

PROGRESS REPORT

ON

DECENT WORK AGENDA

IN FIJI

**2ND SUBREGIONAL TRIPARTITE FORUM ON DECENT WORK
IN SOUTH EAST ASIA AND THE PACIFIC**

5TH TO 8TH APRIL 2005

Introduction

The objective of the ILO is the promotion of decent and productive work in conditions of freedom, equality, security and human dignity. Decent work is important because it not only provides a platform for social inclusion and poverty alleviation but also comes with a social and economic dividend. Section 33(1) (3) of the Constitution of Fiji also entitles all persons the right to fair labour practices, including humane treatment and proper working conditions.

The Ministry of Labor's commitment under the National Strategic Plan 2004-2006 is to rebuild confidence, stability and growth in the labour market with a vision of "Decent Work for All". It is reforming all labour legislations with the aim of providing a progressive business environment that promotes flexibility in wage fixing, stable employment relationships that will enhance productivity and quality of working life.

This report is focused on progress made by Fiji on Decent Work in the four strategic objectives of Labour Standards, Fundamental Principles and Rights at Work, Decent Employment and Income, Social Protection and Social Dialogue as submitted in the "Plan of Action for Decent Work" during the 1st South-East Asia and the Pacific Subregional Tripartite Forum held in Auckland in 2003.

Sector One: Labour Standards, Fundamental Principles and Rights at Work.

Labour standards provide the benchmarks for Member States to compare their performance under the Decent Work agenda.

Fiji has ratified twenty-five (25) ILO Conventions including the eight (8) "core" Conventions and the latest being Convention 159 dealing with the Rights of Disabled People.

Government has made sure that the Employment Relations Bill 2005 (ER Bill), previously known as the Industrial Relations Bill, is in compliance with all the ratified Conventions, and continues to encourage social partners to dialogue in good faith. In this regard a tripartite workshop was held on the Bill for the social partners and currently a "road show" is being held around the country to seek the views of the large portion of employers and workers in Fiji including the general public before tabling of the Bill in Parliament later in the month.

The ER Bill

In its present form, the ER Bill contains 22 Parts, 267 sections and eight Schedules. The Bill provides a legislative framework for:

- Creating labour standards fair to workers and employers to build productive employment relationships;
- Elimination and prevention of discrimination in employment to enhance quality of working life and promote good governance;
- Establishment of a structure of rights and responsibilities for parties engaged in employment relations and encourage good faith bargaining;
- Establishment of Mediation Services as the primary mechanism for resolution of employment grievances and disputes. The establishment of the Employment Tribunals and Employment Court for adjudicating disputes:
- Encouraging labour-management consultation in workplaces to promote quality employment relationships between parties; and
- Complying with international obligations and Fiji's Constitution.

Salient Features of the Bill

The Bill retains many of the provisions contained in the existing legislations that are considered still relevant and applicable. However, some provisions have been modified to reflect the changing circumstances.

Further, the Bill introduces new laws in line with developments and practices in Fiji and internationally, ensures compliance with ILO Conventions especially those, which Fiji has ratified, and brings various outdated provisions in line with Fiji's Constitution.

Some provisions of our existing labour laws have also been tested through the Courts either by employers, trade unions or individual workers. These provisions were updated to reflect case law judgments that are compatible with the policy direction of the Bill.

Legislation to be Repealed

The enactment of the ER Bill is designed to repeal and replace the following separate pieces of labour laws:

- Employment Act (Cap 92)
- Public Holidays Act (Cap 101)
- Trade Disputes Act (Cap 97)
- Trade Unions Act (Cap 96)
- Trade Unions (Recognition) Act 1998 and
- Wages Councils Act (Cap 98)

The Health and Safety at Work Act, Workmen's Compensation Act and Industrial Associations Act are scheduled to be reviewed next year.

Policy Statement of the Bill

This Bill implements Government policy to repeal and replace the abovementioned legislation and introduce a framework for the conduct of employment relations based on

the understanding that employment is a human relationship involving issues of mutual trust, confidence and fair dealing, not simply a contractual, and economic one.

