

A COMMISSION OF INQUIRY FOR FIJI

January 2014

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' (see ILO Timeline of Shame). 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 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.



Commodore Bainimarama

Since the complaint for a Commission of Inquiry was filed in June 2013, the regime has engaged in brazen violations of the right to freedom of association. In July, 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, the regime issued a new decree, the Essential National Industries & Designated Corporations (Amendment) (No. 2) Regulations 2013, which extends the coverage of the ENI Decree to the following industries: 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."

Once again, the government is using the courts to harass and intimidate union leaders. 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. Mr Urai was released on bail but must now report daily to the court. He will face trial in March. The earlier sedition charges against Mr Urai were never dropped and can be invoked at any time.

The International Trade Union Confederation (ITUC), its Fijian affiliate and the international trade union movement call upon the ILO Governing Body to approve at the March 2014 session the establishment of a Commission of Inquiry (COI) under Article 26 of the ILO Constitution for serious and systematic violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). This step will allow the Governing Body, and the international community, to press the Fijian regime to finally undertake the long called for and much needed reforms in law and in practice. Without a strong check on the excesses of the regime right now, of which the Commission of Inquiry could play a key role, we fear that any democratic space for workers, employers and other civil society organizations will be lost for many years.

The Situation in Fiji

1. Assaults

On the acts of assault and physical attacks on trade unionists, the Committee of Experts (CEACR) 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. Mr Urai was released on bail but must now report daily to the court. He will face trial in March.



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 Committee of Experts:

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.*



© ITUC

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).

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.

5 New Concerns:

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.¹ 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.

6 Conclusion

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. The Fijian regime will continue to ignore the criticisms and recommendations of the ILO supervisory mechanisms, as it has done in the past. As the ILO's highest-level investigative procedure, the Commission of Inquiry could promote the needed reforms in law and in practice. The Commission of Inquiry could help to open up needed space for debate and consultation. Given the lack of freedom of association and other fundamental human rights, a Commission of Inquiry would help create space for freedom of association not only for trade unions but society more broadly. The lack of fundamental human rights, including democracy, remains an important obstacle to the full enjoyment of freedom of association for workers.



¹ For 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.

AN ILO TIMELINE OF SHAME

2011-2013

In **June 2011**, the Committee on Application of Standards, in a discussion on Convention 111, “noted concerns regarding the difficulty in exercising the right to freedom of association in the country, and called on the Government to establish the conditions necessary for genuine tripartite dialogue, with ILO assistance, with a view to addressing the issues related to the implementation of the Convention.”

That June, the Credentials Committee also found that the Government deliberately chose not to nominate the Workers’ delegate, Felix Anthony, and reminded the Government of its obligation under article 3, paragraph 1, of the ILO Constitution. Notably, Mr Anthony was attacked by members of the armed forces upon his return.

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 and for gazetting a far reaching Essential National Industries Decree.

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.”

In **December 2011**, a resolution which strongly condemns the actions of the Fiji Government was adopted at the 15th ILO Asia and the Pacific Regional Meeting (APRM). The resolution urged the Government, among other things, to accept an ILO direct contacts mission.

In **February 2012**, the report of the Committee of Experts is released, reflecting the decision of the Experts to “double-footnote” Fiji on Convention 87. The Experts repeatedly expressed deep concern regarding the numerous allegations in the report, from assaults, harassment and intimidation, the restrictions on trade union meetings, and the various decrees, particularly the essential industries decree, that the seriously restrict the right to freedom of association.

In **September 2012**, the ILO direct contacts mission, sent in response to the APRM resolution, 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.

The Committee on Freedom of Association in November 2012 again reported on Fiji and designates it as 1 of the 5 most serious and urgent cases concerning the right to organize, collective bargaining and social dialogue. In its conclusions, the CFA called upon the Government to open independent investigations into the attacks on trade unionists, to drop all criminal charges, to bring legislation into conformity with freedom of association principles, and to restore dues check off among other measures. The CFA also “dr[ew] the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein.”

In **March 2013**, the ILO Governing Body noted the absence of cooperation by the Government, expressed its strong disappointment at the failure of the Government to respond to the Director General, urged the Government, together with the social partners, to find appropriate solutions to bring the law and practice into conformity with freedom of association principles, and to accept the direct contacts mission.

In **June 2013** the Conference Committee on Application of Standards raised several serious outstanding concerns and 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.

By **October 2013**, the government had still not allowed in the direct contacts mission and suggested that the ILO wait until after the proposed elections in September 2014 to conduct the mission. The Governing Body formally received the complaint for a Commission of Inquiry and urged the government to receive a direct contact mission before the March 2014 session. The Government has so far refused to allow a direct contacts mission. The Government has also failed to act on any of the conclusions of the supervisory bodies (and indeed prior tripartite resolutions).