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Office of the UN High Commissioner for
Human Rights

10 March 2014

Submission of the International Trade Union Confederation¹ Universal Periodic Review - FIJI

Instruments Violated:

International Covenant on Civil and Political Rights, Art. 22
International Covenant on Economic, Social and Cultural Rights, Art. 8
ILO Conventions 87 and 98

Introduction:

Since having taken power through a 2006 coup d'état, Commodore Bainimarama has systematically restricted or denied the right to freedom of association in law and practice in Fiji. ILO supervisory mechanisms have detailed extremely serious and systematic violations of the right to freedom of association, from harsh beatings, threats, arrests on false charges and constant surveillance to the near complete elimination of labour rights for workers in the public sector and private sector 'essential industries'. The ILO and social partners have sought to engage in a constructive dialogue with the regime in order to find solutions to these extremely serious violations -- but to no avail. Indeed, the regime even ejected an ILO direct contacts mission in 2012 that was sent to verify the numerous allegations made by Fijian workers. To date, the regime continues to refuse to allow the mission to return.²

¹ The ITUC represents 175 million workers in 156 countries and territories and has 315 national affiliates. It submits these comments on their behalf.

² In September 2012, the ILO direct contacts mission was expelled from Fiji. The ILO Director-General strongly condemned the Government's decision "which puts a greater spotlight on the critical situation of freedom of association in Fiji (...). As always, I call on the Government to reconsider its position and continue collaborating with the ILO on these important matters for the international community". In November 2012, the ILO Governing Body adopted a tripartite resolution again condemning the worsening situation in the country and which outlined specific action items that the Government of Fiji was required to undertake, including to: 1) accept a direct contacts mission under the previously agreed terms of reference, based on the conclusions and recommendations of the ILO Committee on Freedom of Association on Case No. 2723; and 2) to find appropriate solutions in law and in practice that are in conformity with freedom of association principles together with the social partners.

In June 2013, a complaint for the establishment of an ILO Commission of Inquiry was filed under Article 26 of the ILO Constitution.³ Since then, regime has engaged in brazen violations of the right to freedom of association. In July 2013, the Fiji Sugar and General Workers' Union (FSGWU) filed a legal notice to hold a secret ballot to authorize a strike in the nations' sugar mills. The union had no other choice as the Fiji Sugar Corporation (FSC), the public entity that owns and manages the sugar mills, had continuously refused to bargain with the union. FSC management held meetings in all work stations in order to intimidate union members not to vote and even threatened that if they voted the FSC would turn their names over to the government. Police and military officers were present at the polling sites to threaten and intimidate workers. The Attorney General personally threatened that the government would intervene to keep the mills running in the case of a strike through use of replacement workers. Despite the threats, workers voted overwhelmingly to strike. The intimidation by the police, the military and management only intensified, and branch union leaders were harassed and workers told they would be fired if they carried through with the strike. In the end, the strike was called off out of concern for the safety of the members.

On December 18, 2013, the regime issued an amendment to the Essential National Industries Decree (discussed below), the Essential National Industries & Designated Corporations (Amendment) (No. 2) Regulations 2013, which extends the coverage of the ENI Decree to the: 1. Pine Industry; 2. Mahogany Industry, 3. Fire Prevention Services Ltd., 4. Local Government; and 5. Airports Fiji Limited.

All of the companies in the pine industry were unionized and the Tropik Wood Industries Limited Workers had commenced secret ballot for industrial action in support of their Log of Claims for 2013. This ballot was stopped by Ministry of Labour Officials when they produced the text of the Decree. About 130 of the 190 workers had voted and all votes supported industrial action. Management of this company immediately issued a memo to all employees advising them that there was no longer a union in the company and that union officials had no longer any authority to represent them. The Attorney General made clear that the purpose of the decree was to eliminate the union, stating "We hope now that employees are given more control over their own work environment by being able to negotiate directly with the employers rather than having some outside trade unions coming in and making unreasonable claims things would improve."⁴

On 9 January 2014, Daniel Urai was arrested for allegedly instigating an "unlawful" strike. The police also entered the NUHCTIE office and seized the computers and mobile phones. The charges were later dropped after an international pressure campaign, but the earlier sedition charges against Mr Urai were never dropped and can be invoked at any time.

