

## **Fiji Public Order Amendment Decree (January 2012): Major Concerns**

1. 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, a union leader seeking, 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, that person 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 sentence for seeking international aid to pressure the government to respect international law – clearly its intent.

2. Section 3 allows 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. Thus, it may not be long before the display of a trade union emblem or flag becomes a crime punishable by three years imprisonment and/or a fine of up to \$5,000.

3. Section 5 requires any person to apply to hold a public meeting with the police seven days in advance. The police may deny a permit to any person or organization that has been refused a permit by virtue of any law or any person or organization who failed to comply with conditions imposed with respect to any meeting, procession or assembly or who has organized any meeting or procession or assembly which prejudiced the peace, public safety and good order or sabotaged or attempted to undermine the economy or financial integrity of Fiji. This provision is certain to give the authorities any excuse to prevent a trade union from ever holding a public meeting again.

4. Section 6 provides that the police may prohibit any meeting in any building, public or private, even if a permit has been granted, if the commissioner considers it necessary to secure public safety or public order. The police have the right to order such a meeting to disperse, and may use such force as necessary, including arms, to disperse the meeting after giving due warning. The police are granted total immunity from any civil or criminal action for the loss or harm caused by the use of such force. The police can also prohibit any meeting if the person or organization organizing that meeting was ever refused a permit under the Public Order Act or failed to comply with any conditions imposed with respect to any meeting or assembly or that person or organization had in the past organized a meeting or assembly that prejudiced the peace, public safety and good order. Interpreted broadly, it is not hard to imagine this section to be used to break up a trade union meeting, march or demonstration (even permitted ones) with deadly force if the government could claim it necessary to maintain public order. Failure to obtain a permit, to heed the limitations of a permit, or if the meeting or assembly took place in contravention of a police order, he or she could face five years in prison and/or a \$10,000 fine.

5. Section 6 gives the commissioner of police sweeping control over the free movement of persons, including where they may travel in Fiji, where they may live, when they can go

outdoors and when they may leave Fiji. The decree also empowers the police to require the person to report to the nearest police station at any time, date or manner requested, to post a bond to ensure good behaviour. These powers may be exercised if the commissioner of police considers them necessary to maintain public safety, public order or ensuring that the economy and financial integrity of Fiji is not undermined or sabotaged. As some of these powers are already being exercised by the police against trade unionists that have denounced the regime's behaviour, it is wholly conceivable that they would be applied against anyone who participated in an international pressure campaign which could affect the economy of Fiji.

6. Section 8 empowers a police officer who has reasonable suspicion that a person has acted or is about to act in a manner prejudicial to public safety or the preservation of the peace, or if the person fails to satisfy the police as to their identity, place of employment or purpose for being in the place where he or she is, to arrest the person without warrant and detain him or her without charge for up to 16 days by order of the Prime Minister. Under the PER, the maximum detention without charge was 10 days.

7. Section 8 also confers upon the military the power to perform police functions by the consent of the police. Thus, the military will now be even further entrenched in the civilian affairs of the nation, which could no doubt lead to serious abuses of civil and political rights - as they have already.

8. 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 1 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 until 2022.

9. Finally, and most dangerously, the courts are divested of 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.