The overarching objective of the Bill is therefore to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment. The employment environment encompasses the entire complex and dynamic system of relationships, which includes all participants, not just employers and workers. In order to achieve this primary purpose, the Bill specifically:

- Recognizes that employment relationships must be built on good faith behavior;
- Acknowledges and addresses the inherent inequality of bargaining power in employment relationships;
- Promotes collective bargaining as a democratic choice of workers;
- Protects the integrity and right of individual choice;
- Promotes mediation as the primary problem resolving mechanism; and
- Reduces the need for judicial intervention.

The Bill also seeks to promote observance in Fiji of the principles underlying all the eight “core” International Labour Organization Conventions, including Conventions 87 and 98, regarding the right to freedom of association for all workers and employers, and the promotion of collective bargaining. The Bill also ensures that its provisions comply with and give effect to relevant provisions of the Constitution (Amendment) Act 1997.

In order to address the issues underlying its objectives, the Bill therefore promotes the voluntary organization of workers via unions and collective bargaining as the best means of redressing bargaining power imbalances, whilst giving individuals the choice as to how their terms and conditions are negotiated, either individually or collectively. Alongside this, is the notion that the employment relationship itself should be conducted in a manner that promotes good faith, fair dealing and mutual trust and confidence between the parties.

The Bill requires employers and union to conduct collective relationships in good faith. Whilst good faith will be of particular importance during negotiations, the duty will apply at all times – essentially it will require all participants in the employment environment to act reasonably in their dealings with each other.

Terms and Conditions of Employment

The Bill provides for both collective and individual employment relationships and sets processes for negotiating employment agreements.

Essentially, collective agreements set the terms and conditions of union members who undertake the work covered by the coverage clause of the collective agreement. Additional terms and conditions can also be negotiated on an individual basis, provided that these are not inconsistent with those of the collective agreement. Any worker can

elect to be employed on the collective agreement at any time, if they fall within the coverage clause of the agreement, by joining the union.

Recognizing that workers are often most vulnerable at the commencement of employment, the Bill makes special provision to protect new workers.

For the first 30 days of employment new workers are employed on oral contract. However, thereafter the Bill requires the parties to enter into written contract stipulating minimum terms and conditions of employment consistent with the Bill.

Employment Grievances & Dispute Resolution

Consistent with the emphasis on the maintenance of the employment relationship wherever practicable, reinstatement becomes the primary remedy for grievances where this is sought by the complainant.

The Bill also provides that every collective agreement and individual agreement must set out a grievance procedure to effectively manage any differences between the parties. However, if there is no such agreed procedure, the Bill provides for a standard procedure for settlement of grievances and disputes.

In terms of dispute resolution in employment relationships, a strong emphasis is placed on the prior resolution of differences by the parties themselves. A key element is the establishment of specialist nation-wide mediation services, delivered via range of information and problem resolution means provided by the Ministry of Labour, operating across the whole range of employment matters to facilitate their speedy resolution. The Bill embodies a general presumption that mediation will be the first port of call for dispute resolution before any decision-making forum is sought.

While mediation is not compulsory in all cases, the Bill makes it a general prerequisite that all mediation options should be exhausted, wherever practicable, before further actions can be taken.

The Bill also establishes a separate specialist adjudicating body, known as the Employment Tribunal, to hear and determine employment matters in a speedy and sometimes non-adversarial way. The Tribunal will have the power to gather information, call evidence and investigate matters as they see fit, in order to understand the key issues in dispute, and make pragmatic determinations about them.

It is intended that the Tribunal will make practical decisions quickly, with a minimum of detail, focusing on key issues and how to resolve them. Informality may be emphasized by the Tribunal, and efforts to achieve prior settlement encouraged by enabling , and efforts to achieve prior settlement encouraged by enabling the Tribunal to order the parties to try to resolve their differences through mediation before it proceeds to deal with any matter, where this is appropriate in the circumstances.

The Bill establishes an Employment Court as a division of the High Court dealing primarily with labour related matters. The Court will also hear cases on appeals, where

the parties are dissatisfied with decisions of the Tribunal. Any appeals from a decision of the Employment Court will be heard by the Court of Appeal, on points of law, and thereafter to the Supreme Court.

