

## MINISTRY OF INDUSTRY & TRADE

Naibati House, 9 Goodenough Street, Suva  
G P O Box 2118, Government Buildings, Suva  
Phone: (679) 3305411 Fax: (679) 3310816/3302617

Website: [www.commerce.gov.fj](http://www.commerce.gov.fj)

---

September 18, 2012

Mr. William D. Jackson  
Deputy Assistant U.S. Trade Representative  
Chairman, GSP Subcommittee of the Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, D.C. 20508

Dear Mr. Jackson,

### **Re: Fiji Comments on the US GSP Scheme Hearing**

On behalf of the Government of the Republic of Fiji, I wish to thank you for the opportunity to provide pre-hearing comments on the Generalized System of Preferences (GSP) case (003-CP-11) concerning whether the Republic of Fiji provides its workers internationally recognized worker rights.

As required by the *Federal Register* Notice of July 12, 2012, we are also submitting our Request to Testify at the October 2, 2012, public hearing to [www.regulations.gov](http://www.regulations.gov).

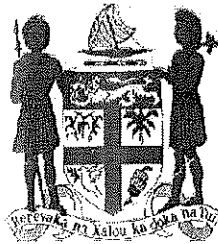
Should you have any questions, please do not hesitate to contact me. Thank you for your consideration, and we look forward to meeting you at the public hearing.

Sincerely,



Shaheen Ali

**Permanent Secretary for Industry and Trade**



**Pre-Hearing Brief Submitted by the Government of the Republic of Fiji**

**on the**

**Petition of the AFL-CIO to Remove Fiji from  
the List of Eligible Beneficiary Developing Countries Pursuant to Section 19  
USC 2462(d) of the Generalized System of Preferences (GSP) Statute**

**Case 003-CP-11**

## **Government of the Republic of Fiji Pre-Hearing Comments: Review to Remove Fiji from GSP Eligibility because of Worker Rights Concerns**

The Government of the Republic of Fiji welcomes this opportunity to provide pre-hearing comments on the case to remove the country from GSP eligibility. Detailed below are the actions that the Government is taking to upgrade and ensure the provision of internationally recognized worker rights within all areas of the country.

### **Summary**

The Government of Fiji is on a path toward reform and parliamentary democracy, based on three principles: empowering Fijians; modernizing the nation; and strengthening the economy.<sup>1</sup> By empowering Fijians, the government is seeking to ensure that all citizens – regardless of ethnic background - are placed on a level playing field while possessing the tools to compete with their peers in the global community and to improve their livelihoods and fulfill their dreams. By modernizing Fiji, the Government is seeking to make the country, institutions, and legal system strong, independent and world-class. By strengthening its economy, the Government is working to lessen the country's dependence on other nations and diversify its economic activities, including building ties with new partners and businesses around the world.

As part of Fiji's progress in reform toward democracy, the Government committed to and is in the process of reviewing this year all current labour laws to implement the eight core ILO Conventions and the 26 additional ILO Conventions that Fiji has ratified.

It is important to note that since submission of the AFL-CIO petition in December 2011, the Public Emergency Regulations (PER) have been lifted. The Public Order Act under which Fiji is now operating has been amended with changes including removal of the requirement for meeting permits and advanced notice; removal of media censorship; and changes that address other concerns identified in the petition. In addition, a tripartite Employment Relations Advisory Board (ERAB) held its first meeting on 11th April 2012, in order to initiate further steps to reform and modernize the current labour laws. A tripartite technical Advisory Committee of ERAB was appointed at that meeting to review all current labour laws relative to the Articles of the eight ILO Core Conventions and other relevant conventions Fiji has ratified. The Minister for Labour, Industrial Relations and Employment is expected to receive the ERAB's recommendations on labour law reform by the end of December 2012 before the Cabinet is advised of the recommended reforms in early 2013.

Based on communications earlier this year between the ILO and the Fijian government, the ILO has initiated a due diligence process focused on Fiji. The Fijian Government has invited an ILO Fact-Finding Mission under a Terms of Reference.

---

<sup>1</sup> 2012 Budget Address

## Context

### **Public Emergency Regulations (PER) No Longer in Force**

On January 7, 2012, the Government of Fiji lifted the PER. Fiji is guided, once more, by the Public Order Act that has been in effect in Fiji since independence (1970) and that has been modernized through adoption of the Public Order (Amendment) Decree 2012. The amended Act now provides internationally accepted, modern laws to combat terrorism, racial and religious vilification, and other serious public order offences.

All persons and organizations, including trade unions, now hold public meetings and assemblies, with no advance notice, including no need for a permit. The Fiji Constitution Process (Constitutional Commission) (Decree No. 57 of 2012) suspends section 8 of the Public Order Act [Cap. 20] that had required that a permit be obtained for meetings and processions.

The PER removal has also meant that all forms of media censorship have been removed and political parties are now free to meet and organize. This is especially important to the goals of Fiji's government, as it encourages these entities to prepare their submissions to the Constitutional Commission. .

Since the announcement of the Public Order (Amendment) Decree, the Fijian Police Commissioner has proactively invited leaders of Fijian unions, along with other civil society groups, to an open discussion about the repeal of the emergency restrictions and to establish an ongoing dialogue. The actions have been met positively, prompting the General Secretary of the Fiji Teachers Union (Agni Deo Singh) to comment, "I would like to thank the police for inviting us. It has been quite some time since any Government authority last invited us to any such forum and indeed it is very encouraging..."<sup>2</sup>

### **Adoption of a New Constitution in 2013**

It is important to highlight the substantial reforms that the Fijian Government is undertaking in creating transparent rules of governance and a legal system that is based on substantive equality and justice. Fiji is currently developing a new Constitution for adoption in early 2013. This is being done through an inclusive national dialogue and will result in Fiji's first non-race based democratic elections in 2014. As established by a July 2012 decree<sup>3</sup>, the new Constitution's non-negotiable principles and values are: a common and equal citizenry; a secular State; the removal of systemic corruption; an independent judiciary; the elimination of discrimination; good and transparent governance; social justice; one person, one vote, one value; the elimination of ethnic voting; proportional representation; and a voting age of 18 years.

The July 2012 decree to establish the Constitutional process was two months ahead of the Government's announced September 2012 timeframe for beginning the Constitutional reform

---

<sup>2</sup> Fiji TV, 10 January, 2012.

<sup>3</sup> FIJI CONSTITUTIONAL PROCESS (CONSTITUENT ASSEMBLY AND ADOPTION OF CONSTITUTION) DECREE 2012 (Decree No. 58 of 2012)

process.<sup>4</sup> The decree established a five-member Constitutional Commission that is chaired by Professor<sup>5</sup> Yash Ghai, a United Nations Development Programme (UNDP) constitutional expert and author of the Asian Human Rights Charter (“A People’s Charter,”). Professor Yash Ghai is from Kenya and has been engaged by the UNDP for the preparation of constitutional instruments in Kenya, Nepal, and Somalia and helped draft Fiji’s former Constitution. The Commission’s other members include the South Africa human rights expert, Professor Christina Murray, as well as three distinguished Fijians.

The Commission is now holding hearings throughout Fiji, along with receiving submissions from all Fijians and all sectors of the Fijian society, including trade unions, employer groups, public servants, and public institutions. Public servants, comprising four percent of Fiji’s population, are being invited to voice opinions and submit comments to the Constitutional Commission. This specific group of workers was not involved in the 1990 or 1997 Constitutional Review processes.

