



Governing Body

324th Session, Geneva, 13 June 2015

GB.324/INS/5(Rev.)

Institutional Section

INS

Date: 5 June 2015

Original: English

FIFTH ITEM ON THE AGENDA

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

Purpose of the document

This document contains the recommendation of the Officers of the Governing Body concerning the decision to be taken in light of the reports provided on the implementation of the Tripartite Agreement signed in March 2015 (see the draft decision in paragraph 3).

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

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Document for Governing Body decision in November 2015.

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.323/INS/7(Rev.1).

1. At its 323rd Session (March 2015), when considering the complaint concerning non-observance by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by several Workers' delegates to the 102nd Session (2013) of the International Labour Conference under article 26 of the ILO Constitution, the Governing Body adopted the following decision:

Taking into account the Tripartite Agreement recently signed by the Government of the Republic of Fiji, the Fiji Trades Union Congress (FTUC) and the Fiji Commerce and Employers' Federation (FCEF) (reproduced in Appendix II to document GB.323/INS/7(Rev.1)), on the recommendation of its Officers, the Governing Body:

- (a) requested the Government and the social partners, in accordance with the Tripartite Agreement, to submit a joint implementation report to its 324th Session (June 2015);
 - (b) deferred until its 325th Session (November 2015) the decision to consider the establishment of a commission of inquiry.¹
2. In a communication dated and received on 2 June 2015, the Government of Fiji submitted an implementation report signed jointly by the Minister for Employment, Productivity and Industrial Relations and the Fiji Commerce and Employers' Federation (see Appendix I). The Government states that there was no agreement with the workers and notes that they may submit separately a different version of the report. In this vein and on the same date, the Fiji Trades Union Congress submitted its own implementation report (see Appendix II). The workers declare to remain seriously concerned about the process yet also committed to its completion.

Draft decision

3. ***Recalling the Tripartite Agreement signed by the Government of the Republic of Fiji, the Fiji Trades Union Congress (FTUC) and the Fiji Commerce and Employers' Federation (FCEF) on 25 March 2015 and the Governing Body's request to the Government and the social partners to submit a joint implementation report to the Governing Body at its 324th Session (June 2015) in accordance with that Agreement,***

Noting the joint communication of 2 June 2015 submitted by the Government of the Republic of Fiji and the Fiji Commerce and Employers' Federation (FCEF), and the separate communication of 2 June 2015 from the Fiji Trades Union Congress (FTUC),

Regretting the failure to submit a joint implementation report as called for in the decision adopted by the Governing Body at its 323rd Session (March 2015),

The Officers of the Governing Body recommend that the Governing Body:

- (a) urge the Government of Fiji through the Employment Relations Advisory Body to review its labour laws to ensure compliance with ILO core Conventions;***
- (b) reiterate the request for the submission of a joint implementation report, in accordance with the Tripartite Agreement signed in March 2015, before the 325th Session of the Governing Body (November 2015); and***
- (c) consider at its 325th Session the establishment of a commission of inquiry.***

¹ GB.323/PV/Draft, para. 114.

Appendix I

RECEIVED - 2 JUN 2015

LIBSYND



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

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45.15

Ref: 1/10/1

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

In this respect, the Permanent Mission of the Republic of Fiji has the further honour to submit herewith a report signed jointly by the Government of Fiji and the Employers. There was no agreement with the workers, who may submit separately a different version of this report.

