



Governing Body

320th Session, Geneva, 13–27 March 2014

GB.320/INS/11

Institutional Section

INS

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ELEVENTH ITEM ON THE AGENDA

Complaint concerning non-observance by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 102nd Session (2013) of the International Labour Conference under article 26 of the ILO Constitution

Purpose of the document

The Governing Body is invited to decide whether, in light of the information provided by the Government of Fiji in the appendix to this document, it wishes to appoint a Commission of Inquiry under article 26, paragraph 4, of the ILO Constitution (see the draft decision in paragraphs 11 and 12).

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

Policy implications: None.

Legal implications: None.

Financial implications: See paragraphs 9 and 10.

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

Author unit: International Labour Standards Department (NORMES).

Related document: GB.320/INS/10.

1. At its 319th Session (November 2013), the Governing Body had before it a report by its Officers regarding a complaint concerning non-observance by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by several Workers' delegates to the 102nd Session (2013) of the International Labour Conference.
2. The Governing Body, on the recommendation of its Officers:
 - (a) requested the Director-General to transmit the complaint to the Government and invite it to provide its observations on the complaint by 20 January 2014; and
 - (b) deferred the decision to establish a Commission of Inquiry to its 320th Session (March 2014).
3. The Director-General wrote to the Prime Minister on 18 November 2013 informing him of the decision taken by the Governing Body and requesting that the Government formulate its response to the article 26 complaint in accordance with the Governing Body's request.
4. In a communication dated 24 January 2014, the Prime Minister of Fiji replied to the Director-General's letter ¹ and formulated his Government's response to the article 26 complaint. A copy of the response is attached.
5. No discussion on the merits of the complaint is admissible at this stage. Indeed, it would be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the ILO Constitution that there should be any discussion in the Governing Body on the merits of the complaint until the Governing Body has before it the contentions of the Government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body.
6. It will be recalled that the Committee on Freedom of Association has been examining a number of complaints submitted by workers' organizations alleging violations of trade union rights in Fiji of a similar nature. It will also be recalled that the Committee of Experts on the Application of Conventions and Recommendations made observations to the Government of Fiji regarding the observance of the Convention referred to in the complaint submitted under article 26 of the ILO Constitution and that the Conference Committee on the Application of Standards discussed some matters relating to the observance, in practice and under law, of Convention No. 87 at its meeting in June 2013 and included its conclusions on this case in a special paragraph.
7. The Governing Body has also been considering the trade union situation in Fiji in a separate item of its agenda since March 2012 in follow-up to the 15th Asia and the Pacific Regional Meeting resolution on the trade union situation in Fiji of December 2011. The Governing Body adopted its own resolution on the trade union situation in Fiji at its 316th Session (November 2012), has been discussing the follow-up to this resolution in its subsequent sessions and has placed this item on the agenda of its present session. ²
8. In accordance with established practice, when a Commission of Inquiry is appointed, the relevant matters before the various ILO supervisory bodies are referred to this Commission.

¹ See GB.320/INS/10.

² *ibid.*

9. Should the Governing Body decide to exercise its powers under article 26, paragraph 4, of the Constitution to appoint a Commission of Inquiry, financial arrangements will need to be made to enable such a Commission to proceed with its work. The Programme and Budget for 2014–15 contains no provision for inquiries under article 26 of the Constitution.
10. The procedures of such a Commission normally involve initial sessions to settle procedural matters, such travel as is necessary to gather further information and a final session for the adoption of the Commission's report. Resources thus need to be provided for travel, for the production and publication of the Commission's report, and for supporting staff. It is also proposed to make provision for the payment to the three members of the Commission of an honorarium of US\$350 per day. On the basis of this pattern of work, it is estimated that the cost of the Commission will amount to some US\$870,000, comprising staff costs (US\$603,500), travel (US\$162,300), honoraria (US\$31,500) and translation, printing and miscellaneous (US\$72,700). It is proposed that the costs expected to be incurred for this Commission would in the first instance be financed, in the respective financial periods, from savings that might arise under Part I of the budget or, failing that, through the use of the provision for unforeseen expenditure, Part II. Should this subsequently prove impossible, the Director-General would propose alternative methods of financing at a later stage in the biennium.

