

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)
INTERNATIONALLY RECOGNISED CORE
LABOUR STANDARDS IN FIJI
REPORT FOR THE WTO GENERAL COUNCIL REVIEW
OF THE TRADE POLICIES OF FIJI
(Geneva, 25 and 27 March 2009)

EXECUTIVE SUMMARY

Fiji has ratified the eight core ILO labour Conventions. However in view of legal restrictions on the trade union rights of workers, discrimination, and other legal restrictions, further measures are needed to comply with the commitments Fiji accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations, and in the ILO Declaration on Fundamental Principles and Rights at Work.

Fiji has ratified both the ILO Convention on the Right to Organise and Collective Bargaining and the ILO Convention on Freedom of Association and Protection of the Right to Organise. There have been major improvements in the Fijian labour legislation allowing greater respect of trade union rights. However trade unions still face difficulties when organising workers and, like other civic organisations, their freedom of speech is restricted by the provisional government formed following the 2006 military coup.

Fiji has ratified both ILO core Conventions on equal remuneration and discrimination. In practice however women earn less than their male counterparts and they are overrepresented in informal and unprotected work. More efforts are needed to fight income disparity between ethnic groups and to promote decent work, especially in rural areas, where Indigenous Fijians are overrepresented.

Although Fiji has ratified both ILO core Conventions on child labour, there are important shortcomings in the current legislation. The government needs to strengthen legal protection from hazardous work for children and young persons in particular. Systematic monitoring of child labour is lacking although currently, efforts are being made to gather data to gauge the extent of child labour in Fiji.

Fiji has ratified both ILO Conventions on forced labour. Forced or compulsory labour is not a widespread phenomenon in the country but the government should monitor the issue of trafficking in human beings more closely.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN FIJI

Introduction

This report on the respect of internationally recognised core labour standards in Fiji is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "*We renew our commitment to the observance of internationally recognised core labour standards.*" The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC affiliate in Fiji is the Fiji Trades Union Congress (FTUC). About a third of the workforce is unionised. Statistics indicate that the total labour force amounted to 120,012 employees both in salary and wage categories, of which 78,935 were males and 41,077 females. The majority of the unionised workforce are employed in the public service, tourism and services, the sugar industry and the manufacturing sector.

I. Freedom of Association and the Right to Collective Bargaining

In 2002 Fiji ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise. In 1974 Fiji had ratified Convention No. 98 on the Right to Organise and Collective Bargaining.

Trade union rights in law:

The Fijian Constitution provides for freedom of association. However, the Constitution also foresees the possibility of enacting legislation applying restrictions in the public interest or to protect national security.

From a legal perspective workers have the right to form and join trade unions as well as to organise and bargain collectively. In October 2007, after ten years of campaigning by the unions, the new "Employment Relations Promulgation 2007" (ERP) came into force. The new Promulgation cannot, properly speaking, be called a law since it was enacted under a military regime. While making significant progress in several areas, numerous provisions of the ERP are still not in line with Conventions 87 and 98.

The new legislation seems to have solved the problems previously associated with the registration of unions. Application for registration is now mandatory and, in order to avoid excessive delays, the new regulations provide for a maximum period of 21 days between receipt of the application for registration and the decision of the Ministry of Labour. The Registrar's discretionary powers to reject the merger of unions have been limited to those cases where the proposed rules for the merger contravene the provisions of the ERP or where one of the union's aims is unlawful. However, the Registrar retains the discretionary power to refuse to register a union with an inappropriate name or to cancel the registration of a trade union in the cases provided by the law.

This has led the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) to request the Fijian government to establish appropriate protective measures to prevent undue interference from the Registrar. Trade unions now have the right to appeal to the Employment Relations Tribunal against the decisions of the Registrar.

Certain categories of employees such as those working in prison or in correctional services are excluded from the scope of the EPR. Yet according to the provisions of the Conventions they should be entitled to the right to organise.

The new legal arrangements contain a comprehensive prohibition of acts of antiunion discrimination for all types of trade union activity, at all stages of the employment relationship, including recruitment. The Employment Relations Tribunal and the Employment Relations Court have the power to order remedies including reinstatement, reimbursement and/or compensation for humiliation, loss of benefit or loss of property. This is a clear improvement to the previous legislation.

