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Thirteenth sitting, 17 June 2019, 5 p.m.
Treizième séance, 17 juin 2019, 17 heures
Decimotercera sesión, 17 de junio de 2019, 17 horas

Chairperson: Mr Rochford
Président: M. Rochford
Presidente: Sr. Rochford

Discussion of individual cases (cont.)
Discussion sur les cas individuels (suite)
Discusión sobre los casos individuales (cont.)

Fiji (ratification: 2002)

Freedom of Association and Protection of the Right to Organise
Convention, 1948 (No. 87)
Convention (nº 87) sur la liberté syndicale et la protection
du droit syndical, 1948
Convenio sobre la libertad sindical y la protección del derecho
de sindicación, 1948 (núm. 87)

**Government representative (Mr CAWARU, Permanent Secretary, Ministry of
Employment, Productivity and Industrial Relations)** – In reference to the issues raised
concerning the Joint Implementation Report of 29 January 2016 (JIR), legislative aspects of

labour legislation and trade union rights and civil liberties, the response of the Fijian Government is as follows.

Mr Felix Anthony has been able to organize and carry out his union activities without any interference from the Fijian Government. The Fijian Constitution ensures that all workers have the right to fair employment practices including the right to join a trade union and participate in its activities. The Fijian Constitution also guarantees all workers their right to freedom of association. The Commissioner of Police as provided for under the Fijian Constitution is authorized to investigate circumstances of a possible violation of any laws. This authority includes the power to arrest, search and detain as necessary. Similarly, the Office of the Director of Public Prosecutions (ODPP) is responsible for the conduct of criminal prosecutions and is not subject to the direction or control of the Fijian Government. Therefore any actions taken by the Commissioner of Police or its police officers at the arrest, search and detention of any person as alleged by the Fiji Trades Union Congress (FTUC) and the International Trade Union Confederation (ITUC) were not intended to harass and intimidate trade unionists but to allow the Commissioner to conduct further investigation into alleged violation of relevant laws. The subsequent prosecution of any persons as a result of such investigation is decided by the ODPP and is not subject to the control of the Fijian Government.

On labour laws reform, I wish to draw the attention of the Committee to the following. First, the Employment Relations Advisory Board (ERAB) is established under the Employment Relations Act of 2007 (the Act) and it consists of public officers and representatives of Government, representatives of employers and representatives of workers. The Minister of Employment is the appointing authority for ERAB. In making appointments, the Minister must appoint persons who, in the opinion of the Minister, have the experience, the expertise, in the areas covered by the functions of the ERAB or in employment relations, industrial, commercial, legal, business or administrative matters. With respect to the appointments of representatives for employers and workers, the Minister is required to

appoint persons nominated by bodies representing employers or workers, respectively. Following the expiry of the previous members' term, the Minister for Employment appointed new members to the board. Nominees were received from the Fiji Islands Council of Trade Unions, Fiji Public Service Association and the Fiji Bank and Finance Sector Employees Union. The appointment of workers' representatives and employers' representatives to ERAB are based on the nominees received by the Minister.

Concerning the Fiji National Provident Fund (FNPF) board, the appointing authority is the Minister responsible for finance. In this case the Minister for Economy. The board members are appointed in accordance with the process of appointment and criteria for selection for appointment under the FNPF Act. The FNPF Act allows for one public official to be a member of the board. With respect to any appointments to the board, the Minister must be satisfied that the members would between them have appropriate skills and expertise in investment management, corporate governance, accounting and auditing, finance and banking, risk management, law, acting as an actuary or an auditor, and information technology or a similar engineering discipline.

As to the Fiji National University (FNU), the Council of the FNU (the Council) is the FNU governing body. The Council is made up of four ex officio members, 14 appointed members, five elected members and up to three co-opted members as follows: (i) the ex officio members: the Chancellor; the Deputy Chancellor; the Vice-Chancellor; and the Permanent Secretary for Education; (ii) members appointed by the Minister for Economy who, according to the Minister, have adequate qualifications, skills, expertise and knowledge to contribute to the disciplines offered by FNU and the general administration and financial management of a tertiary institution; (iii) elected members, as follows: one head of college of FNU; one member of FNU's full-time professional staff; one member of FNU's full-time and non-professional academic staff; one student representative of the undergraduates; and one student representing post-graduate students; and (iv) up to three co-opted members as appointed by the Council.

On the Wages Council. The Minister may, on the recommendation of the ERAB and having been satisfied that no adequate machinery exists for the setting of effective remuneration for a class of workers or that the existing machinery is likely to exist or inadequate, establish a wages council. Prior to the making of an order for a wages council, the Minister for Employment is required to firstly inform the public by way of publication in the *Gazette* of the proposed wages council order and allow for any objections to be made to the proposed order.

On the Air Terminal Services (Fiji) Limited (ATS). ATS is a private company in which the Fijian Government holds 51 per cent of shares and the ATS Employee Trust (ATSET) holds the remaining 49 per cent of the shares. The ATS board consists of seven members, out of which four members are appointed by Government and three workers' representatives appointed by ATSET. The Fijian Government accordingly appoints its representatives to the ATS board. The Fijian Government does not have any authority over the appointment of persons to the board made by ATSET. ERAB is the only statutory body that provides for a tripartite composition inclusive of representatives of workers. The functions of ERAB are clearly stipulated in the Act. FNPF and FNU are statutory bodies with their own statutory functions provided in their respective laws, and the compositions for their governing bodies are distinct from ERAB. Furthermore, ATS is a private company and its board members are determined in accordance with the shareholding structure of ATS.

In the spirit of social dialogue and tripartism, the Fijian Government continues to engage with its social partners on the way forward to implement the outstanding matters in the JIR. The tripartite partners recently met to discuss the way forward and propose timelines for dealing with the outstanding matters of the JIR. The Fijian Government have been able to hold the following meetings. On 11 March 2019, meeting with the Minister for Employment, the Honourable Parveen Kumar, the Permanent Secretary, myself, the trade unionists Mr Anthony, Daniel Urai and two other union officials, and the employers' representative, Mr Nezbitt Hazelman. On 3 April 2019, meeting with the tripartite partners,

that includes the ILO Director for the Pacific Island countries, Mr Donglin Li, and the ILO Decent Work International Labour Standards specialist, Ms Elena Gerasimova. During the 3 April 2019 meeting, the tripartite parties agreed that the Fijian Government has implemented a number of matters under the JIR. Primarily, by way of amendments to the Act, these amendments relate to: (i) the restoration of check-off facilities; (ii) reduction of strike notice to 14 days for essential services and industries; (iii) the reinstatement of grievances which were discontinued by the Essential National Industries (Employment) Decree 2011; (iv) the removal of all references to bargaining units in the Act and allowing workers to freely join or form a trade union, including an enterprise trade union; (v) repeal of sections 191X and 191BC of the Act, (vi); the application for compensation for workers employed in an essential national industry or a designated corporation or designated company under the Essential National Industries (Employment) Decree 2011 whose employment was terminated during the operation of the Decree; and (vii) any trade union deregistered was entitled to apply to be registered again. The outstanding matters under the JIR which the tripartite parties are working towards implementing includes the review of labour laws and the review of the list of essential services and industries. The ILO has offered to provide technical assistance for the review of the list of essential national services and industries. The Fijian Government is liaising with the ILO on the proposed tentative date provided by the ILO technical expert in relation to the workshop to be conducted for social partners. The Fijian Government also met with its tripartite partners on 30 April to review the agreed proposed amendments to the Act. During this meeting, the tripartite partners made good progress on the discussion of the proposed amendments to the Act and agreed to continue discussions. While the Fijian Government had proposed to continue discussions during the third week of May, the FTUC representative, Mr Anthony, informed that they would be providing their response to their participation at the tripartite dialogue on 1 June 2019. Despite the FTUC's withdrawal from participating in the tripartite dialogue and the board meeting on 5 September 2018, the Fijian Government remains committed to undertaking its obligations under the Tripartite Consultation (International Labour

Standards) Convention, 1976 (No. 144), and continues to recognize the FTUC and the Fiji Commerce and Employers' Federation as tripartite partners in advancing social dialogue.