Draft decision

11. *In light of the foregoing, and of the information contained in the appendix to this paper, the Governing Body, duly noting the Government's indication as set out in GB.320/INS/10 that it would accept a direct contacts mission following its elections in September 2014, is invited to:*
 - (a) *determine whether it wishes to appoint a Commission of Inquiry under article 26, paragraph 4, of the ILO Constitution; or*
 - (b) *indicate any other action it wishes to take on this matter.*
12. *Should the Governing Body decide, under paragraph 11(a), to appoint a Commission of Inquiry concerning Fiji, it may wish to decide that: (i) an honorarium at the rate of US\$350 per day be paid to each member of the Commission of Inquiry; and (ii) the cost of the Commission, which is estimated at US\$870,000, be financed from the appropriate budget for 2014–15. In the first instance, this would be from savings that might arise under Part I of the budget or, failing that, through the use of the provision for unforeseen expenditure, Part II. Should this subsequently prove impossible, the Director-General would propose alternative methods of financing at a later stage in the biennium.*

Appendix



**RESPONSE BY THE GOVERNMENT OF THE REPUBLIC OF FIJI TO
THE COMPLAINT UNDER ARTICLE 26 OF THE ILO CONSTITUTION
AGAINST THE GOVERNMENT OF THE REPUBLIC OF FIJI FOR NON-
OBSERVANCE OF CONVENTION NO. 87 ON FREEDOM OF
ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE**

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1. PURPOSE

The purpose of this response is for the International Labour Organisation Governing Body ("ILOGB") to:

- i. Note the response by the Government of the Republic of Fiji to a complaint lodged under Article 26 of the ILO Constitution ("**Article 26 Complaint**") against the Government of the Republic of Fiji by certain delegates to the June 2013 International Labour Conference; and
- ii. Consider the recommendations by the Fijian Government regarding a Direct Contacts Mission and the establishment of a Commission of Inquiry.

2. ISSUE

This paper is a response by the Government of the Republic of Fiji to the Article 26 Complaint for alleged non-observance of the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87).

3. BACKGROUND

The Fijian Government to date has undertaken substantial reforms to create transparent rules of governance and a constitutional and legal system that is based on substantive equality and justice.

Fiji promulgated a new Constitution on 6 September 2013 which was assented to by his Excellency the President of Fiji and became effective on 7 September 2013.

The Constitution guarantees universally accepted principles and values of equality and justice to all Fijians. These include – common and equal citizenry, removal of all forms of discrimination, a secular State, eradication of systemic corruption, protection and promotion of human rights, an independent judiciary and a voting system based on one person, one vote, one value, which removes the legal enforcement of ethnic voting.

Fiji's Constitution also contains an extensive chapter on fundamental human rights, which guarantees the promotion and protection of rights and freedoms of all Fijians including workers and their families. These include provisions guaranteeing freedom from slavery, servitude, forced labour and human

trafficking; freedom from cruel and degrading treatment; right to executive and administrative justice; freedom of expression, publication and media; freedom of assembly; freedom of association; the right to fair employment practices; the right to humane and proper working conditions; right of all workers to economic participation; as well as the right of all Fijians to work and to a just minimum wage.

For the first time, all Fijians including all Fijian workers have guaranteed socio-economic rights in the Constitution. These include the right to adequate food and water, right to housing and sanitation, right to health, and the right to social security schemes. Fiji's Constitution also protects the rights of disabled persons and the rights of children including the right to free primary, secondary and further education. In line with this Constitutional requirement, the Fijian Government has allocated \$541.5 million for the Education Sector in the 2014 National Budget. This ensures that for the first time in the nation's history, all Fijian children are provided with truly free primary and secondary school education.

Also for the first time under the Constitution, discrimination on the grounds of pregnancy and marital status, amongst many other grounds, is prohibited.

The Constitution expressly protects and recognises the rights of all indigenous Fijians, including their unique culture, customs, tradition and language. The Bill of Rights in the Constitution provides special protection to communally owned indigenous lands, which cannot be permanently alienated from the indigenous Fijians.

The Constitution also expressly requires that free and fair general elections must be held before 30 September 2014. The Fijian Government is committed to ensuring that we have the right electoral processes and oversight mechanisms in place to effectively address the corrupt practices and flaws of past elections.

Fiji's international partners have greatly welcomed and supported the progress made by Fiji towards the 2014 general elections and have pledged technical and financial assistance for this purpose. Six elections experts from the European Union, Australia and New Zealand worked with the Fijian Elections Office to finalise planning for all aspects related to the 2014 elections. The assistance offered related to the identification of polling stations, drafting the rules and regulations that will guide the electoral process, and establishing a free, fair and transparent system for the hiring and training of qualified election staff.

Out of approximately 640,000 eligible voters, more than 540,000 voters over the age of 18 years have registered to vote under the electronic voter registration programme. Registration of overseas voters has also begun in New Zealand. This exercise will move next to Australia and to other international locations during 2014.¹

As part of preparations for the elections, Fiji has introduced a new law governing political parties which has provisions similar to jurisdictions such as Australia on governance of political parties. This new law instils transparency and accountability in the registration, conduct, funding, and disclosures with respect to political parties.

In addition to the promulgation of the new Constitution and preparations for the 2014 parliamentary elections, the Fijian Government is working towards maintaining its obligations as a member state of the ILO. It has introduced a number of significant reforms to preserve and create jobs, sustain industries essential to the economy, and to improve the living standards of all Fijians.

Government wage earners received a 10% increase in their wages last year. This year, all government employees will receive pay increases in accordance with their wage brackets - 23% being the highest percentage increase for the lowest salary brackets and 4% being the lowest percentage increase for the highest salary brackets. Also, last year, senior citizens and retired workers over the age of 70 who did not have access to pensions were provided with State funded pension benefits.

