COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS: RESPONSE REPORT ON MINIMUM AGE CONVENTION, 1973 (NO. 138) FIJI (RATIFICATION: 2003)

We refer to the citation on Fiji in the '*Application of International Labour Standards 2010 (I), International Labour Conference, 99th Session, 2010*', page 794, relating to the Observations concerning the submissions to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (Article 19 of the ILO Constitution).

For convenience we have reproduced below the citations on Fiji followed by the Fiji Government response:

"Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. The Committee notes the information provided by the Government in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that a Project Advisory Committee on Child Labour (PAC) with tripartite representation has been established, and that PAC will lead efforts towards developing a Fiji National Action Plan to Eliminate Child Labour. With this purpose, the Committee notes that the first National Child Labour Forum was held, and that the Ministry of Labour will soon hire a consultant to facilitate the strengthening of institutional planning to better formulate and implement child labour strategies and effectively enforce child labour legislation.

The Committee encourages the Government to develop and adopt the Fiji National Plan to Eliminate Child Labour, and requests the Government to provide information in this respect, particularly regarding the programmes of action that are established and the results achieved in terms of the progressive elimination of child labour."

FIJI GOVERNMENT RESPONSE

Government is pursuing vigorously the agenda of abolition of child labour in Fiji. The Ministry of Labour is collaborating with the ILO TACKLE Fiji project hosted by the ILO Office for the Pacific Island Countries based in Suva. The ILO TACKLE project is the Secretariat of the PAC which comprises membership of Government (Ministries of Labour, Education and Social Welfare, Fiji Bureau of Statistics), Fiji Employers Federation and the Fiji Trades Union Congress. There is a total commitment from the members of the PAC for the effective abolition of child labour. The PAC's programme of action had started off with the First National Child Labour Forum in December 2008 followed by the following:

- Training of the representative of the tripartite partners at the ILO-ITC Turin, Italy from September 2008 to November 2009 on Child Labour and Education (Ministry of Education and Fiji Teachers Union), International Labour Standards Reporting: Child Labour Conventions 138 and 182 (Ministry of Labour and Fiji Employers Federation), Labour Dimension of Trafficking in Human Beings with particular focus on Children (Department of Social Welfare and Fiji Police Force Juvenile Bureau), Analysing Data on Child Labour and Youth Employment (Fiji Islands Bureau of Statistics), Labour Dimension of Human Trafficking in Children (Fiji Trades Union Congress and Save the Children Fiji)
- Workshop on the Preparation of Baseline Research on Child Labour - March 2009
- Legislative Review on the application of ILO Conventions 138 and 182 – May to September 2009
- Baseline Research on Child Labour on five specific areas (agriculture, schools, street kids, informal settlements, commercial sexual exploitation of children) from June to November, 2009
- Child Labour Divisional Training Programmes held throughout the Administrative Divisions in Fiji – September 2009. This was an awareness programme on Child Labour for the personnel of the Ministries of Labour, Education, Social Welfare, employers and workers
- Second National Child Labour Forum – March 2010. This was organised as a follow up to evaluate the action plan formulated during the first forum in 2008. It was also to receive the official findings of the Child Labour Survey/Research. The summary of findings could not be presented in totality by the Research Coordinator and now awaiting formal presentation to the next PAC for adoption and for further actions.
- Establishment of the Child Labour Unit in the Ministry of Labour for dedicated child labour issues – June 2010 with technical assistance of ILO/IPEC
- Capacity building by ILO for the Ministry of Labour's dedicated Child Labour Inspectors. The date is yet to be decided by the next meeting of PAC
- Process for determination of Hazardous Work and Light Work to be put into National Policies or Legislation under the principal legislation of the Health and Safety and Work Act, 1996 (HASAWA) and the Employment Relations Promulgation, 2007 (ERP)
- Inclusion of a Child Labour Sub-Committee under the Government's National Coordinating Committee on Children administered by the Department of Social Welfare.

