

Industrial Dispute Resolution Mechanisms in Fiji: Before and Now

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Abstract

The current global employment and industrial relations environment is heavily influenced by the 'new right wing' ideology. In Fiji, however, it is believed that the new labour legislation put in place in 2007, is pro-worker and provides strong protection for individual workers and trade unions. This article utilises the comparative industrial relations framework to review, examine and critically analyse the Dispute Resolution Mechanism processes under the Employment Relations Promulgation (2007) with the provisions under the legislation which the ERP replaced, the Trade Disputes Act (1973) and its subsequent amendment by the Trade Disputes Act (Amendment) Decree 1992.

Introduction

Harmonious employment and industrial relations is a desired goal of employers, trade unions and the state in any country. Workplace grievance and disputes are bound to happen and hence there must be appropriate mechanism in place to solve them. This paper uses the comparative framework to review, examine and analyse

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Dispute Resolution Mechanisms (DRM) under the Employment Relations Promulgation (ERP) (2007) and the Trade Disputes Act (1973) and the Trade Disputes Act (Amendment) Decree 1992.

So far scholarly material on ERP (2007) is scant. There are four unpublished Master degree theses. Goundar (2007) examined the employment relations and dispute resolution mechanism in the Fiji Police Force which had passing reference to the ERP as the ERP does not cover industrial relations issues in the Fiji Police Force. Lako (2008) carried out a section by section analysis of the ERP. Narayan (2009) examined the dispute resolution mechanism in the Fiji Sugar Industry, while Naidu (2009) examined the employer and manager awareness and knowledge of the provisions of the ERP (2007). Prior to the law coming into effect Chand (2006) had done an exhaustive analysis of the then Employment Relations Bill.

This study relies of relevant primary documents like laws (Acts, decrees and promulgations), Hansard reports/parliamentary speeches, documents from employers associations, documents from trade union associations, newspaper articles, and websites. These were supplemented by face-face interviews with relevant stakeholders (Ministry of Labour officials, Tribunal officer, chief mediator, mediators, employers, International Labour Organization (ILO) officials, trade union officials and employees). A number of seminars and workshops on ERP (2007) also provided useful information on the ERP.

Brief Background of Industrial Relations Legislation

Since independence, Fiji has enacted various industrial relations legislation to address industrial relations issues. As a British colony, its early industrial relation legislation was the adopted British industrial relations legislation. In early 1970s, the independent government enacted two main industrial relations legislation, namely the Trade Dispute Act (1973) and the Trade Union Recognition Act (1976). The Trade Disputes Act was the principal legislation to regulate industrial relations disputes. For twenty years, industrial relations disputes were solved via the DRM provided for in the Trade Disputes Act.

The first phase of reform in industrial dispute resolution mechanism came in 1992, when the post-1987 coup government amended the Trade Disputes Act through the Trade Disputes Act (Amendment) Decree 1992. This amendment was universally criti-

cised, including by the International Labour Organisation. In 1996, the Rabuka government continued hired a New Zealand consultant, Stan Williams, to revise and overhaul the industrial relations legislation in Fiji.

The eventual outcome of this process which began as a review of the entire industrial relations legislation was the Employment Relations Promulgation (2007). The latter is based on industrial relations principles borrowed from UK, New Zealand and Japan. The Employment Relations Bill was taken to the Parliament after the 2000 terrorist coup, where the government, overtly open to private sector and employer influence, resisted getting the original draft which was agreed to by the stakeholders, enacted. The Bill remained for the post 2006 coup government of Commodore Frank Bainimarama to be promulgated in 2007. The ERP (2007) has incorporated the eight core ILO Conventions and standards.

It was agreed by the principal stakeholders – the trade unions, the employer bodies, and the government, that the reform of the industrial relations legislation was over-due as the old Acts had a number of shortcomings. The ERP is based on ‘good-faith’ bargaining whilst the Trade Disputes Act was premised on adversarial industrial relations philosophy. The ERP has not only done away with the previous adversarial nature of employment relationship, but also intends to bridge the gap between the relationship between workers and employers through encouraging mutual trust, respect, dignity and fair dealing. However, some of the provisions of the ERP (2007) are being questioned by employment relations actors.

There are a number of differences between the DRM provisions of Trade Disputes Act (1973), Trade Disputes Act (Amendment) Decree (1992) and ERP (2007).