The Fijian Government has also taken significant steps to review and modernise the current labour laws, practices and policies in Fiji. The Government has activated the tripartite social dialogue process under the Employment Relations Advisory Board which has undertaken a total of 39 meetings since July of 2012. It is also reviewing the workmen compensation regime with a view to implementing a no-fault scheme to cover all workers for injuries and deaths arising at work. This is done in consultation with the tripartite partners and the ILO.

On the international scene, last year, Fiji chaired the Group of 77 plus China at the United Nations, and was also the Chair of the International Sugar Council and the ACP trade talks with the European Union.

¹ www.electionsfiji.gov.fj/ Accessed on 23rd December 2013

In August of this year, the Fijian Government hosted the inaugural Pacific Islands Development Forum. This new regional body will work to develop realistic solutions to the challenges of sustainable development in the Pacific.²

4. GOVERNMENT RESPONSE

The Fijian Government notes the issues raised in the Article 26 Complaint and responds as follows.

1. Trade Union Rights and Civil Liberties

Complaint

The CEACR has expressed its deep concern regarding the numerous acts of assault, harassment, intimidation and the arrest of trade union leaders and members for their exercise of the right to freedom of association.

On the acts of assault and physical attacks on trade unionists, CEACR recalled that amongst the liberties essential for the normal exercise of trade union rights the right "to freedom and security of person" was fundamental. It also urged the government to conduct ex officio an independent investigation without delay into the well-known alleged acts of assault, harassment and intimidation against Mr Felix Anthony, Mr Mohammed Khalil, Mr Attar Singh, Mr Taniela Tabu and Mr Anand Singh and to transmit detailed information regarding the outcome of such inquiry and the action taken. No measures have been taken by the Government in this regard. It is also incorrect that no complaint has been filed with regard to these beatings, as the government stated to the CEACR. A complaint was filed with the police in July 2012 regarding the beating. The government has failed to act in any way on this complaint.

Fijian Government Response

As mentioned in our consolidated report dated 1 June 2013 to the International Labour Conference of the ILO, neither the Police Department nor the Office of the Director of Public Prosecutions has received any complaint or filing of a complaint from Mr. Mohammed Khalil, General Secretary of the Fiji Sugar Workers Union, Ba Branch; Mr Attar Singh, General Secretary of the Fiji Islands Council of Trade Unions (FICTU); Mr Taniela Tabu, General Secretary of the Viti National Union of Taukei Workers (VNUTW); and Mr Anand Singh, lawyer regarding alleged physical attacks, intimidation, threats, or assaults. No investigations have been carried out as no complaints have been filed.

² <http://www.islandsbusiness.com> Accessed on 23 December 2013.

The Fijian Government, like all responsible governments, has the necessary investigation processes in place to ensure that the fundamental rights of all Fijians are adequately protected and enforced. All incidents of criminal offences are independently and thoroughly investigated in Fiji upon the lodging of a complaint with the Police Department. All criminal investigations and prosecutions are conducted by the Office of the Director of Public Prosecutions following due process and without any interference whatsoever from any person or office.

Complaint

In relation to arrest and detention of trade unionists – namely Mr Felix Anthony, Mr Daniel Urai and Mr Nitendra Goundar – the Committee noted that the ITUC has indicated that Mr Daniel Urai, the FTUC President, has two cases pending in court which have still not been heard: one for preparing union members for collective bargaining and the other one for having allegedly incited political violence by urging to overthrow the Government; and that, in the first case which is pending for almost a year, the prosecution has not been able to produce all of the required disclosures including the identification of the complainant. The Committee has considered that the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention or criminal charges. With respect to the abovementioned trade unionists, the Committee has urged the Government to take the necessary measures to ensure that all charges against them are immediately dropped. These cases remain pending against these trade unionists.

Fijian Government Response

The only known reported case recorded with Police is the alleged assault reported by Felix Anthony. The case was reported five months after the alleged incident in 2012. Investigations are continuing at Lautoka Police Station. There have been no other recorded incidents in 2012.

2. Continuing Restrictions to Freedom of Assembly and Expression

Complaint

Many of the powers found in the repealed Public Emergency Regulations (PER) of 2009 are included and expanded in the 2012 Public Order (Amendment) Decree (POAD). Indeed, the Committee noted with concern provisions of the POAD, in particular Section 8(5), under which gives the authorities broad powers to refuse to grant persons or organizations, including trade unions, a permit to meet. The Committee stated that this provision “could be used in such a way as to make it

difficult for trade unions to hold public meetings, especially given the previous allegations of the use of the PER to restrict their rights in this regard." The Committee requested that the Government "consider abrogation or amendment of the POAD so as to ensure that the right to assembly may be freely exercised". The Government has failed to abrogate or amend the law. We note that the provision of the law requiring police permission for meetings has been suspended during the constitutional revision process; we also note that that process has been substantially completed and are concerned that Section 8 of the POAD will imminently enter into force. Under the previous law, the PER, permits for trade unions meetings were rarely granted. We are also deeply concerned about several other repressive provisions of the POAD that have continued to remain in force.