"Article 3, paragraphs 1 and 2. Minimum age for admission to, and *determination of, hazardous work*. In previous comments, the Committee noted that, according to section 40(1) of the Employment Relations (Administration) Regulations 2008 (Employment Relations Regulations), a child under 18 years must not be employed or permitted to be employed in situations of direct hostilities, in any work for which the child has little capacity, in any work which is hazardous to the child's health, mental, spiritual or social development and in an environment which subjects the child to physical harm, psychological torture, any form of neglect, torture, any form of cruel, inhuman or degrading treatment, or which does not foster the health, self-respect and dignity of the child.

The *Committee also observed that section 95(2) of Employment Relations Promulgation No. 36 of 2007 (Promulgation No. 36 of 2007) provides that the Minister of Labour may, after consulting the National Occupational Health and Safety Advisory Board, and by order in the Gazette, declare any employment or workplace to be prohibited or restricted on the ground that it is injurious to health or is hazardous, dangerous, or unsuitable, including attendance on machinery, working with hazardous substances, driving motor vehicles, heavy physical labour, the care of children, or work within security services.*

The *Committee observed that no such list of hazardous employment or work appeared to have been declared by the Minister of Labour, and requested the Government to provide information on the progress made in this regard.*

The Committee notes the Government's *statement that this matter will be referred to the tripartite Employment Advisory Board for consideration, and this body will advise the Minister for Labour Industrial Relations and Employment in the creation of a list of hazardous activities prohibited to persons below 18 years of age."*

FIJI GOVERNMENT RESPONSE

The Employment Relations Advisory Board (ERAB) had met on the 9th of October 2009 and decided that it be referred to the National OHS Advisory Board to clarify the issue of the definition of hazardous work for children.

On the 14th of May 2010 the National OHS Advisory Board met to discuss the paper prepared by the National OHS Advisory Board Secretariat on the list of hazardous workplaces or employment which is likely to harm the health and safety and morals of children and a copy of the board paper is attached herewith (**Appendix A**) for information. This paper had been referred to an OHS Advisory

Sub-committee on to look at the content of the list of hazardous workplaces or employment that had been identified as not suitable for children to work in and further deliberate on the list with all the stakeholders before the paper is referred back to the Board for consideration.

The OHS Advisory Sub-committee will deliberate further on the list on the 4th of June 2010 before it is retabled to the National OHS Advisory on the 24th of June 2010. This OHS Advisory Sub-committee is basically a tripartite stakeholder forum appointed by the National OHS Advisory Board to deliberate further on the discussion papers tabled to the Board after consultation with all the stakeholders regarding policy changes and directions. In this particular case the sub-committees term of reference is to gather all information's regarding

The discussion paper had considered the comments of the Committee to ensure that all the recommendations are considered when compiling the list of hazardous activities and occupations prohibited to persons below 18 years of age, and will conform to the requirements in the Health and Safety at Work Act 1996.

Once the Board has approved the draft it will then advise the Minister to declare by order in the Gazette, the list of employment or workplace to be prohibited or restricted on the ground that it is injurious to health or is hazardous, dangerous, or unsuitable, including attendance on machinery, working with hazardous substances, driving motor vehicles, heavy physical labour, the care of children, or work within security services.

It is our intention that by the next report the Government of Fiji would have completed all the required work necessary to ensure that the list of list of hazardous activities and occupations prohibited to persons below 18 years of age are gazetted through a Ministerial Order.

"The Committee also notes the Government's indication that *a Ministerial Order will be developed under section 95(2) of Promulgation No. 36 of 2007, after consultation with both workers' and employers' organizations and other relevant stakeholders. This Order will outline the list of hazardous activities and occupations prohibited to persons below 18 years of age, and will conform to the requirements in the Health and Safety at Work Act 1996.* ***The Committee requests the Government to refer to Paragraph 10(1) of the Minimum Age Recommendation, 1973 (No. 146), according to which in determining the types of employment or work to which Article 3 of this Convention applies, full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes (including ionizing radiations), the lifting of heavy weights and underground work. The Committee also requests the Government to***

provide a copy of the list of the types of work determined to be hazardous for persons under 18 as soon as it is adopted."