Definition: ‘Trade Dispute’, ‘Dispute of Right’, ‘Dispute of Interest’, ‘Employment Grievance’ & ‘Employment Dispute’

First difference relates to the definition of a ‘dispute’. The Trade Disputes Act (1973) defined a trade dispute as ‘...any dispute or difference between employers and employees, or between employees and employees or between employees and any authority or body, connected with the employment or non-employment, or with the terms of employment...’ The Trade Disputes Act (Amendment) Decree (1992) also termed a dispute as ‘trade dispute’, but demarcated it into two types namely; a ‘dispute of right’ and a ‘dispute of

interest’. It defined a ‘dispute of right’ as a ‘dispute concerning the interpretation, application, or operation of an existing collective agreement or any dispute that is not a dispute of interest’. It defined a ‘dispute of interest’ as a ‘dispute that arose with intent to procure a collective agreement or amendment clauses in an existing collective agreement or settle a new matter’.

The ERP (2007) distinguished ‘dispute’ into two types namely; individual ‘employment grievance’ and ‘employment dispute’. It defined an ‘employment grievance’ as a grievance that a worker can report to Ministry of Labour against their current employer or a former employer. AN ‘employment dispute’ is defined as ‘...a dispute that either a trade union or employer can report to the Permanent Secretary for Labour...’ (ERP s170(3)).

Scope: Coverage of Workers

The second difference relates to the types of workers that the legislation covered. Both the Trade Disputes Act (1973) and the Trade Disputes Act (Amendment) Decree 1992, covered unionized workers. They did not cover non-unionised workers. The latter, additionally, also excluded workers in the Fiji Sugar Industry. In contrast, the ERP covers all workers: non-unionized workers, workers in the Fiji Sugar Industry, part-time workers, casual workers and domestic workers. The ERP also gives the right to workers to choose between direct (individual) and indirect representation (via trade union) or both. This flexibility was not present in the older legislation or its 1992 amendment. Disciplined force employer – those employed in the military, police and prisons – are excluded from all the laws.

Who Can Report Employment Grievance or Employment Dispute?

The third difference relates to which industrial relations party can report the trade dispute to the Permanent Secretary of Labour. Under the Trade Disputes Act (s2), only the recognized trade unions or an employer could report a trade dispute to the Permanent Secretary for Labour. In contrast, under the Trade Disputes Act (Amendment) Decree 1992, both majority and minority trade unions and employers were allowed to report a trade dispute. The ERP (s111, 169) allows for both to report - an ‘individual worker’ can lodge an

'employment grievance' and a 'trade union' can lodge an 'employment dispute' with the Ministry of Labour.

The major advantage of the new provision under the ERP is such that it allows for a 'non-trade union member' to have recourse to the DRM. Individual employees had no remedy under the older laws. The justification was that every worker should have the liberty to report grievance and have access to the DRM. On this basis, the monopoly of trade unions on taking up disputes ended.

Some unions have seen this as a strategy by the state to reduce the trade union power base, thereby eventually reducing trade union density. Trade Union officials state that this provision was to encourage workers not to join trade unions (interviews with FTUC officials, January 2010). Some employers have also opposed this provisions because they do not want to be inundated with individual complaints reported by workers to the Ministry of Labour which would be time consuming and costly to solve these problems. The major employer grievance, however, seems to be the inclusion of non-unionised workers in the DRM.

Data shows that more employees are resorting to use the individual 'employment grievance' route to address the problem. Table 1 shows data for reported cases of 'employment grievance' and 'employment industrial disputes' during the first six months in 2009.

Table 1: Reported and Mediated Cases: January - June 2009

	Total Reported	Resolved		Referred to ERT	
		#	%	#	%
Employment Grievances	208	180	86.54	28	13.46
Employment Disputes	102	59	57.84	43	42.16
Total	310	239	77.1	71	22.9

Source: Data from Ministry of Labour.

During the first six months of 2009, employment grievances reported were almost twice the number of 'employment disputes'. This indicates that more workers are resorting to lodge complaints individually. Unionized workers also take this route because they see this as a fast and easier tract to solve their employment grievance (Interview with Labour Ministry Mediator, Mr Kunatuba). Of the 208 grievances reported in the first 6 months of 2009, 87% were resolved by mediation within the period. It is anticipated that report-

ing of individual employment grievances will rise as more workers become aware of this provision of the labour law. This will required the Ministry of Labour to provide additional mediators for the provision of the law to remain effective.

Table 1 also shows that for the six months of 2009, on average, 71% of all employment grievances and employment disputes were resolved by mediation. There was a higher success rate for resolution of 'employment grievance' through mediation (87%) than the resolution of 'employment disputes' through mediation (58%).

