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November 2, 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 17th Street NW
Washington, D.C. 20508

Dear Mr. Jackson,

Re: The Government of the Republic of Fiji's Response to Hearing and Post-Hearing Questions

On behalf of the Government of the Republic of Fiji, I wish to thank you for the opportunity to provide post-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.

Should you have any questions, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

Shaheen Ali

Permanent Secretary for Industry and Trade



Post-Hearing Comments 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 Post-Hearing Comments: Review of the Government of Fiji's Provision of Internationally Recognized Worker Rights

1. Introduction

The Fijian Government appreciates this opportunity to provide post-hearing comments on the review of its provision of internationally recognized worker rights under the Generalized System of Preferences (GSP). Detailed below are responses to questions posed by the GSP subcommittee: 1) to the Fijian Government during the hearing; 2) to the Fijian Government after the hearing; and 3) to the AFL-CIO that the Government finds appropriate and necessary to address. We have also included pertinent information to explain further the various actions the Fijian Government is taking to improve and ensure the provision of internationally recognized worker rights within all areas of the country.

2. Summary

The Fijian Government is on a path toward reform and parliamentary democracy, based on three principles: empowering Fijians; modernizing the nation; and strengthening the economy.¹ 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 nation, institutions, and legal system strong, independent, and world-class. By strengthening its economy, the Government is working to decrease the country's dependence on other nations and to diversify its economic activities, including building ties with new partners and businesses around the world.

On 31 October 2012, the Fijian Government announced substantial increases of up to 10.4% in the minimum wage rates for thousands of workers in a total of 10 industries/sectors, which include sawmilling and logging workers, road transport workers, security service workers, printing trade workers, building civil and electrical engineering workers, hotel and catering workers, mining and quarry workers, and workers employed in the wholesale and retail trade industries. These substantial increases are reflective of the positive growth in the national economy and confidence in the labour market, as well as Government's commitment to ensuring social justice for the workers in Fiji. For the first time in history, Government has introduced a productivity-based wage system, which also includes increases for cost of living. A press statement was issued and is appended as Appendix One.

As part of Fiji's progress in reform toward democracy, the Government has begun the process of reviewing all labour laws in order to implement the eight core ILO Conventions and the 26

¹ 2012 Budget Address



additional ILO Conventions that Fiji has ratified. It anticipates completing that review by the end of the year.

The Fijian Government is committed to a future of equality and opportunity for all Fijians. This includes ensuring that the rights of its working people are protected and extended. Fiji makes this promise not only to the United States, but also as the newly chosen Chair for 2013 of the G-77. Fiji's leadership of the G-77 (now 132 members strong) is the first time in the organization's 48-year history that the Chair has been chosen from the Pacific region. Fiji is committed to executing responsibilities pertinent to the GSP, as well as to the international community with humility, honour, integrity, and in a manner worthy of the trust that has been placed upon it.

In addition, there are currently no mechanisms for bilateral communications or cooperation between our two Governments, whether focused on trade, labor, or general bilateral relation. Therefore, the Fijian Government has proposed (and the Office of the U.S. Trade Representative and the Department of Labor have accepted) initiation of an informal working group and dialogue between Fiji and the United States on these issues. The Government looks forward to initiation of the discussion and information-sharing as soon as possible. This will help foster clear communication in areas such as labour rights, and it will serve as a mechanism through which enforcement training and technical assistance can be provided. Such a forum will support and clarify Fiji's efforts in the areas of labour and worker rights.

Included in the appendices to this submission (found at www.mit.gov.fj) are letters of support from the Fiji-U.S. Business Council (Appendix Two) and the Fiji Commerce and Employers' Federation (Appendix Three). The Business Council completed a survey of its members on the vital importance of GSP to the individual businesses and to Fiji's economy. Business Council members' employees also are union members and are active in promoting their products in the U.S. market, including in major trade shows. Members of the Employers' Federation comprise the employer representatives to the ERAB.

Again, the Fijian Government appreciates the opportunity to respond to the GSP subcommittee's questions.

3. Responses of the Fijian Government to Post-Hearing Questions

Question 1

In May 2011, the Government of Fiji published Decree No. 21, which amended the Employment Relations Promulgation (ERP). The new amendment excludes all public sector workers from the coverage of the ERP. Many outside of Fiji view this decree as removing fundamental labor rights, including rights of association and collective bargaining from the 15,000 public sector workers.

The general perception, which is not accurate, is that the Employment Relations (Amendment) Decree 2011 (Decree No. 21) excluded 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 benefits are just a few of the rights and entitlements afforded to Government employees by GO2011.

In reference to the claim that Decree No. 21 of 2011 restricts the Freedom of Association of Government employees, the Fijian Government would like to point out that the Decree does not limit this right.

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. This is 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 Commission 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 that comprises representatives from the unions, employers, and Government employees, such as Permanent Secretaries (which are equivalent to the Managerial level).

3. *Valid Contracts of Service* – even though the ERP 2007 does not apply to Government employees, the contracts of services afforded to them meet or exceed 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 is 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-sector 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 of 1999 to include fundamental principles, 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, then the employee can raise the grievances through a clearly outlined internal grievance procedure provided for in the PSC's Policy on Grievance Procedure in 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 in 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, as well as the Public Service (Amendment) Decree 2011.
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 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.
 12. *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.
 13. *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.
 14. *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 means that Government is not obligated to deduct union fees on behalf of union members. However, an employee is at full liberty to directly make arrangements with the employer or his bank for deduction of union dues.
- a. **The Government of Fiji response to claims regarding the loss of freedom of association is to assert that the ERP fosters economic growth and does not limit Government employee rights. Do Government employees have the right to freedom of association? If yes, what is the Government doing to foster their ability to exercise these rights? If not, why not?**

Government employees are free to associate. In fact, despite the exemption of Government from the provisions of the Employment Relations Promulgation 2007, a number of Government workers continue to be members of trade unions and participate in meetings and elections of the unions. Most Government workers are members of the Fiji Public Service Association and, to-date, they continue (through their own personal arrangements with their Ministry employer) to have their union dues deducted from their pay. The Government has never had a policy which prohibits Government workers from joining a union of their choice. The Public Service (Amendment) Decree 2011, which applies to all Government workers, expressly states that the fundamental principles and rights at work apply to these workers. Section 10B(5) states that “An employee shall not be prohibited from being or becoming a member of a trade union, and it shall not be a condition of employment that an employee must not be or become a member of a trade union.”

