

AFL-CIO 1993

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The AFL-CIO's June 1992 petition to the GSP Subcommittee detailed how labor decrees and legal notices promulgated unilaterally by the government of Fiji in 1991 and 1992 represented a clear retreat in the protection of worker rights, including the fundamental right to freedom of association. The government of Fiji's violation of the right to freedom of association was similarly condemned by the International Labor Organization's Committee on Freedom of Association in its November 1992 report (Case No. 1622 - Attachment I). Among the government policies that the committee noted violate internationally-recognized worker rights are:

FOA

- 1) Blocking a union recognition claim because of the existence of a rival union;
- 2) Intervening in internal union elections and strike ballots;
- 3) Banning strikes related to union recognition disputes;
- 4) Imposing requirements on unions attempting to garner solidarity support from persons or organizations outside Fiji;
- 5) Restricting the rights of employees having multiple employers to form unions and be parties to labor disputes.

Recent events belie the Government of Fiji's assurances that it "has undertaken to review the labor decrees in full consultation with the FTUC" and that there is a "new spirit of cooperation between Government and unions" (testimony of Minister of Labor and Industrial Relations Militoni Leweniqila before the GSP Subcommittee on October 15, 1992). In April 1993 Minister of Finance Paul Manueli announced that his government does not intend to rescind the decrees and stated, "it is essential now to regard the reforms as permanent" (emphasis added). Press reports as recent as May 13 confirm this stance.

Even those who took the government at its word became ardent critics as authorities retreated from earlier promises. FTUC General Secretary James Raman, who accompanied the government delegation to the Subcommittee hearing in October 1992, expressed the FTUC's outrage that the "Government is hell-bent to see the Labor Reforms unilaterally promulgated by the interim administration remain on the statute books."

These events demonstrate that initial AFL-CIO fears that the GOF would renege on promises to review the regressive decrees with an eye toward rescinding them were not unwarranted. The AFL-CIO urges the Subcommittee to remove GSP benefits from the Government of Fiji until such time as the GOF brings its labor laws in line with internationally-recognized worker rights.

# **ATTACHMENT I**

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Case No. 1622

COMPLAINTS AGAINST THE GOVERNMENT OF FIJI  
PRESENTED BY  
- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU) AND  
- THE PUBLIC SERVICES INTERNATIONAL (PSI)

642. The International Confederation of Free Trade Unions (ICFTU) presented allegations of violations of trade union rights against the Government of Fiji in communications dated 21 January and 10 February 1992. The Public Services International (PSI) presented its complaint of violations of freedom of association in a communication dated 27 January 1992.

643. The Government sent its observations on the case in communications dated 3 April and 2 November 1992.

644. Fiji has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

645. In its communication of 21 January 1992, the ICFTU alleges that on 31 October 1991 the Fiji Interim Administration adopted a series of Decrees amending Fiji's labour legislation in breach of Conventions Nos. 87 and 98. It supplies copies of the Decrees in question, Nos. 42, 43 and 44, as well as legal notices issued by the Minister for Employment and Industrial Relations, namely the Trade Union Regulations (Amendment) Regulations and the Trade Unions (Deduction of Union Dues) Regulations.

646. The ICFTU claims that the Decrees were issued despite written assurances from the administration to the ICFTU and the Fiji Trades Union Congress (FTUC) following an ICFTU mission to the country in October 1989, to the effect that trade union rights would be fully restored, tripartite consultations re-established, recognition accorded to the FTUC as the representative body of trade unions and workers, and that any review of industrial relations laws and procedures be carried out in conformity with ILO standards. The Decrees subsequently adopted conflict with the principles of freedom of association and collective bargaining, and the views of the FTUC were clearly ignored in their elaboration.

647. The complainant points out that the contents of the Decrees have many similarities to the contents of the much-criticised Decrees (Nos. 18 and 19) issued in May 1991 and subsequently suspended by the President of Fiji following representations from the FTUC. Although he had undertaken to take account of the FTUC's views on changes to the labour legislation, the new Decrees were passed while the President was out of the country.

648. First, the ICFTU refers to section 3(a) of Decree No. 42 - the Industrial Associations Act (Amendment) Decree, 1991 - which changes the definition of "associations" and prohibits them from engaging "... in any trade dispute or matters connected with the regulations of relations between employees and employees, employees and employers or between employers and employers". According to the ICFTU, industrial associations have been the means by which certain workers, particularly in industries where it is not

denies that the legislative changes contravened internationally accepted workers' rights and states that relations between the new Government and labour unions have improved immeasurably. The Government, following meetings with the FTUC, has undertaken to review the labour Decrees in full consultation with the FTUC.