Grievance Procedures in a Worker's Employment Contract

The fourth difference relates to the provisions on employment grievance procedures in employment contracts. The ERP (Part 13) specifically states that all workers must have an 'employment contract' (whether individual or collective contract) issued by employers and the employment contract must contain a clause outlining the 'grievance procedure' in the organisation. The Trade Disputes Act (1973) and Trade Disputes Act (Amendment) Decree 1992 were silent on this.

The main reason behind this provision is to ensure that in the first place, an organization should be able to solve it's grievance at the organization level without resorting to the intervention of a third party. The state wants employers and employees to settle their grievances on their own by exhausting all internal DRM procedures before utilizing the publicly funded machinery for this purpose.

Exhaustion of 'Internal Grievance Procedures'

The fifth difference emerges from the provision of internal grievance procedures. The ERP requires the exhaustion of 'internal grievance procedures' within an organization before a grievance can be entertained by the Permanent Secretary for Labour. The ERP (s170(2)) states that the reporting party must justify and show, via documents, that the aggrieved that exhausted the organization's internal grievance procedures. The law provides for the time frame within which the employer needs to address the grievance raised.

The Trade Disputes Act (1973) and Trade Disputes Act (Amendment) Decree 1992, were silent on this requirement. Thus, in the past, some trade disputes were reported to the Permanent Secretary for Labour without fully been dealt by the 'internal grievance

procedures' within an organization. However, where there existed internal procedures, the Ministry required the unions to exhaust the internal procedures first.

Some union officials see the ERP provision as a way to delay dispute resolution because employers can drag the process for unto six months. By that time the worker could have left the organization in frustration. Furthermore, except for large organizations, most organizations do not have clear laid down written in-house grievance procedures. Most organizations have also not established 'Labour Management Consultative Committee' (LMCC). Establishing a LMCC is a requirement under ERP (2007). This Committee provides room for joint labour consultation, dialogue and problem solving between workers and employers. The logic behind the formation of LMCC was to have a more consultative workplace, aimed at reducing grievances and solve problems in-house. The idea is borrowed from Japan and Germany.

Time duration within which to report grievances or dispute

The sixth difference relates to the timeframe in which employment grievances and disputes are to be reported. Under the Trade Disputes Act (1973), no time duration was specified within which employers or trade unions had to bring a dispute for resolution in-house before reporting the matter to the Ministry for Labour. The Trade Disputes Act (Amendment) Decree 1992, however, specified a time of twelve months for this. The ERP (s.169) reduced this period 6 months. (Figure 3 in the Appendix shows the process of dispute resolution).

The lack of any provision in the original legislation on the period in which a matter had to be dealt with in-house, was seen as a problem; a majority of the trade disputes were left either unresolved or deadlock (Interview, Ministry of Labour). Employers in most cases exploited the loophole in the legislation by failing to respond to the process of settling disputes. The ERP provides for 6 months before the next DRM step may be activated by the aggrieved. This period intends to allow the parties to solve the problem via bargaining or negotiation and solve the grievance as soon as possible.

A related but new provision, which we note as the seventh difference, relates to the duration in which the reporting party is required to furnish copies of the reported employment grievance or dispute to the other party. The ERP (s169(3)) requires the reporting

party to provide an employment grievance or dispute to the other party within three days. The Trade Disputes Act did not have any such requirement, while the Trade Disputes Act (Amendment) Decree 1992 required that the party refer to matter to the other party 'without delay'. The new provisions regarding reporting of employment grievance and/or employment dispute under the ERP are designed to speed up dispute resolution.

Powers of the Permanent Secretary for Labour

The eight differences relates to the powers of the Permanent Secretary for Labour with regards to the discharge of duties when a dispute is reported to the Ministry of Labour. Under the Trade Disputes Act (s7), the Permanent Secretary for Labour had five options to pursue once he/she received a dispute: (a) accept the dispute, (b) reject the dispute, (c) refer the matter back to the parties, (d) refer to conciliation, and (e) appoint a Board of Inquiry. There was no amendment to this until the ERP. The ERP (s170(2)) limits the powers of the Permanent Secretary to two options: to either accept the grievance/dispute or to reject it. This is done to avoid unwarranted delay in decision making.

Another difference relates to the period in which the Permanent Secretary would have to decide on the options. Under the Trade Disputes Act, the decision was to be made within sixty days whilst under ERP this has to be done within thirty days.