In relation to Article 2 of the Convention, I wish to address that the ERAB is continuing its review of the labour laws and the inclusion of any proposed amendments to the Act. Any agreed proposed amendments will subsequently be submitted to the Parliament of the Republic of Fiji for its deliberation.

In relation to technical assistance from the ILO on the definition of essential services, I wish to advise that the Fijian Government acknowledges that an outstanding matter under the JIR is the review of the list of essential services and industries. The Fijian Government confirms that the ILO has offered to provide technical assistance for the review of the list of essential services and industries. On 29 May 2019, the Permanent Secretary, Mr Cawaru, met with Mr Anthony to discuss the Union's case against the Water Authority. In this meeting, Mr Anthony and the Permanent Secretary agreed to a suitable date to have the Essential National Industries Workshop, tentatively towards the end of October or early November 2019. This was communicated to the ILO Office of the Pacific Island Countries in Suva on 30 May and the Fijian Government has been advised that the ILO Suva Office is liaising with the technical experts on the proposed dates.

In relation to the obligation of union officials to be employees of the relevant industries or trade, and other issues concerning strikes and assemblies under the Employment Relations Act, the Fijian Government notes the comments provided by the Committee of Experts and will continue to work with its tripartite partners in reviewing the labour laws.

In relation to the Public Order Act, the Fijian Government notes the request from the Committee of Experts. It, however, restates that the permit requirement under section 8 of the Public Order Act 1969 applies to all persons in Fiji. The permit requirement is appropriate and necessary for the purpose of determining matters of public importance such

as national security, public safety, public order, public morality, public health and the orderly conduct of election and the protection of the rights and the freedom of others.

As for the Political Parties Decree, the Committee of Experts recalled that in its previous comments it had noted that under section 14 of the 2013 Political Parties Decree, persons holding an office in any workers' or employers' organizations are banned from the membership or office in any political party and from any political activity, including merely expressing support or opposition to a political party; and that sections 113(2) and 115(1) of the Electoral Decree prohibit any public officer from conducting campaign activities and any persons, entity or organization that receives any funding or assistance from a foreign government, inter-governmental or non-governmental organization to engage in, participate in or conduct any campaign, including organizing debates, public forums, meetings, interviews, panel discussions or publishing any material that is related to the election, and had requested information in this regard. The Committee noted the Government's reiteration that it has undertaken reforms, including the voting system, to create transparent rules of governance and that these provisions seek to ensure the political neutrality of public officers which include trade union officers. It further noted the continuing concerns of the FTUC that these provisions have created fear among the trade unionists as they have been accused of taking part in political activities when they have simply participated in union meetings, while the Decree itself denies the basic right of unionists to participate in political activities.

A full report of our response was provided in advance to the Committee last week and we seek the indulgence of the Committee to also rely on that report as I have used up my time.

Worker members – The violation of freedom of association in Fiji continues to be a very serious concern. As you recall, the Government of Fiji has a long history of hostility to the exercise of this fundamental right, as well as the institution of the ILO itself.

In June 2011, the Committee called on the then military Government of Fiji to establish tripartite dialogue with ILO assistance. In September 2012, a direct contacts mission attempted to visit the country but had been expelled. In 2013, having noted the lack of cooperation by the Government, the Governing Body of the ILO repeated its request to find appropriate solutions and to accept a direct contacts mission. In November 2015, the ILO Governing Body authorized a tripartite mission. That mission visited Fiji at the end of January 2016. At the conclusion of the mission, the Government acknowledged that its legal reforms did not comply with the Convention and agreed to another tripartite agreement to reform its legislation and comply with the terms of its previous agreement. The Government of Fiji was required to complete all agreed reforms before the March 2016 Governing Body. While some reforms were made and led to the withdrawal of the Commission of Inquiry complaint, many important issues were not addressed. Regrettably, the Government did not follow through on these outstanding commitments. Since the eyes of the international community turned away in 2016, the Government has walked away from its commitments and has instead returned to the use of threats, arbitrary arrests, pre-trial detentions and harassment. The persistent refusal to make progress on the JIR, and the continued and rising attacks on the exercise of the right to freedom of association requires the Committee to prioritize this serious case. We can simply not allow this situation to continue in Fiji.

We are deeply concerned about the return to violence against unionists and the repression of trade union rights and civil liberties. For example, on 1 May this year, hundreds of workers of the Water Authority of Fiji were preparing to picket against the Authority. The picket was lawful. However, the riot- and plain-clothed police stormed the union property and prevented the picket from taking place. Twenty-nine members of the National Union of Workers were arrested. Mr Felix Anthony, the National Secretary of FTUC, was also arrested on the same day. Shockingly, he was arrested during a tripartite meeting that took place at the Ministry in the presence of the ILO. How can we talk about respect for freedom of association and social dialogue when tripartite meetings are disrupted in this manner by

the police? The arrest was followed by the search of trade union offices and the confiscation of documents, computers, USB keys and the interrogation of union staff. Mr Anthony remains under surveillance. A further detail to these incidents that is of serious concern to us is the fact that the police relied on the Public Order Decree in order to restrict trade union gatherings and meetings. Section 8 of the Public Order (Amendment) Decree provides public authorities with the discretion to refuse a permit to hold an assembly to those that had previously been denied a permit. Moreover, the authorities may deny the permit to allow assemblies on very broad and undefined grounds. Any assembly that could be considered to prejudice peace, public safety and good order may be denied. The section also criminalizes any person or organization who would allegedly undermine or sabotage the economy or financial integrity of Fiji. These are very broad grounds and therefore prone to abuse. Indeed, as we have seen in the incidences I just mentioned, this provision continues to be applied in a manner that interferes, prevents and frustrates peaceful trade union meetings and assemblies. This is a blatant violation of the Convention. The right of trade unions to hold meetings in their premises, without prior authorization and interference by the authorities, is an essential element of freedom of association. Public authorities must stop interfering with trade union affairs. In light of these violations perpetrated by the Government, immediate steps must be taken to review the Public Order Decree, especially section 8, to bring it into line with the Convention. The right to freedom of assembly must be guaranteed both in law and in practice. The harassment and intimidation of workers by the security forces is persistent, more generally speaking. These tactics are used to undermine and silence social partners as they pursue their legitimate activities and objectives. Using detention and other police tactics against trade union leaders or members to influence their activities or membership is contrary to the principles of freedom of association and civil liberties. The Government must take steps to ensure that the police and other security forces abide by Fiji's international labour standards obligations.

Second, it is deeply concerning that the Fijian Government is manipulating national tripartite bodies to undermine the effective representation of workers' and employers' organizations. The Committee of Experts report indicates that the Government has interfered in the representation of workers' and employers' bodies such as the Fiji National Provident Fund, the Productivity Authority of Fiji, the Air Terminal Service and the wages councils, the Arbitration Court and the ERAB by removing or replacing members. Clearly, this is a gross interference in union affairs weakening the union from carrying out its basic function, which is to represent the interests of the workers. The protection of the autonomy and independence of workers' and employers' organizations in relation to the public authorities demands that the organizations determine their own representatives to national tripartite or representative bodies. The Government must address these concerns rapidly.