The ERP promotes and encourages collective bargaining. It sets out a duty of good faith on both the union and the employer bargaining for a collective agreement. In 2008, the Employment Relations Advisory Board, a tripartite body, developed a Code of Good Faith to provide guidance on the application of this duty. The Tribunal and the Court may have regard to this Code.

The right to strike is recognised for all matters except those relating to trade union recognition. Under the ERP, the conditions governing the right to strike remain unchanged in relation to previous legislation, and unions are required to give 21 days' notice to the Registrar of Trade Unions (who reports to the Minister of Labour) before putting a strike to the ballot.

The strike is allowed if more than 50 per cent of the paid-up members vote in favour. This applies to all unions, in both "essential" and "non-essential" industries. With respect to "essential" industries, however, a further 28 days' notice must be given to the Registrar, and organisers must provide the Ministry of Labour with information concerning the date, time and location of the strike, together with a list of participants. The requirement that more than 50 per cent of the paid-up members vote in favour of the strike is too restrictive and is a substantial obstacle to the exercise of the right to strike. The ILO Committee of Experts (CEACR) has therefore requested the government to modify this requirement so that only the votes cast in the strike ballot have to be taken into account.

The list of "essential" industries has been reduced and is now broadly in line with the terms of ILO Convention 87.

The Minister of Labour has the right to declare existing or proposed strikes unlawful. If he or she does so, the dispute is referred to a Permanent Arbitrator and workers are obliged to return to the workplace. This power effectively enables the government to restrict the exercise of the right to strike. Trade unionists can face criminal charges and risk imprisonment if they persist with strike action. There is no adequate judicial protection to prevent abuses and the imposition of disproportionate penalties on trade unionists.

The ERP maintains the possibility of imposing compulsory arbitration at the request of one of the parties or of the Ministry of Labour when the strike is not considered to be in the public interest or could jeopardise the economy. This runs counter to ILO Convention 87, which only allows compulsory arbitration to end a strike in very limited circumstances or with the agreement of both parties.

Furthermore there are no provisions prohibiting employers from hiring strike breakers.

Trade union rights in practice:

Fiji is currently run by a civilian government resulting from a coup d'état and that has no democratic legitimacy. Freedom of speech and press is restricted. Although some civic organisations are granted permits to assemble, permits for political demonstrations and marches are denied. The police commissioner and the ombudsman have discouraged public dissent and politically oriented public gatherings by warning that security forces would actively enforce the public order laws.

Under these conditions, the Fiji Trades Union Congress (FTUC) has continued its efforts to re-establish democracy. Several strikes took place in 2007, including those by teachers, nurses and other public sector employees who demanded the implementation of salary increases that had been promised by the government in 2006 and revoked by the new regime after the coup. The provisional government accused the strikers of pursuing a political agenda that undermined its policies. Permission to hold several demonstrations linked to the strikes was denied, and the police broke up several strike pickets. The Health Minister of the provisional government tried to recruit retired nurses to replace those on strike.

In March 2007, using the state of emergency rules, the police disrupted the annual meeting of the National Union of Public Workers and briefly detained its general secretary and its lawyer.

In December 2008 the president of the Fijian Teachers Association, was suspended from his position and charged with disciplinary offenses after making public statements critical of the interim government. The president of the Civil Servants Union received threats after making similar critical statements.

In addition, trade unions still face major difficulties in organising workers, especially migrant workers and those in the export processing zones (EPZs). The FTUC has highlighted the fact that many different means are being used to discourage workers in EPZs from forming unions and that fear of reprisals from the employers is one of the main obstacles. The FTUC reports similar difficulties and obstacles in organising workers brought to Fiji by their employers.

According to trade union sources, employers make every effort to offer new employees seemingly advantageous employment terms, particularly in the case of highly qualified and graduate staff, in order to promote individual employment contracts.

In May 2008, 30 workers of the company Haroon Holdings were sacked after joining the Building, Construction and Timber Workers Union. The Union has filed a complaint with the Ministry of Labour.