Mediation Services: New Provision under ERP

The ERP has introduced 'mediation' in trade disputes resolution.² There was a provision of 'conciliation' in the Trade Disputes Act. This was the second step of solving trade disputes; under this all parties to a trade dispute had to go through a 'conciliation' process. The conciliation process was regarded as a failure, as most disputes were not solved at this level and had to be either voluntarily taken to the Arbitration Tribunal or declared as deadlocked.³ The

² Fiji is the first country in the Pacific to introduce mediation in trade dispute resolution provisions of industrial relations legislation

³ The Ministry of Labour also noted that in many cases, employers used the conciliation process to buy time and prolong the trade dispute (Interview, Tevita Kunatuba, Ministry of Labour, October 2009).

Trade Disputes Act (Amendment) Decree tried to address this problem by creating a 'dispute committee' through which all disputes of right. (Disputes of interest continued to take the route of 'conciliation' process). The 'dispute committee' comprised three members, one each nominated by the two parties, with the third member being an official of the Ministry of Labour.

The ERP replaced the 'Conciliation' and 'Dispute Committee' steps with a single 'mediation' mechanism.

Mediation is a major industrial relations institution development in Fiji and is the main DRM stage where most of the employment grievances and employment disputes are aimed for resolution. As shown in Table 1, during the first 6 months of 2009, 87% of all employment grievances and 56% of all employment disputes were resolved by mediation process. The mediation mechanism, thus, seems to perform well, as disputes are not only resolved, but are done so quite rapidly.

Under ERP, a 'Mediation Unit' has been established within the Ministry of Labour. This unit is resourced with a Chief Mediator and eight other Mediators. In September 2008, nine accredited mediators were appointed by government. Most of the mediators are former officials of Ministry of Labour and one from the Fiji Military Force. Amongst the nine mediators, two are females whose deal with 'sexual harassment' related cases. All mediators have been accredited from Australian Commercial Dispute Centre (ACDC) and Singapore Mediation Centre (SMC). The mediation mechanism is a point of entry for both employment grievance as well as employment dispute.

Employment Relations Tribunal

Under the Trade Disputes Act the Arbitration Tribunal, headed by a Permanent Arbitrator, was the highest decision making body on industrial disputes. The decision of the Permanent Arbitrator was final. The ERP (s202, 219) replaced the 'Arbitration Tribunal' with an 'Employment Relations Tribunal', and created an 'Employment Relations Court'.

There are four major differences between the Arbitration Tribunal (AT) and Employment Relations Tribunal (ERT). The first concerns the status and power of the ERT. The AT had the status of a high court; the ERT has the status of a magistrate's court. The ERT is for all purposes a Magistrate Court which is only authorised

to hear and adjudicate on industrial relations related matters. Matters from ERT can proceed to the Employment Relations Court (ERC). Thus the ERT is not the highest body; it is the ERC. Second, the ERT now consists of a three members as opposed to a single member AT. The ERT is headed by a Chief Tribunal and two other members who may not necessarily be legally qualified. The Chief Tribunal is appointed by the Judicial Services Commission whilst the other two members are appointed by the Minister for Labour. The Chief Tribunal must be a legal practitioner who has at least seven years of law practice and preferably have experience in industrial relations matters. Third, in addition to hearing all industrial relations related matters, the ERT has been authorized to deal with two other specific issues. First, it includes the hearing of all workmen's compensation cases under the provisions of the 'Workmen Compensation Act' (1965), and second, the ERT's role includes the hearing of cases and appeal against any notice issued under the Health and Safety at Work Act (1996). Both the 'Workmen Compensation Act' (1965) and Health and Safety at Work Act (1996) were not incorporated with the ERP (2007) and continue to exist on their own. The ERT, thus, has a wider jurisdiction. This expanded jurisdiction is aimed at bring a speedy resolution of workmen's compensation and health and safety in workplaces issues. Fourth, the ERT must decide within sixty days after completion of the hearing. The AT, on the other hand, had to make a decision within twenty eight days after completion of the hearing.

Both ERP and Trade Disputes Act, respectively, provide that the decisions made by the ERT and the AT can be retrospective, provided that they are not in conflict with any other law in Fiji.

The Employment Relations Court

The Employment Relations Court, also known as the Labour Court, is the final step in employment grievance and employment dispute resolution. The Labour Court provides an opportunity for the grieving party a chance for further redress in case it is not happy with a decision made by the ERT. The Labour Court is a specific division of the high court empowered to deal only with industrial relations matters. Its decisions are at par with other divisions of the High Court.

