sector. It now includes prohibition on discrimination on grounds such as marital status, pregnancy, sexual orientation, gender identity and expression, HIV/AIDS and religion;

(b) Sections 78, 79 and 80 – the Act further expands the grounds on which in discrimination is prohibited in the rates of remuneration;

(c) Section 119 – the Act amends section 119 on applications for registration of trade unions in line with the ILO recommendations and discussions at ERAB and ERAB sub-committee;

(d) Section 122 – this section is amended to restrict the Registrar of Trade Unions for refusing a name of trade union to only where the name is offensive, or racially or ethnically discriminatory;

(e) Section 125 – is amended to require the Registrar to consult with those who are intending to register as a trade union;

(f) Section 127 – is amended to allow officers of one trade union to be an officer of another trade union;

(g) Section 128 – restricts the Registrar of Trade Unions from inspecting the accounts of a trade unions to only when 10% of the voting membership so require the registrar;

(h) Section 170 – To avoid delays in acceptance of disputes lodges by employers and workers, the Act is amended to require that the Permanent Secretary must decide within 30 days whether to accept or reject the dispute. If no decision is made within 30 days, then the dispute is deemed to have been accepted;

(i) Section 181 – restricts the Minister from applying to Court to prevent or discontinue a strike or lockout to only when either a union or

employer so requests the Minister to make the application to Court; and

(j) Section 250 – removes all sentences of imprisonment in cases where a strike or lockout is declared unlawful.

28. On 10 September 2015, the Minister for Employment, Productivity and Industrial Relations gazetted the commencement date for the Act. The Act came into force on 11 September 2015.

29. In light of the above, immediately upon the commencement of the Act, in accordance with section 191A of the Act, His Excellency the President appointed Mr. Yohan Liyanage as the Chair of the Arbitration Court. Mr. Liyanage is an independent judicial officer and is presently the Chief Registrar of the High Court of Fiji.

30. In October 2015, the Minister for Employment, Productivity and Industrial Relations appointed additional members to ERAB to ensure that all sectors of the social partners, including Government, Employers and Workers are widely represented on ERAB. The appointment of additional members was also at the request of a number of representatives of Workers and Employers to be members of ERAB.

31. In addition to the existing members of ERAB as listed in paragraph 10, the following additional 6 members were appointed to each group, making it a total of 10 members for Government, Workers and Employers:

Additional Workers representatives

(a) Mr. Attar Singh – Fiji Islands Council of Trade Unions;
(b) Mr. Joji Nakaoa – Fiji Islands Council of Trade Unions;
(c) Mr. Rajeshwar Singh – Fiji Public Service Association;
(d) Mr. Shalendra Naidu – Fiji Bank & Finance Sector Employees Union ;
(e) Mr. Hira Shandil – Fiji Electricity Authority Workers Association; and
(f) Mr. Uday Raju – Telecom Fiji Bargaining Unit.

Addittional Employers representatives

(a) Dr. Nur Bano Ali – Fiji Chamber of Commerce & Industry;
(b) Mr. Meiki Tuinamuana – Fiji Chamber of Commerce & Industry;
(c) Mr. Dixon Seeto – Fiji Hotel and Tourism Association;
(d) Mr. George Karountzos – Fiji Manufacturers Association;
(e) Mr. Ajay Raniga – Fiji Manufacturers Association; and
(f) Mr. Veeramalai Wanarajan – Textile, Clothing & Footwear Council of Fiji.

Additional Government representatives

(a) Mr. Faiz Khan – Executive Chair, Airports Fiji Limited;

(b) Mr. Ajith Kodagoda – Chair – Amalgamated Telecom Holdings Limited;

(c) Mr. Riyaz Sayed-Khaiyum – CEO, Fiji Broadcasting Corporation;

(d) Mr. Hasmukh Patel – CEO, Fiji Electricity Authority;

(e) Mr. Andre Viljoen – CEO, Fiji Airways; and

(f) Mr. Viliame Gucake – Acting Permanent Secretary for Sugar.