- b. The Fijian Government also implies that individual contracts are a positive step because such contracts are based on merit and performance. Why does the Government of Fiji feel that collective bargaining and contracts based on merit and performance are mutually exclusive?**

The individual contracts of Government workers afford equivalent or more rights and privileges than the minimum legal requirements stipulated in the Employment Relations Promulgation 2007. Unions are not barred from entering into Collective Bargaining negotiations with the Government. However, if the unions want to change the terms and conditions of employment, it will have to be done through the Cabinet as the terms and conditions of Government workers are governed by law (General Orders 2011, Terms and Conditions of Employment for Government Wage Earners).

- c. We understand that an additional decree was passed amending the Civil Servant Act to prohibit automatic dues deductions for all public sector workers. Is this accurate? If so, what was the rationale for this change?**

Contrary to the question posed, an additional decree was not passed that led to the cessation of automatic dues deductions. The Employment Relations Promulgation 2007 (“ERP”) outlines, in section 163, the deduction of union fees. This section states that union fees deducted from a member’s salary or wages must be paid to the union concerned in a manner agreed to by the union. The ERP was amended on 16 May 2011 to exclude Government employees from the provisions of the ERP. This is because the Public Service Act 1999, the General Orders 2011, and the Terms and Conditions of Employment for Government Wage Earners 2010, all of which apply to Government workers, adequately cover their terms and conditions of employment. The exemption of Government from the provisions of the ERP essentially meant that the provision in the ERP concerning deduction of union fees no longer applied to Government. As such, Government issued a public statement in the media outlining that the exemption of Government from the ERP meant that it was no longer required to facilitate automatic union dues deduction from Government to the unions. Members of unions who wish to pay union dues have to make their own arrangements with their employer Ministry in terms of payments.

Question 2

Please provide additional clarification of the circumstances under which unions must acquire permits since the repeal of the Public Emergency Regulations (PER) in January 2012. In the pre-hearing brief and in the Government of Fiji’s hearing testimony the Subcommittee was informed that unions no longer need permits to hold meetings. At the hearing, the Subcommittee was also informed that all entities, including unions, require a permit to assemble in a public place.

- a. Please explain how “public space” is defined for purposes of this law.**

The Public Emergency Regulations 2009 was revoked on 7 January 2012. The revocation effectively meant that public order in Fiji is now maintained under the Public Order Act, which has been in force since independence (1970). The Public Order Act states in section 8 that 'Any person who wishes to organize or convene a meeting or procession in a public place shall first make an application for a permit in that behalf to the appropriate authority.' A public place is defined under the Public Order Act as: '(a) any highway, public street, public road, public park or garden, any sea beach, river, public bridge, wharf, jetty, lane, footway, square, court, alley or passage whether a thoroughfare or not; or (b) any – (i) land or open space, whether such land or space is closed or unenclosed; and; (ii) place or building of public resort, other than a dwelling house, to which for the time being the public have or are permitted to have access whether on payment or otherwise.'

However, in July 2012, the requirement of obtaining permits for a meeting in a public place was relaxed. As such, as the law stands now, all persons or groups can hold or organize meetings in a public place without having to obtain a permit. Trade unions can hold and organize meetings in a public place without the need to obtain a permit.

However, permits are still required if a meeting, or an assembly is going to be held in a public road, public park or garden and sporting arena. Permits will also be required for public processions in a public road or public park.

This permit requirement is the law in other countries. It is due to the underlying requirements to close roads and to plan for other administrative functions such as the provision of law enforcement officers to maintain order.

b. If a union holds a meeting in a private space, such as a union office or home, are there any circumstances for which they must apply for a permit?

No, under no circumstance is any individual or union required to seek a permit for a meeting in a private place.

c. Please provide information on how many requests for permits were received in the last year; from whom; whether the permit was granted or denied and how long it took the Government to respond in each instance.

There were altogether 470 permits received in 2011, according to Fiji Police Force records. Twelve of these permits were not approved based on security reasons. It takes 7 days to process each permit application.

Question 3

According to the AFL-CIO petition, under the recent Public Order Amendment Act, courts

have been divested of any jurisdiction to hear claims against decisions by any public official. Is there any system of review, judicial or otherwise, or another kind of checks and balances for decisions made by a public official?

Under the Public Order Act, any decision to charge any person for an offence against public order is independently made by the Director of Public Prosecutions, after a thorough consideration of evidence and the legal provisions. If any charges are laid against any person under the Public Order Act, then these charges will be independently adjudicated upon by an independent judiciary.

The Fijian Government wishes to highlight that offences against the public order under the Public Order Act are limited to serious criminal offences that have the potential to undermine public safety and public order.

Question 4

The Government's pre hearing brief states that the Employee Relations Unit (ERU) is responsible for the management of strikes and lockouts. Have there been any strikes or lockouts in the last two years? Please explain the ERU's role in dealing with strikes or lockouts. Additionally, how many employee disputes has the ERU ruled on? What were the types of resolutions achieved and how many cases were resolved by each type of resolution?

There has not been any strike or lockout in Fiji in the last two years. The trade unions that intended to go on strike were referred to informal mediation through the Employment Relations Service. The importance of informal mediation has been that:

1. Parties meet in good faith to try and find amicable solutions;
2. The grievance causing the unions' strike mandate is heard and dealt with expeditiously; and
3. Parties forfeit their right to strike because subsequent participation in a strike or lockout becomes unlawful if the strike or lockout takes place in contravention of a settlement by a Mediator.

Question 5

The Labour Standards Service (LSS) is responsible for the promotion of fundamental principles and rights at work standards as well as compliance with the Employment Relations Promulgation 2007 (ERP). Is this section of the Ministry current on its enforcement obligations? If there is a backlog, could you indicate what actions the LSS has taken this year to fulfill its functions?

The Labour Standard Service is carrying out its statutory functions. The greatest hurdles, however, that prevent it from properly and effectively discharging its role are budgetary constraints and the need for more staff. For example, the Labour Compliance Unit ("LCU"),

which is responsible for employer/workplace inspections, has just five Labour Inspectors covering an area in which are located more than 5,000 employers. Hence, on average, one Labour Inspector deals with 1000 employers. The work of Labour Inspectors regarding employer/workplace inspections range from verification of wage records, resolution of labour complaints and employment grievances, (attestation) of foreign contracts of service, prosecution of offences under the Employment Relations Promulgation 2007, and appearing as representatives of workers at the Employment Relations Tribunal and Employment Relations Court.