Third, we once again remind the Committee, and particularly the Government of Fiji, that the closure of the article 26 complaint was premised on the commitment of the Government to make steady progress with the realization of the JIR. This critically includes the review of the labour laws. We join the Committee of Experts that no progress whatsoever has been made. The Employment Relations Promulgation continues to retain repressive provisions which violate the Convention. Time will not allow me to detail all non-compliant provisions. However, I would like to point at a few examples that demonstrate the restrictive nature of the national legislative framework. The Law denies the right to establish trade unions without prior authorization. The registrar retains excessively wide discretionary powers to refuse the registration of a trade union under section 125. Section 3(2) denies prison workers the right to form or join unions. Section 127(d) prohibits non-citizens from becoming trade union officers. Section 184 permits interference in the making of union by-laws. Section 128(3) grants excessive powers to the registrar to demand access to trade union accounts at any time rather than calling for yearly audits as permitted under the Convention. The Law, in other sections, permits imprisonment in case of peaceful strikes in essential services. The law also grants wide discretionary powers to the Minister with respect to the

appointment and removal of members of the Arbitration Court and the appointment of mediators. I could go on and on with more examples, but I stop here.

The Committee of Experts has on several occasions reviewed these provisions as violating the Convention and has called on the Government to amend the provisions including the labour law as a whole. It is simply unacceptable that the Government has done nothing in four years to review these provisions. The Government should take urgent steps, in consultation with the social partners, to review these laws in line with the JIR. The Committee of Experts also points out that section 14 of the 2013 Political Parties Decree bans office holders in workers' and employers' organizations from membership or office in any political party. The exclusion of union office holders from political activities is confirmed by sections 113(2) and 115(1) of the Electoral Decree, which prohibits any public officer from conducting campaign activities. The Decree bans any entity that receives funding or assistance from a foreign government, intergovernmental or non-governmental entities from engaging in, participating in or conducting any campaign that is related to the elections. The ban and restrictions on trade unions, either directly or indirectly, from engaging in political activities constitutes a manifest violation of the Convention and the principles of freedom of association and civil liberties. Trade unions must enjoy the right to engage in public debates concerning economic and social policy without the fear that they may face retaliation or other consequences that would limit their rights under the Convention. The decision to cooperate with organizations outside the country must also be left to the discretion of the trade union. These provisions have been called out by the Committee of Experts as unduly restrictive. We join the Committee of Experts in calling for immediate amendments of the laws. Despite repeated disappointments over the Government's failure to make a genuine effort to fully implement the JIR, we still believe that this must be the way forward. The Government must immediately return to the negotiating table with the social partners and fully implement the JIR. Safeguards and guarantees for those participating in such a dialogue must be guaranteed. We repeat that

violent police interference targeting trade union leaders is not conducive in this respect. This must never happen again. The Government must walk the talk and demonstrate meaningful action in order translate its stated commitments into actual change that will finally put an end to these violations.

Employer members – The Employers’ group would like to begin by thanking the Government for their intervention today, and the provision of written information in advance. We note the Government’s submissions regarding its efforts to engage in consultation with national workers’ and employers’ organizations, as well as the Government’s submissions regarding its efforts to collaborate with the ILO.

This case stems from claims made by the FTUC that it and its members have been discriminated against by the Government. These claims relate primarily to a claimed lack of progress in the implementation of the JIR signed by the Government, the FTUC and the Fiji Commerce and Employers’ Federation on 29 January 2016, which, as the Worker spokesperson has explained, gave rise to the closure of the procedure earlier invoked under article 26 of the ILO Constitution. The FTUC claims that a persistent lack of progress in implementing the JIR, as well as continuing harassment and intimidation of trade unionists, and violations of human rights continues. It is mainly for this reason that the Committee of Experts has decided to examine the Convention outside of its normal reporting cycle.

The FTUC also alleges that the Government has systematically dismantled tripartism by removing or replacing the tripartite representation on a number of bodies, including the ERAB, the National Provide Fund, the Fiji National University Training, the Productivity Authority of Fiji, the Air Terminal Service and the wages councils, with its own nominees.

A third general area of concern expressed by the FTUC relates to the Political Parties Decree, under section 14 of which persons holding an office in any workers’ or employers’ organization are banned from membership or office in any political party and from any political activity including expressing support or opposition. The FTUC has explained that

its concerns relate to these provisions placing trade unionists at risk of being accused of taking part in political activities by participating in union meetings. At the outset, the Employers note that from a principle perspective we do not necessarily object to the notation that activities of any employers' or workers' organizations should be apolitical. Restrictions on public officers in engaging in political activity could be used to attempt to ensure political neutrality in the performance of the functions of the public office. It could also provide confidence that persons holding public offices do not use their public office resources, including funds, to finance political campaigns or advance a particular political agenda. Political activity may still be possible though the resignation from public office. This kind of restriction has been done in the past and the employers' or workers' representative can resume their role in the trade union or employer federation after contesting the general election. Having made this preliminary note, we would wish to make the following observations regarding the Committee of Experts' more detailed observations on this case. We note that the Fijian Constitution guarantees all employees the right to the freedom of association. This makes the recent arrest and subsequent release of the FTUC General Secretary all the more unfortunate, since the tripartite parties had just come to an agreement and set definite timelines to achieving the remaining two items under the JIR, which were a review of the list of organizations under the essential services and a review of the Employment Relations Act. It appears that the incident had the equally unfortunate effect of dissuading the FTUC from taking further part in progressing the work of the items remaining under the JIR. The Employers sincerely hope that the FTUC decides to return to the discussion table so that the two outstanding issues within the JIR can be achieved before the November Governing Body meeting. In seeking the re-engagement of the FTUC, the Employers agree that more can be done and should be done by the Government to ensure that regular meetings take place in a climate free from intimidation. Recent changes to the management of the Ministry of Employment, Productivity and Industrial Relations, and the chairmanship of the ERAB will, in the Employers' opinion, potentially serve to make a constructive difference to progress.

Unlike the FTUC, the Employers understand that the Fiji Commerce and Employers' Federation has no issue with the idea that statutory bodies be comprised of competent individuals. It accepts that this means that no one organization has absolute rights to representation on such bodies if their candidates do not possess the requisite attributes. This general view appears to apply to bodies such as the National Provident Fund, the National University and the ERAB. Employees, through such organizations as the FTUC used to enjoy board memberships as part of the tripartite requirement to certain boards. With respect to any appointment to the Fiji National Provident Fund Board, the appointing Minister must be satisfied that the members would between them have appropriate skills and expertise in investment management, corporate governance, accounting and auditing, finance and banking, risk management, law, actuary or auditor experience and or information or similar engineering experience and professional accreditation. In respect of the Fiji National University council members, we understand that the Minister appointing council members must be satisfied that the person appointed to the council must have adequate qualification, skill, expertise and knowledge to contribute to the disciplines offered at the Fiji National University, as well as the general administration and financial management of such an institution. Currently, the Fiji Commerce and Employers' Federation continues to be invited to submit a nominee to the Minister. However, we understand the FTUC is not extended such invitation. The Employers are of the view that it would be appropriate for the FTUC to also be invited to submit candidates on the understanding that neither the employers nor the union have a right to have their candidate selected if such candidates do not possess the appropriate expertise.