32. At the request of the Minister, the members of ERAB met on 12, 13 and 14 October 2015 (**'Meetings'**) to consider the submission of this Joint Implementation Report to the ILO Governing Body. Invitations and notice for each day's meetings were sent by way of email, facsimile and hand-delivery to all the ERAB members. Furthermore, drafts copies of this Joint Implementation Report were circulated to all the ERAB members to allow all members to provide their input and suggestions.

33. At the Meetings, Government explained that due to the passage of time taken to table, deliberate and implement the Act through the democratic Parliamentary process, ERAB could not convene any sooner. Government also submitted that due to the repeated requests of the members of ERAB for an expansion of its membership, appointments of additional members to ERAB had to be considered and made by the Minister, and that other administrative matters such as the appointment of a Chair of the Arbitration Court and setting up of the Arbitration Court including sourcing funding for the Arbitration Court was seen as a matter of priority.

34. As a result of the discussions from the Meetings, ERAB agreed that in accordance with section 191D of the Act, it would urge the Minister for Employment to invite organisations representing Employers and organisations representing Workers for nominations for appointments to the Employer Panel and the Worker Panel of the Arbitration Court respectively.

35. ERAB also further discussed in detail the disagreements between the parties on matters listed in paragraph 18 above. In particular, the following matters were discussed on which ERAB members were able to make progress in reaching a resolution which is to be submitted by ERAB to the Minister for his consideration.

Check-Off

36. With respect to check-off ERAB agreed that check-off has been fully restored in Government. With respect to other entities that were previously covered by ENI

Decree, all members of ERAB agreed that with the repeal of ENI Decree, check-off must be available in all these entities. ERAB agreed that check-off would be restored with the employers seeking confirmation from their workers as to which trade union they were members of and whether they agreed to have union dues deducted directly from their wages or salaries.

Right to Strike

37. With respect to the limitation on the right to strike in essential services and industries, the Workers' representatives submitted that the Act denied workers in essential services and industries the right to strike. They further submitted that the provisions of the ENI Decree pertaining to essential industries were simply incorporated into the Act, which in essence meant that there was no legal or factual change in the positions relating to workers right to strike in essential industries. The Government and Employers' representatives on the other hand disagreed with this position that provisions of the ENI Decree was incorporated in the Act and submitted that Part 19 of the Act pertaining to Essential Services and Industries provided workers in essential industries with the right to strike, on the basis that they give 28 days' notice. They further submitted that the Act also provides for a resolution of all disputes of interest arising out of collective bargaining by an independent and tripartite Arbitration Court which has all necessary powers and jurisdiction to expeditiously adjudicate on all disputes of interest in essential services and industries, and for the resolution of disputes of rights to be determined by the Employment Tribunal under the ERP. They further submitted that the Act provides the same processes and mechanisms for strike and lockouts in essential services and industries, which had previously existed under the ERP.

38. ERAB agreed to make submissions to the Minister that the 28 days' notice period for strike be reduced to 14 days.

The scope of essential services and industries

39. The Workers' representatives disagreed with the inclusion of the essential services and industries from the ENI Decree into the Act. They submitted that the scope of essential services and industries was extended to include industries that they considered outside the ambit of essential services. They further submitted that the scope of the essential services and industries in the Act were not as that stipulated by ILO, implying that there is a 'one size fits all approach'.

40. The Government submitted that the list of essential services and industries is dependent on the needs of an individual country, and did not agree with a 'one size

fits all approach'. The Government and Employers' representatives submitted that although the scope of essential services and industries were extended to include other industries, the rights of workers in these industries were extended, rather than limited. For instance, workers in essential industries were provided the right to freely associate, whether it be through an existing union, or Bargaining Unit, or through the formation of an entirely new Union. The choice was ultimately that of the worker. They also submitted that workers in essential industries were also allowed the right to strike, provided that 28 days' notice was given. These rights were non-existent under the ENI Decree, however, the Act provided the workers such rights.

41. Following discussions and submissions made by the Workers, ERAB agreed to reconsider the list of essential services and industries under the Act and upon further deliberations at its monthly meetings, ERAB would make recommendations to the Minister on the list of essential services and industries.