The Commission will formally present the draft Constitution and the Explanatory Report to the President by the first week of January 2013.<sup>6</sup> The Constituent Assembly, whose purpose is to debate and adopt the new Constitution, will hold its first sitting by the second week of January 2013, and will finish its work by the end of the third week in March 2013.<sup>7</sup>

#### **Moving toward General Elections by September 2014**

A United Nations Needs Assessment Mission visited Fiji in April 2012 to explore and determine the manner in which any technical assistance can be offered to Fiji in terms of preparatory work toward the 2014 Elections. As of the 12<sup>th</sup> September 2012, just over 500,000 voters were registered, which is about 80 percent of current eligible domestic voters.

A number of Fiji’s key development partners, including the Pacific Islands Forum, Australia, New Zealand, Japan, the European Union and the United States, are supporting Fiji in its preparation of a new Constitution and holding general elections. As part of that support, they have committed to providing technical and financial assistance to Fiji for this purpose. Their actions comprise a major turnaround in these countries’ relationships with the current Fijian government.

In summary, there are clear and real signs, with third-country verification, that Fiji is “a country in transition, moving to put in place processes required for elections.”<sup>8</sup>

---

<sup>4</sup> 2012 Budget Address (25 November 2011)

<sup>5</sup> Professor Emeritus at the College of Law at the University of Hong Kong.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Third Visit of the Forum Ministerial Contact Group (MCG) on Fiji, Pacific Islands Forum Joint Statement, 1 May 2012.

## National Economic Outlook

In 2011, Fiji's population was 868,400 people. The country's gross national income per capita was \$3,680, classifying the country as a lower-middle income country (World Bank). Fiji's labor force currently comprises 341,200 workers (2012), where approximately 271,700 (79.6 %) are in the money economy, 40,157 (11.8%) are in the subsistence economy (without money), and the remaining 29,343 (8.6%) of the population are unemployed. Approximately half of all employees work in Fiji's urban areas and half work in the rural areas.

Contrary to the economic conditions described in the AFL-CIO petition, the 2012 growth outlook is positive, supported by moderate growth in key markets and the reconstruction following recent floods in May 2012. In spite of the heightened risks in the global economy, economic indicators for the first half of this year suggest overall economic performance has been on track and the projected economic growth of 2.7% for this year remains intact.<sup>9</sup> Inflation has been reduced from 7.7% at the end of 2011, to 4.9% in July 2012.<sup>10</sup> Reduction in poverty was not uniform throughout the country when compared to the periods between 2002-03 and 2008-09. The urban areas saw a reduction in poverty from 28% to 19% (a change of 34%), while poverty in rural areas increased by 3% from 40% to 43%.<sup>11</sup> To address the rural sector's increase in poverty and the adverse impacts of global financial and economic crisis (including on Fiji's important trade partner, the European Union), the Government has boosted its social protection program budget from \$54.5 million in 2007 to \$116.5 million in 2012.

These strong poverty alleviation initiatives, coupled with the massive reduction in income taxes for most workers and increased tax threshold to \$15,600 have significantly increased the social wage components for all workers. The Government's Wages Reform, as committed by the Ministry of Labour, is premised on this national social protection floor scheme. This is consistent with the social and economic principles and criteria under ILO Convention 131 and ILO Recommendation 135 that the Fijian Government has adopted.

## Importance of GSP to the Economy of Fiji and its Communities

U.S. imports from Fiji in 2011 totaled USD 131.5 million. In the first six months of 2012, U.S. imports were USD \$81.4 million, a 9.8% increase over the same period in 2011. U.S. imports under GSP have historically comprised approximately 40% of all U.S. imports from Fiji. U.S. Customs and Border Patrol's reclassification of Fiji Water in July 2011 from a GSP-eligible tariff line to a duty-free item has resulted in Fiji's GSP-eligible U.S. imports in 2012 (year-to-date) to drop to USD 5.7 million, rather than the USD 39.7 million in the same period of 2011. GSP-eligible imports from Fiji, however, emphasize the agricultural, seafood, and small-scale manufacturing industries of the country. Examples of U.S. GSP-eligible imports from Fiji include cane molasses, dasheens, cassava, communion wafers, ginger root, certain fish, taro, national flags, mangoes, vegetables, ornamental foliage, bath preparations, skin wash products, spices, Agarbatti, and brooms and brushes of twigs. Most of these products are produced by

<sup>9</sup> Reserve Bank of Fiji, Economic Review, August 2012

<sup>10</sup> Reserve Bank of Fiji, Quarterly Review, March 2012

<sup>11</sup> Poverty in Fiji: Changes 2002-03 to 2008-09 and policy implications, Fiji Bureau of Statistics, May 2012

micro and small enterprises, small-scale farmers, as well as by industries. The fishing industry especially employs and supports many residents with lower incomes.

### **Status of Fiji's Unions and Membership**

Based on the Registrar of Trade Union's records, as of the 11<sup>th</sup> September 2012, 74 affiliated trade unions are operating throughout Fiji, with a total of 38,167 members. Under Section 4 and Section 119(2) of the ERP, any seven workers can form a trade union with automatic recognition to bargain collectively with employers. Also, trade unions operate freely to promote the interests of Fijian workers - and the Government is committed to labour representation continuing to do so. This is aptly demonstrated in the access of unions in workplaces under Section 145 of the ERP. This Section allows a trade union official access to a workplace to discuss union business with union members, to recruit workers as union members, and to provide information on the union and union membership to any worker on the premises without disrupting the work arrangement of the employer.

There are 74 trade unions operating in Fiji, where 25 (33.8%) are affiliated to the Fiji Trades Union Congress (FTUC) which is the 'most representative'<sup>12</sup>, workers organization in Fiji. Sixteen unions (21.6%) are affiliated with the second major union body, the Fiji Island Council of Trade Unions (FICTU), and 33 (44.6%) are not affiliated with either of the two peak union bodies.<sup>13</sup> However, some of the FTUC-affiliated unions have not filed Annual Returns for the last three years, which may signify that they are no longer active. Further, for those that are in operation, the Registrar of Trade Unions has received numerous complaints on governance issues from union members, which reflect poor governance and leadership quality by their union leaders. There are 38,167 union members, where 21,065 (55.2%) are members of FTUC, 11,622 (30.5%) are members of FICTU, and the remaining 5480 (14.3%) are not affiliated with any of the two peak union bodies. The major unions within the FTUC with their respective memberships are the Fiji Teachers Union (4,312 members), Fiji Public Service Association (4,014), National Union of Factory & Commercial Workers (3,938), National Union of Hospitality Catering & Tourism Industries Employees (3,093), and the Fiji Sugar & General Workers Union (1,623). Major unions within the FICTU umbrella with their respective memberships are the Fijian Teachers Association (4,269) and the Public Employees Union (4,004).<sup>14</sup>

### **Union Leaders Named in AFL-CIO Petition are not fully Representative of Fiji's Unions**

Some Fiji unions are not in agreement with the actions of union leaders, Felix Anthony and Daniel Urai (who are identified by the AFL-CIO petition as representing all of Fiji's unions). Attached is a letter from Mr. Tomasi Tokalauvere, one of the longest-serving General Secretaries of the Pacific Fishing Company Limited (PAFCO) Employees Union and one of the founders of FTUC. He finished his term as the PAFCO General Secretary on 14th September 2012. His letter, addressed to the ILO, discusses the activities of Mr. Anthony and Mr. Urai to form their own political party and their meeting with FTUC unions to solicit the unions' mandate to support

<sup>12</sup> AFL-CIO petition, page 4.