This situation has prompted the Ministry of Labour to create a new team, the Complaints Resolution Team, solely to address complaints and grievances from individuals and parties that have used the LCU but were dissatisfied with the service provided.

Question 6

As we understand it, Section 7(1) of the Essential National Industries Decree (ENID) from July 2011 requires any representative of a union to be an employee of the corresponding corporation. Does this decree prevent unions from hiring attorneys to represent the workers in collective bargaining negotiations?

The Essential National Industries (Employment) Decree 2011 (“ENI Decree”) does not prevent unions from hiring attorneys or lawyers to advise them on collective bargaining negotiations. However, the actual collective bargaining *negotiations* must be done by the employees themselves (who are the representatives of the bargaining units).

Additionally, Section 7(2) seems to provide an incentive to a company to terminate a union leader under this Decree since that would terminate his/her position with the union. Are there any protections for a worker who is elected as an office-bearer or representative for a union from being unfairly terminated?

Section 7(2) is not an incentive for designated corporations to terminate union leaders. It merely provides that an employee who represents workers employed in a designated corporation who ceases to be an employee of the designated corporation cannot continue to represent the workers who are employees. This is due to the requirement in section 7(1) that officers of a union must be employees of the designated corporation. The termination of an employee in a designated corporation is independent of one’s union membership; termination of an employee must be done under normal employment law requirements. As such, there is no issue of unfair termination, and indeed no termination of employment has occurred on this basis.

Question 7

The ENID requires 75 workers to form a union in a bargaining unit. How did the Government arrive at this number?

The Fijian Government determined that at least 75 workers employed by the same employer who perform similar types of work for the employer are needed to form a Bargaining Unit. This helps to ensure that workers performing similar types of work are able to form a group, enter into collective agreements, and deal directly with their employer.

Question 8

The ENID designated 11 corporations including some involved in radio and television, banking, and transportation as essential industries. The ILO defines essential services as those services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population. Please explain why the Government believes that these are essential industries consistent with the ILO's definition of essential services.

The key objective of the 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. As defined in the Essential National Industries (Employment) Decree 2011 (Decree No. 35 of 2011); "essential national industry" means those industries:

- a. Which are vital to the present and continued success of the Fiji national economy or gross domestic product or those in which the Fiji Government has a majority and essential interest; and
- b. Which are declared as an essential national industry by the Minister under Regulations made pursuant to this decree.

~~Under the auspice of this definition, the Fijian Government believes that such industries are "essential industries" to the Fijian economy. Please also see question four (4) below on the hearing questions for further details as to why these industries are essential to the Fijian economy, and hence, are covered under the ENI decree.~~

4. Responses of the Fijian Government to Hearing Questions

Question 1

In its pre-hearing brief, the Government of Fiji notes that it invited an International Labor Organization (ILO) Fact-Finding Mission to visit Fiji under agreed Terms of Reference. We understand that, a few weeks ago, the Government asked the visiting ILO mission to leave following a disagreement over Government-proposed changes to the mission's Terms of Reference. Can you share with the Subcommittee what changes in the Terms of Reference the Government was seeking and why you chose to seek these changes after the ILO had begun its mission? Has the Government of Fiji had further discussions with the ILO following this visit concerning the Terms of Reference and has a date been set for a second mission of the ILO to Fiji?

The Fijian Government would like to clarify that the Fijian Government did not ask the ILO mission to leave the country. The Government directly and initially invited the ILO to send the direct-contacts mission.

The Fijian Prime Minister clearly stated to the ILO Director-General that the Terms of Reference (TOR) for the ILO Mission would need to be agreed upon by the Fijian Government, and that the ILO delegation should be objective, all-inclusive, and transparent.

Unfortunately, the ILO's TOR (Appendix Four found at www.mit.gov.fj) was not agreed upon by Fiji at the highest levels prior to the delegation's arrival due to internal miscommunication between pertinent Ministries. In fact, the initial TOR under which the ILO direct contacts mission visited Fiji was proposed by ILO. The TOR proposed by the ILO was too generalized and was not outcome-oriented.

After realizing the situation, the Fijian Government provided a new TOR (Appendix Five found at www.mit.gov.fj) to the delegation in Suva. The TOR provided by the Fijian Government were open-ended, detailed, outcome oriented and will enable a transparent, fair, and objective assessment to be carried out of Fijian labour laws and labour reforms that are currently being undertaken in Fiji. In the TOR proposed by ILO the Scope of the Mission was "to cover all matters relating to freedom of association, including legislative and practical application of this fundamental principle, including other relevant compliance matters."

The TOR provided by the Fijian Government stated the Scope of the Mission as follows:

- (a) To review the impact of the Essential Industries Decree 2011 ("Decree") on essential industries, in particular-
 - (i) Whether the aims and objectives of the Decree are in conflict with the fundamental rights of workers and employers in an essential industry;
 - (ii) Whether workers in an essential industry have been able to collectively organize and form unions;
 - (iii) Whether workers in an essential industry have been able to reach collective agreements with their employers;
 - (iv) Whether workers in an essential industry have been able to collectively agree with employers on a fair means of resolving employment disputes;
 - (v) Whether the workers in an essential industry, in effect, now have better terms and conditions than what was prevalent before.
- (b) To assess whether Fiji has adequate laws and processes to effectively investigate, prosecute and adjudicate complaints of assaults, intimidation and harassment by any person, including any trade union official;
- (c) To review the terms and conditions applicable for public servants, in particular, whether public servants have the right to form and join trade unions, and whether they are entitled to the fundamental rights and principles at work;

- (d) To assess whether public servants have recourse to have their individual grievances addressed by an independent judiciary;
- (e) To assess whether unions representing public servants are prevented from negotiating terms and conditions for public servants;
- (f) To assess whether trade unions, workers and employers are able to hold meetings and associate, in light of the removal of the Public Emergency Regulations;
- (g) To assess whether complaints made against the Fijian Government are with respect to concerns of all workers in Fiji, or whether such complaints are only made by a select few trade unionists for their own personal, political or pecuniary interests;
- (h) To genuinely assess the situation of workers and employers in Fiji, without simply heeding to what is being stated by a select few trade unionists (as was done by the Committee of Experts and the Committee on Freedom of Association);
- (i) To discuss with Government officials on the various reforms undertaken by Government to preserve and create jobs for workers, to sustain industries essential to Fiji, and to improve living standards of all Fijians; and
- (j) To assess Fiji's commitment to ILO Conventions, in light of the recent ratification by Fiji of numerous ILO Conventions.