42. ERAB members unanimously agreed to invite ILO to provide technical assistance and expertise at the earliest to assist ERAB to reconsider, gauge and determine the list of essential services and industries under the Act, in order to enable ERAB to make appropriate recommendations to the Minister on the list of essential services and industries.

Reinstatement of Individual Grievances which were discontinued by the ENI Decree

43. ERAB discussed the issue of reinstatement of individual grievances which were discontinued by the ENI Decree. Following lengthy discussions, ERAB agreed that those individual grievances filed on behalf of employees (such as termination of employment cases) which had been filed with the Employment Tribunal and were pending before the Employment Tribunal as a pending case, should be reinstated to allow for these disputes to be heard and adjudicated upon. ERAB agreed to make recommendation to the Minister for reinstatement of these individual grievances.

Other Issues and Way Forward

44. ERAB further agreed that the disagreements raised in paragraph 18 above including the new issues raised by the Workers' representatives were to be further discussed and deliberated upon at the monthly meetings of ERAB, so that a submission could be made to the Minister by ERAB as a whole, which has the mandate to review all labour laws in Fiji and make submissions to the Minister.

45. ERAB further agreed that it will reconvene on a monthly basis to consider in detail all the other recommendations made by the ERAB Sub-committee in the previous years which were not raised by the ILO Committee of Experts or not deemed to be in breach of ILO core conventions, as well as any other outstanding or new matters. All recommendations from ERAB will be submitted to the Minister for consideration by Cabinet and Parliament.

46. In accordance with the Agreement, the Fijian Government, Workers representatives and the Employers representatives as part of ERAB hereby submit this Joint Implementation Report to the ILO Governing Body for its consideration.

DATED and signed by ERAB Members this day of October 2015.

Government:

Name: NEMANI KATONITABUA
Organisation: GOVERNMENT OF FIJI

Name: AJITH KODAGODA
Organisation: ATH

Name: RIYAZ SAYED-KHAIYUM
Organisation: FBC

Name: BOBBY NAMBIAR
Organisation: FEA

Name: KRISHNA PRASAD
Organisation: MINISTRY OF FINANCE

Name: DIANA FONG
Organisation: FIJI AIRWAYS

Workers:

Name: Sabastian Xavier
Organisation: Acting General Secretary Fiji Electrical Workers Association

Name:
Organisation:

Name:
Organisation:

Name:
Organisation:

Name:
Organisation:

Name:
Organisation:

Employers:

Name: GEORGE KAKOUNTZOS
Organisation: FIJI MANUFACTURERS ASSOCIATION

Name: Veena Mudaliar
Organisation: TCF Council.

Name: NESBITT HAZELMAN
Organisation: Fiji Commerce & Employer Federation.

Name: Dixon Seeto.
Organisation: FHTA President. Fiji Hotel and Tourism Assn

Name: MICHAEL WONG CEO
Organisation: Fiji Hotel & Tourism Assn - EE

Name: ANA TUICAKAU
Organisation: FIJI CHAMBER OF COMMERCE

Name: VIRISILA TUIMANU Organisation: MINISTRY OF TRADE & TOURISM.	Name: Organisation:	Name: Organisation:
Name: Organisation:	Name: Organisation:	Name: Organisation:
Name: Organisation:	Name: Organisation:	Name: Organisation:
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Appendix II

FIJI TRADES UNION CONGRESS

32 DES VOUEX ROAD, P.O. BOX 1418, SUVA, FIJI

PRESIDENT: **Daniel Urai**

NATIONAL SECRETARY: **Felix Anthony**

YOUR REF: .....

OUR REF: INT/16 A DATE: **14/10/2015**

The Director General
International Labour Organisation
4 route des Morillons
CH-1211 Genève 22
SWITZERLAND

Dear Sir,

We herewith submit a report for consideration of the Office and the Governing Body. We advise that it is not possible to submit a joint report with the Government of Fiji and the Fiji Commerce and Employers Federation (FCEF) as required by the resolution of the March and June 2015 Governing Body. This has not been possible due to the Government of Fiji not convening any meeting between the parties to address the issues agreed to in the March Agreement, which you had witnessed.