Application of the Bill

The provisions of the Bill apply equally to the State sector (with its Government and statutory entities) as to the private sector, including the Sugar Industry which is not covered under the current trade dispute legislation. The domestic workers will also come under the ambit of this Bill.

Sector Two: Create Greater Opportunities for Women and Men to secure Decent Employment and Income.

The population is slowly changing and Fiji is departing from its youthful status with a proportion of working age population rising from 51% in 1966 to 61% in 1996. The number of women entering the labour force has also increased. This is a demographic bonus to the nation if people can find decent work.

The small and micro-enterprise (SME) sector offers the greatest opportunity for the employment creation and wealth in the medium term. Out of an estimated labour force of 298,215 recoded in the 1996 Census, 169,983 (57%) were engaged in small and micro-enterprises. SMEs generate more employment than paid or formal employment.

It has been observed that women face a narrow range of occupational choices, less access to the formal and fewer opportunities to find full-time jobs relative to men despite their higher average level of education. Women also earn less than their male counterparts in some sectors and comparable positions. With the ratification of ILO Conventions 100 and 111 and inclusion in the ER Bill, greater efforts would be made to ensure equality in opportunity and treatment to prevent discrimination against women that denies them full access to labour market rewards.

In order to provide safety net and protection to vulnerable workers in the both unorganized and informal sector, efforts are being made towards setting of minimum wages through the establishment of sectoral Wages Councils. In addition, the Industrial Relations machinery in the ER Bill will for the first time afford the unorganized sector avenue for redress of employment grievances including unfair dismissal through the Labour tribunal and the Labour Court.

From 1998 to 2004 the OHS Service of the Ministry conducted and trained about 10,000 members of OHS Reps and Committees on OHS and this has reduced the Workmen's Compensation cases reported to this Ministry from 909 in 1999 to 719 in 2004. There are other private trainers and institutions such as the Training and Productivity Authority of Fiji (TPAF) that train employers and workers on OHS also.

The Integrated Human Resources Development Programme for Employment Promotion

(IHRDPEP) has replicated the Sigatoka Pilot Scheme in all provinces of Fiji and it is expected to create about 200 jobs in each province but there has been poor response to the Employment Placement Services/Job Matching System that has been established under the IHRDPEP. This unit has assisted about 270 applicants find jobs in 2004. The Computerized Human Resources information System (CHRIS) has been set up and is functioning while the National Standards and Accreditation Council has been set up with TPAF to promote the quality of skills training for job seekers.. The Government has given grants to Government Departments in 2005 and the next five years to reactivate the apprenticeship training scheme in Government Departments to boost the numbers of skilled manpower.

Sector Three: Enhance the Coverage Effectiveness of Social Protection for All.

There are 156 reported HIV/AIDS cases as at June 2004 and the National HIV/AIDS Strategic Plan 2004-2006 has been developed and endorsed by Government.

The increasing number of HIV/AIDS cases is a national concern and the ER Bill has provisions where workers with HIV/AIDS cannot be discriminated in employment. In an attempt to effectively prevent, manage and control the potential devastating impact of HIV/AIDS in Fiji, and the development of draft “Code of Practice for HIV/AIDS in the Workplace” forms part of this Strategic Plan. The National OHS Service of the Labour Ministry developed the draft Code after extensive consultation with the Ministry of Health and social partners. The draft has received strong support from local, national, regional and International Organizations.

The draft Code of Practice, which applies to all workplaces, provides practical guidance to workplaces in regards to duties of employers to workers and duties of workers to address and prevent HIV/AIDS in workplaces.

The guidelines cover the following areas:

- (a) Prevention of HIV/AIDS;
- (b) Minimization of the risk of infection resulting from work-related exposure to HIV;
- (c) Management and mitigation of the impact of HIV/AIDS on workplaces;
- (d) Care and support of workers infected and affected by HIV/AIDS;
- (e) Elimination of stigma and discrimination on the basis of real or perceived HIV status; and
- (f) To assist workplaces to respond appropriately and effectively to HIV/AIDS related workplace incidents.

The draft Code of Practice is referenced to the ILO Code of Practice and the Code by the Australian National Occupational Health and Safety Commission. It is currently with the State Law Office for legal vetting.