Conclusions:

There have been major improvements in the Fijian labour legislation allowing greater respect of trade union rights. In practice trade unions still face difficulties when organising workers and, like other civic organisations, their freedom of speech is restricted by the provisional government formed following the 2006 military coup.

II. Discrimination and Equal Remuneration

In 2002, Fiji ratified both ILO Convention No. 100 (1951) on Equal Remuneration and ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation).

The Employment Relations Promulgation of 2007 provides that “every employer shall pay male and female workers equal remuneration for work of equal value”. Part 9 of the Promulgation contains further provisions with a view to “ensuring equal rates of remuneration for work of equal value”. Section 78 (“unlawful discrimination in rates of remuneration”) provides that “an employer must not refuse or omit to offer or afford a person the same rates of remuneration as are made for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description for any reason including the gender of that person”. However according to the CEACR the concept of “work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and should also encompass work that is of an entirely different nature, which is nevertheless of equal value. Accordingly, the Committee asked the Government to amend section 78 of the Employment Relations Promulgation so as to bring it into conformity with the Convention

The Employment Relations Promulgation (ERP) further requires employers to develop and maintain a policy to prevent sexual harassment in the workplace. It addresses sexual harassment by the employer or its representative, as well as by co-workers and covers both quid pro quo and hostile environment harassment. A National Policy on Sexual Harassment has been developed under the ERP and is one of the accompanying legislations of the ERP.

Women are generally paid less than men for similar work. According to the Asian Development Bank, only 30% of the economically active female population is engaged in the formal economy, and a large proportion of these women worked in semi-subsistence employment or self-employment.

According to a recent study “Gender issues in employment, underemployment and income in Fiji” women carry out 52% of total work in the economy, but receive only 27% of the total income. The study also found that 44% of the female workforce earn a salary below the poverty line (using \$60 per week as a reference) while 32% of the male workforce is in the same situation.

Tensions exist between Indigenous Fijians, who make up 52% of the population, and other ethnic groups. About 42% of the population is Indo-Fijians. According to the last census, Indigenous Fijians work principally in rural based activities and represent 60% of agricultural workers. They are also overrepresented in the tourism industry as most hotels are located on native land and employ local villagers (mostly as low paid workers) as part of the lease agreement. Only a third of economically active Indigenous Fijians are in permanent employment and receive a wage or salary.

Indo-Fijians and other ethnic groups are overrepresented among the professional, and technical workers (55%), administrative and managerial workers (74%), and the sales force (74%). According to the 1996 Census, 64% of the managerial positions are occupied by Indo-Fijians, 15% by Indigenous Fijians and 10% by other ethnic groups.

These employment disparities are reflected in household income disparity, and according to a 1997 UNDP Poverty Report Indigenous Fijian households earned 30% less than Indo-Fijian households did.

Conclusions:

Although legislation prohibits discrimination on the labour market, in practice women earn less than their male counterparts and they are overrepresented in informal and unprotected work. More efforts and money are required to effectively tackle gender discrimination in employment and remuneration. Likewise more needs to be done to fight income disparity between ethnic groups and to promote decent work, especially in rural areas, where Indigenous Fijians are overrepresented

III. Child Labour

In 2003 Fiji ratified ILO Convention No. 138 (1973), the Minimum Age Convention and in 2002 Fiji ratified Convention No 182 (1999), the Worst Forms of Child Labour Convention.

Under the law children under age 12 may not be employed except in a family-owned business or agricultural enterprise. Children between ages 12 and 15 may be employed on a daily wage basis in nonindustrial work not involving machinery, provided they return to parents or guardian every night.

This is not in conformity with ILO Conventions.

Indeed according to Article 7 of the Convention, only children from 13 years of age may be permitted to perform light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school, or their participation in vocational orientation or training programmes. Furthermore by virtue of Article 2 of the Convention, no one under the age specified upon ratification shall be admitted to employment or work in any occupation. The government of Fiji specified the age of 15 years when it ratified. As a result the CEACR has asked the government to put its legislation in conformity with the Conventions.