The Fijian Government's TOR also stated the following:

"Instead of just meeting the executives of Fiji Trades Union Congress (FTUC), Fiji Islands Council of Trade Unions (FICTU) and Fijian Teachers Association (FTA), the visit must also meet directly with workers employed in essential industries. In particular, they must meet the workers representatives in industries such as the airline industry (Air Pacific), factory workers representatives, workers employed in financial and banking sectors. They must also meet numerous other trade union officials recommended by Government and the employers, rather than only meeting with the executives of FTUC and FICTU. The visit must also meet with the employers in essential industries, including Air Pacific, employers in the banking and financial sector (Fiji Revenue and Customs Authority (FRCA), Australia New Zealand Bank (ANZ), Westpac, Bank South Pacific (BSP), Bank of Baroda, Bred Bank), telecommunications industry (Fiji Broadcasting Corporation Limited (FBCL), Telecommunications Fiji Limited (TFL), Fiji International Telecommunications (FINTEL)), and the public utilities industry (Fiji Electricity Authority (FEA) and Water Authority of Fiji (WAF)). They must also meet with the Commissioner of Police, Commissioner of Fiji Independent Commission against Corruption (FICAC), and the Director of Public Prosecutions."

We also annex a letter from Mr. Pramod Rae, National Secretary of the Fiji Bank and Finance Sector Employees Union regarding the TOR from the Fijian Government ([Appendix Six](#) available at www.mit.gov.fj). Mr. Rae stated that "Fiji Bank & Finance Sector Employees Union welcomes the scope of the proposed terms of reference with respect to the Essential National Industries (Employment) Decree 2011 (ENI) in particular and as laid out in paragraph (a) (i) to (v) with an amendment in (i) to include all the provisions of the decree rather than just

the aims and objectives. The rest of the part of the TOR is well formulated and as amended will lend itself to a reasonable assessment of the ENI decree.”

The ILO delegation was not prepared to accept the Fijian Government’s TOR when the delegation was in Suva. Therefore, the Fijian Government politely suggested that it would greatly welcome a return ILO mission at the earliest date possible.

The Fijian Government has affirmed that it welcomes back the direct-contacts mission from the ILO. In fact, the Fijian Government made it known to the ILO that it was ready to receive the Mission the following week after the misunderstanding.

Question 2

As discussed in the previous panel, there is some dispute over whether trade unions are now able to meet freely, since the repeal of the Public Emergency Regulations (PER) in January. Are unions still required to receive approval in order to hold meetings? If not, do unions need to provide any notification to Government authorities before holding meetings or public gatherings? Does the Government send anyone to monitor union meetings and, if yes, why?

In Fiji, public meetings held in a public place now DO NOT require a permit. This includes meetings held by members of a union.

The Public Emergency Regulations 2009 was revoked on 7 January 2012. The revocation effectively meant that public order in Fiji is now maintained under the Public Order Act which has been in force since independence (1970).

The Public Order Act states in section 8 that ‘Any person who wishes to organize or convene a meeting or procession in a public place shall first make an application for a permit in that behalf to the appropriate authority.’

A public place is defined under the Public Order Act as: ‘(a) any highway, public street, public road, public park or garden, any sea beach, river, public bridge, wharf, jetty, lane, footway, square, court, alley or passage whether a thoroughfare or not; or (b) any – (i) land or open space, whether such land or space is closed or unenclosed; and; (ii) place or building of public resort, other than a dwelling house, to which for the time being the public have or are permitted to have access whether on payment or otherwise.’

However, in July 2012, the requirement of obtaining permits for a meeting in a public place was relaxed.

As such, as the law stands now, all persons or groups can hold or organize meetings in a public place without having to obtain a permit. Trade unions can hold and organize

meetings in a public place without the need to obtain a permit. A copy of a permit application which details the requirement for meetings is available as Appendix Seven on www.mit.gov.fj.

However, permits are still required if a meeting, or an assembly is going to be held in a public road, public park or garden and sporting arena. Permits will also be required for public processions in a public road or public park. This permit requirement is the law in other countries. That is the law in Australia, in the Commonwealth, and in the United Kingdom. Permits are required for public meetings on a public road, public park or sporting arena, and for public processions. Essentially, this has been the law in Fiji prior to 1970, and no complaints were previously made with respect to the law. This has been the law before 2011, 2009, and going back before the imposition of the Public Emergency Regulations.

It is due to the underlying requirements to close roads and to plan for other administrative functions such as the provision of law enforcement officers to maintain order. This is because roads and public parks have to be closed to the public when being used for another purpose; hence, permits are required for those instances. It is a fairly accepted international public order rule that where there are public processions on a public road, where there are public assemblies on a public road or a public park, permits are required. Fiji is a small developing island country and as a result, roads have to be closed for marches to happen. Law enforcement officials have to be made available, and be present for public safety purposes. For these reasons, permits are required. This has been the law in Fiji since the country's independence.

Question 3

Will those individuals previously charged under the PER continue to be prosecuted now that the measure has been repealed?

Under Common Law, any prosecution which has been initiated under a repealed law continues in the Courts as the matter is already before the Courts. It should be noted that Government does not oversee such matters. The prosecution of individuals charged under the Public Emergency Regulations is carried out by an independently appointed Director of Public Prosecutions ("DPP"). The DPP independently decides whether a prosecution is initiated; he independently decides whether a prosecution continues based on evidence; he independently decides whether a prosecution is discontinued. More importantly, it is a court of law, an independent judiciary that adjudicates on charges laid. There is no involvement of Government, the executive, or any State official. As such, proceedings brought under the Public Emergency Regulations are still in Court however it is not for the Government to decide on these cases as the Court will decide how such proceedings are dealt with. The prosecution of individuals in Fiji is independent of Government.

Question 4

The Essential National Industries (Employment) Decree of 2011 made several significant changes to the registration, operations and bargaining of unions in covered companies. The ILO and other observers raised concern about the consistency of these changes with international labor standards. Could you describe your Government's rationale for enacting these changes?

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. 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.

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 the Fijian economy. This is not the intention, and it would not be permitted by the Decree itself. The Decree is specific in its definitions of "an essential national industry" and "designated corporation."

Section 9 of the 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 engage in collective bargaining and are effective associations of their employees and have reached new collective bargaining agreements with their employers. As an example, Fiji's Cabinet extended the initial bargaining window laid out in the ENI, based on employers' requests, to give them additional time to reach new agreements with their unions.

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

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

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

It is certainly not the case, 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 similarities 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. However, as in many countries, this right is circumscribed in order to avoid damaging disruption to commerce.