³ For the recent views of the ILO supervisory system with regard to Fiji, please refer to Committee on Freedom of Association Case No. 2723, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0:FIND:NO:20060:P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:103278,1495810 and the ILO Committee of Experts Observations on Convention 87, 2013 at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3141885 and 2012 at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3080589

⁴ See <http://www.fijisun.com.fj/2013/12/19/pay-rise-5/>

The Situation in Fiji

1. Assaults

On the acts of assault and physical attacks on trade unionists, the ILO Committee of Experts has recalled that amongst the liberties essential for the normal exercise of trade union rights the right “to freedom and security of person” was fundamental. It has urged the Government to conduct ex officio an independent investigation without delay into the well-known alleged acts of assault, harassment and intimidation against Mr Felix Anthony, Mr Mohammed Khalil, Mr Attar Singh, Mr Taniela Tabu and Mr Anand Singh and to transmit detailed information regarding the outcome of such inquiry and the action taken. No measures have been taken by the Government in this regard. Further, a complaint was filed with the police by FTUC General Secretary Felix Anthony in July 2012 regarding the beating he endured. The Government has failed to act on this complaint.

2 Arrests

Trade union leaders Mr Felix Anthony, Mr Daniel Urai and Mr Nitendra Goundar were arrested in 2011. Mr Urai, the FTUC President, has two cases pending in court which have still not been heard: one for preparing union members for collective and the other one for having allegedly incited political violence by urging to overthrow the Government. Just after the 2013 International Labour Conference (ILC), the regime decided to press ahead with the second, and more serious, case. The CEACR has considered that the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention or criminal charges. The CEACR has urged the Government to take the necessary measures to ensure that all charges against them are immediately dropped. These cases remain pending against these trade unionists. On 9 January 2014, union president Daniel Urai (and 5 others) was arrested for allegedly instigating an “unlawful” strike after some workers led a walkout from a resort hotel on 31 December – a charge that he denies. The police also entered the union’s office and seized the computers and mobile phones. The charges were recently dropped but are further evidence of the government’s use of the courts to harass trade unionists and to chill the exercise of freedom of association.

On August 11, 2011, the ILO Director General publicly expressed serious concern about developments in Fiji including the arrest and charging two trade union leaders under emergency regulations for holding a meeting without a permit.

3 Restrictions to Freedom of Assembly and Expression

In January 2012, the regime repealed the widely-condemned Public Emergency Regulations (PER) of 2009. However, days later, it issued a new law, the 2012 Public Order (Amendment) Decree (POAD), that included and expanded the powers in the PER. Indeed, the CEACR noted with concern provisions of the POAD, in particular Section 8(5), under which gives the authorities broad powers to refuse to grant persons or organizations, including trade unions, a permit to meet. The Committee stated that this provision “could

be used in such a way as to make it difficult for trade unions to hold public meetings, especially given the previous allegations of the use of the PER to restrict their rights in this regard.” The Committee requested that the Government “consider abrogation or amendment of the POAD so as to ensure that the right to assembly may be freely exercised. The Government has failed to abrogate or amend the law.

The portion of the law requiring prior approval by the authorities to hold meetings was suspended during the constitutional revision process. However, that process has been completed and the requirement for prior authorization is likely to enter into force once again. We are also deeply concerned about several other repressive provisions of the POAD that have and continue to remain in force. For example, the Decree includes a broad definition of “terrorism” that could be employed to charge trade unions for carrying out any campaign meant to pressure the Government to change a policy. A person charged as a terrorist may be imprisoned for life.