The Government only convened a meeting of a reconstituted Employment Relations Advisory Board (ERAB) at very short notice on Monday 12th October 2015. The new Board appointed by Government included many other participants that have no status or were not party to the Agreement signed. The FTUC wrote to the Prime Minister on Monday 12th October 2015 and advised that FTUC would not be a party to the meeting and will not be in a position to sign a joint report. (Attached).

The GB decided to defer a decision on a Commission of Inquiry strictly on the basis of the Agreement reached and the assurance of Government to fully honor the Agreement. It was evident in the June GB that Government had not complied and the GB again urged the Government to honor the Agreement. Since the June GB, the parties have not met nor has Government taken any action to comply.

The FTUC now considers that no useful purpose will be served in any further deferment of a decision on the Commission of Inquiry. In fact, it would be to the detriment of workers and allow the continued serious violations of workers' rights. It is evident that

Government never intended to honor the Agreement but to use it as a tool to avoid and delay a decision on a Commission of Inquiry in March 2015. The FTUC therefore urges the Office to recommend and the Governing Body to decide on a Commission of Inquiry.

Yours Sincerely,

Felix Anthony
National Secretary

Copy: General Secretary-ITUC
Employers Spokesperson – GB
Workers Spokesperson – GB

All correspondence to be addressed to the National Secretary Phone: (679) 3315377, 3315402/ Fax: (679) 3300306 / Email: ftuc1@connect.com.fj

Appendix III

FIJI TRADES UNION CONGRESS

REPORT

TO

OFFICERS OF THE ILO GOVERNING BODY

GENEVA, SWITZERLAND

Fiji Trades Union Congress
32 Desvouex Road
Suva, FIJI
15th October, 2015

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FTUC REPORT TO THE OFFICERS OF THE ILO GOVERNING BODY

At the March 2014 Session of the ILO Governing Body (GB), the GB agreed to establish a Commission of Inquiry if the Government of Fiji (GOF) failed to allow the ILO Direct Contacts Mission to return in time to report to the November 2014 Session of the GB. The GOF did receive the Mission in early October 2014 - more than two years after it was ejected without warning - to verify the charges levelled by the workers, and which were supported in two tripartite resolutions. The Mission verified the numerous allegations concerning serious and widespread violations of the Right to Freedom of Association in Fiji.

An MOU was signed at the conclusion of that Mission by Fijian worker and employer representatives, but the GOF refused to sign it claiming that it had not been consulted. At the November 2014 Session, the ILO GB decided to defer its decision to March 2015, and monitor any progress made to address the observations of the ILO supervisory system and the Mission's report.

Just prior to the March 2015 Session, the GOF put forward a new MOU which made no reference to ILO Convention 87 and included no timeline to address the constituents' concerns. The GOF's MOU was viewed as inadequate and rejected by workers. As it thus appeared that the ILO GB might establish the Commission of Inquiry, the GOF, signed a new Tripartite Agreement with the Fijian social partners on 25 March, 2015.[1]

The agreement provided:

1. That the Employment Relations Promulgation (ERP), the main labour law of Fiji, would remain the primary basis for labour management relations in the country.

2. The agreement also provided that the review of the labour laws would be conducted through the Employment Relations Advisory Board (ERAB) and be in compliance with Core ILO Conventions.

3. That the Parties may introduce new matters for consideration and also review amendments already agreed to by the Tripartite Partners in ERAB.

4. The agreement also committed the GOF to restore check-off facilities for union dues.

5. The agreement established a timeline, requiring the GOF to ensure that the labour law review was completed and presented to Parliament by the end of August 2015 and implemented by the end of October, 2015.

[1]Tripartite Agreement, online at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/genericdocument/wcms_357269.pdf

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6. Based on that agreement, the GB requested the Government and the social partners, in accordance with the Tripartite Agreement, to submit a joint implementation report to the June 2015 GB and agreed to defer a decision on the Commission of Inquiry until the November 2015 Session.

To date, none of the six provisions of the Agreement (stated above) have been complied with by the GOF.