The workers in the essential industries have been able to freely organize, form bargaining units and elect representatives. They have successfully reached collective agreements with employers and have devised their own dispute resolution processes. All this has been done without any third party intervention. In one essential industry, workers and their representatives have been able to successfully negotiate salary increases of up to 25%, together with other employment benefits. The workers in this industry will also receive guaranteed pay increases every year throughout the five-year term of the collective agreement. In addition, the workers and employers have agreed

that workers will receive a share of any profits declared by the employer. None of these benefits were available to the workers prior to ENI enactment.

ENI information requested of the Government by the GSP Subcommittee

Please provide a better explanation of the union impact chart: in detail, how many unions are certified, number of “functioning units” operating – if different and why, how many had to be recertified, how many are still in operation, how many not, and how many new unions formed.

- i) Functioning bargaining units – 4;
- ii) Bargaining units yet to be registered – 5;
- iii) Collective Agreement registered with the Registrar of Trade Unions – 1;
- iv) Collective Agreements still in the negotiation stages – 3; and
- v) Organizations that could not form bargaining units due to the minimum number of members criterion (75) – 2.

Provide a copy of the collective agreement of the airline sector.

Air Pacific is unable to do so because there is a strict confidentiality clause within the agreement. However, Air Pacific is willing to physically show a copy of the Collective Agreement to the GSP Subcommittee in camera to maintain the confidentiality requirement of the Agreement. The Fijian Government will await the GSP Subcommittee's directives as to how this can be done.

Provide the various resolutions agreed between the employer and the representative of the bargaining unit with respect to bonuses, profit sharing and guaranteed pay increases.

This refers to Air Pacific. Due to the strict confidentiality clause within the Collective Agreement, they are unable to make the Agreement available. However as stated above Air Pacific is willing to show a copy of the Collective Agreement to the GSP Subcommittee in camera to maintain the confidentiality requirement within the Agreement.

Provide a link to the ENID and the Public Order Amendment Decree.

Please see the Ministry of Industry and Trade's website at www.mit.gov.fj for this information.

Question 5

As we understand it, under the Public Order Amendment Act, individuals who are seen to undermine or sabotage the economy of Fiji could, in some circumstances, be prosecuted as a terrorist and face life sentences in prison. Under other sections of the law, statements undermining the economy can result in sentences of up to ten years in prison. Notably, a September 19 statement by a Fijian Government official concerning the GSP review used similar language, stating that “the action of the Fiji Trade Union Congress and others in

**seeking American sanctions against our own nation is sabotaging the economy...” Is the
Fijian Government planning to prosecute Fijian trade unionists for their involvement in
this GSP country practices review?**

The Fijian Government is not aware of any plans to prosecute Fijian trade unionists for their involvement in the GSP country practices review. Under the Public Order (Amendment) Decree the term ‘offence against public order’ is defined as “(a) the offence of terrorism as prescribed under Part 3A of this Act (b) treason and other offences against Government authority prescribed in sections 63 to 71 of the Crimes Decree 2009 (treason, urging political violence or inciting communal antagonism, seditious intention, seditious offences) (c) other offences against public order prescribed in sections 72 to 75 of the Crimes Decree 2009 (mutiny, aiding prisoners of war to escape) (d) offences against the international order prescribed in sections 76 to 132 of the Crimes Decree 2009 (genocide, crimes against humanity, slavery, sexual servitude and deceptive recruiting, trafficking in persons and children, people smuggling and unlawful entry into foreign countries, foreign enlistment, piracy). The definition of terrorism is the identical definition from the Australian statute. Hence, if there is evidence that a person is attempting to or has in fact engaged in the offences outlined, that person will of course, under Fijian Laws, be prosecuted. That is the nature of public order offences.

Question 6

**In its pre-hearing brief, the Government of Fiji described the work of the tripartite
Employment Relations Advisory Board (ERAB) on analyzing current labor laws and
proposing reforms. Has your Government enlisted the advice and support of the ILO in
ensuring that these proposed changes are consistent with international labor standards?**

The Government’s commitment to review all current labour laws related 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 28th May 2012.

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.

As part of Government’s progressive Labour Reform agenda, ILO was also advised by the Labour Ministry in a subsequent letter on 13th June 2012 that the Fijian Cabinet has endorsed an additional eight (8) ILO instruments for ratification or adoption in its sittings on 22nd May and 5th

June 2012 on the recommendations of the tripartite Employment Relations Advisory Board (ERAB) in its meetings of 11th April and 9th May 2012.

The Permanent Secretary for Labour convened a special Employment Relations Advisory Board (ERAB), which was also charged with the tripartite review of all labour laws relative to ratified Conventions. The ERAB created a tripartite ERAB Sub-committee to focus on the review. At the start of first ERAB Subcommittee meeting of 23rd July 2012, the members of the Subcommittee unanimously agreed to adopt a 4-tiered approach in undertaking Fiji's Labour Law Review relative to the ILO comments and recommendations:

- Labour-related Decrees;
- Update on 2010 Amendments to the Employment Relations Promulgation (ERP);
- Domestication of newly ratified ILO instruments into Fiji's labour laws; and
- New labour policy matters.

The table in the accompanying appendices (Appendix Eight found at www.mit.gov.fj) summarizes the work of the ERAB and its Subcommittee between 11th April 2012 and 13th August 2012. During this four-month period, the ERAB has met three (3) times and the ERAB Subcommittee has met seven (7) times – six (6) all-day meetings and one (1) all-day workshop meeting. In total, the ERAB and its Subcommittee has had ten (10) all-day meetings. During this period, the Subcommittee has completed the first-tier review (labour-related Decrees) and the second-tier review (2010 ERP Amendments). It has almost completed the third-tier review; to-date it has finalized labour law amendments to domesticate seven (7) out of the eight (8) new ILO instruments, with the exception of the Maritime Labour Convention 2006 (MLC). Further, the Subcommittee has also made significant inroads in finalizing amendments to the current labour laws (especially the ERP) on new policy areas to enhance the quality of these laws and their applications taking into account the working experiences of the various stakeholders using these laws.