Under the terms of the Employment Ordinance, no child or young person shall be employed in any work which, in the opinion of the proper authority, is injurious to health, or is dangerous or otherwise unsuitable. However the national legislation does not determine the types of work that are injurious, dangerous or unsuitable. The CEACR has therefore requested the Government to provide a list of activities and occupations prohibited to persons below 18 years of age and information concerning the consultations held with relevant organisations of employers and workers on this subject. Up to this day the Government has failed to respond.

Currently, efforts are being made to conduct a survey and gather data to gauge the extent of child labour problems in Fiji. Unofficially it is seen as a major issue affecting the literacy rate and contributing to dropping out from schools at a very early age. Recommendations have been made to set up a data base system that could link employer organisations and unions in terms of employment figures of those below the legal age to work.

The Government had created a Committee for the Elimination of Child Labour, which includes individuals from the Ministry of Labour, the Ministry of Women, Social Welfare, and Poverty Alleviation, the Fiji Police Force, and UNICEF, as well as media and employers' and workers' organisations. However

there is no comprehensive government policy to eliminate the worst forms of child labour.

According to the government there has not been a case of the worst forms of child labour in Fiji. According to national sources however inadequate enforcement of existing child labour regulations failed to fully protect children from workplace exploitation. Youths from rural areas often end up in informal form of work, including shoe shining work, casual work, or even prostitution. There are also reports of commercial sexual exploitation of children.

Conclusions:

There are important shortcomings in the current legislation on the prohibition of child labour in Fiji. The government needs to strengthen the legal protection of children and young persons in particular from hazardous work. A systematic monitoring on child labour is lacking and data is effectively non-existent, showing the importance of cooperation and between employers' and workers' organisations.

IV – Forced Labour

In 1974 Fiji ratified both Convention No. 29 the Forced Labour Convention and Convention No. 105, the Abolition of Forced Labour.

The Constitution prohibits forced or compulsory labour, including by children.

The ILO CEACR has noted section 126 of Marine Act No. 35, 1986, under which a seafarer who, during an international voyage, wilfully and persistently neglects his or her duty or disobeys lawful commands or combines with other seafarers for the same purpose or for impeding the navigation of the vessel, is liable to imprisonment for up to two years. However this provision is not in conformity with the Convention as the imposition of penalties of imprisonment involving compulsory labour for breaches of labour discipline or participation in a strike is incompatible with the Convention, except for offences which endanger the safety of the vessel or the life or health of persons.

In practice there are reports of children being trafficked for the purpose of sexual exploitation (See chapter III on Child labour).

Conclusions

Although forced labour is not a widespread phenomenon in Fiji, the government should monitor more closely the issue of trafficking in human beings.

Recommendations

1. The government of Fiji needs to put its legislation into conformity with ILO Conventions on trade unions' rights.
2. The government should establish appropriate protective measures to prevent undue interference in trade union activities from the Registrar.
3. Staff working in prison or correctional services should have the right to organise.
4. The requirement that more than 50 per cent of the paid-up members vote in favour of a strike is too restrictive and is a substantial obstacle to the exercise of the right to strike. The legislation should be amended accordingly.
5. The government should ensure that no compulsory arbitration at the request of one of the parties or of the Ministry of Labour can be imposed to end a strike, except under the strict conditions provided for by the Convention.
6. Legislation should be enacted to prohibit employers from hiring strike breakers.
7. The government of Fiji should actively promote collective bargaining including in EPZs.
8. The legislation against discrimination needs to be amended so as to provide for the ILO concept of "equal pay for work of equal value".
9. The government need to increase efforts and budget to tackle gender discrimination in employment and remuneration so as to improve women's position on the labour market.
10. The government needs to fight income disparity among ethnic groups by promoting decent work for all.
11. The government of Fiji must amend its legislation so as to make sure that children below 15 years of age are not admitted to employment.
12. The government of Fiji must strengthen the protection of children and young persons from hazardous work by determining, after consultation with the social partners, a comprehensive list of hazardous occupations and activities.
13. The government of Fiji should establish systematic monitoring on child labour with special attention to the informal sector and low-income communities.
14. The government of Fiji must investigate allegations of children being trafficked.
15. In line with the commitments accepted by Fiji at the Singapore, Geneva, and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Fiji should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.

16. The WTO should draw to the attention of the authorities of Fiji the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Fiji in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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