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

International Labour Organisation Route des Morillons 4 CH-1211
Geneva 22



REPUBLIC OF FIJI
JOINT IMPLEMENTATION REPORT
Background

1. A Tripartite Agreement ("**Agreement**") was signed between by the Minister for Employment, Productivity & Industrial Relations, Honourable Jioji K. Konrote for and on behalf of the Government of the Republic of Fiji, the Chief Executive Officer of the Fiji Commerce and Employers Federation, Mr Nesbitt D. F. Hazelman, and General- Secretary of the Fiji Trade Union Congress, Mr Felix Anthony, at the International Labour Organisation ("**ILO**") Head Quarters on 25 March 2015, in Geneva, Switzerland.
2. Under the Agreement, the Parties agreed that the review of the labour laws including the Employment Regulations Promulgation 2007 ("**ERP**") be conducted through the Employment Relations Advisory Board ("**ERAB**") mechanism and ensure compliance with ILO core Conventions.
3. The Agreement also stated that any further issues and recommendations identified by any of the Parties in respect of the review shall only be raised and negotiated through the ERAB mechanism.
4. The Agreement also stipulated that ERAB should vet any Bill that addresses the issues highlighted by ILO before it is presented to Cabinet and Parliament no later than August 2015, and tha: the Bill once approved by Parliament, be implemented no later than the end of October 2015.
5. Furthermore, the Agreement stated that the Parties submit a Joint Implementation Report to the June 2015 Session of the ILO Governing Body.
6. In accordance with the Agreement, the Parties wish to submit this Joint Implementation Report to the ILO Governing Body for its consideration.

ERAB Meetings and Decisions

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

Chair:

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

Workers Representatives:

- (a) Mr Felix Anthony;
- (b) Mr Agni Deo Singh;

(c) Mr Daniel Urai; and

(d) Mr Rohit Singh.

Employers Representatives:

(a) Mr Nesbitt Hazelman;

(b) Mr Harvie Probert;

(c) Mr Rajesh Punja; and

(d) Mr Brian Kirsch.

Government Representatives:

(a) Mr Shaheen Ali, Permanent Secretary for Industry, Trade and Tourism and Public Enterprises;

(b) Mr Filimoni Waqabaca, Permanent Secretary for Finance; and

(c) Mr Naipote Katonitabua, Permanent Secretary, Office of the Prime Minister.

8. The Workers representatives appointed to ERAB were nominated by the Fiji Trade Unions Congress ("**FTUC**") and the Employers representatives appointed to ERAB were nominated by the Fiji Commerce and Employers Federation ("**FCEF**").
9. ERAB held its first meeting on 12 May 2015 and thereafter, ERAB had two more meetings on 20 and 21 May 2015.
10. At its first meeting on 12 May 2015, ERAB discussed and endorsed Government's proposal that the Essential National Industries (Employment) Decree 2011 ("**ENI Decree**") and the Employment Relations (Amendment) Decree 2011 (which removed Government workers from the ERP) will both be repealed and all workers and employers under the ENI Decree as well as the Government will be brought within the ambit of the ERP, in order to ensure that workers in these industries are provided with the full freedom of association to form and join trade unions, with the full right to engage in collective bargaining, and that any disputes arising out of collective bargaining would be resolved by an independent Arbitration Court which will be made of a Chair and representatives selected by both the workers and employers. Government indicated that this would address the issues raised in the Report of the Direct Contacts Mission, which had formed the basis of the complaint to the ILO after the promulgation of the ENI Decree and the Employment Relations (Amendment) Decree 2011.
11. Furthermore, Government proposed that those sections of the ERP and other laws which have been referred to in the reports of the ILO Committee of Experts should also be addressed first, whilst all other recommendations made by the ERAB Subcommittee in the

previous years which were not raised by the ILO Committee of Experts or not deemed to be in breach of ILO core conventions will be considered by ERAB in detail from the third week of June 2015 (on a date convenient to all the ERAB members) after the conclusion of the 2015 ILO Conference, in addition to any outstanding or new matters.

12. Based on this general understanding, ERAB members agreed that Government would prepare a draft Bill which ERAB members would consider in detail at its next meeting.
13. A draft Bill was circulated to all the members of the ERAB at its meeting on 20 May 2015. ERAB members discussed individual clauses of the draft Bill and proposed a number of amendments, which were incorporated for discussion by ERAB members on 21 May 2015. The amendments were proposed by all the members including Workers representatives as well as Employers representatives.
14. At its meeting on 21 May 2015, ERAB members discussed the proposed amendments to the draft Bill, after which Government proposed that the draft Bill be referred to the Minister.
15. Whilst the Government and Employers representatives agreed with the draft Bill, the Workers representatives raised a number of disagreements with the draft Bill, in particular with respect to the following issues:
 - (a) The right to strike;
 - (b) The option for workers to remain part of Bargaining Units;
 - (c) The scope of essential services and industries;
 - (d) Reinstatement of collective agreements that existed prior to the ENI Decree; and
 - (e) Resolution of disputes which were discontinued by the ENI Decree.
16. It was agreed by ERAB that the matters of disagreement highlighted by the Workers representatives will be noted and recorded by ERAB whilst the draft Bill should be considered for tabling in Cabinet and Parliament.
17. ERAB agreed that once the Bill is tabled in Parliament and referred to a Parliamentary Standing Committee, then everyone (including individual members of ERAB) will have the full opportunity to make submissions to the Parliamentary Standing Committee. It was further agreed that once the Parliamentary Standing Committee receives all the submissions on the Bill, ERAB would also address the Parliamentary Standing Committee and provide its comments on the submissions made to the Parliamentary Standing