After the 13th August 2012 meeting of the ERAB Subcommittee, the Ministry of Labour Policy Team reviewed the various policy discussion papers tabled to ERAB for the Subcommittee, and researched international case laws relating to the reviews. 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 the respective policy recommendations and amendments to the ERP to ensure robustness in the application of the ERP on these “gaps”. To synergize Government's policy position on matters discussed, the Public Service Commission (PSC), in consultation with the Ministry of Strategic Planning, National Development and Statistics, has also completed the review of PSC labour laws with the view to table these to the ERAB Subcommittee. The Solicitor General's Office has also been invited to the ERAB Subcommittee meetings in order to familiarize itself with the range of policy debates and discussions between the tripartite partners to facilitate their final legal vetting on recommended amendments to the respective labour laws.

In the meantime, the employers and workers representatives at ERAB Subcommittee have been given time to hold consultation meetings with their constituents on the new policy areas (fourth-tier) before the next Subcommittee meeting is convened shortly. With the Government and Ministry's Policy Team concluding their reviews, the next ERAB Subcommittee anticipates concluding the Labour Law Review agenda.

Who participates in the tripartite Employee Relations Advisory Board, and are recommendations of workers, or workers' representatives taken into consideration?

The Employment Relations Advisory Board ("ERAB") is established under Part 3 of the Employment Relations Promulgation 2007 to advise the Minister for Labour on all matters pertaining to employment relations. The membership of ERAB comprises public officers as representatives of Government, representatives of employers, representatives of workers, and independent members. Decisions reached at such meetings are then submitted to the Minister for Labour for his consideration and decision prior to further submission to Cabinet for necessary approvals. For example, the ERAB Sub-Committee which has been meeting from 23 July 2012 to consider the review of Labour Laws will then submit its decision to the full ERAB. ERAB will make recommendations to the Minister for Labour, who decides on the submissions and submits his decision to Cabinet for endorsement. Hence, this is an all-inclusive process, and the views and recommendations of workers are considered at this forum.

Information requested by the GSP Subcommittee during the hearing

• **Provide a detailed analysis of the institutional structure of the ERAB**

The ERAB is established under Part 3 of the ERP 2007 to advise the Minister for Labour on all matters pertaining to employment relations. The ERAB consists of public officers as representative of Government, representatives of employers, representatives of workers, and independent members.

• **Provide more information on how the constituents to the ERAB are selected, appointed, chosen, and also whether those recommendations of the ERAB are made public.**

Please see answer to question 6 above. In addition, the members of ERAB are appointed by the Minister for Labour. In making such appointments, the Minister must appoint such persons who, in the opinion of the Minister, have experience and expertise in the areas covered by the functions of the Board or in employment relations, industrial, commercial, legal, business or administrative matters. The Minister invites bodies representing employers or workers to make nominations and appoints such nominees as members. The Permanent Secretary for Labour is the chairperson of ERAB. The Board regulates its own procedures and must keep proper records of its proceedings.

- **Provide the statute creating the ERAB, which details its functions, duties, and powers** ([Appendix Nine](#) available at www.mit.gov.fj).

The ERAB was established under Part 3 of the Employment Relations Promulgation 2007. Its functions and powers are –

- (a) To consider and advise the Minister for Labour on employment related matters including issues of policy as well as matters provided for by the ERP and any other written law;
- (b) To inquire into and report to the Minister for Labour on employment related matters referred to it by the Minister;
- (c) In liaison with the Ministry for Labour, to facilitate the making of regulations, codes of practice and guides relating to matters covered by the ERP for the consideration of Minister for Labour;
- (d) To advise the Minister for Labour on consultation and cooperation between labour and management and how this process may be promoted and strengthened;
- (e) To advise the Minister on International Labour Organization instruments; and
- (f) To perform other functions under the ERP or any other written law.

The recommendations of workers are submitted through their representatives who discuss such recommendations with the other members of ERAB during their scheduled meetings. The ERAB recommendations are not made public, as the role of ERAB is to advise and make recommendations to the Minister for Labour. Its advice and recommendations are for the purview of the Minister (as per statutory requirement).

Prior to the labour law review, the ERAB considered the Public Order (Amendment) Decree and the Essential National Industries (Employment) Decree. Please refer to pages 7 to 14 and 16 of Annexure S of the ERAB Sub-Committee meeting minutes ([Appendix Ten](#) at www.mit.gov.fj).

Other Information Requested by the GSP Subcommittee of the Fijian Government

Please note that the responses below are made by the Fiji Police Force in a letter signed by the Acting Assistant Commissioner of Police, for the Commissioner of Police dated 23rd October, 2012 ([Appendix Eleven](#) at www.mit.gov.fj).

- **Are there records of Mohammed Khalil coming to a police station three times to file charges and the police refusing to accept them?**

The police have researched this question. They found no record at any Police Station in Fiji to indicate that Mr. Mohammed Khalil attempted to file charges at a police station, and that the Police refused to accept his complaint. If Mr. Mohammed KHALIL could produce the date and time of such claims, it would help facilitate the Fiji Police Force's research.

- **The AFL-CIO has indicated that, “If Mr. Anthony and Mr. Urai apply for a permit, it is likely to be denied.” Are there any records to indicate that is the case?**

A check of Police records was conducted. There is no record of permits being denied at any Police Station. If the AFL-CIO or other entity could provide information on the date and time or other relevant information concerning the permit application denials, it would help to facilitate the Fiji Police Force’s research.

- **Tropicwood and Allied Workers Union – clarification of the Union not able to get a permit to meet.**

The police have researched this question. There is no record at any Police Station in Fiji to indicate that permits were refused to Tropicwood and to the Allied Workers Union. The Police records show that all requests for permits for union meetings in the Western Division (where Tropicwood and Allied Workers Union are based) were approved. The Fiji Police Force would appreciate if the dates and time for these refusals could be provided.

- **Father Kevin Barr incident: please investigate and provide additional information**

Father Kevin Barr was taken in for Police questioning on a possible violation of the Public Order (Amendment) Decree in that he and others organized a gathering without a permit at Peace Park, Suva without prior approval to do so. This gathering was held in a public park without a permit. Under the Decree, meetings, processions and assemblies on a public road, Public Park or a sporting arena require permits from the relevant authorities. As such, Father Kevin Barr did not have the relevant permit. The Police interviewed Father Barr and he was released.

5. Addressing Certain Questions Posed to the AFL-CIO

Post-hearing questions

- 1. In its pre-hearing brief, the AFL-CIO included an attachment from the International Trade Union Confederation (ITUC) that alleges that the Labasa Cane Producers Association (LCPA), which represents several hundred harvesting gangs, is under the influence of the Fiji Sugar Corporation (FSC). Please explain why the AFL-CIO believes that this organization is less independent of the Government than the unions representing workers in this sector.**

Please note that the response below was made in a letter sent by the Fiji Sugar Corporation Ltd that is included in the Appendices (Appendix Twelve at www.mit.gov.fj).