<sup>13</sup> Statistics from the Office of the Registrar of Trade Unions, 11<sup>th</sup> September 2012

<sup>14</sup> *Ibid*

the new party. Other union members have voiced disagreement with the leaders' actions when they called for international sanctions against Fiji to the detriment of many of Fiji's workers (including those in the FTUC).<sup>15</sup> For example, the General Secretary of the Public Employees Union (PEU), Viliame Kautia in a Fiji Sun article published when Anthony and Urai were in Australia calling for a tourism boycott against Fiji, commented that, "The members must be given a right to choose the action to take(;) it must follow the process... These unionists have no mandate from the workers of the country... I have not spoken to them (Anthony and Urai) and they have no mandate from the PEU but we are most affected..."<sup>16</sup>

### **Responsibilities within the Government of Fiji to Provide Internationally Recognized Worker Rights**

The vision of the Ministry of Labour, Industrial Relations, and Employment is Decent and Productive Work for All. It holds the major responsibility to ensure social justice, good faith employment relations, and safe and productivity driven workplaces in Fiji. Consistent with the goals of the Peoples Charter for Change, Peace and Progress (PCCPP), the Presidential Mandate for the Government, the Millennium Development Goals (MDGs), the Sustainable Economic and Empowerment Development Strategies (SEEDS), the Government's Roadmap, Fiji Productivity Charter, the Public Service for the 21<sup>st</sup> Century (PS21), the Fiji Budget Estimates 2012, and international standards, the Ministry seeks to provide:

- an enabling social justice environment that promotes stable employment relations and promote equitable socio-economic development;
- the enhancement of productivity in all workplaces;
- modern and innovative labour market policies;
- safe and healthy work environment;
- equal employment opportunities and dignity for all;
- decent employment terms and conditions;
- speedy resolution of employment problems through the Mediation Service, the Employment Relations Tribunal and the Employment Relations Court;
- decent and progressive social security policies for all; and
- institutional strengthening for job creation.

The pertinent section of the Ministry focused on ensuring the provision of internationally recognized worker rights is the Labour Standards Service (LSS). The LSS is responsible for the promotion of fundamental principles and rights at work standards and compliance with the Employment Relations Promulgation 2007 (ERP) and its subsidiary Regulations, including the ten Wages Regulation Orders. The LSS focuses on the minimum terms and conditions of employment in Fiji under the reformed labour legislations and comprises the following Units:

(i) Labour Compliance Unit (LCU), which is responsible for employer/workplace inspections including verification of wages records, resolution of labour complaints/employment grievances, regulation (attestation) of foreign contracts of service, prosecution of offences under the ERP and

<sup>15</sup> <http://www.fjisun.com.fj/2011/07/22/unions-%E2%80%98collect-3-5m-yearly%E2%80%99/>

<sup>16</sup> *Ibid.*



also appears as Advocates for workers during their individual grievance hearings at the Employment Relations Tribunal.

(ii) Employment Relations Unit (ERU), which is responsible for the analysis of reports of employment disputes and their referral to the Mediation and Employment Relations Tribunal Services. The Unit is also responsible for the monitoring and management of strikes and lockouts.

(iii) Wages Councils Unit (WCU), which provides the Secretariat (Sole Chairperson and Secretary) of the 10 sectoral Wages Councils that set the minimum wages and other terms and conditions of employment in Fiji's employment sectors.

(iv) Trade Unions and Industrial Associations Unit (TUIAU): Its TUIA Registrar is responsible for registering trade unions and ensuring that trade unions observe the minimum requirements stipulated in the ERP 2007 in their operations. The TUIAU is also advisory to trade unions and industrial associations. The Unit is also responsible for the coordination and supervision of trade unions and the vetting and registration of all Collective Agreements between employers and registered trade unions.

The Ministry is assisted in its work by its strong social dialogue culture through the various tripartite national bodies that advise the Minister for Labour, Industrial Relations & Employment on labour related policies and laws. These tripartite bodies include the Employment Relations Advisory Board (ERAB), the National Occupational Health and Safety Board (NOHSAB), the National Employment Centre Board (NECB), the ten Wages Councils, and the National Training and Productivity Board (NTPB). The responsibilities of these tripartite bodies are to promote and sustain democratic governance in Fiji's labour market in compliance with ILO principles of tripartite social dialogue contained in ILO Convention 144.

To ensure effective integration and promotion of national democratic governance mentioned above with enterprise initiatives to enhance organizational effectiveness, Fiji's Labour Reform provides for bi-partite (worker-government) committees to actively promote industrial democracy through the participation of employers and workers (trade unions) at the organizational levels.

For example, the goals of the Labour-Management Consultation and Cooperation Committees (LMCC Committees) are to promote good faith employment relations and productivity growth in enterprises and organizations in sustainable manner. The overall intent of the Labour reform is to ensure social justice in workplaces where civil liberties are respected (as contained in the ILO Core Conventions), and also to convert these individual rights and liberties into organizational cohesion to boost productivity at the individual, enterprise, industry and national levels. This is in synergy with the introduction of productivity-based wage system under the Wages Reform of the overarching Labour Reform undertaken by the Fiji Government together with the tripartite constituents and relevant agencies and stakeholders.

## **Government Actions to Improve Worker Rights**

The promotion of rights and freedoms of workers and their families has been and continues to be of central concern to the Government. The six (6) components of Labour Reforms that the Labour Ministry has accomplished since the 1990's are included in Appendix One that will be available prior to the public hearing.

The Ministry of Labour and other pertinent entities are working to complete a review of the Labour Reform agenda in 2012, which is the year set by Government for the completion of all social and economic reforms in Ministries and Departments.

### **Recent Reforms**

The Fijian Government has introduced a number of significant reforms to preserve and create jobs, to sustain industries essential to the economy, and to improve the living standards of all Fijians. As an example, for the first time in decades, Government recently implemented a substantial reduction in the income taxes payable by over 99% of all Fijians, including thousands of workers as well as employer groups.

The Ministry places special recognition on social dialogue with its tripartite social partners and other stakeholders in rolling out the Labour Reform and its restructure efforts. The convening of the tripartite Employment Relations Advisory Board (ERAB), the National Employment Centre (NEC) Board and the National Occupational Health and Safety Advisory Board (NOHSAB) as well as the meetings of the Wages Councils, are imperative to realizing those purposes. Internally, the Ministry is committed to the up-skilling and upgrading of senior managers and operational-level supervisors and staff to implement its proposed reforms effectively.

The Government established a Mediation Service under Section 193, Part 20 (Institutions) of the Employment Relations Promulgation 2007. It is the primary conflict-resolution institution at the national level, which must first be exhausted by the disputing or aggrieved parties before the secondary institutions of the Employment Relations Tribunal or Employment Relations Court are activated. The Mediation Service is the continuation of the good faith dialogue between the parties at the enterprise level. The only difference is that at the Mediation Service, a professionally trained and accredited Mediator provides the facilitative negotiator role. Any decision agreed to by the parties and endorsed by the Mediator is final and binding.