### C. The Committee's conclusions

686. The Committee notes that this case involves allegations that three Decrees adopted in October 1991 as well as Regulations issued on prerequisites for strike action and the deduction of union dues violate various principles of freedom of association. In addition, the complainant alleges that all these legislative changes were made without consultation and in spite of formal undertakings given by the authorities to take account of the FTUC's views on protection of freedom of association in the country.

687. The specific points complained of are: (1) a change in the definition of "association" (section 3 of Decree No. 42); (2) a ban on multiple office-holding - evidenced by the proceedings commenced in February 1991 against Mr. M. Chaudhry who holds leadership positions in two different unions - and other conditions on eligibility for union office (section 4 of Decree No. 42, which inserts a new section 5A in the Industrial Associations Act); (3) administrative restrictions on recognition (section 3 of Decree No. 43); (4) a ban on strikes relating to union recognition (section 10 of Decree No. 43 which inserts a new Part III in the Trade Unions (Recognition) Act); (5) exclusion of certain categories of workers from recognition (section 7 of Decree No. 43); (6) the introduction of secret ballot requirements on solidarity issues (section 4 of Decree No. 44); (7) supervision of union ballots and power to take certain action vested in the administrative authority (Regulation 10(1) and (3) of the Trade Union Regulations as amended); (8) notice and secrecy requirements and a six-week validity period introduced for strike ballots (Regulations 10A and 10B); (9) the removal of legal check-off facilities (section 2 of the 1991 Trade Union (Deduction of Union Dues) Regulations); and (10) the imposition of certain requirements on public service associations in return for signature of check-off agreements.

688. The Committee notes the Government's detailed reply to these allegations, in particular its denial that the legislative changes were based on anti-union motives, but were rather part of the extensive labour market reform it had undertaken with encouragement from international financial institutions.

689. On the initial allegation that these reforms were introduced without any consultation with the FTUC and despite earlier government assurances that any legislative amendments would take account of the organisation's views, the Committee notes the Government's denial of this. According to the Government there were extensive consultations. In particular, the Committee notes that, after their widely publicised introduction at the 1991 National Economic Summit, the proposed legislative changes were discussed at the tripartite Labour Advisory Board where, although the FTUC was not present, union representatives from other workers' organisations (including some affiliated to the FTUC) were. Nevertheless, the Committee cannot but regret that sufficient specific contacts were not made by the Government with the major industrial organisations to discuss the proposals. These proposals, despite being aired broadly in the community through the Summit and the media, certainly merited more detailed scrutiny in the presence of the representatives of the labour movement. Even if tripartite discussions in the

Labour Advisory Board were thwarted by the absence of the FTUC itself, the Government ought to have persevered in having the matter debated so that at least the views of all the parties could be publicly recorded, even if agreement was not possible.

690. Turning to the specific allegations raised by the complainant, the Committee first notes that section 3(a) of the Industrial Associations Act (Amendment) Decree No. 42 amends the definition of "associations" to limit them to the protection and furthering of their professional interests and to prohibit them from engaging in any dispute over employer-employee relations. In reply, the Government points out that the amendment aims at making a clearer distinction between professional associations and trade unions, and that organisations wishing to be covered by the provisions of the Trade Disputes Act for disputes can re-register as trade unions. The list of registered industrial associations provided by the Government shows that employers or self-employed groups such as taxi owners, market vendors, bankers, musicians and landowners, etc., register under the Industrial Associations Act. For this group of self-employed workers, no question of trade disputes arises vis-à-vis an employer.

691. However, the Committee notes that, according to the complainants, if a group of wage-earners wishes to form a union for furthering and defending the members' interests, it registers under the Trade Unions Act subject to certain requirements particularly the need to be employees of only one employer. The Committee considers that this requirement is a problem for those workers having multiple employers who, wanting registration as a trade union, fall foul of the Trade Unions Act's requirement that employees have one sole employer. As long as any group of wage-earners having several employers finds its means of action restricted - because of the requirements of the Trade Unions Act - there is a violation of the principles of freedom of association.