The role of FSC was to assist sugarcane growers in Labasa to benefit from the Fair Trade premium for the sugar exported from Labasa. Tate and Lyle Sugars of the UK, the buyers of

sugar under the brand Fairtrade, have assisted the Project Unit (of FSC) to establish the system of buying sugar and selling under that brand name. One of the requirements of Fairtrade is that members of LCPA must be democratically elected. Hence there is no justification for the allegation by unions that there is influence by FSC or the Government on the LCPA. With the establishment of LCPA, the role of FSC is only to provide information in terms of sugar shipped from Labasa at no cost to the farmers and the Fairtrade Association. FSC does not benefit from the premium associated with Fairtrade.

The ITUC letter also alleges that the military intimidated and threatened farmers into joining the LCPA at the same time that the Government instructed the FSC to stop dues deduction from the National Farmers Union (NFU). What has been the impact on the unions of this alleged Government support for the LCPA?

The FSC is not aware of any threats or intimidation by the military for farmers to join LCPA. In addition, there has not been any government involvement in LCPA and the only support provided by FSC is to Fairtrade (since Fairtrade provides additional revenue to LCPA).

2. Regarding the Employee Relations Advisory Board (ERAB): Is it your understanding that all legislation affecting labor is within the scope of reform proposals being considered by the ERAB, or are certain laws (e.g. Public Order) outside the scope of ERAB discussions?

The Employment Relations Advisory Board Sub-Committee (“ERAB Sub-Committee”) is currently undertaking a review of labour laws relevant to labour related issues and the ILO Conventions that Fiji has ratified. The scope of the review is wide and in fact, at its meeting on 30 July 2012, the Public Order (Amendment) Decree was discussed by the ERAB Sub-Committee. The union representatives, employer representatives and the independent members all contributed to discussions and aired their views on the Public Order (Amendment) Decree. The relevant excerpt from the minutes of the ERAB Sub-Committee meeting discussing the Public Order (Amendment) Decree at page 16 of Annexure S is included in Appendix Ten available at www.mit.gov.fj.

To what extent have Fijian union leaders engaged in the discussions of the ERAB? If labor unions submitted any proposals through the body how have these proposals been treated?

The Employment Relations Advisory Board (“ERAB”) has the following membership composition:

- (a) public officers as representatives of the Government;
- (b) representatives of employers;
- (c) representatives of workers; and
- (d) other persons – independent representatives.

An ERAB Sub-Committee was appointed to specifically examine and review laws relevant to labour related issues and the ILO Conventions that Fiji has ratified. The decisions from the ERAB Sub-Committee are tabled to the ERAB for its consideration and any decisions. The ERAB will then advise the Minister as per decisions reached. The meetings of the ERAB Sub-Committee have not concluded and are still on-going as the areas to be covered in terms of relevant labour law issues and conventions ratified by Fiji are fairly wide.

The minutes of the ERAB Sub-Committee meetings that have been held clearly show that representatives from the employers and unions were extensively involved in the discussions regarding review of laws relevant to labour related issues and ILO Conventions ratified. At the ERAB Sub-Committee meetings, there were employer representatives and four worker representatives. The worker representatives consisted of Felix Anthony, Daniel Urai, Rajeshwar Singh, and O.P. Singh. They were provided with ample opportunity to voice worker concerns regarding the current labour laws, their concerns were noted and accepted by the Chair of the ERAB Sub-Committee and these concerns will be tabled to the ERAB body which advises the Minister for Labour.

Do Fijian union leaders have confidence in ERAB and its process? If not, have they proposed improvements to the process?

The employer representatives and worker representatives are Felix Anthony, Daniel Urai, Rajeshwar Singh, and O.P. Singh. They have willingly participated in the labour law review process. In addition, Felix Anthony, Daniel Urai, and Rajeshwar Singh are current members of the ERAB, which is appointed by the Minister for Labour and advises the Minister on all matters pertaining to employment relations. As such, it would appear that their participation in the review process and membership of ERAB and the ERAB Sub-Committee is evident of the confidence they hold in the ERAB and its processes.

Hearing Questions

1. **In its pre-hearing brief, the AFL-CIO details several incidents in 2011 of assault and harassment of trade union leaders. In its brief, the Government denies that such harassment has occurred and indicates that no reports have been filed with the police. Do you know whether the alleged victims of assault and harassment have filed complaints, or attempted to file complaints, with Fijian authorities? If so, are you aware of any efforts to investigate the alleged assaults? If not, why not and what evidence can be presented to support these claims? Have there been any similar incidents in 2012?**

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

see Comments by the Fiji Police Force on 18th September 2012 and appended as Appendix Thirteen at www.mit.gov.fj).

2. **The AFL-CIO describes concerns with the Essential National Industries (Employment) Decree of 2011, including its requirements for re-registration of unions, restrictions on union officers and representatives, scope of the bargaining unit, renegotiation of collective bargaining agreements, and the right to strike. In response, the government of Fiji's pre-hearing brief asserts that almost all trade unions have continued in operation and are conducting collective bargaining. Please describe what you understand to be the challenges faced by the trade unions affected by this decree, including their ability to represent workers in the companies covered. How did the regulations of the Essential National Industries (Employment) Decree of 2011 change the procedures for collective bargaining?**

The Essential National Industries (Employment) Decree 2011 maintains the freedom to associate and the right to collectively bargain. However, the rights exercisable under the Decree are subject to certain conditions and restrictions. This is the case with essential industries laws in virtually all other countries that have adopted it, including the United States. The Decree states that the principles of good faith outlined in Division 1 of Part 16 of the Employment Relations Promulgation 2007 shall apply to all negotiations and interactions between the employer and the registered representative under the Decree. A requirement to bargain in good faith is common to many jurisdictions, and it is right that this is included in the Decree. The principles of "good faith" are outlined in detail in the Employment Relations Promulgation 2007, and the Decree applies them to negotiations between employers and worker representatives in designated corporations. They include for example, timely meetings, consideration of, and response to proposals by either party, provision of necessary information, and not undermining the other party.

3. **The AFL-CIO pre-hearing brief notes that some union leaders have been prohibited from participating in tripartite dialogue processes, such as at the ILO annual meeting. Since last June, have you seen any greater willingness on the part of the Government of Fiji to allow labor leaders to participate in such discussions?**

The Government's encouragement of the participation of all tripartite partners is evident in the fact that a tripartite delegation, consisting of representatives of the Government, employers, and workers attended the 2012 International Labour Conference in Geneva.