Even though the ERP was promulgated in October 2007, the

Employment Relations Court was not established until July 2009.⁴ It was, on establishment, serviced by a Family Court judge and not an industrial relations specialist as it is intended by the ERP (2007). During 2009 only two cases were referred to the Employment Relations Court.

If a party is not happy with the decision of the Labour Court, it can appeal to the next level, which is the Court of Appeal (ERP, s245). On the institution of Labour Court, two issues emerge that need discussion. The first is whether litigation, which may most likely involve lawyers, is the best way to solve industrial disputes. Evidences from other countries show mixed results. In New Zealand and Australia Labour Courts have functioned well, but in UK and Ireland they have not functioned so well (Balnave, et al 2007:10). The second issue concerns the role of courts. Given that some industrial relations matters have clear political leanings, should a court intervene in this matter. Evidence from other countries show that judges can use their power to intervene in cases of legal strikes and invoke 'injunctions' or issue 'restraining orders' to serve the interests of the employers and not the workers (Budd, 2007).

The Appeal System

The ERP (2007) has provisions for an appeal mechanism which was absent in the Trade Disputes Act. Decisions from the ERC can be appealed at the Court of Appeal, from where an appeal can be lodged at the Supreme Court. This appeal institution provides an opportunity for a grieving party a chance for further redress in case it is not happy with a decision made by the ERT. This appeal provision is different from the judicial review process under the Trade Disputes Act which only allowed the High Court judge to examine whether the Permanent Arbitrator had made an error in law (which rarely happened); the judge could not overturn the decision of the Permanent Arbitrator; if there was an error, it was remitted back to the AT. The Employment Relations Court, on the other hand, functions as a full court.

There are a number of situations which can give rise to an ap-

⁴ The main reason for the slow progress of the Employment Relations Court is the difficulty in finding a judge at High Court level who has industrial relations knowledge and experience. Stakeholders have expressed concern over the slow progress in duly establishing the Employment Relations Court.

peal. These include reporting (a grievance or disputes) and application for registration of a trade union or a strike ballot. Any appeal against the decision of the Permanent Secretary for Labour and Registrar of Trade Union, respectively, must be made by way of writing (ERP, s239-40). It is mandatory to file an appeal with the ERT registry within twenty one days from the date the appellant receives the decision. Furthermore, with regards to issues such as 'strikes' and 'lockout', ERP (s241) allows a grieving party to appeal against the Minister for Labour's decision in case the Minister declares a 'strike' or 'lockout' illegal. In such cases, the appeal will be heard by the Employment Relations Court.

Court of Appeal and Supreme Court

The Court of Appeal and the Supreme Court are not special industrial relations established under the ERP; they are a part of the existing judicial system in Fiji. Both these courts have the power to change the decision of the Employment Relations Court.

Comparison: A Summary

Table 2 provides a summary of the comparative analysis of the DRM process under the Trade Disputes Act, the amendment to the Trade Disputes Act and the ERP.

Strengths of DRM under ERP

The ERP has a number of strengths over the previous industrial disputes resolution mechanisms.

First, it has expanded the coverage of disputes resolution. The period systems permitted only trade unions to raise disputes. Individual employees had no redress under the Trade Disputes legislation. The ERP allows individual employees to also raise employment grievances. This window enables the unorganized workforce, which constitutes 70% of the entire workforce (Lako, 2008) an access to the DRM. Prior to the ERP, only 30% of the workforce had potential access to state funded DRM. The accessibility of the unorganised workforce to mediation process has, however, increased the workload of mediators. This calls for additional public sector resource allocation to DRM, additionally as awareness of a direct redress for worker grievances rises.

Table 2.0: Comparative Analysis of the DRM Process under the 3 legislation

Main features & institutions	Trade Disputes Act 1973	Trade Disputes Act (Amendment) Decree 1992	ERP 2007
Collective Bargaining process	Only registered & recognized trade unions can engage in collective bargaining. No role for minority unions.	Only unions and enter into collective bargaining. All registered and recognised unions can do so (including minority unions).	Registered trade unions can bargain collectively; recognition is not a pre-requisite.
Individual Bargaining process	Silent on this. Employment contract presumed to address this	Silent on this. Employment contract presumed to address this	Silent on this. Employment contract presumed to address this
Conciliation	All disputes to go through this; sole conciliator or a committee	All dispute of interest go through this; sole person or committee	No provision
Dispute Committee	No provision	This is the point of entry for a dispute of right. Committee is Tripartite, and has to decide within 14 days	No provision
Mediation	No Provision	No provision	This is the point of entry for all disputes/grievances. The decision has to be made within 14 days
Tribunal	Permanent Arbitrator; decision within 28 days	Permanent Arbitrator; decision within 28 days	Employment Relations Tribunal; decision within 60 days
Labour Court	No provision	No provision	Employment Relations Court at High Court level of jurisdiction
Appeals System	Judicial Review of AT decisions to High Court	Judicial Review of AT decisions to High Court	Appeals from ERC to the Court of Appeal and then the Supreme Court