Fijian Government Response

The Public Emergency Regulations 2009 was revoked on 7 January 2012. The revocation effectively meant that public order in Fiji is now maintained under the Public Order Act which has been in force since independence (1970). The Public Order Act states in section 8 that any person who wishes to organize or convene a meeting or procession in a public place shall first make an application for a permit in that behalf to the appropriate authority. A public place is defined under the Public Order Act as any highway, public street, public road, public park or garden, any sea beach, river, public bridge, wharf, jetty, lane, footway, square, court or alley; any land or open space; and place or building of public resort.

For meetings in public places, a permit is required to ensure the carrying out of administrative functions such as the closure of roads and the provision of law enforcement officers to maintain order. For all other instances, a permit is not required.

In fact, with the promulgation of the Constitution, the Bill of Rights ensures to all Fijians the right to freedom of assembly, association, and movement.

3. Legislative Issues

Complaint

Essential National Industries Decree: The Committee again took note of the devastating impact of the Essential National Industries Decree issued in 2011. The Committee had previously urged the Government to take the necessary measures to amend the Essential National Industries Decree without delay, in full consultation with the social partners, so as to bring it into conformity with the Convention. Not only has the government not done, repealed or amended the ENID, it appears the

government is even considering expanding its reach to councils and fire-fighters. There remains a pending threat to extend the ENID to the sugar sector, if the workers make demands. Of particular concern are section 6 (cancellation of all existing trade union registrations in essential national industries); sections 10-12 (unions to apply to the Prime Minister to be elected as bargaining unit representative; determination by the Prime Minister of composition and scope of a bargaining unit for election purposes; conduct and supervision of elections by the Registrar); section 14 (50 per cent plus one necessary for a union to be registered as a representative of the bargaining unit); section 7 (union officials to be employees of the relevant company); section 27 (providing for serious restrictions of the right to strike); section 26 (lack of judicial recourse for rights disputes; compulsory arbitration by the Government of disputes beyond a certain financial threshold); section 24 (4) (prohibition of automatic dues deduction for workers in essential national industries).

Fijian Government Response

The intention of the Essential National Industries (Employment) Decree 2011 ("ENID") is to ensure the viability and sustainability of certain industries that are vital or essential to the economy and the Gross Domestic Product of Fiji.

The ENID and its Regulations set forth realistic and balanced requirements for both employers and worker representatives. The purpose is to help create growth and long-term viability for industries essential to Fijians and, in doing so, protect jobs and ensure fundamental workers' rights.

The ENID is limited to essential national industries, that is, only industries that are vital to the Fijian economy may be brought within the scope of the Decree. It will not apply to the vast majority of employers in Fiji. The Decree will not be extended to cover all unions in all sectors of the Fijian economy. This is not the intention, and it would not be permitted by the Decree itself. The Decree is specific in its definitions of "an essential national industry" and "designated corporation."

Section 9 of the ENID provides for voluntary recognition of a Bargaining Unit without an election. There is no forcing of unions to register under difficult new rules and to hold new elections. In addition, it is not the case that collective bargaining agreements are abrogated. Based on reports from designated corporations, unions continue to engage in collective bargaining, are effective associations of their employees, and have reached new collective bargaining agreements with their employers. As an example, Fiji's Cabinet extended the initial bargaining window laid out in the ENID, based on

employers' requests, to give them additional time to reach new agreements with their unions.

The ENID upholds the fundamental right of workers in essential national industries to form and to join a trade union of their choice.

It upholds other widely recognized fundamental workers' rights, including:

- The right to vote in a secret ballot election;
- The right to strike;
- The right to collectively bargain and the duty of corporations and labour unions to renegotiate bargaining agreements in good faith;
- The right to a well-defined dispute resolution process; and
- The right to receive overtime pay.

It is certainly not the case that the ENID abolishes all existing trade unions in Fiji. In designated corporations within essential national industries, workers can and do still join a trade union. The union continues to be recognized for the purpose of collective bargaining if a majority of workers clearly want that. In the event that occurs, the employer is obliged to recognize and negotiate in good faith with the union representatives.

Workers who do not want to be represented by a trade union also have that freedom. The ENID strikes a balance between the interests of all workers. The ENID contains the concept of "bargaining unit" which is found in other countries' laws, including in the United States of America and the United Kingdom.

The bargaining unit does not "replace trade unions" – the two are quite different concepts. Trade unions will continue to exist and can represent workers within a bargaining unit in a designated corporation in accordance with the ENID.

The ENID is not a unique piece of law. It is comparable in terms of its key provisions and principles to other major developed countries, such as the United Kingdom and the United States of America. Additionally, it also has some important comparable similarities with the Australian legal system.

