

108th Session, Geneva, June 2019

Committee on the Application of Standards

Information supplied by governments on the application of ratified Conventions

Fiji

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Fiji (ratification: 2002). The Government has provided the following additional written information.

Response to the observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on trade union and civil liberties

Mr Felix Anthony has been able to organise 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 (**‘Commissioner’**) as provided for under the Fijian Constitution is authorised 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 or police officers at the arrest, search and detention of any person as alleged by FTUC and 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.

Response to the observations of the CEACR on legislative issues

1. Employment Relations Advisory Board (ERAB)

The ERAB is established under the Employment Relations Act 2007 (**‘Act’**) and consists of public officers as representatives of Government, representative of employers and representative of workers.

The Minister for Employment is the appointing authority for ERAB. In making appointments,

the Minister must appoint persons who, in the opinion of the Minister, have experience and expertise in the areas covered by the function of 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 appointments of workers' representatives and employers' representatives to ERAB are based on the nominees received by the Minister.

2. Fiji National Provident Fund (FNPF)

With respect to the Fiji National Provident Fund Board, the appointing authority is the Minister responsible for finance (**'Minister for Economy'**).

The Board members are appointed in accordance with the process for appointment and criteria for selection for appointment under the Fiji National Provident Fund Act 2009 (**'FNPF Act'**). The FNPF Act only 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.

3. Fiji National University (FNU)

The Council of the Fiji National University (**'Council'**) is the Fiji National University's (**'FNU'**) governing body. The Council is made up of 4 ex-officio members, 14 appointed members, 5 elected members and up to 3 co-opted members, as follows:

(a) Ex-officio members:

- (i) the Chancellor;
- (ii) the Deputy Chancellor;
- (iii) the Vice-Chancellor; and
- (iv) the Permanent Secretary for Education.

(b) 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.

(c) Elected members, as follows:

- (i) one head of a college of FNU;
- (ii) one member of FNU's full-time professorial staff;
- (iii) one member of FNU's full-time non-professorial academic staff;
- (iv) one student representing undergraduate students;
- (v) one student representing post-graduate students; and

(d) up to 3 co-opted members as appointed by the Council.

4. Wages Council

The Minister may, on the recommendation of ERAB and having been satisfied that no adequate machinery exists for setting effective remuneration for a class of workers or that the existing machinery is likely to exist or is 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.

5. Air Terminal Services (Fiji) Limited (ATS)

ATS is a private company in which the Fijian Government holds 51% of shares and the ATS Employee Trust ('ATSET') holds the remaining 49% of the shares.

The ATS Board consists of 7 members out of which 4 members are appointed by Government and 3 workers' representative 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 for 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.

Response to the observations of the CEACR on the review of the labour legislation, as agreed in the Joint Implementation Report (JIR)

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 proposed timelines for dealing with the outstanding matters of the JIR.

The Fijian Government have been able to hold the following meetings:

(a) 11 March 2019 meeting with the Minister for Employment, Productivity and Industrial Relations Honourable Parveen Kumar, Permanent Secretary for Employment Osea Cawaru, trade unionists Felix Anthony, Daniel Urai and two union officials and employer's representative, Nezbitt Hazelman; and

(b) 3 April 2019 meeting with the tripartite partners, ILO Director for Pacific Island Countries Donglin Li and ILO Decent Work & International Labour Standard 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) reinstatement of grievances which were discontinued by the Essential National Industries Decree;

- (iv) 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) 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 (Decree) whose employment was terminated during 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 include 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 services and industries. The Fijian Government is liaising with the ILO on the proposed tentative date provided by ILO technical expert in relation to the workshop to be conducted for the social partners.

The Fijian Government also met with its tripartite partners on 30 April 2019 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, Fiji Trade Union Congress (FTUC) representative, Felix Anthony (Mr Anthony) informed that they would be providing their response to their participation at the tripartite dialogue on 1 June 2019.

Despite FTUC's withdrawal from participating in the tripartite dialogue and board meeting on 5 September 2018, the Fijian Government remains committed to undertake its obligations under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and continues to recognise FTUC and the Fiji Commerce and Employers Federation as tripartite partners in advancing social dialogue.

Response to the observations of the CEACR on Article 2 of the Convention concerning pending matters under the Employment Relations (Amendment) Act 2016

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 Republic of Fiji for its deliberation.

Response to the observations of the CEACR on Article 3 of the Convention concerning the list of essential services and industries

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 for Employment, Mr Osea Cawaru and team met with Mr Felix Anthony to discuss the Union's case against Water Authority. In this meeting Mr Anthony and the Permanent Secretary agreed on a suitable date to have the ENI Workshop, tentatively towards the end of October or early November 2019. This was communicated to the ILO Office of the Pacific countries in Suva on 30 May 2019. The Fijian Government has been

advised that the ILO Suva Office is liaising with the technical expert on the proposed dates.