The Ministry of Labour intends to decentralize mediation services to three geographical divisions (Central, Western and North-

ern).⁵ While this is not a requirement of the law itself, opening up the DRM to individual grievances requires decentralisation of the mediation services. The older conciliation services were all centralized and based at the Ministry of Labour headquarters in Suva.

The second strength is the provision of appeals mechanisms. Under the old mechanism, the Permanent Arbitrator's decision was final. Now employment matters could be taken to the Supreme Court level. Some unionists see this as a disadvantage, claiming that employers can drag employment matters in the Court of Appeal and Supreme Court for a long period of time. Advocates of the appeals process argue that since the appeals courts award costs and are liberal in awarding financial awards, only those cases which employers believe have significant merit will be taken to these levels. A definitive statement on this can only be made after a number of years of the operation of the appeals system.

Third, the ERP allows the unsettled 'grievance' or 'dispute' to go through other stages of DRM. One of the major weakness of the Trade Disputes Act was that only trade disputes in essential services had access to compulsory Arbitration Tribunal, while the remaining trade disputes had to go through conciliation and then to voluntary Arbitration Tribunal. If the parties did not agree, the matter ended up as deadlock. Deadlocks enabled trade unions to take industrial action. This was an adversarial and confrontational system, leading to significant resources wastage for both, the employers and the workers. If trade unions went on a strike the Minister of Labour could either declare the strike illegal or, if he so decided, convince the parties to Voluntary Arbitration. This problem has now been addressed by the ERP, where the ERT is a necessary step in the DRM.

Under the ERP, the roles, functions, procedures, and settlement rules of mediation services are clearly spelt out. This was absent in the Trade Disputes Act. This was one reason for the failure of conciliation and dispute committee processes. ERP has two specific requirements for mediation. First, in contrast to conciliation, individuals representing the parties at mediation must have the man-

⁵ Mediation services are established in Nadi and Lautoka only. The Northern Division continued to be serviced by Suva based mediators. One other advantage, applicable to the sugar sector, concerns the ability of the sugar industry workers to raise disputes. Prior to the ERP, disputes in the sugar sector were excluded from the DRM; the matters had to be dealt with under the Sugar Industry Act (1984). Sugar industry unionists are glad about the inclusion of their unions in the DRM under the ERP. This adds to the DRM's resource demand.

date to make binding decisions. Under the older DRM, parties claiming to conciliation often claimed that they did not have the authority to make binding decisions. This delayed the process. Second, the new provision makes it compulsory for both the parties to attend the first scheduled mediation, failing which the defaulting party incurs penalty of upto \$2,000. Subsequent mediation meetings are to be mutually agreed by the two parties. Both these requirements were missing in the conciliation process under Trade Disputes Act.

The ERP makes provisions for specified timelines within which mediation is to be concluded. This is stated in the *Code of Ethics for Mediators 2007*; each mediation process must be concluded within thirty days from the first mediation session. This timeline was missing in the conciliation process.

Another major strength of the ERP is that once the decision is made at the mediation stage and the agreement signed by the parties and the mediator, the decision is final and legally binding. It does not allow any party to appeal against the decision at a later stage. Reneging on decisions made is not a feature of DRM under ERP. Under conciliation process, however, employers could, without retribution, later take moves to renege from the agreements.

The mediation stage does not allow lawyers to represent either party. Given that a majority of the cases are resolved at the mediation stage, the role of lawyers in the DRM has been reduced significantly. Under the previous DRM, since most of the trade disputes were not resolved at conciliation stage, they ended up at the Arbitration Tribunal stage where litigation was the primary method of solving the dispute. Employers usually hired lawyers to advance their cases in Arbitration Tribunal. Trade unions which were financially weaker were disadvantaged from this unequal power relationship. The ERP fosters an 'interest-based bargaining'⁶ process, where the emphasis is based on the interest of the parties and not their status and power. The present focus of mediation is a joint problem-solving exercise between employers and workers without lawyers and a judge involved in litigation process determining who is right or wrong.