In respect of the ERAB, this is a statutory body that provides for a tripartite composition inclusive of representatives for workers. Its functions are clearly stipulated in the Employment Relations Act. Importantly, it is the principle tripartite mechanism for discussing and agreeing changes to Fiji's labour relations environment. Until recently, progress towards giving effect to the JIR has been steady. The Fiji Commerce and

Employers' Federation together with the FTUC have on two occasions gone through a review of the entire Act and agreed to, we understand, 90 per cent of the proposed changes in an effort to ensure compatibility to the Conventions taking into account the comments offered by the Committee of Experts. As evidence of this progress, on 3 April 2019, the tripartite parties agreed that a number of matters under the JIR have been implemented, primarily by way of amendments to the Act. These amendments relate to: the restoration of check-off facilities; the reduction of strike notice; the reinstatement of grievances; the removal of references to bargaining units in the Act; repeal of certain sections – 191 and 191X and 191BC of the Act, as well as dealing with trade union deregistration and the entitlement to become registered once again. There are still outstanding matters under the JIR which the tripartite parties, we understand, are working towards progress in implementation which includes the review of labour laws and the review of the list of essential services and industries. A date has been proposed to receive an ILO technical expert on essential services which we hope and expect will see this activity completed. In addition, as part of the development of a new employment relations regime, the Fijian employers have gone on record seeking the Government to set up a formal mechanism when dealing with wage setting across the ten industries covered under the national wage-fixing mechanism. We understand that any wage adjustment must first see the approval of the ERAB whose role is to advise the Minister and that discussions are continuing on this point. An outstanding matter under the JIR is noted, is the review of the list of essential services in industries. We understand that the ILO has offered technical assistance for a review of this list of essential services and industries and we encourage the Government to avail itself of this assistance while ensuring that it continues consultations with social partners on this issue.

Therefore, the Employers' group would urge the Government to encourage the FTUC to re-engage with the JIR process. We also urge the Government to ensure that the invitation for candidatures for public office are sent widely, including to the FTUC, so that the widest

pool of suitable candidates may be identified and considered. We also urge the Government to review its position on the Political Parties Decree to the extent that simple membership of a political party may not be grounds for punitive action, focusing instead on the consideration of the regulation of political activities while an individual is in public office. Finally, the Employers' groups urges the Government to accept technical assistance from the ILO to complete its review of the essential services while continuing true and genuine consultation with the social partners.

Worker member, Fiji (Mr ANTHONY) – 1 May is a very special day for workers the world over. That is the day where workers celebrate struggles over the decades. In Fiji, 1 May this year, some 2,075 workers were summarily terminated; 29 workers were arrested for simply being on union property for unlawful assembly and jailed for two days and charged by police; trade union leaders who dared to speak up for workers were arrested and jailed for two days; union offices were raided by police and staff and members were threatened and intimidated by police in riot gear. This summarizes the state of our democracy and the atmosphere in which trade unions and workers work in Fiji. Government's response in defence of its actions, it attempts to rely on the Public Order Amendment Decree which was imposed by the military Government and violates human and trade union rights.

In March 2015, the tripartite partners signed a JIR in the presence of the Director-General of the ILO. The Government of Fiji agreed to address all of the 33 issues identified by the Committee of Experts in 2015, which were bundled together under the labour law review process. This JIR was signed only the night before the Governing Body meeting was due to take place on the Fiji case and averted the decision for a Commission of Inquiry into Fiji under article 26 of the ILO Constitution. While the Government addressed some of the issues, labour law review and the essential services listing remained outstanding. Since then, no progress has been made despite a further contacts mission in 2016 where a second JIR was signed. The same commitments were given by the Government of Fiji. On the contrary, the Government unilaterally continued to impose the open merit system to assess workers'

performance and made it a condition of employment for workers to sign these individual contracts, more particularly for civil servants, government-owned entities and all those industries that Government had redefined as essential services, including banks, airlines and local government workers. This contract periods were anywhere from three months to three years. In most government-owned entities, blue collar workers were only given three-month contracts which would be renewed every so often after a week's break to deny workers their minimum entitlements. This effectively meant that while the Essential National Industries Decree was repealed, the same conditions intended by the Decree continued, thus denying workers the freedom of association and unions the right to collective bargaining and reduce union density and coverage. Existing collective agreements that were in existence at the time of the imposition of the Decree and which were made invalid by the Decree have not been reinstated despite the Committee of Experts' request. The Government's explanation that they have been replaced by new negotiated collective agreements is simply not true. There has been no negotiations on collective bargaining except for the timber industry. We do not see any valid reason why the collective agreements that existed prior to the Decree cannot be reinstated. They were negotiated and agreed to after all. We are dealing with issues that the Committee dealt with for over seven years. On every occasion, we have had the Government's undertaking that they would completely respect workers' rights and address the violations. Yet little has been done and in fact the situation has actually worsened. The Government's inaction and disregard for the decisions of the Committee has amounted to wasting the valuable time of the Committee. We would like to see the Government of Fiji behave more responsibly and take seriously its commitments to the Committee.

I would like to address some of the issues that have not been implemented. The labour law review which is part of the JIR which the Government has not honoured till today. This was to address 31 issues that the 2015 and 2016 Committee of Experts had asked the Government to act upon and to ensure compliance with all core Conventions. The violations are again listed in the most recent report of the Committee of Experts. The list of essential

industries was also part of the JIR. The parties had agreed to act upon this. What we find is that it is only now, just before this meeting, that the Government has actually requested technical assistance from the ILO to address this issue.

The report cites the Public Order Amendment Decree and had urged the Government consistently to address violations. This Act gives sweeping powers to the police and the Commissioner of Police to deny any form of protest or assembly in either public or private places and to arrest and charge any persons. The Act defines terrorism as any person who attempts or incites any action that would either damage or potentially damage the economy or cause unrest. The penalty for this is life imprisonment. Because of this, unions cannot undertake any strike or protest action. In this respect, more recently the FTUC had made four applications to organize peaceful marches in protest against the violation of workers' rights. These have all been denied by the police without providing any reasons. More recently, on 30 April, the General Secretary of the Nurses' Union and the General Secretary of the Fijian Teachers Association and a union organizer were arrested and detained for 48 hours. On 1 May, I was arrested and detained for 48 hours and questioned about the protests and marches that the FTUC had planned. On the same day, 29 other members of the National Union of Workers who were terminated by the Water Authority of Fiji were arrested on union property for alleged unlawful assembly and charged under the Public Order Amendment Act. Strict bail conditions were imposed including a curfew from 6 p.m. to 6 a.m. and a travel ban. On 1 May, the workers of the Water Authority were summarily terminated with the employer citing that the contracts had come to an end. The police intervened and guarded the entrance to the workplace and disallowed workers from entering the premises. On 1 and 2 May, the National Union of Workers and FTUC premises were raided by the police, and documents and electronic equipment, including files, computers and mobile phones were confiscated. My computer and phone have not been returned to me until today.

The report also questions the powers of the Registrar of Trade Unions. This has been well covered by the spokesperson for the Workers. On the Political Parties Decree, I also do not see the need for me to elaborate on that other than to state that a trade union officer is not a public office. Trade unions are membership-based organizations and it is the membership that actually pays for the running of the trade union and it is not paid by the Government at all. We do not believe that trade unions should be classified as public offices, quite apart from the fact that the denial of our fundamental rights and not partaking in the political process of the country.

The Committee of Experts has consistently called on the Government to allow prison officers to join or form unions. Currently, prison officers are not allowed to exercise their freedom of association. The Government stubbornly continues to refuse prison officers this right.

As to the long-standing 26 year-old strike by Vatukoula goldmines, we recall that the Government had presented an elaborate plan for the mineworkers in 2016 before the Committee. I note that the Government's current position has changed totally where they claim no responsibility or liability for mineworkers at all.