Along with the Government of Fiji's pre-hearing brief was an appendices section, which is available at www.mit.gov.fj. Appendix Two is titled "*Employment Relations Advisory Board (ERAB) and its Subcommittee's Work (April – August 2012)*." This table details the dates that the tripartite Employment Relations Advisory Board (ERAB) was convened to start and to complete the review of all labour laws to ensure compliance with all ILO Conventions ratified by Fiji. Included in the table are the dates in which the ERAB Subcommittee

meetings were held, the agenda/ items discussed, those present in the tripartite meetings, and the resolutions reached by the ERAB and the Cabinet, where relevant.

As indicated in the table, the ERAB participants in these meetings included worker representatives, including Mr. Felix Anthony and Daniel Urai. Such indication is evidence that the Fijian Government indeed allows and seeks labor leaders to participate in all tripartite dialogue discussions. Thus, the statement by the AFL-CIO is incorrect.

4. **The Fijian government cited the Employee Relations Tribunal and Court (established in the Employee Relations Promulgation of 2007) as a place where employee-worker disputes are mediated or tried. How does the AFL-CIO or its Fijian trade union partners assess the work of the Employee Relations Tribunal and Court functions in resolving employee-worker disputes?**

The Employment Relations Tribunal was established under Section 202, Part 20 (Institutions) of the Employment Relations Promulgation 2007 and its jurisdiction is much wider than that of the former Arbitration Tribunal, which it had repealed. 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 it in writing as a binding award or decision. In adjudication proceedings, there is also a requirement for the Tribunal to provide mediation assistance to the disputing parties when the need arises.

The Employment Relations Court was 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 who is aggrieved by a decision of the Tribunal may appeal as of right or by leave to the Employment Relations Court. An appeal from the Employment Relations Court shall lie with the Court of Appeal.

The Mediation Unit is also an effective means of resolving employer/worker disputes and grievances as lawyers do not participate at the mediation level. The employer and worker themselves are directly involved in the mediation process. Below is a table demonstrating the high success rate of resolving disputes and grievances at the mediation level: 2008 – 75%; 2009 – 76%; 2010 – 78%; 2011 – 78%; and 2012 – 79%.

OUTCOME OF EMPLOYMENT CASES RECEIVED AT THE MEDIATION UNIT

YEAR	TOTAL RECEIVED	TOTAL MEDIATED	SETTLED	REFERRED TO TRIBUNAL	% SETTLED
2008	330	220	165	55	75%
2009	702	670	506	164	76%
2010	1045	1057	827	230	78%
2011	1209	1130	879	251	78%
2012	852	878	698	180	79%

Source: Mediation Unit, Ministry of Labour, Fijian Government

5. To your knowledge, have unions or labor-related non-Government organization (NGOs) been able to participate in a meaningful way in the deliberations on the new constitution or in the Government’s review of labor laws?

As detailed in the Government’s pre-hearing brief, the new constitution is being created through an inclusive national dialogue, led by a five-member Constitutional Commission. This process will result in Fiji’s first non-race based democratic elections in 2014.

The inclusive national dialogue nature of this new constitutional process makes it easier for all members of the Fijian society, including unions or labor-related non-Government organization (NGOs) to participate in a meaningful way in its formulation and consequent enactment. In fact, unions have been able to participate willingly and meaningfully in the deliberations on the new constitution. The Fiji Trade Union Congress made submissions to the Constitution Commission on 12 October 2012 (Appendix Fourteen at www.mit.gov.fj), the Fiji Mineworkers Union made submissions to the Constitution Commission on 3 September 2012 (Appendix Fifteen at www.mit.gov.fj), and the Fiji Island Council of Trade Unions made submissions to the Constitution Commission on 15 October 2012 (Appendix Sixteen at www.mit.gov.fj).

As per participation of unions in government’s review of labour laws, the ERAB Sub-Committee has been meeting since 23 July 2012 to examine all labour laws to ensure compliance with the ILO Conventions Fiji has ratified. There have been meaningful and thorough contributions from employer and worker representatives. The employer union represented was the Fiji Commerce and Employers Federation. The worker unions represented were the Fiji Public Service Association, Fiji Trades Union Congress, Fiji Sugar and General Workers Union, and National Union of Hospitality, Catering and Tourism Industries.

Therefore, the Government’s goal to review of all labour laws is being taken in the same inclusive manner as the constitutional national dialogue process.

Conclusion

The Fijian Government wishes to thank the U.S. Trade Representative for providing this opportunity to respond to the questions posed by the GSP Subcommittee during and after the Public Hearing. The Government, at its highest levels, looks forward to continuing an informal dialogue with U.S. officials on these issues, along with the provision of training and targeted capacity building, which will lead to the positive closure of the GSP case.

Appendices – found at www.mit.gov.fj
(Listed in order of mention in Post-Hearing comments)

1. Press Statement by the Fijian Government on Wage Increase.
2. Fiji-U.S. Business Council Letter of Support
3. Fiji Commerce and Employers' Federation Letter of Support
4. ILO Fact-Finding Mission Terms of Reference proposed by the ILO
5. ILO Fact-Finding Mission Terms of Reference proposed by Fijian Government
6. Letter from Mr. Pramod Rae, National Secretary of the Fiji Bank and Finance Sector Employees Union regarding the Terms of Reference from the Fijian Government
7. Blank application for Permit for Public Meeting or Procession
8. Chart indicating the Work and Attendees of the ERAB and its Subcommittee between 11th April 2012 and 13th August 2012
9. Statute creating the ERAB (<http://www.labour.gov.fj/erp2008/ERP/A4.pdf>)
10. Minutes of the ERAB Sub-Committee meeting in which the Public Order (Amendment) Decree was discussed (Pages 7 to 14, and 16 of Annexure S of the ERAB Sub-Committee meeting minutes)
11. Comments by Fiji Police Force, 23rd October, 2012
12. Fiji Sugar Corporation LTD (FSC) letter
13. Comments by the Fiji Police Force, 18th Sept., 2012
14. Fiji Trade Union Congress Submission to the Constitution Commission on 12 October 2012
15. Fiji Mineworkers Union Submission to the Constitution Commission on 3 September 2012
16. Fiji Island Council of Trade Unions Submission to the Constitution Commission on 15 October 2012
17. List of Websites of the Laws distributed to the GSP Subcommittee at the Public Hearing