4 Legislative Issues

Below are just some of the issues previously raised by the ILO Committee of Experts, which the government has failed to address:

Essential National Industries Decree: The CEACR took note of the devastating impact of the Essential National Industries Decree issued in 2011. The Committee previously urged the Government to take the necessary measures to amend the Essential National Industries Decree without delay, in full consultation with the social partners, so as to bring it into conformity with the Convention. Not only has the Government not repealed or amended the ENID, it expanded its reach. There remains a pending threat to extend the ENID to the sugar sector.

Of particular concern are section 6 (cancellation of all existing trade union registrations in essential national industries); sections 10–12 (unions to apply to the Prime Minister to be elected as bargaining unit representative; determination by the Prime Minister of composition and scope of a bargaining unit for election purposes; conduct and supervision of elections by the Registrar); section 14 (50 per cent plus one necessary for a union to be registered as representative of the bargaining unit); section 7 (union officials to be employees of the relevant company); section 27 (providing for serious restrictions of the right to strike); section 26 (lack of judicial recourse for rights disputes; compulsory arbitration by the Government of disputes beyond a certain financial threshold); section 24(4) (prohibition of automatic dues deduction for workers in essential national industries).

On September 13, 2011, the Director-General of the ILO, expressed deep regret at the decision of the Government of Fiji to proceed with the publication of regulations to implement the Essential National Industries Decree. Mr Somavia explained that, “[t]he Government has demonstrated the same lack of concern for the views of the international community as it has for the rights and aspirations of its own people. What is really essential for Fiji is that it change course now. That means reversing this and other

restrictive labour decrees, a return to dialogue with trade unions and employers, an end to assaults on and harassment of trade unionists, and the immediate restoration of basic civil liberties.”

In November 2011, the ILO Committee on Freedom of Association issued a lengthy interim report and concluded that the, “loss of these fundamental rights by decree... is clearly contrary to the country’s obligations under international labour law and represents further evidence of deepening authoritarianism in Fiji.”

Employment Relations Promulgation of 2007 (ERP): The Committee has for years commented on the necessity to amend the following provisions of the ERP in order to bring them into conformity with the Convention. The Government has failed to do so. On a few occasions, the Government has convened meetings with workers and employers to discuss revisions of the labour law in line with international conventions. However, these meetings have yet to produce any results.

Public Order Amendment Decree

The government made much of the fact that it repealed the Public Emergency Regulations (PER) in January 2012. However, that decree was replaced just days later with the Public Order (Amendment) Decree of 2012. In many respects, the decree incorporates and expands many of the powers found in the PER. Most dangerously, the decree provides that courts have no jurisdiction to hear any claim by any person challenging the validity, legality or propriety of any decision made by the commissioner of police, any divisional police commander, the Prime Minister or any public official.

For example, Section 2 of the decree redefines “terrorism” to cover any act, inside or outside Fiji, to compel a government or an international organization to do, or to refrain from doing, any act, where the action is done or the threat is made with the intention of advancing a political, religious or ideological cause, and the act is done or threat is made with the intention of coercing or influencing by intimidation the government of Fiji. Read broadly, someone urging, for example, a government or international organization to denounce or sanction the government of Fiji, which the government deems to be ideological in nature and intimidating, is guilty of an act of terrorism under the law. Under Section 7, a person charged as a terrorist may be imprisoned for life. The same section allows for life sentences for those who harbour a “terrorist” or participate in a group involved in the act of “terrorism.” This wide net could lead to numerous persons facing severe sentences for seeking international aid to pressure the government to change its policies – clearly its intent.

Section 3 maintains the power available under the PER to allow the government to ban the manufacture, use, sale, display or possession of any flag, banner, emblem, picture, etc., if the Prime Minister deems it in the public interest to do so. Under the PER, a violation of this provision carried a penalty of two year imprisonment and/or a \$1,000 fine. Under the new decree, the display of e.g., a prohibited emblem or flag is punishable by three year in prison and/or a fine of up to \$5,000. Union flags or insignias could be

banned under this provision.