Workers in Fiji work under a cloud of fear. Their jobs are insecure, unionists are unable to carry out their legitimate activities. Tripartism in Fiji is dead and this includes all the tripartite bodies where the workers had traditionally been represented. I would just like to say that we note that the Government's response is that the appointments are made according to law. What the Government has omitted to tell the Committee is that the laws that they refer to were amended by this very Government more recently where they have excluded the workers' and the employers' representatives. We note that the Government has referred to recent meetings which were initiated by the ILO Suva Office to explore the way forward for the social partners. The partners and the ILO had agreed that these meetings would be informal and that no party would refer to these meetings or publicize them. Obviously, the

Government has not kept its part of the deal, as usual. This now puts the social partners in a more difficult situation for further discussions.

Lastly, the Government of Fiji continually attempts to demonize the trade union movement in Fiji and its officers. Most recently, the Prime Minister and the Attorney-General publicly called unions irrelevant. They have removed unions from tripartite bodies and imposed precarious and insecure working conditions that violate workers and trade union and human rights. Yet they come to the Committee and applaud decent work, social dialogue and tripartism. This hypocrisy has to stop.

Employer member, Fiji (Mr HAZELMAN) – The Fiji Commerce and Employers’ Federation enjoys a very healthy working relationship with the social partners. This relationship is built on sound respect and good faith in each other. The Federation has and continues to play a mediator role between the Government and the FTUC, and this was seen as evident in 2015–16 when we had the article 26 hanging over our heads. Like the trade union movement, the Fiji Commerce and Employers’ Federation enjoys full rights to organize and bargain and carry out its legitimate functions. The Fijian Constitution again guarantees all employers the right to freedom of association.

I just want to make a comment on the JIR. I would like the Committee to note that out of the nine issues that are on the table, we have achieved seven. There are only two outstanding items left, and that being the review of the lists of the organizations under the Essential National Industries Decree and the review of the Employment Relations Act. This current process has begun. I have been sitting in meetings where we have discussed this – although on an informal basis we have sat. The fact is that we need to get this done before the Governing Body meeting in November and I will urge the Government to ensure that the parties meet well before that to ensure that we have these two items addressed and done away with. It is important that we take this on board because the Fiji Commerce and Employers’ Federation was a signatory to the JIR and we are serious about our commitment in this area.

It was very unfortunate that in our presence the National Secretary of the FTUC was detained and arrested. It happened at a time when we were just about to come to an agreement on the way forward in relation to the JIR. I personally hope that the FTUC will come back to the table, come back to the bargaining table and reconvene with the social partners and let us carry on where we left off. There is an opportunity for that and we should not lose it. There was a lot of goodwill displayed in our first meeting where we managed to get to quite a bit of work on the areas relating to the labour laws. There are 376 articles or clauses we have to go over, so the task is cut out for us to achieve that, and the Employers will be there to assist wherever we can and we will take full participation in ensuring that we achieve this. We request that the social partners come to us at the table where we can discuss this. We have much to lose if Fiji goes into a Commission of Inquiry, Employers, as we are seen to be sort of the meat between the sandwich in these cases.

The Employers agree that a lot can be done by the Government in ensuring that when we agree to timelines for meetings, that these meetings do take place, and that minutes are kept and that all social parties are told of this. The Employers are not concerned about the make-up of the ERAB or any other body. We are concerned with outcomes. What we can do to achieve an environment where everybody can live in harmony and all the laws relating to the ILO are kept in sync with our obligations.

In conclusion, all I want to say is that there has been a lot of goodwill shown of late. I am sitting here, I sometimes wonder whether if I am still sitting in the same country as the speakers are saying, because I am sitting at the meetings and I know for sure that there is a lot of goodwill being displayed and we need to carry on with that goodwill and the spirit of that goodwill in ensuring that the JIR is achieved. The other aspects will be covered when we manage the areas where we deal with labour law, the areas that have been raised, and I am sure that we can achieve this, come the next Governing Body meeting.

Government member, Romania (Mr TACHE) – I am speaking on behalf of the European Union and its Member States. The Candidate Countries, the Republic of North

Macedonia, Montenegro and Albania as well as the EFTA country, Norway, member of the European Economic Area, align themselves with this statement.

We are committed to the promotion of universal ratification and implementation of the eight fundamental Conventions as part of our Strategic Framework on Human Rights. We call on all countries to protect, promote and respect all human rights and labour rights and we attach the highest importance to freedom of association and the right to organize. Compliance with the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is essential in this respect.

As signatories to the Cotonou Agreement, the EU and Fiji have agreed to a comprehensive, balanced and deep political dialogue, covering human rights, including labour rights, as a pre-condition for sustainable development, growth and poverty reduction. The fourth enhanced EU–Fiji High-Level Political Dialogue under article 8 of the Agreement on 20 May reiterated the centrality of promotion of access to justice and respect to human rights. Fiji and the EU also cooperate through the Economic Partnership Agreement applied since July 2014 which commits parties to supporting social rights.

We note with regret the observations of the Committee of Experts' report on Fiji's implementation of the fundamental Convention. It is particularly worrying to see insufficient progress in implementation of the JIR signed by the national tripartite partners in January 2016 to avert establishment of the Commission of Inquiry. We also express deep concern over allegedly continuing harassment and intimidation of trade unionists, as well as violations of fundamental human rights. We urge the Government to provide the updated information in this regard.

We also note with regret that the ERAB established to review the labour laws as agreed under the JIR has not created an environment conducive to dialogue and trust between employers, workers and governments. In view of the Committee of Experts' observations, we urge the Government, in line with the Convention, to fully recognize the role of

representative national workers' and employers' organizations in determining representatives on national bodies, such as the ERAB and to refrain from any interference in this process.

We also note with regret that we have seen insufficient progress on the legislative changes required to bring the legislation into conformity with the Convention as agreed in the JIR, including the labour legislation, as well as the Employment Relations Amendment Act from 2016, the latter in particular in relation to excessively wide discretionary power of the Registrar and the denial of right to organize to prison guards.

Similarly, as agreed in the JIR, we note with disappointment that the Government has not taken measures to review numerous provisions of the Employment Relations Promulgation. Revision of the list of essential services developed under the Employment Relations Promulgation has still not been determined in any way, agreed in the JIR, delay which is surprising given the possibility of the ILO's technical assistance. We call on the Government to take all the necessary measures to review the above-mentioned provisions of the ERP, in accordance with the agreement in the JIR and in a tripartite manner so as to bring the legislation into full conformity with the Convention.

We also note with regret that the application of the Public Order Amendment Decree with regard to the free exercise of the right to assembly is not in line with the Convention. We therefore urge the Government to take the necessary measures to bring section 8 of the Public Order Amendment Decree into line with the Convention.

We also draw the attention of the Government that, as indicated by the Committee of Experts, the provisions of the Political Parties Decree are unduly restrictive in prohibiting membership in a political party or any expression of political support or opposition by officers of workers' and employers' organizations. We request the Government to take measures to amend, in a tripartite manner, the above provisions. The EU and its Member States will continue to support Fiji in these endeavours.

Government member, United States (Ms MORENO) – In January 2016, the tripartite signing of the JIR brought the worker-filed article 26 complaint to an end. The JIR provides the tripartite participants with a framework to address labour issues in the country. Three years after the signing of this important agreement, the Government has yet to fully implement key provisions of the JIR. Specifically: the Government has not yet amended labour legislation; in the two years between the JIR signing and the mid-2018 withdrawal of workers’ representatives, the ERAB did not complete the review of the labour laws or prepare any amendments, and workers have had difficulties in conducting legitimate union activities including organizing demonstrations, holding meetings, and resolving disputes.