The National OHS Service of the Ministry, in consultation with Ministry of Agriculture, Department of Environment, has prohibited the import, export, use and disposal of five Persistent Organic Pollutants (pesticides) which are considered harmful to workers and the general public.

The Service has also outlined the procedure for the safe removal of asbestos containing material in the interest of the health and safety of workers involved and the general public.

The Fiji National Provident Fund (FNPF) legislation has been reviewed to extend the compulsory coverage policy to achieve universal coverage of social security in Fiji. It is expected that FNPF would take lead to formulate health care coverage and extension of coverage to workers in the informal sector. The necessary legislation has been prepared and sent to State Law Office for vetting.

Sector Four: Strengthen Tripartism and Social Dialogue

Tripartism is a declared Government Policy and social dialogue is widely practiced in Fiji. Government recognizes the importance of social dialogue and this is reflected in its decision to reactivate the Tripartite Forum. The tripartite process gives a voice to employers and workers in the formation of national policy on work related and other social and economic issues. The Labour Advisory Board which is tripartite in membership is fully operational and advising Government on key labour and employment issues. The Board also includes the Fiji Women Rights Movements and key NGOs.

The progress of the Tripartite Forum has been hampered by objections to its composition and the Government is considering this issue. It is hoped a decision would be made later in the year.

The Ministry of Labor's minimum wage fixing machinery known as the Wages Councils are also tripartite in membership. They are set up for ten sectors to determine minimum wages and setting humane conditions of work in the small and micro industries, where most of the workers are unorganized and vulnerable.

Considering that women lack full access to, and participation in social dialogue mechanisms and processes, the Government has made policy of at least fifty percent membership of women on all its boards and committees.

2005 NATIONAL PLAN OF ACTION FOR DECENT WORK: FIJI

Sector One: Fundamental Principles and Rights at Work			
Decent Work Focus	Current Situation	Strategic Response	Progress to-date
Principles			
Freedom of Association and Collective Bargaining	Freedom of Association for employers and workers permitted under Fiji's Constitution Access to Collective Bargaining permitted under Fiji's labour laws	Any restrictions currently on Freedom of Association and access to Collective Bargaining will be removed in the revised Industrial Relations Bill	ILO Conventions 87&98 have been ratified. ER Bill has been endorsed in principle by the Social Partners in its modified terms.
Abolition of Forced Labour	No concrete evidence of forced labour in Fiji	Continue to monitor the situation through labour inspections	Ministry of Labour is monitoring the situation
Abolition of Discrimination in Employment and Occupation	Some discrimination exists in a subtle form	It will be illegal to discriminate against workers on a number of grounds and laws will be put in place to deal with offenders – Employment Grievance in ER Bill.	ILO Conventions 100&111 ratified and are included in the ER Bill
Abolition of Worst Forms of Child Labour	Worst forms of child labour not apparent as yet in Fiji. Some child labour exists but extent and magnitude not known Work likely to harm the health, safety or morals of children	Study to identify causes, nature and extent of child labour and recommend measures Implement Compulsory Education Act, revise school curriculum,	Compulsory Education Act implemented in 2004 Curriculum revised to include environmental and business skills Combined pre-school & secondary enrolment decreased from

	is prohibited School drop outs	increase combined primary and secondary enrolment to 90% and increase preschool enrolment in rural schools by 10% Upgrade school facilities in rural areas	86.6 in 1999 to 83.2 in 2002 Pre-school enrolment in rural schools increased OHS Service is working with Ministry of Education
Rights	No worker required to perform forced labour No discrimination limited only to grounds provided for in Fiji's Constitution Freedom of Association No restrictions on workers joining a trade union of their choice. Employer cannot make it a condition that a worker must be or become a member of a trade union to get a job. No closed shop No provision prohibiting screening for HIV/AIDS, STD or pregnancy is prohibited.	The ER Bill to include no discrimination based on an expanded list of grounds Pay male and female equal remuneration for work of equal value ER Bill will prohibit the screening for HIV/AIDS, STD or pregnancy. Women performing their reproductive functions must be provided with adequate remuneration and recovery periods Women must not be disadvantaged by taking maternity leave	ILO Conventions 100 & 111 ratified and are included in the ER Bill. Effective date of implementation of the ER Bill
Ratification of Fundamental	Fiji ratified all Core Conventions in	Ensure compliance with the ratified	Reports already submitted to ILO