The ENID does not outlaw professional trade unionists, rather, it requires that those who negotiate directly with the employer in designated corporations are employees of the company concerned so that an employer may negotiate

terms and conditions directly with its own employees who have a direct stake in the outcome. This is as opposed to an external third party who may have a wider agenda of their own.

The ENID only allows an employer in a designated corporation to impose terms and conditions after it has conducted good faith negotiations for at least 60 days. Where a new collective agreement is imposed, there is a right of appeal to the Minister for a review of its contents. This is similar to the position in other countries, such as the United Kingdom where an employer may dismiss employees and re-engage them on new terms and conditions.

The ENID upholds the fundamental right of workers to take industrial action in pursuit of their legitimate interests. However, as in many countries, this right is circumscribed in order to avoid damaging disruption to commerce.

The workers in the essential industries have been able to freely organize, form bargaining units and elect representatives. They have successfully reached collective agreements with employers and have devised their own dispute resolution processes. All this has been done without any third party intervention. In one essential industry, workers and their representatives have been able to successfully negotiate salary increases of up to 25%, together with other employment benefits. The workers in this industry will also receive guaranteed pay increases every year throughout the five-year term of the collective agreement. In addition, the workers and employers have agreed that workers will receive a share of any profits declared by the employer. None of these benefits were available to the workers prior to the enactment of the ENID.

Complaint

Public Sector: The public sector remains seriously impacted by a series of executive decrees that have limited or eliminated many of the fundamental rights of workers. Information provided to the Committee of Experts by the Government of Fiji to the contrary is incorrect. Public service unions are unable to exercise fully their fundamental rights, including the right to freedom of association.

Fijian Government Response

The Constitution expressly guarantees the following worker rights, which include government workers:

(a) *Section 10 Freedom from slavery, servitude, forced labour and human trafficking* – A person must not be held in slavery or servitude, or subjected to forced labour or human trafficking.

(b) *Section 11 Freedom from cruel and degrading treatment* –

(1) Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

(2) Every person has the right to security of the person which includes the right to be free from any form of violence from sources which includes work.

(c) *Section 16 Executive and administrative justice* – Subject to the Constitution and other limitations prescribed by law, every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt; every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and any executive or administrative action may be reviewed by a court, or independent and impartial tribunal.

(d) *Section 18 Freedom of assembly* – Every person has the right, peaceably and unarmed, to assemble, demonstrate, picket and to present petitions.

(e) *Section 19 Freedom of association* – Every person has the right to freedom of association.

(f) *Section 20 Employment relations* –

(1) Every person has the right to fair employment practices, including humane treatment and proper working conditions.

(2) Every worker has the right to form or join a trade union, and participate in its activities and programmes.

(3) Trade unions and employers have the right to bargain collectively.

(g) *Section 33 Right to work and a just minimum wage* – The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to work and to a just minimum wage.

The Public Service (Amendment) Decree 2011 also expressly guarantees the fundamental principles and rights at work of all Government employees. This

Decree provides for the right of Government employees to join and be members of trade unions. The employees also have access to the courts by way of judicial review to challenge decisions made against them, including decisions arising out of disciplinary action and termination of employment, as recently decided by the High Court of Fiji. Furthermore, a number of public service unions have concluded collective agreements with Government in good faith to improve the employment terms and conditions of Government wage earners.

In addition, there is an internal grievance procedure outlined in the Policy on Grievance Procedure of the Public Service which came into effect on 16 August 2011 whereby Government employees can seek redress of any decision which affects an employee.

The procedure appears as follows:

- (a) An employee who has a personal grievance shall submit the grievance to the immediate supervisor in writing setting out the nature of the grievance, the facts giving rise to the grievance, and the remedy sought.
- (b) The grievance shall be submitted as soon as practicable after it arose so as to enable the immediate supervisor to remedy the grievance.
- (c) The employee's immediate supervisor shall investigate the matter and provide a written response with reasons for any decision taken at this stage.
- (d) An employee, upon receipt of a response from the immediate supervisor, is not satisfied with the decision, shall request the immediate supervisor to forward the matter in writing to the Section Head for consideration and thereupon shall consider the matter and give the employee a decision in writing with reasons within 14 days of the written report being received.
- (e) An employee, upon receipt of a response from the Section Head, is still aggrieved with the decision, the Section Head, shall, upon request of the employee, forward the matter in writing to the Permanent Secretary or Head of Department for consideration and thereupon the latter shall make a decision in writing with reasons within 14 days of receipt.
- (f) Where it is not practicable to make a decision within the time limits specified above, the time limit shall be extended by informing the aggrieved employee.

- (g) Where the employee, upon receipt of a decision from the Permanent Secretary or Head of Department is still aggrieved, the matter shall be referred in writing to the Permanent Secretary for the Public Service Commission with all the necessary documents.