In June 2015, the ILO GB regretted the failure to submit a joint implementation report as called for in March, 2015. The GB urged the GOF through the Employment Relations Advisory Body to review its labour laws to ensure compliance with ILO core conventions. It further reiterated its request for the submission of a joint report at the November 2015 session of the Governing Body. The deadline for the submission of this report is mid-October. Since no meeting have taken place, it is not possible to submit a joint report as required by the GB. Therefore, the FTUC submits this report to the Officers of the ILO GB.

It should come as little surprise that the GOF apparently had no intention of honoring the agreement. The GOF made numerous amendments to the ERP, including incorporating some of the worst provisions of the Essential National Industries (ENI) Decree into the ERP. The Committee of Experts had called for the total repeal of the ENI Decree, which did not happen. The GOF did so of course with no consultation with, much less agreement of, the social partners. Further, provisions of an earlier review by the ERAB were not taken up at all. As such, the new ERP is far out of compliance with Convention 87, passed in the absence of meaningful consultation with, much less agreement of, worker and employer representatives. Indeed, no meaningful meeting has taken place with the GOF since the March 2015 Governing Body despite numerous requests and reminders from FTUC and FCEF.

The GOF has squandered yet another opportunity and instead acted in bad faith, demonstrating that it simply cannot be trusted. The GOF has shown it simply will not comply with its legal obligations without the imposition of more serious measures.

Below are some of the FTUC's concerns with the new ERP:

1. No remedy for Unions that were deregistered and Agreements which were abrogated.

The government's unilateral imposition of the *Essential National Industries Decree* (ENI Decree) led to the deregistration of several trade unions and the abrogation of their Collective Bargaining Agreements. The new ERP does not solve the legacy issues. Those trade unions which weren't wholly eliminated by a new minimum membership requirement were replaced by so-called non-union "Bargaining Units" - which were criticized by the CEACR. Those unions are no longer and the bargaining units remain in place. And, as explained below, the new ERP actually promotes those units over trade unions.

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2. Non-union "Bargaining Units" are promoted as an alternative to Trade Unions.

Workers can belong either to non-union Bargaining Units or form or join trade unions; however, Bargaining Units are clearly promoted over Trade Unions. Bargaining Units created under the ENI Decree were not eliminated but instead allowed to continue to operate under the new ERP and to enjoy all the rights of Trade Unions, including the right to Collective Bargaining. Section 189(2) does allow workers in existing bargaining units to join a trade union; however, this may only take place if a majority of the workers in the bargaining unit vote in favour of joining a trade union by a secret ballot. This provision appears to narrow the provision of Section 190 which provides that all workers have the right to form and join trade unions. Under Section 119(2) of the ERP, a group of seven or more workers may form a new trade union. Workers in existing bargaining units appear not to have that right.

Further, Bargaining Units appear not to be subject to any of the extensive registration, governance and compliance regime in Part 14 of the ERP (Section 116-140) like Trade Unions. The fact that a Bargaining Unit may be set up through an easier process involving fewer requirements may facilitate the capacity of the employer to interfere in the choice of the workers and establish a unit which is more clearly under the his or her domination or control. Given that a bargaining unit by its very nature does not embody the democratic structures established in trade union constitutions which outline the rules of officer elections, general assemblies and engagement with its membership on critical issues, it is not clear how a bargaining unit ensures that its engagement with the employer reflects the interests of the workers.

By definition, the officers, executives, representatives and members shall be made up of the workers who are part of the Bargaining Unit, meaning that Bargaining Units cannot elect leaders from outside of the enterprise – depriving workers of the opportunity to elect full time, experienced Trade Union leaders. This violates C87. It remains unclear what relationship Bargaining Units may have with Trade Unions or Trade Union Federations or Confederations.

Finally, Bargaining Units appear not to be covered by Part 15 of the ERP relating to rights and liabilities of the Trade Unions, including prohibition on civil liability for acts in furtherance of a labour dispute, to own property, and to access workplaces to discuss union business or to recruit members. Members of Bargaining Units who are subject to acts of "anti-union discrimination" do not seem to fall within the scope of anti-discrimination provisions elsewhere in the ERP.