Conventions	<p>April 2002</p> <p>First reports to be submitted in April 2004</p> <p>Core Conventions not mandated by the Parliament</p>	<p>Conventions</p> <p>ER Bill will be aligned to the ratified Conventions</p> <p>This is not a requirement as confirmed by the ILO</p>	
Gender Equality – TC Program	<p>Different pay for men and women in some industries</p> <p>Fiji has ratified Convention 111</p>	<p>It would be unlawful to afford a person different remuneration by reason of the gender of that person</p> <p>Employers will be given twelve months to make adjustments</p> <p>Equal pay for work of equal value</p>	<p>These provisions have been included in the ER Bill</p>
Sector Two: Decent Employment for Women and Men			
Employment			
Policy	<p>National policy on employment creation and strategies: uncoordinated</p>	<p>Need to develop national policy in consultation with Tripartite Peak Body on IHRD and LAB</p>	<p>Govt. proposing that Tripartite Peak Body to develop national policy in consultation with MLIRP & NPO</p>
Job creation through small and medium micro enterprises (entrepreneurship private investment and cooperatives)	<p>Legislation is now in place to implement SME development</p> <p>National Centre for SME Development set up to coordinate and facilitate development of SME's</p> <p>Need to increase</p>	<p>Implement strategies through the Small and Micro Enterprise Act of 2002</p> <p>Increasing private investment requires investor confidence</p> <p>Requires resolution of political impasse regarding multi</p>	<p>Ongoing</p> <p>Investment on law & order should improve investor confidence</p> <p>Resolved</p>

	private investment	party Cabinet	
Job creation in the informal sector (entrepreneurship private investment and cooperatives)	IHRDP is currently confined to the Nadroga province	Monitor performance of IHRDP and consider replicating in other provinces Job placements	The project has been replicated in all Provinces
Creation of Jobs in different sectors such as tourism, agriculture, forestry, etc	IHRDP ongoing with limited application ADB Displaced Farmers Livelihood project	National Centre for Small and Micro Enterprises and FDP should continue with the efforts	The ACP loan been given to Ministry of Commerce, Business Development and Investment to assist the needy Ongoing
Employment off Disadvantages groups <ul style="list-style-type: none"> Youth Women Persons with disability 	Women youth and persons with disability belong to the disadvantaged group	Women will be given equal opportunity and should not be discriminated Ratification of Convention on the Disabled (159) Should be paid equal rates of remuneration for work of equal value Employers with 50 or more workers must employ disabled workers on a ration off 2% of their workforce	These provisions have been included in the ER Bill Convention 159 has been ratified Has been included in the ER Bill Has been included in the ER Bill
Employment through knowledge and skills (such as training in vocation, trade, knowledge-based industry, technology development, etc gender balanced	These types of training are currently provided by the FIT and TPAF through its own efforts and also through the Asian Productivity Organization	Continue to provide employment training in line with the growing demand for such training	FIT/TPAF and the Ministry of Education Ongoing
Labour market policy-	Existing policy	Implement all	CHRIS has been

gender balanced Policy development	contained in the NSDP stresses the need to review labour legislation, establish CHRIS and LMI, set up a National Accreditation Board, employment placement and job matching centre and conduct labour force surveys annually	measures outlined in the NSDP	established and proposal for LMI being done. National Standards & Accreditation Council established by TPAF Ongoing –LA&PI
Dynamic labour market information system	<ul style="list-style-type: none"> • Highly disaggregated data • Inconsistent series • HIES conducted in 2002 is the latest source 	All LMI data collection and analysis agencies to pull their efforts together	National Planning Office LMI collation transferred from the Labour Ministry to the Ministry of Youth and Sports in late 2003 Relies on BOS data & the CHRIS
Sector Three: Social Protection for All			
Social Security (Provident Fund) – efficient operation and Coverage	<p>FNPF widened in its coverage Restrictions on withdrawals from FNPF on grounds of unemployment</p> <p>Poverty allowance should be needs based and given to the poorest of the poor</p> <p>Social safety net in case of sudden closure of businesses</p>	<p>Include voluntary contributors</p> <p>ER Bill provides for employers to give notice for closure</p>	<p>Draft Bill referred to State Law Office- included is extended coverage and health care coverage</p> <p>ER Bill provides minimum redundancy pay</p> <p>ER Bill requires that notice be given to workers and Ministry</p>
Policy	Wages Councils determine minimum conditions of	Assess the effectiveness of The wages councils	Ten Councils are operational and another under