Section 5 provides that any person must to apply to hold a public meeting with the police seven days in advance. However, the penalties now include a sentence of up to five years in prison (up from two years in the PER) for holding a meeting without permission. The police may deny a permit to any person or organization that has ever been refused a permit before by virtue of any law or who has organized any meeting or procession or assembly which prejudiced the peace, public safety and good order. This provision is certain to give the authorities any excuse to prevent a trade union from ever holding a public meeting.

Section 13 provides that any person who makes any statement, orally or in writing, “which is likely to undermine or sabotage or attempt to undermine or sabotage the economy or financial integrity of Fiji” faces 10 years imprisonment and/or a \$50,000 fine. The original law, which was targeted largely at hate speech, carried a maximum one-year imprisonment and a \$500 fine. Again, any effort by a person campaigning to sanction the country or any industry for the violation of international labour rights could find themselves in prison.

Fiji Political Parties Decree: In 2013, the Government sought to exclude trade unions from the political process by decree. In January, the Government promulgated the Fiji Political Parties Decree. The decree excludes public officers from applying for, being a member of, or holding office in a political party. Article 14.2(d) defines as “public officer” any elected or appointed trade union officer, or of any federation, congress, council or affiliation of trade unions. A subsequent amendment to that decree broadened the scope of unionists barred from the political process. Under Art 14.1(c), a trade union official cannot even express support for a political party. If a trade unionist does become an applicant, member or officer, they will be deemed as having resigned from their trade union office under Art 14.5. Anyone defying this decree faces a \$50,000 fine, 5 years imprisonment or both. The decree also provides that existing political parties that fail to successfully reregister under the decree’s cumbersome new requirements will have their assets confiscated by the Government.

New Constitution: After having received a draft constitution from an independent Constitution Commission, which was informed by a highly-participatory process – with over 7,000 public submissions, including from Fijian trade unions – the Government in December 2012 confiscated copies of the Commission’s draft and announced that it would instead write its own. On March 20, the Prime Minister unilaterally issued a new draft constitution, which is substantially inferior to the draft presented by the Commission, in particular its fidelity to principles of international law. The Government also decided to do away entirely with the Constituent Assembly, which was charged with reviewing, amending and adopting the constitution. This left only a brief period, from March 20 to April 30 for the public to submit comments on the Government’s lengthy and complex new draft.

There is much to be concerned about with the new constitution, which came into force in September 2013. For example, Articles 19 and 20, while first providing that all persons have the right to associate, to join a union, to bargain collectively and to strike, they include broad exceptions that could be invoked to limit severely those fundamental labour rights and indeed to justify the existing harmful decrees already criticized by the ILO.⁵ The broadly stated principles can and no doubt will be undermined through the invocation of these exceptions. Of note, the Commission's draft constitution contained none of these sweeping exceptions. The contents of the political party decree have also been incorporated into the constitution.

Conclusion

In June 2013 the ILO Conference Committee on Application of Standards urged the Government to, among other things, drop the criminal charges pending against trade unionists, to amend the Public Order Amendment Decree and to amend the labour laws by the end of the year. The Committee also "recalled with regret" that the direct contacts mission did not take place in September 2012 and "expressed the firm hope that the mission, as mandated by the ILO Governing Body, would take place as soon as possible so that it could report back to the Governing Body in October 2013." The Committee decided to place its conclusions in a special paragraph of the report, reserved for cases of particular concern. No action has been taken, and indeed the situation has only worsened since the International Labour Conference of 2013. It is clear that the Fiji regime views trade unions and the international community with contempt. The deepening authoritarianism warned of by the ILO in 2011 of has only deepened.

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⁵For example, the right to join a union and bargain collectively can be limited under the constitution for the following reasons: (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purposes of protecting the rights and freedoms of others; (c) for the purposes of imposing reasonable restrictions on the holders of public offices and members of a disciplined force in order to secure their impartial service; (d) for the purposes of regulating the registration of trade unions, or of any federation, congress, council or affiliation of trade unions, or of any federation, congress, council or affiliation of employers; (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or (f) for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