We are troubled by reports of harassment and intimidation against trade unionists, including recent reports by the ITUC of arrests, detention and criminal prosecution of trade unionists in Fiji for acts related to trade union work. We have also seen a deterioration of social dialogue. We urge the Government to take all measures necessary to implement the JIR, specifically: to reconvene the ERAB to review labour laws, including the relevant provisions of the Employment Relations Promulgation; determine the list of essential services and industries in collaboration with the ILO and the social partners; amend the Political Parties Act to ensure it is not overly restrictive in prohibiting membership in a workers’ or employers’ organization; and ensure that workers’ and employers’ organizations can exercise freedom of association in a climate free from intimidation.

We call on the Government to take all necessary measures to implement its commitments made in the 2016 JIR and comply with its international labour obligations, including to work with the ILO and the social partners.

Worker member, Australia (Mr ROBERTS) – When the National Secretary of the FTUC was arrested by police on 1 May, the Fiji Commissioner of Police said that if he wanted to understand the reasons for his arrest he should read the Public Order Act. We want to take up the Commissioner’s invitation, we want to expose this law and its impact on rights of association in Fiji to the scrutiny of the Committee. Under this Act, anyone who wants to

organize a meeting in a public place must apply to the authorities, seven days in advance, for a permit to do so. A public place includes all buildings that are not private dwellings. The authorities have a wide discretion to refuse a permit because the meeting would “prejudice the maintenance of peace or good order”. Even if a permit is issued, the Minister can override it. There is no express right to appeal a decision to refuse a permit. If a meeting takes place without a permit, the organizers face possible imprisonment for up to five years. Police have the power to arrest and detain, without charge, anyone they think is about to breach the Act. Those organizing or inciting an unlawful meeting also face possible imprisonment. Furthermore, the Public Order Decree defines “terrorism” to include any act that involves serious disruption to critical infrastructure – itself broadly defined – done with the intention of advancing an ideological cause. How does this law operate in practice? Earlier this year, the FTUC applied for a permit to assemble in Nadi on 3 May. On 29 April, the police arrived at the Fijian Teachers Association and ordered 13 officials to report to the police station for questioning about the protest. They were questioned for about four hours and released. On 30 April, the general secretaries of the Fiji Nurses Association and the Fijian Teachers Association were detained and questioned for 48 hours by police. Separately, when the Fiji Water Authority terminated 2,075 workers on 25 April, the union filed a motion in the Employment Tribunal to stop the terminations. The workers went to work on 1 May. At worksites across the country, they found armed police in riot gear at the gates threatening them with arrest and ordering that they not enter or assemble at the gate. In Lautoka, workers were chased from their workplace. They gathered on union premises. The police forcefully entered and dispersed them despite being told that it was private property – 29 workers refused to go. They were charged with unlawful assembly and jailed for 48 hours. In Suva, police in riot gear entered FTUC property and threatened workers with arrest. Members were told not to do “live broadcasts” or social media posts on the issues faced by the terminated workers. The office of the FTUC was surrounded by police in trucks and police in riot gear for three days. While ever these laws remain on the statute books,

freedom of association does not exist in Fiji. The effectiveness of Fijian industrial laws can be completely overridden by laws that criminalize ordinary industrial conduct.

Government member, India (Mr SOUNDARARAJAN) – We thank the Government of Fiji for providing the latest comprehensive update on this issue. India appreciates the high-level commitment of the Government of Fiji to fulfil its international labour obligations especially those related to the Convention by engaging with its social partners in the spirit of social dialogue and tripartism including on the way forward to implement the outstanding matters in the JIR of 2016 based on a timeline. It is noteworthy that the Constitution of Fiji itself guarantees all workers the right to freedom of association, the main object and purpose of the Convention.

We welcome the positive steps taken by the Government of Fiji in response to the observations made by the Committee of Experts including measures to undertake a progressive review of the domestic labour laws through tripartite consultations. It may be needless to add that such efforts of the Government would be in accordance with the specific national contexts and aligned with its socio-economic priorities.

We take positive note of the ILO's offer to provide necessary technical assistance, as required and requested by the Government of Fiji. In fulfilling its labour-related obligations, we request the ILO and its constituents to continue to fully support the Government of Fiji and provide further assistance that it may seek in this regard.

Lastly, we take this opportunity to wish the Government of Fiji all success in its endeavours.

Worker member, United Kingdom (Mr RUSSELL) – Among many duties, it is the job of trade unions to critique government policy – be those governments friendly, indifferent or hostile to those unions. It is hard to discuss issues of economic models, social policy and trade union rights without considering the role of politics in shaping them. It is a glib and easy accusation to make by any government that criticisms are “political”, but it is

more insidiously effective if it accompanies the possibility of legal sanction and even, as we have heard, violent suppression. The restraints on political freedoms placed on union leaders, as applied by the Government of Fiji, place unacceptable limits on their activities in servicing the interests of the union and its membership. As the Committee of Experts said in 2015: “Provisions imposing a general prohibition on political activities by trade unions or employers’ organizations for the promotion of their specific objectives are contrary to Convention No. 87.”

All our societies benefit from politicians with world of work experience, be it as worker, employer or, in many cases, both. Silencing voices from unions and employer associations muffles expert and representative criticism and removes some of the most engaged groups from vital political discourse. Equally, it may deny the associations of the social partners the possibility to benefit from the service of people dedicated to ambitious societal change if they have to make a difficult choice between helping some workers and businesses, or helping all workers and businesses. This unnecessary choice not only inhibits democracy, but constitutes very real interference in the independent running of our organizations, in defiance of the Convention. Perhaps if the Government had more members who had previously been active trade union or employer representatives, it would not make such an unfortunate mistake. This choice is not just hypothetical, it is one that Fijian trade unionists have to make all the time, with many examples of trade union officials having to make the hard decision of whether to give up their posts to engage in campaigning or stand in elections.

The Government has defended itself on the basis that it also enforces the political neutrality of public officials. Trade unionists are not public officials unless, of course, they are in a trade union for public officials. Previous ILO cases have made a clear distinction between trade unionists and public officials, such as Committee on Freedom of Association Case No. 2355. By definition, trade unions and employer associations have members, and they work on behalf of and represent those members. Yes, that membership, and the

democratic structures that go along with that, give us the legitimacy to advocate on behalf of the public good and on the wider world of work, but we remain – or certainly should remain – distinct from and wholly independent of government. By contrast, most definitions of public officials include some element of direct state control or ownership, something completely unacceptable for trade unions, as laid out in ILO standards. For as long as the Government fails to grasp this, it will fall into the trap of attempting to control and assimilate unions in defiance of the Convention. Besides, this dedication to policing the worlds of unions and government only seems to work one way. While trade union leaders are forbidden from expressing opinion about the government during elections, government is empowered by law to vet trade unionists' right to stand in their own elections, with those ballots then run by government officials. This is not only a clear breach of the Convention, but it is also rank hypocrisy. This lack of trust in union democracy undermines not only the application of the Convention, but hinders the functioning of tripartism and social dialogue, core principles of not only ILO membership, but also of sound economic management.