Committee, before the Bill is reported back to Parliament by the Parliamentary Standing Committee.

18. ERAB members also agreed that ERAB will reconvene from the third week of June (on a date convenient to all the members) to consider in detail all the other recommendations made by the ERAB Sub-committee in the previous years which were not raised by the ILO Committee of Experts or not deemed to be in breach of ILO core conventions, as well as any other outstanding or new matters.
19. Based on the above, ERAB submitted the draft Bill to the Minister on 21 May 2015.
20. On 22 May 2015, the Attorney-General tabled the Employment Relations (Amendment) Bill 2015 ("**Bill**") in Parliament. Parliament has referred this Bill to the Parliamentary Standing Committee on Law, Justice and Human Rights, with directions that the report of the Parliamentary Standing Committee be presented back to Parliament in the July sitting of Parliament, when Parliament will debate and vote on the Bill.

Employment Relations (Amendment) Bill 2015

21. A copy of the Bill, which was tabled in Parliament is attached to this Report for the information of the ILO Governing Body.
22. In summary, the Bill proposes to do the following -
 - (a) Repeals the ENI Decree, Employment Relations (Amendment) Decree 2011 and the Public Service Amendment Decree 2011;
 - (b) Brings all essential services and industries and Government under the ambit of the ERP;
 - (c) Expressly provides that all workers in essential services and industries have the full right to freedom of association, namely the right to either continue to organise themselves as Bargaining Units or to form Bargaining Units if they so choose, or to join an existing trade union, or to register itself as a trade union;
 - (d) Provides detailed provisions to enable all workers and employers to freely engage in collective bargaining;
 - (e) Provides for a resolution of all disputes of interest arising out of collective bargaining by an independent and tripartite Arbitration Court;
 - (f) Establishes the Arbitration Court, which is made up of a Chair appointed by the President of the Republic of Fiji and panel members selected by both the Workers representatives and Employers representatives;

- (g) Provides the Arbitration Court will all necessary powers and jurisdiction to expeditiously adjudicate on all disputes of interest in essential services and industries;
- (h) Provides the same processes and mechanisms for strike and lockouts in essential services and industries, which had previously existed under the ERP; and
- (i) Amends a number of sections of the ERP, namely sections 78, 119, 122, 125, 127, 128, 169, 170, 177, 180, 181, 241, 250 and 264.

Conclusion

23. The Fijian Government is committed to ensuring that its laws comply with the ILO core Conventions and will continue to work with the Workers Representatives and Employers Representatives to ensure that all the obligations under the Agreement are met.
24. In this regard, ERAB will reconvene from the third week of June (on a date convenient to all the members) to consider in detail all the other recommendations made by the ERAB Sub-committee in the previous years which were not raised by

DATED this day _____ of June 2015.