Data shows that between July and December 2008, 84% of employment grievances and disputes were solved via mediation (Kunatuba, 2009). The comparable figure for the period January –

June 2009 is 71%. Interviews with thirty officials of trade unions revealed that most of them preferred and liked the mediation process for solving employment disputes. In this regard, the ERP is a progressive legislation in solving employment grievances and disputes, both quickly and at a lower cost than that incurred in the past.

Weakness of ERP Provisions on DRM

A potential weakness of the DRM under ERP is the prospect of increased litigation due to the appeals provisions. Given that more court systems are added in the DRM, more lawyers and judges would be involved in the DRM.

There is also some discussion within the unions on whether the appeals provision will speeden up or delay the DRM process. It is expected that delays will take place after the mediation stage. But the evidence from 2008 and 2009 show that a majority of the cases were resolved during the mediation stage.

Summary and Conclusion

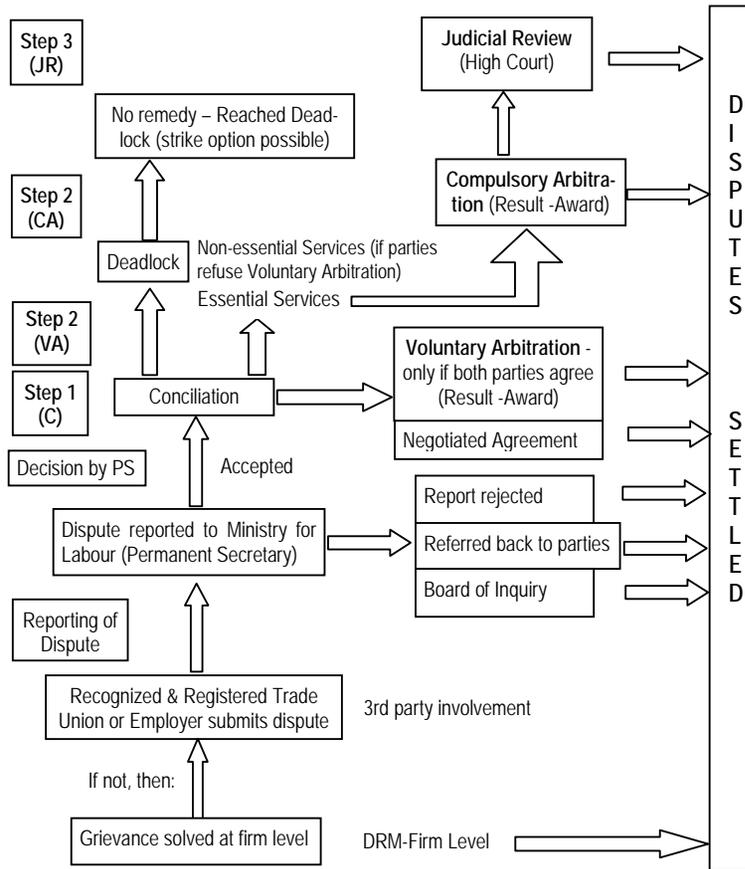
This paper has examined the industrial disputes resolution mechanisms in Fiji under three sets of labour regimes: the Trade Disputes Act (1973); the Trade Disputes Act (Amendment) Decree 2002, and the Employment Relations Promulgation, 2007. It has found that the *provisions* under the current regime are markedly superior to the ones it replaced. Individual employees now have a redress. The provisions also strengthen employees' positions within the IR system.

The paper could not examine the actual operations of the new mechanisms; for this, a longer period of application of the provisions is necessary. Like all good systems, lack of capacity, including human resources and financial, could paralyse the system. The DRM under the ERP faces similar risks. Overall, however, whilst the current global trend of labour legislation has been in favour of employers, the DRM provisions in Fiji's employment legislation provides strong protection for workers and trade unions.

⁶ 'Interest-based bargaining' tries to unify the common interests of the two. See Budd (2007: 251) for further information on this concept.