An Employment Relations Tribunal has also been established under Section 202, Part 20 (Institutions) of the Employment Relations Promulgation 2007. Its jurisdiction is much wider than that of the former Arbitration Tribunal, which it replaced. If employment disputes or employment grievances are not resolved at the Mediation Service, the Employment Relations Tribunal assists employers and their representatives, and workers and their representative trade unions by adjudicating and determining any grievance or dispute between parties to employment contracts. The Tribunal also assists the disputing parties to amicably settle disputes and have the settlement in writing as a binding award or decision. In adjudication proceedings, there is also a requirement on the Tribunal to provide mediation assistance to the disputing parties when the need arises.

The Employment Relations Court is established under Section 219, Part 20 (Institutions) of the Employment Relations Promulgation 2007, as a Division of the High Court. Similar to the High Court, the Employment Relations Court has a very wide jurisdiction to hear and determine aspects of law relating to employment matters including appeals, offences, all actions for the recovery of penalties, compliance orders and other functions or powers conferred on it by the Promulgation or any other written law. A party to proceedings before the Employment Relations Tribunal that is aggrieved by a decision of the Tribunal in the proceedings may appeal as of right or by leave to the Employment Relations Court. An appeal from the Employment Relations Court shall lie to the Court of Appeal.

Other aspects of the Labour Reform, in addition to review of laws' and regulations' compliance with ratified ILO conventions as described below, include review of all internal systems and processes benchmarked to international best practices and standards, and certification towards ISO 9001-Quality Management and ISO 26,000-Social Responsibility standards.

In response to the 2009 ILO Global Pacts Resolution, the Fijian Government has established a National Employment Centre – as a one-stop employment creation service for all Fijians. The target is to reduce unemployment from the 8.6% rate in 2007 to 4.2% in 2014. It is also worth highlighting that, with technical assistance from ILO, Government is already working towards introducing for the first time a national minimum wage in Fiji before the end of this year. Relevant technical assistance has been provided to Fiji on this issue by the ILO.

In consultation with the tripartite partners and the ILO, Government will, this year, be reviewing the workers compensation regime, with a view to implementing a no-fault scheme to cover all workers for injuries and deaths arising out of work. This is part of Government's initiative to strengthen its Social Protection Floor to marginalized workers.

Other priorities include the value-based training of staff on the benchmarked systems and processes and the establishment of the data management and information technology systems for the various Services for informed decision-making. A recent example of capacity building was the Ministry's two-phase training held by the Singapore Mediation Center on September 10-14, 2012 in Suva. The first session focused on managing conflicts and resolving disputes effectively through mediation for ministry officials, primarily from the inspectorate division. The second phase was a one-day mediation training for judges and magistrates.

The Ministry's 2012 Policy target is to: 1) complete the Labour Reform in terms of modernizing of all policies and legislations by 31<sup>st</sup> December 2012; 2) establish the new Fiji Workcare Authority in 2013 for the modern OHS and Workers Compensation Services; and 3) institute Fiji's first National Minimum Wage and its review mechanism together with the new Wages Commission to replace all the ten sectoral Wages Councils.

### **Fiji's Labour Law Review to Ensure Compliance with Ratified ILO Conventions**

The initial challenge of the Labour Reform has been to undertake local, regional and global labour market research to identify "gaps" in labour market policies, laws, institutions, values, practices, competencies, systems and processes. The Reform's goal is also to strategically

position Fiji's modern labour market policies, laws, institutions, values, practices, competencies, systems, and processes against the adverse forces of globalization to ensure that the minimum social protection and labour standards afforded to our workers are compatible with our social and economic needs. Equally critical is the promotion of good faith employment relations and to ensure that best business and management practices are implemented in workplaces to improve productivity in a sustainable manner. This includes the reforming of Fiji's wage-setting machinery to promote productivity and to ensure decent wages for workers, balanced with employers' ability to pay.

#### *Details of the Labour Law Review including ERAB Tripartite Involvement*

The review of the labour laws this year began with the activation of the tripartite process under the tripartite Employment Relations Advisory Board (ERAB), as introduced above. This Board is the peak national tripartite body that advises the Labour Minister on local, regional and international labour matters in accordance with Part 3 of the ERP. The ERAB is also a key element of the Labor Reform Review.

The Government will make necessary amendments to Fiji's labour laws to ensure compliance with the 34 ILO Conventions ratified by Fiji.

The tripartite ERAB Sub-committee held its first meeting on 23 July 2012, which included the Labour Ministry's Policy Team whose role is to recommend appropriate amendments for the ERAB subcommittee's and ERAB's considerations. This is a very intensive and extensive exercise and the Fijian Government is committed to take this project to completion. The Government, through the Minister for Labour, aims to table the amendments of Fiji's labour laws to Cabinet before the end of this year (2012).

Between 11<sup>th</sup> April 2012 and 13<sup>th</sup> August 2012, the ERAB met three times and the ERAB Subcommittee met seven times – six meetings and one workshop meeting. In total, the ERAB and its Subcommittee have had ten (10) meetings. The ERAB subcommittee is tripartite in nature with four members from the unions, four from the employers, two from Government and three from independents (others). Mr. Felix Anthony and Mr. Daniel Urai attended all seven of the ERAB subcommittee meetings, along with two other union representatives. They attended only one of the three full ERAB meetings; two other union representatives attended all three ERAB sessions.

The Subcommittee has made significant inroads in finalizing amendments to the current labour laws (especially the ERP) on new policy areas that will enhance the quality of these laws and their application, taking into account the working experiences of the various stakeholders that use these laws.

After the most recent meeting of the ERAB Subcommittee on 13<sup>th</sup> August 2012, the Ministry of Labour Policy Team was intensively involved in reviewing the policy and law gap analysis on the various policy discussion papers tabled for the ERAB as a whole and its Subcommittee. These included research on international case laws relating to this exercise. The Team has also completed the policy scrutiny and critique of the decisions of the Employment Relations

Tribunal (constituted under the ERP) between 2008 and 2011. Based on these findings, the Team has also completed respective policy recommendations and ERP amendments to the ERAB to ensure robustness in the application of the ERP on these “gaps.”

With these constitutional and labour reforms in mind, the Fijian Government respectfully believes that many of the issues in the petition (Case No. 003-CP-11) lodged by the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) pertaining to the review of the US GSP scheme for Fiji are not accurate and have been made without fully understanding the true legal and factual position in Fiji.

#### *Coordinating with the ILO*

The Government’s commitment to review all current labour laws relative to the ratified ILO Conventions was strongly communicated in the Fijian Government’s responses in May 2012 to the ILO Committee of Experts Reports on ILO Convention 87 on the Freedom of Association and the Right to Organize and on ILO Convention 98 on the Right to Organize and Collective Bargaining. Fiji’s 2012 Consolidated Report to the ILO, which comprised nine (9) separate law and practice reports in relation to ILO Conventions 12, 19, 81, 87, 98, 100, 111, 122, and 129, was deposited to the ILO Standards Office in Geneva on 28<sup>th</sup> May 2012. A copy of the Labour Ministry’s covering letter on this Consolidated Report of 25<sup>th</sup> May 2012, together with the Prime Minister’s letter of commitment to the ILO Director-General of 23<sup>rd</sup> May 2012, are available and will be provided to the GSP subcommittee prior to the public hearing.

In this regard, the Fijian Government has exercised its due diligence in complying with all its reporting obligations under the ILO Constitution, both under Article 19 for un-ratified Conventions and under Article 22 for ratified Conventions. Therefore, Fiji has fulfilled all of its reporting obligations under the ILO Constitution including responses to observations by the ILO Committee of Experts on ILO Conventions 87 and 98.