Minister for Employment,
Productivity, and Industrial
Relations


Chief Executive Officer
Fiji Commerce and
Employers' Federation

Appendix II

Fiji Trades Union Congress

Implementation report

Background

1. A Tripartite Agreement (“Agreement”) was signed between by the Minister for Employment, Productivity and Industrial Relations, Honourable Jioji K. Konrote, for and on behalf of the Government of the Republic of Fiji, the Chief Executive Officer of the Fiji Commerce and Employers Federation, Mr Nesbitt D.F. Hazelman, and General-Secretary of the Fiji Trades Union Congress, Mr Felix Anthony, witnessed by the Director-General of the ILO, at the International Labour Organization (ILO) headquarters on 25 March 2015, in Geneva, Switzerland.
2. The Parties agreed that the Employment Regulations Promulgation 2007 (ERP) shall be the primary legislation governing labour management relations in Fiji and that the review of the labour laws including the ERP be conducted through the Employment Relations Advisory Board (ERAB) mechanism and ensure compliance with ILO core Conventions.
3. The Agreement also stated that any further issues and recommendations identified by any Party in respect of the review shall only be raised and negotiated through the ERAB mechanism.
4. The Agreement also stipulated that ERAB should vet any bill that addresses the issues highlighted by ILO before it is presented to Cabinet and Parliament no later than August 2015, and that the bill once approved by Parliament, be implemented no later than the end of October 2015.
5. The Agreement required that the Government reinstate the check-off facilities.
6. Furthermore, the Agreement stated that the Parties submit a joint implementation report to the June 2015 session of the ILO Governing Body.
7. Unfortunately, the Government today (Tuesday, 2 June) presented a draft report which appeared incomplete and had factual errors. Attempts were made to rectify the report which had the agreement of the Employer representative. The amendments were sent to Suva for agreement. Suva responded that it did not agree with the amendments and would submit a report it had originally prepared with the Employers signing to it as well. This is not in keeping with the Agreement, nor the spirit of the Agreement. In fact, this has been the hallmark of government behaviour after the signing of the Agreement.

ERAB meetings and decisions

8. In April 2015, the Minister of Employment, Productivity and Industrial Relations appointed the following members to ERAB after repeated reminders from the Fiji Trades Union Congress (FTUC) and after receiving nominations from the FTUC, the Fiji Commerce and Employers Federation (FCEF) and Government:

Chairperson

Mr Sharvada Sharma, Solicitor-General appointed by Government.

Workers' representatives:

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

Employers' representatives:

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

Government representatives:

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

9. ERAB held its first meeting on 12 May 2015 and thereafter on 20 and 21 May 2015. In these meetings, there were absolutely no negotiations as required by the Agreement. The Government totally dictated the terms and only agreed to issues that it felt it had to as a minimum. When the Parties entered into the Agreement, doubts were cast from all quarters on the sincerity of the Government to deal with workers in good faith. These doubts were well founded.

At its first meeting on 12 May 2015, ERAB agreed that the Essential National Industries (Employment) Decree 2011 ("ENI Decree") and the Employment Relations (Amendment) Decree 2011 (which removed government workers from the ERP) will both be repealed and all workers and employers under the ENI Decree, as well as the Government, will be brought within the ambit of the ERP, in order to ensure that workers in these industries are provided with the freedom of association to form and join trade unions, with the full right to engage in collective bargaining. Any disputes arising out of collective bargaining would be resolved by an arbitration court which will be made of an independent chair and a representative each selected by the workers and employers.

10. The Parties agreed that those sections of the ERP and other laws which have been referred to in the reports of the ILO Committee of Experts should also be addressed first, while all other recommendations made by the ERAB Subcommittee in the previous review and referred to in the Agreement will be considered by ERAB in detail from the third week of June 2015 (on a date convenient to all the ERAB members) after the conclusion of the 2015 ILO Conference, in addition to any outstanding or new matters.

11. Based on this general understanding, ERAB members agreed that the Government would prepare a draft bill, which ERAB members would consider in detail at its next meeting.
12. A draft bill was circulated to all the members of ERAB at its meeting on 20 May 2015. Concern was expressed that insufficient time had been given to properly review and consider the draft bill. ERAB members discussed individual clauses of the draft bill and proposed a number of amendments, which were incorporated or noted as disagreements for negotiations. The FTUC was unaware that the Government, in repealing the ENI Decree, would insist in incorporating some of its provisions in the ENI through the bill. This caused serious difficulties and, as such, disagreement on some fundamental issues.
13. At its meeting on 21 May 2015, the ERAB members discussed the proposed amendments to the draft bill, after which the Government unilaterally decided to refer the draft bill to the Minister, despite the FTUC calling upon it to attempt to resolve disagreements. The employers simply agreed to everything the Government decided.
14. While the Government and employers' representatives agreed with the draft bill, the workers' representatives disagreed to the following issues.
 - (a) The denial of the right to strike for all essential services and industries as stipulated in the ENI Decree and incorporated in the bill to amend the ERP.
 - (b) The inclusion of bargaining units from the ENI Decree into the draft bill.
 - (c) The inclusion of essential services and industries under the ENI Decree into the draft bill.