	employment in unorganized sectors	and coverage (\$150 gross limit)	consideration by Ministry
Occupational Safety and Health gender balanced	General Workplace (Conditions) Regulations in effect from 01/09/2003	Enforce the GWC Regulations and ensure compliance	MLIRP Ongoing
Reduction of accidents and prevention of occupational diseases	Workers education and awareness programs	Need to continue with workers education program but in a more targeted manner	OHS Services of MLIRP Ongoing National rate of workplace injuries and accidents reduced by 5 to 8 percent per year for last 7 years.
Workers Compensation	Long delays in processing of applications because of no medical reports Review legislation	Set up a panel to decide on compensation claims Enforce provisions requiring employers to provide insurance coverage for workers	Discussions held with Ministry of Health to speed up on medical reports Workmen's Compensation Act to be reviewed next year
HIV/AIDS at workplace – gender balanced	Strategic Plan for 2001 – 2003 to prevent and control the spread of HIV/AIDS is being implemented	Strategic Plan needs to be reviewed and new Plan to be prepared	Ministry of Health has a National Council working on this plan
Policy			
Code of Practice	Lack of general awareness of HIV/AIDS at the workplace	Ensure increased awareness of HIV/AIDS at the workplace	Draft Code of Practice developed in consultation with Ministry of Health and referred to State Law Office for vetting. Awareness on going.
Migrant Workers			
Policy and Gender			

Balanced			
Equal Treatment	Employers should accord equal treatment to migrant workers	Should carry out targeted inspections of workplaces employing migrant workers; checks on contracts,	Ongoing work of MLIRP
Sector Four: Tripartism and Social Dialogue			
Tripartite Partners Improved/New Services	Need to reactivate the Tripartite Forum Wages Councils TPAF and LAB, NOHSAB and Peak Body on IHRDP continue to comprise tripartite representation	Await the decision on multi-party Cabinet	Cabinet has approved but hampered by objections to its composition
Strengthening employers' organizations	Employers organizations participate in all tripartite bodies	Continue with existing arrangements and include SME's from FCCI	Continuing
Social Dialogue			
Application of social dialogue conventions	Convention 144 on Tripartite Consultation on ILO Standards	Create general awareness of the Convention, LAB is the consultative machinery	MLIRP Ongoing
Establishing institution and framework (gender sensitive dialogue)	NGO's working in liaison with the Ministry to set up institutions	Discussions in LAB and other tripartite bodies	MLIRP & NGO's
Labour legislation review	Existing labour legislation is being reviewed OHS Act 1996 stays Workmen's Compensation Act will be reviewed at a later date	The following Act will be repealed: Employment Act, Cap 92 Public Holidays Act, Cap 101, Trade Disputes Act, Cap 97 Trade Unions Act, Cap 96, Trade Unions (Recognition) Act, 1998, Cap 96A,	ER Bill is in its final discussion stage before referred to Parliament. Final LAB meeting and country wide Road Show on the Bill completed last month.

		Wages Councils Act, Cap 98	
Improvement of Industrial Relations	Large number of trade disputes reported to the Ministry	As part of the ER Bill Guidelines for Labour Management Consultation and Cooperation have been included. Develop Industrial Relations policy on government-owned entities	MLIRP, Trade Unions and Employers Organization Ongoing Tripartite development of a Code of Good Faith included in the ER Bill.
Cross cutting issue; Gender mainstreaming	Lack of participation of women in Boards and Committees	Ensure equal representation of women in all labour, IR and Employment Boards and Committees	Ongoing