Observer, Public Services International (PSI) (Mr SINGH) – I speak on behalf of the PSI and the International Transport Workers' Federation. The violation of trade union rights are being perpetuated in all areas across the Fijian public service which has been brought under essential services to undermine their right to collective bargaining. Therefore, all disputes of interest are referred to the Arbitration Court which is then referred to the Minister for Employment for compulsory conference under sections 191(S) and 191(T) which the Minister chairs to settle that dispute. It is ironic that a pay rise claim by a public sector employee, where the Minister is required to mediate, has a clear conflict of interest but the Employment Relations (Amendment) Act 2015 allows this process. The right to industrial action is not allowed in the public service by law which was enforced through the Employment Relations (Amendment) Act No. 4, 2015. This is contrary to the core labour standards of the ILO and the Fiji Government's approach to industrial relations remains obstructive and defiant. Provisions of the Essential National Industries (Employment)

Decree have been incorporated into the Employment Relations Act, 2007, and this has taken away the collective bargaining rights of the workers, airports and related services have been classified as essential services. For example, in March this year, the Arbitration Court ordered the Fiji airport air traffic controllers (ATC) to return to work and to end their protest. Soon after the decision of the Court, the Executive Chairman of the company suspended 22 ATC staff in absolute defiance of the Court order. The provisions of the Arbitration Court require immediate amendments to make it workable and a full-time chairman of the Court be appointed to avoid backlogs which has been hibernating in the system for years. This is an urgent issue as justice delayed is justice denied.

The amended Essential National Industries Decree 2014 as a transitional condition terminated the collective agreement and required negotiations between ATC staff and Airport Fiji Limited of a new contract between the parties. To date, the ATC officers do not have a formal contract and none of them has seen the company's HR policy under which four licensed air traffic controllers have been dismissed. The Government's failure to give compensatory guarantees for workers deprived of the right to strike has led to the extreme dire outcomes of the workers. In another twist, the Fiji Revenue and Customs Services are a statutory authority informing its employees that they are not allowed to discuss the terms and conditions of their contract with a third party which is the union and the union has a registered collective agreement with the statutory authorities. This a blatant violation of the Convention. The list goes on.

The job evaluation exercise as a public service has been used to convert all tenured employees to individual contract appointment which has no correlation to convert tenured employees to compulsory contract appointment. The oppressive clauses in the fixed-term individual contract are brutal: renewal of the contract is at the absolute discretion of the Government; civil servants to agree irrevocably that non-renewal will not be challenged; renewal subject to the Government requiring services; and the Government has the right to change the contract at any time.

The Confederation of Public Sector Unions is trying from 2017 to register itself as a federation under section 147(A) of the Employment Relations (Amendment) Act and the Government is obligated under Articles 2, 3 and 4 of the Convention to allow the workers their right to affiliate with the organization of their choosing. Section 147A of the Employment Relations (Amendment) Act is a window dressing and it must be amended.

The Confederation calls upon the Government to: restore the jurisdictional power of the public service commission as a central personnel authority of the public service, thus empowering the Commission to negotiate claims and terms and conditions on behalf of all the government ministries for all public servants in uniformity and in accordance with the provisions set out in the Employment Relations Promulgation 2007; immediately arrange an exploratory meeting with the Confederation of Public Sector Unions to devise a workable module for a bipartite system for mutual cooperation, respect, dialogue and collective bargaining; and finally, the acceptance and adoption of the concept suggested above will clearly indicate the endorsement of fundamental values of the relevant provisions of the 2013 Fiji Constitution which includes guarantees for the rights and benefits of the workers and trade unions in addition to the human rights and social values contained in the 2013 Constitution.

Worker member, United Kingdom (Mr JAMES) – I am Shannon James, President of the Bermuda Union of Teachers, which also celebrates 100 years this year and I will be presenting some of the education unions' concern in Fiji. I will be speaking on behalf of Education International and the Fijian Teachers Union.

The first concern relates to the Essential Service Decree which states that educators are an essential service. While we all agree that education is essential, the Committee on Freedom of Association of the Governing Body of the ILO has repeatedly stated that the education sector does not constitute an essential service. The second concern has to do with the reforms imposed without involvement of the teachers' unions. Such reforms have a direct negative impact on education workers. Teachers are also blackmailed to sign individual

contracts without the collective bargaining processes. The third concern is related to the unfettered powers given to the Permanent Secretary of the Ministry of Education to impose disciplinary guidelines. The Permanent Secretary has unlimited powers to terminate or force contracts and impose transfer policy. This practice has resulted in the following: families being separated, marriages not consummated for up to one year, and teachers having to forfeit acting positions to move. The last concern deals with the denial of holding protests. The Permanent Secretary of Labour refused to supervise the conducting of a strike ballot as required by law. Applications for permits to participate in marches and rallies to protest are denied on a constant basis without a reason given. Union members are threatened against participation in legitimate union activities, even in the school holidays. I have faith that the Committee will issue supportive recommendations.

Worker member, Pakistan (Mr AWAN) – Essential services, according to ILO standards, are services which deal with life, health and public safety matters. The ILO defines “essential services” as services whose interruption could endanger the life, personal safety or health of the population. Schedule 7 of the Employment Relations Act 2007 of Fiji lists some of those services that are not classified as essential services in the strictest terms as essential services. The list of (a) to (p) – 16 entities – is severely restrictive and generalized and the Fiji unions are not in agreement with it. We believe that this list is the weapon which the Government is using to stifle legitimate union activities like organizing demonstrations, holding meetings and resolving disputes, making it difficult, if not impossible. This list includes sectors or industries that are interpreted as sectors that are “essential to the economy” as decided by the Fijian Government. The amendment in 2015 of the definition of essential services states that essentials services and industry means a service that is listed in Schedule 7 of the Employment Relations Act and include those essential services designed corporations and companies which had no connection to essential services. Another amendment, section 188, stated that the trade disputes in essential industries shall be dealt with by the Arbitration Court and that the Employment Tribunal and Employment Court

under Part 20 shall not have any jurisdiction with respect to trade disputes in essential services. The Minister has the right to refer any such dispute to the Court, however compulsory arbitration can only be imposed at the request of both parties. The preferences here would be for a neutral party such as the Court to decide whether the strike and the State, in case of essential services, will obviously have a conflict of interest. Therefore, we request for Part 180 to be amended in line with the Convention. However, before any such action is taken, the requirement for our mediation services should be considered as the primary remedy once the intention for a strike or lockout is given. Hence the Permanent Secretary must ensure that mediation services are provided as soon as possible to the Parties for the purpose of assisting the Parties to avoid the need for strike or lockout. This did not eventuate in recent cases in Fiji which led to longer delays of strikes action or lockout which never is allowed in Fiji. The definition and list as per Schedule 7 come with heavy restrictions and the combined effect of sections 169, 170 and 181, part (c), is also an attempt to make strikes difficult to hold, if not impossible, for essential services. The requirement of a secret ballot is not disputed, but 50 per cent of the vote of all members entitled to vote? This quorum or majority required makes the exercise of this right very difficult and only a simple majority of votes, of the votes cast, must be allowed in Fiji. This is where the Government adopts tactics to restrict the freedom of the assembly. The Government of Fiji also does not respond to the request for supervising the secret ballot and hence the results are communicated to the Ministry of Employment, which refuses to accept its legitimacy and thus leading it to declare a strike as illegal.

In concluding, we, the Worker representatives propose that Schedule 7 is to be consistent with the ILO interpretation and list, that the Government make a commitment to review the list with ILO technical advice, that the restriction on Fijian unions that prohibit them from exercising their basic right to freedom of assembly be immediately amended.

Government representative – I would like to thank all persons who have spoken in this room about this matter. Most of the issues raised have been addressed in my opening

statement so I will not be repeating it. With regards to other issues raised, my final comments are as follows.