3. Disputes before Tribunal not reinstated.

Numerous disputes that were before the Arbitration tribunal and Courts were discontinued by the imposition of the ENI Decree. This denied many workers any recourse to justice permanently while the ENI Decree was in force. With the ENI Decree repealed, the Amendment of the ERP does not address the rights of these workers to seek review and justice of matters that were before the Tribunal and Courts.

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4. The list of Essential Industries is expanded under the new ERP.

Part 19 has a much wider scope and covers a broad range of activities and services, including activities and services that were previously covered by the ENI Decree, as well as new ones under the ERP.[2]For example, the list of "essential services" has now been extended to include all government-owned commercial enterprises including the sugar industry and fishing industry. All of the essential industries which were previously covered by the ENI Decree are obviously not essential services in the meaning of the ILO principles. The inclusion of "the Government" and "a statutory authority" also goes well beyond the limited notion of exercising authority in the name of the State, where ILO supervisory bodies have considered that restrictions or a prohibition on the right to strike may be permitted.

Part 19 effectively denies workers in "essential services or industries" from taking industrial action (explained below) and takes the negotiation of collective agreement within that class out of the standard procedures that otherwise apply under the ERP.

5. The Right to Strike is nearly impossible to Exercise.

The CEACR previously commented on the combined effect of sections 169, 170, 181(c) and 191(1)(c) of the ERP which restricted strike action. The Committee stated that: "a prohibition of strikes may result in practice from the cumulative effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the **discretion** of the public authorities, disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned". These systems make it possible to prohibit virtually all strikes or to end them quickly: such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members… and is not compatible with Article 3 of the Convention. ***Accordingly the Committee again requests the Government to amend sections 169, 170, 181 and 191(1)(c) of the [ERPf***".

Section 191BS of the new ERP replaces, largely un-amended, Section 191 of the ERP relating to instances where the Minister can refer a strike to the Arbitration Court and order a discontinuance of a strike in such an event. Section 181 in the Bill provides that the Minister can now apply for an injunction to discontinue a strike at the employer.

Section 175(3)(b) relating to strike ballots has not been amended by the Bill. This section sets in place requirements for strike ballots and requires a 50% vote of all members that are entitled to vote. The CEACR has previously requested the Government to take the necessary measures to amend section 175(3)(b) of the [ERP] so as to ensure that, regardless as to whether the strike ballot is conducted during a union meeting or at each individual workplace, only a simple majority of votes cast in a secret ballot is required."

[2]"essential service and industry" or "essential services and industries" means a service listed in Schedule 7 and includes those essential national industries declared and designated corporations or designated companies designated under the Decree, and for the avoidance of doubt, shall also include— *(a)* the Government; *(b)* a statutory authority; *(c)* a local authority, including a city council, town council or rural authority; *(d)* Government commercial company, as prescribed under the Public Enterprise Act 1996; *(e)* a duly authorised agent or manager of an employer; and *(f)* a person who owns, or is carrying on, or for the time being responsible for the management or control of a profession, business, trade or work in which a worker is engaged.

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Section 180 of the existing ERP provides that the Minister has the power to declare a strike illegal. The Committee of Experts has commented that responsibility for declaring a strike illegal should not lie with the government and the right of appeal to the courts does not in itself constitute a sufficient guarantee.

A Union in an essential service must give 28 days' notice of an intention to take industrial action to the Employer or Union in a prescribed form. If notice does not comply with statutory requirements of s191BN (2) or 191BO (2), the notice is deemed not have been made and any strike taken after the service of a non-compliant notice is unlawful.

The combination of these various requirements, in practice, would make it difficult to lawfully engage in a strike.

6. The Institutions Required to Make the Amended ERP Function Do Not Exist.

The amended ERP requires all companies and industries under the "essential services" to report disputes of interest to the Arbitration Court and its Secretariat. The amendments entered into force on 11 September, 2015. No Arbitration Court or Secretariat of the Court has been established despite recent claims by Government that some person has been appointed as the Chair of the Arbitration Court. Therefore, Unions and workers in the "essential services" have no recourse to any third party to resolve disputes. Further, Trade Unions who represent workers in the "essential industries" must register with the Arbitration Court before reporting any dispute or registering any agreement reached with Employers. This too does not exist. All disputes need to be reported on "prescribed forms", which also do not exist.