The Fijian Government has also invited an ILO fact-finding mission.

Furthermore, as part of Government’s progressive Labour Reform agenda, ILO was also advised by the Labour Ministry in a subsequent letter of 13<sup>th</sup> June 2012 that the Fijian Cabinet has endorsed an additional eight (8) ILO instruments for ratification or adoption in its sittings on 22<sup>nd</sup> May and 5<sup>th</sup> June 2012 on the recommendations of the tripartite Employment Relations Advisory Board in its meetings of 11<sup>th</sup> April and 9<sup>th</sup> May 2012. A copy of the letter will be provided prior to the Public Hearing.

#### **Decrees Highlighted by the AFL-CIO**

##### **State Services Decree 2009 (Decree No. 6 of 2009), adopted April 14, 2009**

Firstly, prior to the enactment of the States Services Decree 2009, Government employees aggrieved by the decision of their Senior Executive Management regarding promotion, disciplinary actions, or transfers between districts could appeal to the Public Service Appeals

Board (PSAB). If they were still dissatisfied with the decision of the PSAB, they were entitled to appeal further to the High Court of Fiji.

However, with the enactment of the States Services Decree 2009, Government employees can directly challenge decisions that affect them by applying directly to the High Court of Fiji for a Judicial Review of the decision made. The importance of this Decree is that grievances by Government employees can be speedily dealt with by the High Court. For example, in the case *State v Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunaruarua & Others HBJ02 of 2012*, the High Court of Fiji ruled that it had full jurisdiction to accept cases from Government employees who seek to challenge a decision of the Government or the Public Service Commission on the ground of termination.

To facilitate speedy resolutions of employment grievance and disputes, the Public Service Commission has also implemented a new internal grievance policy that includes the appointments of Conciliators within government ministries and departments. The training of these new conciliators was conducted by the Ministry of Labor's Mediation Service starting on the 11th of May 2012. The training is benchmarked to the Singapore Mediation Centre Standards.

Secondly, in regards to the issue of the retirement age being lowered from 60 to 55 years old, this move was not made to prejudice any particular worker but rather to ensure the effectiveness and productiveness of the civil service workforce in Fiji. This is possible through the decision of the Fijian Government to engage all its employees on performance based contracts.

Also, if a Government employee is a productive and effective worker, then the Government will employ him/her irrespective of age. Currently, there are civil servants within the workforce who are well into their 60's and some even 70's that are still employed by the Fijian Government, as re-engaged officers.

**Administration of Justice Decree 2009 (Decree No. 9 of 2009) Administration of Justice (Amendment) Decree 2009 (Decree No. 10 of 2009) (May 12, 2009) and Administration of Justice (Amendment) (No. 3) Decree 2010 (Decree No. 14 of 2010) (February 18, 2010)**

In the case of *The State v Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunaruarua & Others HBJ02 of 2012*, the High Court of Fiji made several interpretations of the Administration of Justice Decree 2009 (Decree No. 9) and the Administration of Justice (Amendment) (No. 3), Decree 2010 (Decree No. 14). The High Court ruled that it had full jurisdiction to accept cases from Government employees who sought to challenge a decision of the Government or the Public Service Commission, which related to the termination of their employment contract.

The case of the *State v Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunaruarua* illustrates that there is an avenue for legal redress for aggrieved Government employees.

## **Employment Relations Amendment Decree of 2011 (Decree No. 21 of 2011)**

The general perception, which is not accurate, is that the coming into force of the Employment Relations (Amendment) Decree 2011 (Decree No. 21), exempted Government employees from the rights afforded within the Employment Relations Promulgation and are now subjected to anti-union discrimination.

The Public Service Commission, which administers the affairs of all Government employees, released the General Orders 2011 (GO2011) last year. This contains the following worker rights, which gives more or equivalent rights that are afforded under the ERP 2007:

- Annual Leave – the ERP 2007 grants 10 working days while Annual Leave available under the GO2011 offers 18 working days Annual Leave;
- Sick Leave – equivalent to the ERP 2007;
- Bereavement Leave – equivalent to the ERP 2007;
- Paid public Holidays – equivalent to the ERP 2007;
- Allowances – meal allowances afforded to Government employees are one of the highest afforded to any worker within Fiji. Similarly, this is the case with travelling, accommodation, transfer, housing, and duty allowances.

The above mentioned rights are just a few of the rights and entitlements afforded to Government employees.

However, in regards to the claim that Decree No. 21 of 2011 restricts the Freedom of Association of Government employees, the Decree does not limit this right but rather fosters economic growth.

The exemption of Government employees from the ERP 2007 does not mean that they are afforded fewer rights than workers covered under the ERP 2007 because Government employees are now protected under GO2011 and the Public Service Commission Policies. The following is an outline of the main sections of the ERP 2007 that also continue to apply to Government employees under Public Service Policies:

1. *Fundamental Rights at Work* – Government employees are covered under the Public Service Commission (PSC) Policy on the Equal Employment Opportunity in the Civil Service. In addition, the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) amends the Public Service Act 1999 to include fundamental principles and rights at work and Equal Employment Opportunity. It is worth noting that these provisions are very similar to the provisions in the ERP 2007.
2. *Employment Relations Advisory Board and functions of officials* – the Employment Relations Advisory Board is the largest tripartite labour forum in the country which comprises representatives from the unions, employers and Government (which is the PSC in this matter).
3. *Valid Contracts of Service* – even though the ERP 2007 does not apply to Government employees, the contracts of services afforded to them are still

within the minimum requirements outlined in the ERP as these contracts of services contain clauses to ensure that they are in line with GO2011 and PSC Policies.

4. *Protection of Wages* – wages of those persons employed within Government are protected under the Terms and Conditions of Employment for Government Wage Earners 2010 (GWE). For Government employees that are salary earners, their salaries are protected under Chapter 4 of GO2011.
5. *Rights to Minimum Conditions of Work, i.e. hours of work, holidays, leave, etc.* – the minimum conditions of work afforded to Government employees are in the PSC's Policy on Hours of Work of the Public Service. Government employees' hours of work range from 37 hours to 40 hours. Chapter 7 of the PSC's GO2011 provides for Government employees' leave such as annual leave, bereavement leave, sick leave, and long service leave. It is important to note that under the ERP 2007, a worker's minimum annual leave is set at 10 working days but for Government employees it is set at 18 working days. Thus, Government employees are at an advantage compared to private workers.
6. *Equal Employment Opportunity (EEO) and Protection from Discrimination* – Government employees are covered under the PSC's Policy on Equal Employment Opportunity of the Public Service. In addition, the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) amends the Public Service Act 1999 to include fundamental principles and rights at work and Equal Employment Opportunity. These provisions are very similar to the provisions in the ERP 2007.
7. *Protection from Redundancy or Unfair Treatment* – Government employees who sign a long-term contract of more than one year are given 30 days' notice if their services are to be terminated. In the event a Government employee believes he or she has been unfairly treated, they can raise the grievances through a clearly outlined internal grievance procedure provided for in the PSC's Policy on Grievance Procedure of the Public Service.
8. *Registering of Employment Grievances and Disputes* – Government employees can raise their grievances and disputes through the PSC's Policy on Grievance Procedure of the Public Service.
9. *Protection from Sexual Harassment* – The policy on protection from sexual harassment in Government is provided for in the PSC's Policy on Sexual Harassment in the Public Service.
10. *The establishment, registration and operation of trade unions* – there are no restrictions on Government employees to join trade unions nor are there any restrictions on the establishment or operation of trade unions where membership comprises Government employees.
11. *Right to Collective Bargaining and Collective Agreements* – Government employees do not collectively bargain nor do they enter into collective agreements as each Government



employee is employed under an individual contract. This ensures that contracts offered to Government employees are based on merit and performance.