An officer must first exhaust the internal ministerial grievance procedures outlined above. Paragraph (g) of the Policy on Grievance Procedure of the Public Service must be read together with section 127 of the Constitution which provides that Permanent Secretaries are now responsible for the management of a ministry, and the appointment, removal, and initiation of disciplinary action against an officer. Therefore, an employee aggrieved by the decision of the Permanent Secretary does not seek further redress from the Public Service Commission, but rather, from court.

In addition to the government employees exercising their grievance rights and seeking redress through the above-mentioned grievance procedures and court, the General Orders 2011 (GO2011), released by the Public Service Commission in 2011, also contains the worker rights outlined below. It must be noted that the rights of Government workers are equal to or exceed the rights accorded to non-Government workers under the Employment Relations Promulgation 2007 (ERP). The Constitution maintains these worker rights in that all laws existing before the commencement of the Constitution are preserved and continue in force however they must be read with such modifications, adaptations, qualifications and exceptions necessary to enable conformity to the Constitution.

These government worker rights under the GO2011 are:

- (a) Annual Leave - the ERP grants 10 working days Annual Leave while the GO2011 gives 18 working days.
- (b) Sick Leave – equivalent to the ERP.
- (c) Bereavement Leave – equivalent to the ERP.
- (d) Paid Public Holidays – equivalent to the ERP.
- (e) Allowances – meal allowances given to Government workers are some of the highest afforded to any worker within Fiji. This also applies to travelling, accommodation, transfer, housing, and duty allowances.

In addition to these rights, the Public Service Commission Policies which under the Constitution are preserved and continue in force contain the following fundamental worker rights, which apply to all Government workers:

Fundamental Rights at Work – Government workers are covered under the Public Service Commission Policy on Equal Employment Opportunity in the Civil Service. Furthermore, the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) amended the Public Service Act 1999 to include fundamental principles and rights at work and Equal Employment Opportunity.

- (a) Protection of Wages – wages of persons employed in Government are protected under the Terms and Conditions of Employment for Government Wage Earners 2010. For Government workers who are salary earners, their salaries are protected under the GO2011.**
- (b) Right to Minimum Conditions of Work (hours of work, holidays, leave etc.) - the minimum conditions of work of Government workers are contained in the Public Service Commission Policy on Hours of Work of the Public Service. Government workers' hours of work range from 37 hours to 40 hours. Chapter 7 of the GO2011 provides for leave such as annual leave, bereavement leave, sick leave, and long service leave.**
- (c) Equal Employment Opportunity and Protection from Discrimination – Government employees are covered under the Public Service Commission Policy on Equal Employment Opportunity in the Public Service. In addition, the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) includes fundamental principles, rights at work, and equal employment opportunity.**
- (d) Protection from Unfair Treatment – a Government worker who believes that he or she has been unfairly treated can raise a grievance through the internal grievance procedure provided for in the Public Service Commission Policy on Grievance Procedure in the Public Service.**

(e) **Membership in trade unions** – Government workers are free to join any trade union of their choice. In addition, there are no restrictions on the establishment or operation of trade unions whose membership comprises Government workers.

(f) **Right to Challenge Employer's Decisions** – In the case *State v Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunaruara & Others* (HBJ02 of 2012) the Applicant (a former Government worker) and other former Government workers challenged their termination through judicial review to the High Court in Suva. On a preliminary point, it was raised that the High Court did not have jurisdiction to hear the application for judicial review. The Court ruled that it had full jurisdiction to accept cases from Government workers on the basis of termination of employment.

Other cases where Government workers have challenged an administrative decision are:

- (i) *State v Public Service Commission ex parte Fiji Public Service Association* (HBJ 11 of 2012) –
The Applicants filed an application for Judicial Review on 21 November 2012 challenging the retirement age policy in the public service.
- (ii) *State v Public Service Commission ex parte Peter Ledua* (HBJ 2 of 2013) –
The Applicant filed an application for Judicial Review on 1 February 2013 challenging the decision of the Respondent to terminate his employment.
- (iii) *State v Permanent Secretary for Finance ex parte Ramesh Chand* (HBJ 08/2012) –

The Applicant challenged the decision to surcharge him on the grounds of procedural unfairness and excess of jurisdiction.

Below is a very recent case which was served on our office on 13 November 2013.

- (iv) ***Confederation of Public Sector Unions v Public Service Commission*** (Civil Action No. 315/2013) –
The Confederation of Public Sector Unions challenged the increase in salary of Permanent Secretaries. The Applicants in this case however, have withdrawn the matter from court.

In summary, Government workers continue to have the freedom to associate. A number of Government workers are members of trade unions and participate in meetings and union elections. Most Government workers are members of the Fiji Public Service Association and to-date, they continue (through their own personal arrangements with their Ministry employer) to have their union dues deducted from their pay.