The bill does not address the following issues that are critical to workers and which were removed by the ENI Decree and the Employment Relations (Amendment) Decree of 2011.

 - (d) Reinstatement of collective agreements that existed prior to the ENI Decree. These collective agreements were a result of decades of struggle for workers. Without this provision, many workers would be required to start afresh.
 - (e) Resolution of disputes which were discontinued by the ENI Decree. This is a fundamental issue and one of justice. Many workers who were aggrieved and had challenged their treatment by their employers were denied due course and justice.
 - (f) Exclusion of prison officers from the draft bill despite the Committee of Experts repeatedly addressing these issues in their reports.
 - (g) The reinstatement of trade union registration that was cancelled by the ENI Decree.
 - (h) The list is not exhaustive.
15. ERAB members agreed that ERAB will reconvene from the third week of June (on a date convenient to all the members) to consider in detail all the other recommendations made by the ERAB Subcommittee in the previous review, as well as any other outstanding or new matters and complete the review within the time frame agreed.
16. On 22 May 2015, the Attorney-General tabled the Employment Relations (Amendment) Bill 2015 ("Bill") in Parliament. Parliament has referred this Bill to the Parliamentary Standing Committee on Law, Justice and Human Rights, with directions that the report of the Parliamentary Standing Committee be presented back to Parliament in the July sitting of Parliament, when Parliament will debate and vote on the Bill.

Employment Relations (Amendment) Bill 2015

17. A copy of the Bill, which was tabled in Parliament is attached to this report for the information of the ILO Governing Body.
18. In summary, the Bill proposes to do the following:

- (a) Repeal the ENI Decree, Employment Relations (Amendment) Decree 2011 and the Public Service Amendment Decree 2011, but include some provisions of the ENI in the Bill.
 - (b) Bring all essential services and industries in the ENI Decree and the Government under the ambit of the ERP, despite clear recommendations of the Committee of Experts.
 - (c) Expressly provide that all workers in essential services and industries have the full right to freedom of association, namely the right to either continue to organize themselves as bargaining units or to form bargaining units if they so choose, or to join an existing trade union, or to register itself as a trade union. The bargaining units would have the same rights as trade unions. This is an attempt to divide workers and promote bargaining units under the guise of Freedom of Association.
 - (d) Provide for a resolution of all disputes of interest arising out of collective bargaining by an independent and tripartite arbitration court, and for the resolution of disputes of rights to be determined by the Arbitration Tribunal under the ERP.
 - (e) Establish the arbitration court, which is made up of a chairperson appointed by the President of the Republic of Fiji and panel members selected by the most representative workers' and employers' organizations.
 - (f) Provide the arbitration court with the necessary powers and jurisdiction to expeditiously adjudicate on all disputes of interest in essential services and industries;
 - (g) Amends a number of sections of the ERP, namely sections 78, 119, 122, 125, 127, 128, 169, 170, 177, 180, 181, 241, 250 and 264.
19. In addition to the matters relating to the ENI Decree and the draft bill, the check-off facilities have been restored only for civil servants. Workers in municipal councils, government-owned enterprises and corporations still have not had their check off restored despite reminders.

Conclusion

- 20. The Fijian Government claims to be committed to ensuring that its laws comply with the ILO core Conventions and will continue to work with the workers' representatives and employers' representatives to ensure that all the obligations under the Agreement are met. Its conduct so far does not give the FTUC any confidence in its sincerity.
- 21. ERAB is supposed to reconvene from the third week of June (on a date convenient to all the members) to consider in detail all the other recommendations made by the ERAB Subcommittee in the previous review, as well as any other outstanding or new matters. All recommendations from ERAB will be presented through the Minister to Cabinet and then to Parliament. It is noteworthy that despite constant reminders, it took Government six weeks to convene the first meeting after the signing of the Agreement. It expected the FTUC and employers a day and a half to agree to its draft bill, not to negotiate.
- 22. The FTUC remains seriously concerned about the process so far but remains committed to completing the process. It intends to pursue matters that do not comply with core standards.

2 June 2015

Felix Anthony
General Secretary
Fiji Trades Union Congress