12. *Right to Challenge Employer's Decisions* - In the case of *The State v Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tabunaruarua & Others* HBJ02 of 2012, the High Court of Fiji ruled that it had full jurisdiction to accept cases from Government employees who sought to challenge a decision of the Government or the Public Service Commission which related to the termination of their employment contract.
13. *Right to Report Disputes to Mediation Services, Employment Relations Tribunal or Employment Relations Court* – Government employees can settle their disputes internally through the established grievance procedures and can also apply directly to the High Court for Judicial Review.
14. *Right to Appeals at all levels* – Government employees can appeal a decision that affects them through established grievance procedures and directly to the High Court through Judicial Review procedures.
15. *Subsidiary ERP legislation no longer applicable* –ERP 2007 together with the accompanying Regulations remain in force in Fiji for private sector workers.
16. *Automatic Deductions* - Automatic deduction of union fees were ceased pursuant to the exemption of Government from the provisions of the Employment Relations Promulgation 2007. The exemption meant that Government was not obligated to deduct union fees on behalf of union members. Government employees who are union members are now required to make their own arrangements in terms of payment of union fees.

### **Essential National Industries (Employment) Decree 2011 (Decree No. 35 of 2011) and its Regulations**

Referred to as Decree No. 35, the intention of this decree 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. Furthermore, it should be noted that the Fijian Government intends to honor its obligations under the ILO Core Conventions in the new Constitution being developed in anticipation of free and fair elections scheduled to be held in 2014. In support of this commitment, the Employment Relations Advisory Board (ERAB) unanimously agreed to review all labour laws relative to the ILO Core Conventions and recommend to the Labour Minister to bring all labour laws in line with the ILO's Core Conventions.

#### Features of the ENI Decree No. 35 of 2011

The ENI Decree 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.

### Scope of the Decree

The Decree is limited to essential national industries, i.e., 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 Fiji's 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 ENI provides for voluntary recognition of a Bargaining Unit without an election. There is no forcing of unions by the ENI to register under difficult new rules and to hold new elections, as claimed by the AFL-CIO. In addition, it is not the case that "collective bargaining agreements will also be abrogated." Based on reports from the designated essential industries, unions in these industries continue to be effective associations of their employees and have reached new collective bargain agreements with their employers. As an example, Fiji's Cabinet extended the initial bargaining window laid out in the ENI, based on employers' requests, to give them additional time to reach new agreements with their unions.

### Protection of Fundamental Workers' Rights

The Decree upholds widely recognized, fundamental workers' rights, including:

- The right to form and join a union;
- 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.

### Salient Features

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

It is certainly not the case, as has been claimed, that the ENI Decree abolishes all existing trade unions in Fiji. In designated corporations within essential national industries, workers can and do still join a trade union. That union continues to be recognized for the purpose of collective bargaining if a majority of workers clearly want that. Where that happens, 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 must also have that freedom. The ENI Decree strikes a balance between the interests of all workers. The ENI Decree contains the concept of "bargaining unit" which is found in other countries' laws including in the United States and United Kingdom.

The bargaining unit does not “replace trade unions” as has been claimed – 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 ENI Decree.

As noted above, the ENI Decree 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 references with the Australian legal system.

The ENI Decree does not outlaw professional trade unionists as some have misleadingly claimed. 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, rather than with an external third party who may have a wider agenda of their own.

The ENI Decree 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 UK where an employer may dismiss employees and re-engage them on new terms and conditions.

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

Examples: In the United States, airline and railroad employees are prohibited from going on strike, except in narrowly defined circumstances. More generally, U.S. law allows for a Presidential Review Board to review and intervene in the event of a potential strike that could seriously disrupt national commerce. Some individual States prohibit strikes by public sector employees. In the UK, industrial action in a number of critical sectors is illegal or has been illegal in the past, e.g., prison officers, police, and army. There is currently debate (and strong public support) for banning strikes in essential services such as public transport. In Germany, planned strike action by airline pilots was prohibited by the courts in 2010. In France, a 2007 law on continuity of public service in terrestrial transport restricts industrial action by certain categories of public transport workers (e.g., train and bus drivers).

#### Pertinent Aspects of Other Countries’ Trade Laws

- United States: Key elements of the Decree are modeled on U.S. labor law – specifically, the National Labor Relations Act (NLRA). Under the NLRA, a labor union seeking to represent workers in a bargaining unit must obtain support (normally through authorization cards) from a least 30% of employees in the unit. The National Labor Relations Board (NLRB) will then conduct a secret-ballot election in which a majority of the workers in the bargaining unit must vote in support of the union. The NLRB determines the appropriate bargaining unit. An election may not be held if a valid election was held in that unit in the previous 12 months. Employees represented by a union can petition to decertify the union if they produce

evidence that at least 30% of workers support decertification. The employer can also request decertification if s/he has substantial evidence that the union no longer has the support of a majority of the bargaining unit.

- United Kingdom: Only in companies with more than 21 employees do trade unions have a legal right to be recognized by employers for the purpose of collective bargaining. The union must have the support of 40% of workers in a bargaining unit plus a majority of those who vote in a ballot, in order to be recognized by the employer. A union has no right to recognition if there is already in place a collective agreement between the employer and another union covering the same bargaining unit. A claim for recognition may not be brought if the same union made a failed attempt for recognition within the past three years. Statutory recognition is limited to bargaining on pay, hours and holidays only. The legal right was introduced in 2000. Prior to that, trade unions had no legal right to recognition for bargaining purposes. The UK is a founding member of the ILO and has ratified Conventions 87 on freedom of association and 98 on collective bargaining. The UK has robustly defended its union recognition laws as compatible with ILO Conventions, in response to criticism of them by ILO Committees following trade union complaints.
- Ireland has no system of statutory trade union recognition. Recognition of unions for bargaining purposes is a voluntary system.
- The European Court of Human Rights has held that the European Convention on Human Rights does not impose a requirement for compulsory collective bargaining, and the right to strike is not absolute and may be subject to certain restrictions.
- The Court of Justice of the European Union has ruled that right to strike can only be conducted under EU law where it pursues a legitimate aim and is justified by overriding reasons of public interest. It should not be used to restrict freedom of movement and freedom to provide services across borders in the European Union.

### Union Registration and Recognition

#### Re-registration of unions

The Decree requires trade unions, which represent workers within designated corporations, to re-register, having gone through the balloting process set out in the law. This ensures that such unions continue to enjoy the freely-given support of a majority of workers, and that workers who do not wish to be represented by a trade union have the opportunity to express that view. The registration process is modeled on U.S. labor laws and requires a secret ballot.

#### Trade union representatives

The Decree does not outlaw professional trade unionists as some have misleadingly claimed. It requires that those who negotiate directly with the employer in designated corporations are employees of the designated corporations concerned, so that an employer may negotiate terms

and conditions directly with its own employees who have a direct stake in the outcome, rather than with an external third party who may have a wider agenda of their own.

#### Imposition of agreement terms and conditions

The Decree 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 UK where an employer may dismiss employees and re-engage them on new terms and conditions. The cancellation of registration by an employer is also similar to the provisions of the U.S. National Labor Relations Act.