Complaint

Employment Relations Promulgation of 2007 (ERP): The Committee has for years commented on the necessity to amend the following provisions of the ERP in order to bring them into conformity with the Convention. The government has failed to do so. The ERAB subcommittee met on 13 August 2012 to discuss revision of the labour law in line with the international conventions, but nothing resulted from that meeting. There was no further meeting until immediately prior to the Conference, a transparent attempt by the government to be able to claim that it is engaged in social dialogue.

Fijian Government Response

Contrary to the complaint raised, the Employment Relations Advisory Board ("ERAB") and the ERAB Sub-Committee, have been consistently meeting to discuss amendments to the Employment Relations Promulgation 2007 ("ERP"). It is a sincere attempt by the parties to review the law to address issues encountered as per the implementation of the ERP; it is not a transparent attempt prior to the International Labour Conference to engage in social dialogue.

The Fijian Government has taken a number of concrete steps to review and modernise the current labour laws, practices and policies in Fiji. The Government has activated a tripartite process under the ERAB to review the current labour laws.

In 2012 the ERAB and its sub-committee activated the process of amending our Labour Laws to ensure compliance with the 34 ILO Conventions ratified by Fiji. The ERAB Subcommittee is tripartite in nature with representatives from the worker sector, employer sector, and Government sector.

The first meeting to discuss amendment of Labour Laws was held on 23 July 2012. Between July and December 2012 the ERAB held 3 meetings and the ERAB Sub-Committee held 8 meetings. From December 2012 to March 2013 the Ministry of Labour Policy Team held meetings to collate the discussions regarding the amendment of Labour Laws. Further meetings were held on 8 and 9 April 2013.

The proposed amendments which are currently being collated by the Ministry of Labour will be reviewed by the Solicitor-General's Office prior to submission to Cabinet by the Minister of Labour.

We annex the dates of the meetings of the ERAB and its Sub-Committee, together with the list of the tripartite members present.

4. New Concerns

Complaint

Fiji Political Parties Decree: In 2013, the Government sought to exclude trade unions from the political process by Decree. In January, the Government promulgated the Fiji Political Parties Decree. The decree excludes public officers from applying for, being a member of or holding office in a political party. Article 14(2) (d) defines 'public officer' as any elected or appointed trade union officer or of any federation, congress, council or affiliation of trade unions. A subsequent amendment to that decree broadened the scope of unionist barred from the political process. Under article 14 (1) (c) a trade union official cannot even express support for a political party. If a trade unionist does become an applicant, member or officer, they will be deemed as having resigned from their trade union office under article 14 (1) (5). Anyone defying this decree faces a \$50,000 fine, 5 years imprisonment or both. The decree also provides that existing political parties that fail to successfully re-register under the decree's cumbersome new requirements will have their assets confiscated by the Government.

Fijian Government Response

The Fijian Government is currently undertaking substantial reforms to create transparent rules of governance and a legal system that is based on substantive equality and justice.

The Constitution guarantees universally accepted principles and values of equality and justice to all Fijians including a voting system based on one person, one vote, one value which removes the legal enforcement of ethnic voting.

In making substantial progress towards holding truly democratic parliamentary elections which under the Constitution must be held before 30 September 2014, the voting system that has been adopted under the Constitution is the open list system of proportional representation. The Fijian Government is committed to ensuring that we have the right electoral processes and oversight mechanisms in place to effectively address the corrupt practices and flaws of past elections.

In conformity with these principles, section 14(2) of the Political Parties Decree and section 57 of the Constitution ensures the political neutrality of public officers. The definition of public office includes an office in any federation, congress, council or affiliation of trade union or employers. This is to ensure that persons in public offices do not engage in political activity which may compromise the political neutrality of that person's office and from publicly indicating support for or opposition to any political party. This also ensures that individuals in public offices do not use their positions in a public office to advance a personal political agenda as history will show that this was the practice in the past, which contributed to corrupt practices and flaws in past elections.

Complaint

Proposed New Constitution: There is much to be concerned about with the new constitution. For example, articles 19 and 20 while providing that all persons have the right to associate, to join a union, to bargain collectively and to strike, they include broad exceptions that could be invoked to limit severely those fundamental labour rights and indeed to justify the existing harmful decrees already criticised by the ILO. The broadly stated principles can and no doubt will be undermined through the invocation of these exceptions. Of note, the Commission's draft constitution contained none of these sweeping exceptions. The contents of the political party decree have also been incorporated into the Constitution.

Fijian Government Response

The Fijian Government emphasizes that the exceptions under sections 19(2) and 20(5) of the Constitution do not curtail the rights of workers to freedom of association, collective bargaining, and joining a trade union.

The limitations are carried out for the purposes of security, health, and safety at a national level. These purposes include, for example, national security, public safety, public order, public morality, public health or the orderly conduct of elections. Exceptions exist to protect the rights and freedoms of others, impose restrictions on holders of public offices, regulate trade unions, regulate collective bargaining processes or regulate essential services and industries that are vital to the Fiji national economy or gross domestic product of the country.

Furthermore, we believe these exceptions under the Constitution are consistent with international labour standards. Part I Article 8(1) of the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) it states that "In exercising the rights provided for in this Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land".