Unions need to register with the new Arbitration Court before any disputes can be referred to the Court. There is no Court and Secretariat and therefore no disputes can be referred to the Court.

The FTUC has additional concerns:

1. Collective Bargaining Non-Existent.

No Collective Bargaining has taken place despite many requests by Trade Unions in the public sector and in private sector where the industry or company is classified as "essential services". The Public Sector Unions have made numerous request for Collective Bargaining with Government and Government owned Enterprises. No response has been received, let alone the commencement of collective bargaining. This is despite claims by Government that Collective Bargaining has been restored.

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2. Dues Check-Off Not Restored.

The tripartite agreement provided that the GOF would restore dues check-off. However, no check off has been implemented in government owned enterprises despite numerous reminders. Many are simply objecting to any dealing with unions.

3. Workers Subject to Harassment and Intimidation.

In Tropikwood Industries Limited, a wholly owned government company, management has denied to allow union access to workplace despite their right to do so under the ERP. Further, the company has refused to deduct union subscriptions and has threatened workers with the non-payment of annual bonuses and other benefits if the workers do not resign from the Union and join their In-House Union formed by Management. This has been reported to the Ministry of Labour and the Regional Director of the ILO. To date, no action has been taken and Management continues to intimidate workers on a daily basis. Similarly other Government owned enterprises have refuse unions access into workplaces and have intimidated workers. These Employers are actively promoting the formation of bargaining units.

4. None of the other issues raised by the ILO Supervisory System have been resolved.

1. The Fiji Constitution enables impermissible limitations for the purposes of regulating trade unions or collective bargaining process;
2. The Pubic Order Amendment Decree has not been amended, posing serious risks to the exercise of freedom of association;
3. The Fiji Political Parties Decree imposes impermissible limitations on the ability of trade unions to participate in political processes or express political opinions;
4. The assaults against trade union leaders still have not been adequately investigated. No one has been arrested or prosecuted for those assaults; and

Finally, the GOF on 12th October 2015, just 3 days prior to the deadline for the submission of a joint Report by the GOF, FTUC and FCEF was due, convened a meeting of the Employment Relations Advisory Board (ERAB) to finalise a joint report. This time, as in March when the GOF convened a meeting of Bargaining Units and their Employers, the GOF invited many other employers and participants supposedly representing the social partners in an attempt to get them to sign a joint report to GB. Many of these participants were not a party to the Agreement of March 2015 and were not required to sign on in support of GOF. The FTUC did not attend nor did it wish to be a Party to another stunt by the GOF to enable it to report to the GB that consultations were ongoing.

Interestingly, those newly appointed as Employers Representatives are those who are Governments appointees to Government owned enterprises. These are the very people who have supported the ENI Decree and continue to resist unions and deny workers their

Freedom of Association. They are not Employers Representatives but Government representatives. The only exception being the Permanent Secretary for Sugar, who is a civil servant and not an employer. In fact they have usurped the authority of FCEF.

Similarly, the new Workers representatives are people who have formed a breakaway "national center" from FTUC calling themselves FICTU. This small group of people have struggled for some time to get some form of recognition and have found this opportunity to do so. This also suits Government but has exposed the desperate attempt to get some sort of a joint report albeit from parties who were not signatories to the Agreement signed nor do they represent the majority of workers in Fiji. There are others within the Workers group who have no Union in existence after the ENI Decree was imposed while one is from the bargaining unit.

There can be no excuse on part of the GOF to delay matters to the last days of the deadline for submission of reports. Ample time was available.

It is critical to understand that the Agreement placed definite obligation on the GOF within a timeline. The Agreement also stated that Government was to implement the laws passed by Parliament by the end of October 2015. This clearly meant that Government not only legislate laws but put them into practice. This has clearly not happened.

END.

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