#### Collective bargaining

As stated from above, the Decree 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, the workers have the right of appeal to the Minister for a review of its contents. This is similar to the position in other countries, such as the UK where an employer may dismiss employees and re-engage them on new terms and conditions.

#### Right to strike

##### *Restrictions on industrial action*

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

Examples: In the United States of America, airline and railroad employees are prohibited from going on strike except in narrowly defined circumstances. More generally, U.S. law allows for a Presidential Review Board to review and intervene in the event of a potential strike that could seriously disrupt national commerce. Some individual States prohibit strikes by public sector employees.

#### Impact on unions

Out of the nineteen (19) trade unions operating in the eleven (11) designated corporations under the ENI, most of the trade unions are still operating with the exception of the Telecommunications Employees Associations (TEA). The TEA had informed the Registrar of Trade Unions on 14<sup>th</sup> October 2011 that it is unable to continue due to its membership being below the bargaining unit threshold of 75 members. See attached table below for the list of ENI corporations and their respective trade unions. Please note that the TEA operates within three (3) ENI Corporations - namely the Fiji Broadcasting Corporation Limited (lone union), the Fiji International Telecommunications Limited (lone union) and the Telecom Fiji Limited (shared with another union, Fiji Post & Telecommunication Employees Association).

**SUMMARY TABLE ON ENI CORPORATIONS AND OPERATING TRADE UNIONS**

|     | <b>Designated Corporations under ENI Decree (35/12)</b> | <b>Corresponding Unions in ENI Decree</b>   | <b>Impact of ENID on existing Unions</b>  |
|-----|---|---|---|
| 1.  | Australia & New Zealand Banking Group (ANZ)             | 1. Fiji Bank & Finance Sector Employees Union<br>2. Finance Sector Managerial Staff Association   | With the exception of the Telecommunications Employees Association (TEA); all the other unions are still operation.<br><br>The TEA had informed the Registrar of Trade Unions on 14/10/11 that they were unable continue due to the membership number required by the ENI Decree i.e., 75 members per organization. |
| 2.  | Bank of Baroda  | 1. Fiji Bank & Finance Sector Employees Union<br>2. Finance Sector Managerial Staff Association   |   |
| 3.  | Bank of South Pacific (BSP)                             | 1. Fiji Bank & Finance Sector Employees Union   |   |
| 4.  | Westpac Banking Corporation                             | 1. Fiji Bank & Finance Sector Employees Union<br>2. Finance Sector Managerial Staff Association   |   |
| 5.  | Fiji Revenue & Customs Authority (FRCA)                 | 1. Fiji Public Service Association<br>2. Fiji Islands Revenue & Customs Authority Officers Staff Association<br>3. Viti National Union of Taukei Workers  |   |
| 6.  | Fiji International Telecommunications Limited (FINTEL)  | 1. Telecommunications Employees Association (TEA)   |   |
| 7.  | Telecom Fiji Limited (TFL)                              | 1. Fiji Post & Telecommunication Employees Association<br>2. Telecommunications Employees Association (TEA)   |   |
| 8.  | Fiji Broadcasting Corporation Limited (FBCL)            | 1. Telecommunications Employees Association (TEA)   |   |
| 9.  | Air Pacific Limited                                     | 1. Fiji Airline Pilots Association<br>2. Air Pacific Flight Attendants Association<br>3. Federated Airline Staff Association<br>4. Airports Fiji Limited Staff Association<br>5. Air Traffic Management Association of Fiji<br>6. Transport Workers Union |   |
| 10. | Fiji Electricity Authority (FEA)                        | 1. Fiji Electricity & Allied Workers Union<br>2. Fiji Electricity Workers Association<br>3. Electrical Trade Union of Fiji<br>4. Construction Energy & Timber Workers Union of Fiji   |   |
| 11. | Water Authority of Fiji (WAF)                           | 1. Public Employees Union (PEU)<br>2. Fiji Public Service Association   |   |

## Results of the ENI

The workers in these 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 ENI enactment.

## Additional Concerns

### *Overtime Pay*

The Decree does not “ban overtime” for workers in 24-hour operations. Overtime pay can continue, as agreed by the employer in a designated corporation. This is the same approach to overtime pay as in many other countries.

## **Critical Industries in Financial Distress Decree 2011 (proposed)**

There is no such Decree as this.

## **Other Concerns Raised in the AFL-CIO Petition**

### **Alleged Ban on Felix Anthony’s Travel Outside of Fiji**

According to the Government’s records, there has not been, nor is there currently any travel ban imposed on Mr. Felix Anthony. The Government submits that Mr. Anthony has been freely moving within Fiji and overseas to attend worker conferences and to attend meetings in Australia and other countries to galvanize support from trade unions in Australia and abroad to boycott Fiji, especially in the tourism sector.

In 2011, when Mr. Anthony was denied credentials to attend the 100<sup>th</sup> International Labour Conference (ILC) and was not a member of the Fijian Government delegation, he traveled to the Geneva ILC on ITUC sponsorship to speak very strongly on its behalf and against the Fijian Government. Again, he was able to do so because there was no travel ban that had been imposed. He continues to be free to travel freely anywhere within Fiji and globally.

### **Alleged Assault and Harassment of Trade Unions Leaders**

#### **Mr. Felix Anthony (FTUC) and Mr. Mohammed Khalil (FSWU)**

With regards to trade union rights and civil liberties, 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 lodgment 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.

Neither the Police Department nor the Office of the Director of Public Prosecutions has received any complaint or filing from Mr. Felix Anthony, National Secretary of the Fiji Trade Union Congress (FTUC), and from Mr. Mohammed Khalil, General Secretary of the Fiji Sugar Workers Union, regarding alleged physical attacks, intimidation, threats, or assaults. (This is contrary to an August 7, 2012, radio interview with Mr. Anthony<sup>17</sup> during which he asserted that he had just filed the complaint, 18 months after the event.) As a result of no complaints being filed, no investigations have been carried out.

#### Mr. Daniel Urai

When the PER were in force in Fiji, the Fijian Government did not prohibit trade unions from convening meetings as long as they abided with the conditions required to hold a public meeting. These conditions included filing for appropriate permits as required.

In fact, the Fijian Government received requests for, and approved numerous permits over the last five years. In their own admissions, Mr. Urai and Mr. Niten Goundar erred by not applying for the relevant permit to hold a public meeting. After having been arrested and detained for questioning at the Police Conference Room (rather than in a locked cells as has been erroneously reported) in the Nadi Police Station for a day in early August 2011, the case was set for mention for a pre-trial hearing on 2 July 2012. It should be noted that at no time were the gentlemen coerced or assaulted, and proper procedures were followed in their arrest and subsequent charging.

For the case regarding Mr. Daniel Urai and Nitendra Goundar, a summary of events is as follows: The two persons convened a meeting with the Hotel Workers Union at the Mana Island Resort on 3 August 2011 without the proper permit under the PER. Members of the union employed by Mana Island Resort confirmed that URAI and GOUNDAR made inciting remarks against the Government of Fiji specifically the Prime Minister and the Attorney General. The two unionists stated that all union members stand together in order to request overseas counterparts to pursue a trade ban against Fiji.

Police conducted investigations into the complaints and arrested the two men on the same day at 8pm from Mana Island Resort and were escorted to Nadi Police Station for questioning. Mr. Urai and Mr. Goundar were charged on August 4, 2011, after they admitted that they had conducted a meeting without a permit but denied allegations that they made statements against the current Government.