The exceptions are also consistent with the provisions in the International Covenant on Civil and Political Rights (ICCPR). Whilst Article 22(1) provides the right to freedom of association, sub-article (2) states "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

Additionally, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also provides in Article 8(1)(c) that trade unions have a right to function freely subject to limitations prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. Sub-article (2) states further that Article 8 on the right to form and join trade unions does not prevent the imposition of lawful restrictions on the exercise of such rights in relation to the administration of the State.

5. Direct Contacts Mission to Fiji

Since the promulgation of our Constitution in September last year, we have been undergoing a socio-political and constitutional transition in preparation for general elections which under the Constitution must be held no later than 30 September 2014, and revising and formulating specific laws to ensure conformity to the Constitution.

The vital law that is currently being formulated is the electoral laws. In addition, an Electoral Commission has been established that will be responsible for the continuous registration of voters and the conduct of free and fair elections. We highlight that out of approximately 640,000 eligible voters, more than 540,000 voters over the age of 18 years have been registered to vote under the new system of voting known as the proportional representation system.

Also in preparation for elections we had engaged experts from the European Union, Australia and New Zealand to finalize planning for all aspects related to the elections including identification of polling stations, developing a list of material needs, drafting the rules and regulations that will guide the electoral process, and establishing a free, fair and transparent system for the hiring and training of qualified election staff.

With a few months left to prepare for elections, the important activities to be undertaken are public education and awareness, and preparation of the parliamentary machinery. This is aside from the registration of voters and political parties which is a continuing exercise.

The Fijian Government is also working towards formulating a Code of Conduct for public office holders and Freedom of Information laws, whilst at the same time, specific laws are currently under review to ensure conformity to the provisions of the Constitution.

Given the amount of work involved in preparing for Fiji's first truly democratic elections and the review of laws to ensure compliance with the Constitution, it is quite evident that Government's calendar is occupied in the months leading up to the general elections. Therefore it is more practicable to have a Direct Contacts Mission ("DCM") visit Fiji after the general elections in September of this year.

A DCM after the general elections will ensure that the visit is objective and independent, and that any outcomes will not be used as a political tool. It will also ensure that the DCM is held in a politically neutral environment where concrete

solutions on issues against Fiji can be provided to the incoming Parliament. This is more so given that under the Constitution, the Parliament has **express** authority to review and amend any existing laws.

6. Commission of Inquiry

With respect to the Article 26 Complaint calling for the establishment of a Commission of Inquiry against Fiji, we urge the ILO Governing Body to take note of the recommendation outlined at clause 5 above that a DCM visit Fiji soon after the September 2014 general elections. The Fijian Government also invites the ILO Governing Body to first allow the DCM to complete its visit soon after the elections and that any discussions and decisions on the establishment of a Commission of Inquiry to be deferred to the November 2014 sitting of the ILO Governing Body. At this time, Fiji will have successfully completed its general elections and a DCM will have visited Fiji and provided solutions to the issues raised against Fiji.

ERAB & ERAB SUB-COMMITTEE MEETINGS FOR 2012

No	NAMES	ERAB (3)			SUB-COMMITTEE (6)								
Workers Representatives													
	Names of Members	11/04/12	09/05/12	16/07/12	23/07/12	30/07/12	31/07/12	01/08/12	02/08/12	03/08/12	13/08/12 (MLC)	27/09/12	TOTAL
1.	Camodaran Nair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	3
2.	Felix Anthony	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	8
3.	Daniel Ural	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	7
4.	O.P. Singh	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	7
5.	Agri Deo Singh	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	0
6.	Rajeshwar Singh	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	6
7.	John Paul	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
Employers' Representatives													
	Names of Members	11/04/12	09/05/12	16/07/12	23/07/12	30/07/12	31/07/12	01/08/12	02/08/12	03/08/12	13/08/12 (MLC)	27/09/12	TOTAL
8.	Nesbitt Hazelman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	8
9.	Howard Polini	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
10.	Himmat Lodha	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	3
11.	Fofo Maia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	5
12.	Noel Tofiga	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	7
13.	Joseph Della Gatta	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	0
14.	Michael Wong	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	0
15.	Patrick Wong	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
Government Representatives													
16.	Babu Rakula (PSC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
17.	Lusiana Naimai (NP)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	3
18.	Erni Loganimo (PSC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
19.	Pamish Chand (PSC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
20.	Nasa Tulakepa (PSC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
21.	Kelera Nukunamai (PSC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	5
22.	Saleshi Daumbana (SG's Office)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	4
23.	Mr Masu	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1
Independent Members													
	Names of Members	11/04/12	09/05/12	16/07/12	23/07/12	30/07/12	31/07/12	01/08/12	02/08/12	03/08/12	13/08/12 (MLC)	27/09/12	TOTAL
24.	Pani Gavidli	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	10
25.	Marie Chan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	11