<u>FIJI GOVERNMENT RESPONSE</u>

Government is fully committed to its undertaking on the development of the list of the types of hazardous work. With this in mind, it has scheduled the meetings of both the tripartite National Occupational Health and Safety (NOHSAB) and the Employment Relations Advisory Boards (ERAB) for the year 2010. The Boards have met during the first quarter of 2010 and at the time of updating this report (May 2010), a special sub committee of the NOHSAB has developed the first draft list and will discuss further on 4th June 2010. From the NOHSAB than it will be discussed further with the ERAB which is the apex advisory body and forum on all labour and employment relations matters to the Minister for Labour. If appropriate, the NOHSAB may advise the Minister on the application of section 95(2) of the Promulgation in the issuance of the Ministerial Order on the list of hazardous work or workplaces. With no specific list of hazardous work at the moment, the provisions of the Health and Safety at Work (General Workplace Conditions) Regulations, 2003 relating to hazardous work have been observed generally.

"Article 7, paragraphs *1 and 3. Light work and determination of light work*. The Committee previously noted that, according to section 93(2) of Promulgation No. 36 of 2007, children between 13 and 15 years of age may be employed in light work.

The Committee requested the Government to take the necessary measures to ensure that, in the absence of a definition of light work in the legislation, the competent authority determines what is light work and prescribes the number of hours during which, and the conditions in which, light work may be undertaken.

The Committee notes the Government's acknowledgement of the Committee's concern on the lack of determination of what activities constitute light work, and notes the Government's statement that this matter will be referred to the Employment Relations Advisory Board for consideration.

The Committee also notes the Government's indication that, currently, the provisions regulating the hours a child engaged in light work may work are the same as those which apply to children over 15 for non-light work. Pursuant to section 97 of Promulgation No. 36 of 2007 and section 41 of the Employment

Relations Regulations, no child may be employed for more than eight hours a day.

The Committee is of the view that work consisting of up to eight hours per day, on any day, as allowed by Promulgation No. 36 of 2007, does not constitute light work. The Committee draws the Government's attention to paragraph 13(b) of the Minimum Age Recommendation, 1973 (No. 146), which states that in giving effect to Article 7(3) of the Convention, special attention should be given to the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training, for rest during the day and for leisure activities.

The Committee therefore hopes that the Government will take the necessary measures to determine the number of hours, as well as the types of activities, which constitute light work. The Committee further requests the Government to supply a copy of the list of the types of light work permitted for children between the ages of 13 and 15, once adopted. "

FIJI GOVERNMENT RESPONSE

The Government is committed to ensuring that necessary steps are taken to determine the number of hours, as well as the types of activities, which constitute light work. In view of this recommendation, the government will put in action plan for now till the next report to ensure that the recommendations by the Committee of Expert for the determination of light work for children are in place.

The action plans includes formation of advisory committee to look at the Committees of Experts recommendations and formulate a draft guideline to determine what is the definition of light work and the list of activities which may constitute light work in line with the guidelines set out by the Committee of Expert but to be tailor-made to suit Fijis working conditions and meeting the international guidelines. A copy of the list of the types of light work permitted for children between the ages of 13 and 15, will be supplied to the Committee once adopted by the Board and approved by Government through Cabinet Decision.

Government takes note of the Committee's concern on the strict limitation of the hours of work for the children between 13 to 15 years of age. As stated above, both the tripartite Boards (NOHSAB and ERAB) are working hand in hand to develop not only the list of hazardous work but also the list of Light Work as provided for under the Convention. Since the two Boards have not concluded on this agenda, Government will be in a better position to give an update in the submission of its next report.