692. Secondly, on section 4 of Decree No. 42 which prohibits the multiple holding of office and places certain restrictions on eligibility for union office (current engagement in the industry concerned for one year and no criminal conviction for fraud, dishonesty or extortion for the past five years), the Government defends this provision by arguing that it is similar to already existing provisions in the Trade Unions Act. Those provisions had been agreed upon in 1964 in a tripartite forum, and the Government denies that their extension to the Industrial Associations Act was intended to target any particular individual. The Committee's opinion on restrictions of this kind is that provisions which require that trade union leaders shall, at the time of their election, have been engaged in the occupation or trade in which the organisation functions for more than a year, are not compatible with Convention No. 87 [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 304]. An additional incompatibility lies in the discretion vested in the Registrar for the filling of the offices of secretary and treasurer which may be held by persons not actually engaged in the trade or industry: such a provision, prima facie, appears to allow a certain flexibility in electing qualified outsiders to posts which require specific aptitudes, and yet gives an administrative official power to refuse a person freely elected by members of a workers' organisation. The Committee is also of the opinion that a ban on holding office in more than one workers' organisation interferes with the right of workers to elect their representatives in full freedom [Digest, para. 293]. Given that proceedings have been instituted against a trade union leader (Mr. Mahendra Chaudhry) for holding leadership posts in two different unions, the Committee asks the Government to cease prosecution action and to inform it of the measures it intends taking to bring these provisions into line with the principles of freedom of association.

693. However, the Committee recalls - as does the Committee of Experts on the Application of Conventions and Recommendations [General Survey on Freedom of Association and Collective Bargaining, 1983, paras. 163 and 164] - that disqualification from office because of certain specific crimes calling into question the integrity of the official might not be in contravention of the right to elect leaders freely. In the present case, ineligibility based on "any crime involving fraud, dishonesty or extortion" could run counter to this right since "dishonesty" could cover a wide range of conduct not necessarily making it inappropriate for persons convicted of this crime to hold positions of trust such as trade union office.

694. Thirdly, with regard to the recognition requirements added by section 3 of the Trade Unions Recognition Act (Amendment) Decree No. 43, the Committee notes the Government's arguments that the powers vested in the Permanent Secretary to deal with an application for recognition were already present in the 1976 Act, that they are exercised independently, that no employer to date has attempted to encourage a rival union in an undertaking so as to frustrate such an application and that the complainant has confused the two separate issues of "registration" and "recognition for collective bargaining purposes". The recognition requirements (50 per cent of employees to be voting members of the applicant union; no rival union also claiming to represent these persons; application to be in writing and sent by registered mail or hand-delivered to the employer with a copy to the Permanent Secretary; the latter to have access to documents to verify figures) seem to be objective and pre-established, aimed at avoiding partiality or abuse, and the civil servant verifying the claim acts independently in applying the provisions of the Act [General Survey, para. 295]. Moreover, the making of compulsory recognition orders complements the principle that employers should recognise for the purposes of collective bargaining organisations that are representative of workers in a particular industry [Digest, para. 619]. In fact it appears that the 1991 Decree merely makes it particularly clear that a union must first present a claim to the employer concerned and then, if unsuccessful, apply for a compulsory recognition order to the Permanent Secretary who verifies that claim objectively [Digest, para. 620] and who has, according to the Government's figures, decided on 126 such applications up to December 1991. Nevertheless, the Committee notes that a recognition claim could be blocked by the existence of a rival union. It thus considers that, in cases of union rivalry over exclusive bargaining rights, representativity should be solved rapidly and objectively, for example by having a vote taken.

695. The Committee notes, furthermore, that the Act is silent as to the position of a majority union which does not cover 50 per cent of the employees in a bargaining unit. The Committee of Experts has recalled that, if under a system of designating an exclusive bargaining agent there is no union covering more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members, so that negotiations cannot be frustrated for the lack of a bargaining partner [General Survey, para. 295]. The Committee therefore trusts that the Permanent Secretary, in making orders under section 3 of the Act, takes account of this principle, and it asks the Government to keep it informed of the number of applications made and granted since the 1991 Decree came into force.

696. Fourthly, the ICFTU alleges that section 10 of the Decree outlaws strikes arising out of a recognition dispute. The Government points out that similar powers exist under the Trade Disputes Act and that fears about an employer challenging a union's recognition during negotiations are unfounded since negotiations cannot even begin until recognition is settled. In the Committee's opinion this ban on strikes related to recognition disputes is not in conformity with the principle that recourse to strike action is a

legitimate means available to workers and their organisations for the promotion and defence of their occupational interests [Digest, para. 362]. It accordingly requests the Government to take the measures necessary to restore the right to strike over recognition issues, and to keep it informed of any action taken.