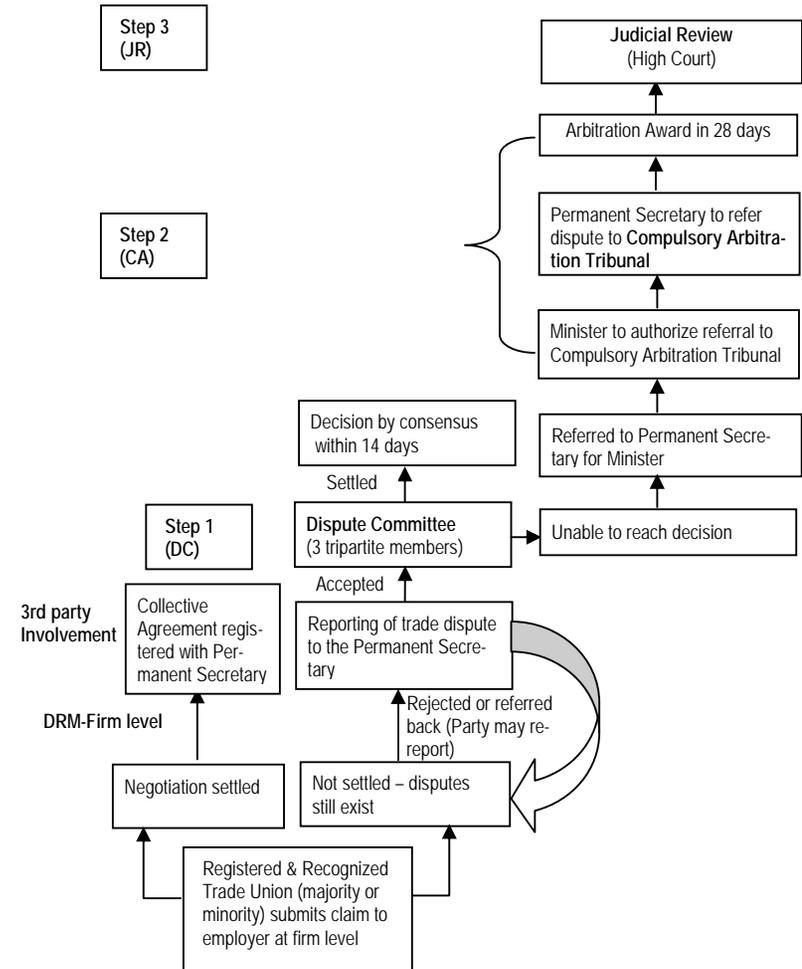
Appendix

Figure 1: DRM under the 'Trade Disputes Act' (1973)

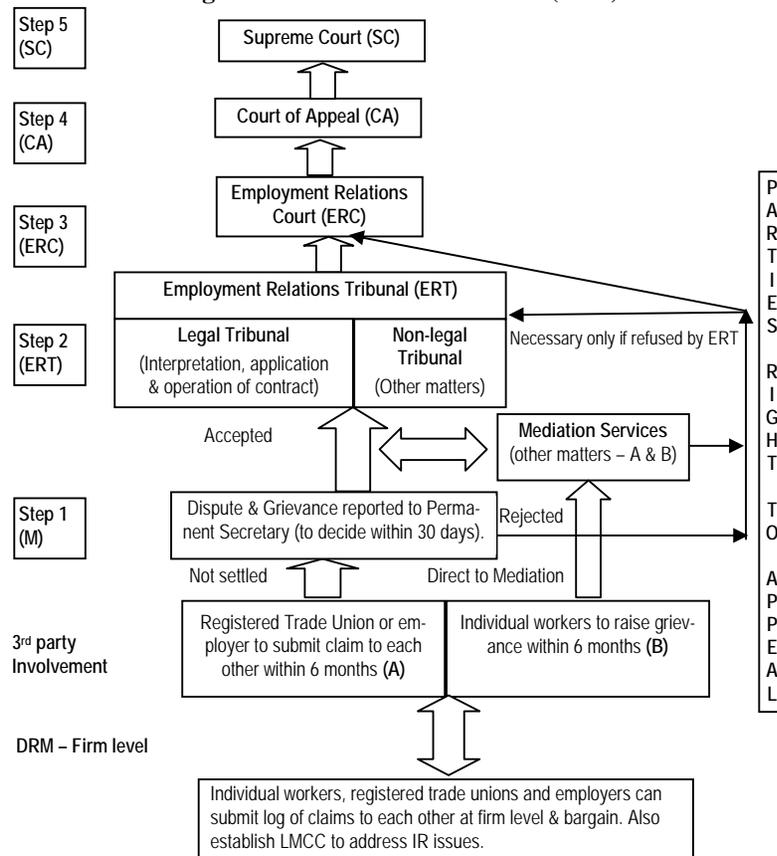


Source: Data from Ministry of Labour and re-designed by authors (2010)

Figure 2: DRM under the Trade Disputes Act (Amendment) Decree 1992



Source: Data from Ministry of Labour and re-designed by authors (2010).

Figure 3: DRM under the 'ERP' (2007).

Source: Data from Ministry of Labour and re-designed by authors (2010)

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