No threats were made against the accused, nor were they coerced but the two were kept in the Police Conference room in Nadi Police Station and not detained in cells. In its ruling on 7 May 2012, Chief Magistrate Usaia Ratuveli allowed Mr. Urai to leave the jurisdiction from 13-19 May

---

<sup>17</sup> [www.abc.net.au/news/2012-08-07/late-complaint-for-fiji-unionist-felix-anthony/4183408](http://www.abc.net.au/news/2012-08-07/late-complaint-for-fiji-unionist-felix-anthony/4183408)



2012 to attend the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Worker's Association meeting in Geneva. This is despite the Director of Public Prosecution's contention that the charge laid upon Mr. Urai was a serious one. It was determined that the accused had an incentive to leave the country, and that the security of the nation could be severely undermined if Mr. Urai were allowed to travel overseas for fear of organizing international disaffection against Fiji. The case was set for a pre-trial hearing on 2 July, 2012.

The pertinent issues that need to be conveyed regarding this case are as follows:

- For any public meeting to occur, the relevant permit needs to be applied for from the Divisional Commissioner stating the purpose of the meeting, the date, time and venue of the meeting. The meeting will only occur once consent has been given by the relevant Divisional Commissioner.
- Trade unions were not prevented from convening meetings as long as they abided with the conditions required to hold a public meeting.
- Mr. Urai and Mr. Goundar erred by not applying for the relevant permit to hold a public meeting and allegedly made statements that could be interpreted to be inciteful. At no time were the two men coerced or assaulted and proper procedures were followed in their arrest and subsequent charging. The two have been charged for breaches under the Public Emergency Regulations and are in the process of having their case dealt with under the law.

#### **Alleged Interference with Union Meetings**

Freedom or rights come with responsibilities for one's action(s) or failure to act in any given situation. For any public meeting to occur, a party needs to apply for the relevant permit from the Divisional Commissioner stating the purpose of the meeting, the date, time and venue of the meeting. The meeting will only occur once consent has been given by the relevant Divisional Commissioner.

This procedure was in place prior to the introduction of the PER. Trade unions were not prevented from convening meetings as long as they abided with the conditions required to hold a public meeting during the period in which the PER were in force.

Given that the PER was lifted as of 7 January, 2012, Fiji is now once again guided by the Public Order Act, which has been in force in Fiji since independence (1970) but has been modernized through the Public Order (Amendment) Decree 2012.

Presently, trade unions are freely holding meetings without the need to obtain a permit and are conducting their important work in promoting the rights and well-being of workers in Fiji – a goal that is shared by the Fijian Government.

## **Denial of credentials to Mr. Felix Anthony for the 100<sup>th</sup> (2011) Session of ILC; approval of his credentials to the 101<sup>st</sup> (2012) ILC Session**

The 2011 denial of credentials to Mr. Anthony – which did not constitute a travel ban - was based on the repeated gender discrimination by the Fiji Trades Union Congress (FTUC). The FTUC had not nominated any female delegate to any International Labour Conference (ILC) in Geneva, despite Fiji's ratification of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the ILC's mandate to include females in all Government delegations to the ILC.

In stark contrast, the Fiji Commerce and Employers Federation nominated two (2) female delegations who participated in different ILC sessions in the past (Messrs. Naranjan (former President of Fiji Employers Federation) and Judy Yee Joy). The Government had also nominated two (2) female delegates in the past (Minister Bernadette Rounds Ganilau and Ms Salaseini Serulagilagi) in different ILC sessions in the past.

Government is fully aware of the intensive culture of gender discrimination and very strong male domination within the FTUC that are clearly reflected in the power control of the FTUC male elites against promising female Officers. The Ministry of Labour has received complaints of these gender discriminations in the past and currently from FTUC Officers and Government has a duty to request the FTUC to nominate a female candidate to the ILC as there are a few female officers (2 or 3) that can represent FTUC at the ILC in Geneva. Unfortunately, the ILC attendance has been limited only to a very few male executives of the FTUC, which does not add value in progressing the national interests and actively participating in Fiji's Labour Reform to bring about a productive workforce.

In addition, ILC exposure is a significant opportunity to build the national capacity and capability of the tripartite constituents at the national tripartite bodies, which include the Employment Relations Advisory Board, National Occupational Health and Safety Advisory Board, Wages Councils, etc.

In requesting a female candidate from the FTUC to attend the 100<sup>th</sup> Session of the ILC, Government was expecting the FTUC to exercise its social responsibility under the ILO Constitution to nominate a female candidate in order to fulfill Fiji's obligation under the UN CEDAW Convention and the ILC mandate that has been promoted every year by the ILO Director-General.

Whilst the Fijian Government respects the Conference Credentials Committee's conclusion that the "government must accept the most representative organizations," the choice regarding the persons to be nominated as Employer and Worker delegates should be in accordance with Article 3, Paragraph 5, of the ILO Constitution. The Government also expects the most representative organizations to exercise their equally important social responsibility as required under the CEDAW and ILC mandate on gender mainstreaming when choosing member delegates to the ILC. To interpret Article 3, Paragraph 5 of the ILO Constitution without the context of the CEDAW and ILC mandate (which came after the Constitution) is considered irresponsible and will nullify the intent and purposes of CEDAW and the ILC mandate.

The Fijian Government believes in the promotion of good governance principles in the nomination of ILC candidates and Government is hopeful of a better and inclusive interpretation of Article 3 in the context of CEDAW and the ILC mandate on gender mainstreaming in future.

In view of the conclusion of the Conference Credentials Committee on Fiji in 2011, the Fijian Government has honored its obligation at the 101<sup>st</sup> Session of the ILC this year and accepted Mr. Felix Anthony's candidature as part of the Fijian Government's tripartite delegation to the ILC in Geneva. Copies of the relevant Cabinet Decision and Credentials are available.

It should be noted that Mr. Felix Anthony was part of the Fijian delegation to the ILO Conference in 2012.

### **Technical Assistance**

There is significant opportunity for U.S. labor and other international experts to provide technical assistance. This is especially the case in light of the Ministry of Labour's goals to review of all internal systems and processes benchmarked to international best practices and standards, and to acquire certification towards ISO 9001-Quality Management and ISO 26,000-Social Responsibility standards, along with the development of related values and competency based training packages. In addition, the Ministry is committed to the up-skilling and upgrading of its senior managers and operational level supervisors and staff to effectively implement its proposed reforms. The areas of useful training and skills expansion include:

- U.S. B Malcolm Baldrige Business Excellence capacity building
- ISO 9001 QMS for certifications and training
- Labour Statistics
- Productivity measurement and statistics
- Legal and policies training
- Compliance
- Competency-based training
- Work/Professional development program & attachments in U.S. agencies
- Public policy and leadership training of senior Ministry executives
- Minimum wage capacity-building
- Mediation training
- Judicial training
- Human rights awareness training

### **Conclusion**

The Fijian Government wishes to thank the United States Trade Representative for providing this opportunity to respond to the various issues raised in the Petition to remove Fiji from the List of Eligible Beneficiary Developing Countries pursuant to Section 19 USC 2462(d), as filed by the American Federation of Labour & Congress of Industrial Organizations (AFL-CIO) in December 2011. The Government, at its highest levels, looks forward to initiating a regular dialogue and effective discussions on these issues with pertinent U.S. officials, beginning with the October 2, 2012, public hearing.