697. Fifthly, as regards the allegation that the amendment to section 10 of the Act denies freedom of association to persons who are employed in a confidential capacity or who represent the employer in matters affecting industrial or staff relations, the Committee notes the Government's reply that the amendment merely extends the provision already existing in the Act concerning only compulsory recognition orders to cover both cases of compulsory recognition and voluntary recognition. The Government suggests that the complainant has confused the right to join organisations with the scope of recognition orders which are made in the context of collective bargaining. The Committee recalls that the supervisory bodies of the ILO have accepted that, with a view to avoiding conflicts of interest, certain conditions may be imposed on the freedom of association of managerial staff or those involved in confidential labour relations tasks. But for there not to be an infringement of freedom of association, it should be clear that these workers have the right to form their own organisations to defend their particular interests [General Survey, paras. 86-88 and 131]. These organisations should, in turn, be able to apply to the employer for voluntary recognition for their specific bargaining purposes and to the Permanent Secretary for a compulsory recognition order in the same terms.

698. Sixthly, as regards section 4 of the Trade Unions Act (Amendment) Decree No. 44 which introduces the requirement of secret ballot for matters concerning solidarity support, the Committee notes the Government's reply that important union decisions have always required a secret ballot. The Committee considers that this is a matter which should be left to the internal rules of a workers' organisation and accordingly requests the Government to keep it informed of the measures taken to remove this interference in the internal affairs of trade unions.

699. On the seventh specific allegation, concerning the supervision of union ballots contained in new Regulation 10(1) and (3) of the Trade Unions Regulations, the Committee observes that, according to the Government, the introduction of this requirement was necessary to stop the widespread abuse of balloting arrangements and there is "no possibility of abuse" of the Registrar's powers. The Committee is of the view that legislative provisions prescribing the intervention of certain administrative authorities in the election procedure (for example the obligatory presence of labour inspectors or representatives of the administration - such as the Registrar in the present case - during voting or the participation of these officials in the counting of votes) create the risk of interference in the right to free elections which is not compatible with Convention No. 87. Even if the provisions in question are aimed at preventing disputes, intervention by the administrative authorities is liable to appear arbitrary, and it is desirable that supervision, if it is necessary, should be exercised by the competent judicial authority so as to guarantee an impartial procedure [General Survey, para. 173]. In the present case, the Committee asks the Government to keep it informed of the measures taken to repeal this restriction on freedom of association.

700. Eighthly, as for new Regulations 10A and 10B which introduce notice and secrecy requirements for strike ballots, the Government argues that this is a reasonable requirement for such an important decision as a strike call and that it allows enough flexibility for the balloting so as to avoid any practical problems (provision is made for postal ballots or workplace ballots

or at a place convenient to the voters). The Government also stresses that six unions and affiliates of the FTUC have already held secret ballots under the new provisions and no difficulties were encountered despite the fact that their membership is scattered around the islands. The Committee, while conscious of the constraints due to the geographical characteristics of the country, recalls that it has considered in previous cases that obligations to give notice and to take strike decisions by secret ballot are acceptable [Digest, paras. 381 and 382].

701. As for the introduction of a six-week limitation on the validity on strike ballots also contained in Regulation 10B, the Committee notes the Government's argument that a strike mandate must relate to a particular issue and that it is not conducive to productive negotiations when a constant threat of strike action is held over the employer. The Committee takes particular note of the fact that the limitation does not in practice restrict workers from striking, but merely complicates the prerequisites for taking strike action. However, in the Committee's opinion, this restriction appears to be an unnecessary interference since the strike mandate can be renewed indefinitely at the end of every six-week period, thus still leaving an ongoing form of pressure on the employer. This is, in any case, a matter which should be the subject of internal regulation by unions, and the Committee accordingly asks the Government to remove this interference in the affairs of workers' organisations.

702. On the ninth point, concerning the removal of the compulsory check-off facilities introduced by the Trade Unions (Deduction of Union Dues) Regulations, 1991, the Committee notes that the Government considered the previous situation to be an unnecessary burden on employers; the Government stresses, however, that provision remains for voluntary agreement on deduction of union dues. Noting that the parties are free to negotiate such agreements, the Committee considers that the current position does not run counter to the principles of freedom of association.

703. Lastly, the complainant alleges that public service associations are obliged to give certain undertakings in return for the signature of voluntary check-off agreements. The Committee notes the Government's denial and explanation that two of the civil service unions signed an agreement which merely asks them to undertake to recognise Decrees Nos. 42, 43 and 44 and not to engage in any unofficial or illegal strike action. From a copy of one such agreement supplied by the complainant, the Committee observes that a signatory association undertakes to abide by the Decrees "in consideration of the Government deducting union dues pursuant to this Agreement" and accepts a very wide ban on its freedom of action: not to encourage or participate directly or indirectly in any strike as defined in Decree No. 44. While recognising the autonomy of the parties negotiating such check-off agreements, the Committee nevertheless draws the Government's attention to the fact that this kind of precondition to a so-called "voluntary" check-off agreement is not conducive to harmonious industrial relations, especially as the Government is both the administrative power establishing such agreements and the employer signing them. It accordingly asks the Government to have those particular "standard" undertakings removed from civil service check-off agreements so that parties to such agreements are left without interference to negotiate their contents and any rights and duties arising from their signature.