With regards to the timelines for the review of the labour laws, pursuant to the JIR, I wish to draw to the Committee's attention that we have been having discussions on this issue with Mr Anthony and we have written to Mr Anthony and have proposed timelines. In an email on 31 May 2019 to the National Secretary of the FTUC, the Ministry suggested a proposed timeline. The timeline set out proposed dates from 1 April to 6 September encompassing: the continuation of tripartite dialogue on the agreed clauses of the Employment Relations Promulgation matrix; time for the Ministry to prepare submissions and submit for legal drafting to the Solicitor-General's office; the legal drafting process; ERAB meeting on the review; and finally for the presentation to Parliament between 4 and 6 September 2019. Therefore, the Government has proposed a timeline to the FTUC and we are still waiting for a response.

In response to the long-standing Vatukoula goldmine strike 29 years ago, this matter was before the courts as a result of the Permanent Secretary accepting a report of a trade dispute from a group of workers of the Vatukoula goldmine. The High Court held that the Permanent Secretary did not have the powers to accept that report. In a separate case, the Fijian High Court held that the termination of the 364 workers was lawful. The Fijian Government is, therefore, not legally obliged to compensate the workers but is considering whether to grant compensation to the 364 workers involved in the 1991 strike.

A review of the national minimum wage, including an analysis of the economic and social impacts of the implementation of the national minimum wage, has been undertaken by my Ministry. A consultant has been currently engaged to continue and undertake a nationwide survey with a view of presenting a report to the ERAB.

In response to the arrest of union workers, I wish to reiterate that the Commissioner of Police is an independent office holder, appointed under the Constitution, who acts in

accordance with the rule of law. The Commissioner of Police does not come under the control of my Ministry. The Commissioner of Police's decision to deny or allow a march is also independently made and only on the basis of threats to public order.

In response to the imposition of individual contracts, the Fijian Government had undertaken a job evaluation exercise of its employment positions in 2017. This exercise included the broad bending of positions and benchmarking to the private sector to decrease administration, streamlining salary management and providing attractive and competitive salaries across the civil service. During the job evaluation exercise, the Fijian Government consulted and discussed the proposed changes to the salary structure with public sector unions. Following the job evaluation exercise, new employment contracts were offered to all civil servants in August 2017 to reflect the new working conditions and ensure consistency across the civil service. However, some civil servants opted to remain as permanent employees and therefore did not sign the new contracts. Employment contracts were introduced into the Fijian civil service in 2009. Prior to the 2017 job evaluation exercise, about 74 per cent of civil servants held employment contracts. To date, 99 per cent of civil servants hold employment contracts.

I very much appreciated the views expressed by the Employer representative from Fiji, Mr Hazelman, that there is goodwill among the parties. We have achieved seven of the nine outcomes of the JIR and full implementation is achievable. The Government is committed to the process and the outcome and we, again, invite the FTUC to join us in this important journey.

In conclusion, we also wish to draw to the Committee's attention that the issues being raised today are a small portion of the overall reforms that the Fijian Government has adopted in order to improve the lives and welfare of all workers and their families. We have free education, bus fares for children. Persons with disabilities and the elderly are heavily subsidized. Furthermore, access to medicine and medical services is also heavily subsidized. The Government is committed to the modernization of infrastructure and has implemented

many reforms that directly impact the welfare of workers. The Fijian Government has also implemented new provisions on paternity leave, family care leave for the first time and we have also provided financial assistance to mothers who have given birth. These are family-friendly provisions aimed at improving the status of workers and their families, and is also designed to guide the acceptance of the changing role of fathers and mothers in the family. These reforms affect the welfare of every worker and decreases the burden on the worker's salary and wage packages. Therefore, I would like to say that the matters raised in this hearing should be seen in the context of the enormous reforms adopted and pursued by the Fijian Government, and I ask that this be reflected in the report of the Committee.

Employer members – I would like to thank the distinguished Government delegate for his submissions to the Committee this afternoon. We welcome the Government's representations that it is committed to both the process and the outcome in respect of the JIR process. We also are encouraged by the Government's indication that it has taken measures to welcome the FTUC to re-engage and participate in the remaining elements of the JIR process. Therefore, the Employer's group believes that it is important to encourage the Government to continue to invite and engage in good faith the FTUC to re-engage with the remaining elements of the JIR process. We also encourage the Government to complete the work of the JIR process including reaching an agreement on essential services in consultation with the social partners before the November Governing Body session. In this regard, we encourage the Government to accept ILO technical assistance to complete the review of the essential services issue. We also request that the Government ensure that invitation for candidates for public office are sent widely, including to the FTUC so that the widest possible pool of suitable candidates may be identified and considered. The Employers' group also urges the Government to review its position on the political decree to the extent that simple membership within a political party should not be grounds for punitive action or exclusion otherwise. We are encouraged by the Government's submissions today and would encourage it to engage with the social partners to continue the social dialogue which has

been taking place, but to do so on a full manner and to continue to accept the ILO technical assistance in this regard.

Worker members –The discussion of the application of the Convention has exposed very serious violations against the right of workers to freedom of association in Fiji. It has demonstrated that despite the adoption of the JIR, violations in law and in practice have relentlessly persisted. The closure of the article 26 complaint was premised on progress achieved within the framework of the JIR, including the revision of the labour laws. We once again express regret over the absence of sufficient progress in this regard. While some matters have been dealt with, progress on the most significant areas and, in particular, the reform of the legislation, remain outstanding. The restrictive provisions of the Employment Relations Promulgation remain intact. As outlined in my opening speech, these provisions include:

- the denial of the right to associate for prison workers;
- excessively wide discretionary powers afforded to the Registrar preventing workers from forming trade unions without previous authorization;
- limitations to the exercise of rights of non-citizens; and
- the criminal sanctions imposed on peaceful strike action.

We urge the Government to swiftly amend its legislation in order to bring it into line with the Convention.

The Political Parties Decree remains problematic and restricts trade unions from undertaking legitimate trade union activities. Therefore, this piece of legislation must be amended without any further delay. Moreover, we have discussed the increased use of the Public Order Amendment Decree to interfere in, prevent and frustrate trade union meetings and assembly. Section 8 of the Decree provides the authorities with the discretion to refuse and grant permits on excessively wide and unjustified grounds and therefore violates the

Convention. It is very clear that Article 3 of the Convention protects the right of workers' and employers' organizations to organize their affairs, including their activities and programmes, in a manner to advance the economic and social interests of workers. The supervisory bodies have long held that this protection under Article 3 covers the right to assembly, the right to organize trade union meetings and to protest. Therefore, any attempt by the Government to restrict these rights to make their exercise meaningless evades their obligations and violates the Convention. We have called on the Government to address these concerns within the context of the JIR and must demonstrate sufficient progress to the Committee of Experts at its next sitting.

We are deeply concerned that the Fijian Government is manipulating national tripartite bodies in order to undermine the effective representation of workers' and employers' organizations contrary to the Convention. This does not only prevent trade unions to exercise their functions but also curtails the possibility of having genuine tripartite dialogue. We disagree with the position expressed by the Employers in this regard. As previously stated by the ILO supervisory bodies, it is only where workers and employers are able to freely nominate their members that we can speak of a genuine tripartite dialogue. Representatives cannot act in full independence if their nomination depends on the Government. This does, of course, not mean that there should not be any objective and transparent criteria for nominations. It is the discriminatory application of these criteria that we strongly disapprove of. It also comes as a surprise to us that the Employers defend this position in this case, when they argued the exact opposite in a case we discussed just ahead of Fiji.

We call on the Government to swiftly return to the full implementation of the JIR. The FTUC is at all times ready to participate in tripartite discussions in this regard. However, we must now see that there is time-bound action in order to give credibility to the discussions held, and we must see that unions can participate without fear of arrest. Given that the progress on the implementation of the JIR is stalled and that there are very serious new

violations of the Convention, we call on the Government to accept a high-level ILO mission to the country.