Response to the observations of the CEACR on the outstanding matters under the Employment Relations Promulgation (ERP)

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.

Response to the observations of the CEACR on the right to assembly under the Public Order (Amendment) Decree (POAD)

The Fijian Government notes the request from the Committee. 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 or the orderly conduct of elections and the protection of the rights and freedoms of others.

Response to the observations of the CEACR on the need to amend the Political Parties Decree

The Fijian Government reiterates that the activities of any trade unionist and employers organisation representatives must be apolitical and for the purpose of regulating the relationship between workers and employers.

The restriction of a public officer (which includes holding an office in any trade union) from joining a political party and from engaging in any political activity under the relevant laws ensure political neutrality in the performance of the functions of the public office. It also ensures that persons holding public offices do not use their public office resources including funds, to finance their political campaigns or advance their political agenda, and safeguards against abuse of office.

However, a public office holder intending to join a political party or engage in any political activity may do so by resigning from their public office.

RESPONSE TO ADDITIONAL ISSUES RAISED

1. Complaint of FTUC against Water Authority of Fiji (National Union of Workers vs Water Authority of Fiji)

The Fijian Government is not privy to the employment dispute lodged by the National Union of Workers against Water Authority of Fiji and is therefore not in a position to comment on the complaint.

Under the Act, any employment dispute successfully lodged with the Permanent Secretary for Employment is referred to the Employment Relations Tribunal (Tribunal) or in the case of an essential service and industry, lodged with and determined by the Arbitration Court. The jurisdiction, powers and functions of the Tribunal and Arbitration Court are provided under the Act and their decisions are subject to appeal.

2. Right to Strike

The Fijian Constitution guarantees every person in Fiji the right, peacefully and unarmed, to assemble, demonstrate, picket and present petitions. The Act also makes provision for the prerequisites for undertaking a strike including the provision of a notice of secret ballot to the Registrar of Trade Unions 21 days prior to the nominated date to hold the ballot.

3. Air Terminal Services dispute where workers were locked out in 2017/18

Matters regarding Air Terminal Services Limited in relation to the 2017/2018 lockout were heard and determined by the Employment Relations Tribunal. The Fijian Government was not a party to the proceedings and did not have authority to intervene in the proceedings.

4. Longstanding Vatukoula Gold Mines strike (29 years) still appears in the CEACR Report

By way of background, in or about 1991, 436 miners, who were members of the Fiji Mine Union Workers ('**FMWU**'), went on strike against their employer, Emperor Gold Mining Company (Emperor) Limited ('**VGM**'). VGM dismissed the workers between April and July 1991.

Thereafter, the Permanent Secretary for Employment ('**Permanent Secretary**') purportedly accepted a report of a trade dispute ('**trade dispute**') under the Trade Disputes Act [Cap 96A] from a group of workers calling themselves "*the organising committee of the mine workers*". VGM then filed a judicial review application against the Permanent Secretary's acceptance of the trade dispute, and the Fijian High Court ruled in favour of VGM by determining that the Permanent Secretary did not have authority to accept the trade dispute (*State v Permanent Secretary of the Ministry of Employment, Industrial Relations ex-parte: Emperor Gold Mining Company Limited, Jubilee Mining Company Limited and Koula Mining Company Limited Judicial Review No. 32 of 1991*).

In a separate court proceeding, the Fijian High Court determined that the termination of the 436 workers by VGM was lawful (*Emperor Gold Mining Company Limited, Jubilee Mining Company Limited and Koula Mining Company Limited v Jone Cagi & Ors 205 of 1991 in State v Permanent Secretary of the Ministry of Employment, Industrial Relations ex-parte: Emperor Gold Mining Company Limited, Jubilee Mining Company Limited and Koula Mining Company Limited Judicial Review No. 32 of 1991*).

In or about May 2014, the Fijian Government met with FMWU representatives who sought compensation of \$2 million for every worker involved in the 1991 strike, 364 workers in total. Noting that the Fijian Government is not legally obliged to compensate the workers, the Fijian Government is considering the request from the FMWU representatives.

5. Imposition of Individual Contracts

The Fijian Government had undertaken a job evaluation exercise of its employment positions in 2017. This exercise included the broad banding of positions and benchmarking to the private sector to decrease administration, streamline salary management and provide 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 have 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% of civil servants held employment contracts. To date, 99% of civil servants hold employment contracts.