704. As a final overall point, the Committee would point out to the Government that legislation which minutely regulates various aspects of union activities is incompatible with the principles of freedom of association. The Committee recommends that the Government amend the legislation as indicated above so as to leave the necessary autonomy to workers' organisations in

electing their representatives, organising their administration and activities and formulating their programmes in accordance with their own internal rules.

The Committee's recommendations

705. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee asks the Government to amend the legislation so that wage-earners having multiple employers can enjoy trade union rights and be parties to labour disputes.
- (b) The Committee considers that provisions which require that trade union leaders shall, at the time of their election, have been engaged in the occupation or trade in which the organisation functions for more than a year or which vest discretion in the Registrar for the filling of the offices of secretary and treasurer or which ban the holding of office in more than one workers' organisation, are not compatible with the right of workers to elect their representatives in full freedom. The Committee therefore requests the Government to bring the provisions of Decree No. 42 into line with the requirements of freedom of association and to inform it of the measures taken in this respect.
- (c) The Committee asks the Government to cease the prosecution action commenced in February 1991 against Mr. M. Chaudhry for holding office in two workers' organisations, and to keep it informed of the withdrawal of the proceedings.
- (d) The Committee asks the Government to re-examine the provisions concerning disqualification from office because of certain specific crimes in view of the considerations expressed in the above conclusions.
- (e) With regard to the requirements for compulsory recognition orders under Decree No. 43 of 1991, the Committee, noting that a recognition claim could be blocked by the existence of a rival union, recommends that, in such cases, representativity should be solved rapidly and objectively, for example by having a vote taken. In addition it trusts that the Permanent Secretary, in making such orders, takes account of the principle that where there is no union covering more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members, so that negotiations cannot be frustrated for the lack of a bargaining partner; it asks the Government to keep it informed of the number of applications made and granted since the 1991 Decree came into force.
- (f) Since the ban on strikes related to recognition disputes is not in conformity with the principles of the right to strike, the Committee requests the Government to take the necessary measures to bring its legislation into line with the principles of freedom of association on this point, and to keep it informed of any action taken.
- (g) The Committee, considering that the new requirement in Decree No. 44 of 1991 of secret ballots for solidarity support is a matter that should be left to the unions' internal rules, requests the Government to keep it informed of the measures taken to remove this requirement.

- (h) Since the Committee is of the view that the new legislative provisions (in Regulations 10 and 10B) which prescribe the intervention of certain administrative authorities in union ballots and limit strike ballots to a six-week validity period create the risk of interference in the right to free elections and intervene too far in internal union matters, it asks the Government to keep it informed of the measures taken to repeal these restrictions on freedom of association.
- (i) The Committee asks the Government to have the "standard" undertakings removed from civil service check-off agreements so that parties to such agreements are left without interference to negotiate their contents and any rights and duties arising from their signature.
- (j) The Committee recommends that the Government amend the legislation as indicated in the conclusions so as to leave the necessary autonomy to workers' organisations.

#### V. CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Cases Nos. 1512 and 1539

##### COMPLAINTS AGAINST THE GOVERNMENT OF GUATEMALA PRESENTED BY

- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
- THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION (WCOTF) AND
- THE LATIN AMERICAN CENTRAL OF WORKERS (CLAT)

706. The Committee has examined these cases on a number of occasions, the last being at its November 1991 meeting, when it submitted an interim report to the Governing Body [279th Report of the Committee, paras. 642 to 664, approved by the Governing Body at its 251st Session (November 1991)]. In communications dated 17 December 1991 and 22 April 1992, the International Confederation of Free Trade Unions (ICFTU) and the Latin American Central of Workers (CLAT) made new allegations. In a communication of 31 July 1992 the Guatemalan Education Workers' Trade Union (STEG) provided information requested by the Committee. The Government sent its observations in a communication dated 9 September 1992.

707. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

##### A. Previous examination of the cases

708. The complainants' allegations that remained pending concern the requests for information on inquiries into murders, death threats and other serious forms of intimidation against trade union officials and on anti-union discrimination practices against strikers.

709. At its November 1991 Session, the Governing Body approved the following interim recommendations of the Committee: