

**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

PETITION TO REMOVE

FIJI

**FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES
PURSUANT TO SECTION 19 U.S.C. § 2462(d) OF THE GENERALIZED SYSTEM OF
PREFERENCES (GSP)**

filed by

**THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)**

DECEMBER 2011

Information Required Pursuant to 15 CFR § 2007

A. Party Submitting Petition:

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B. Country Subject to Review:

Fiji

C. Section of Law Warranting Review

19 U.S.C. § 2462(c)(7)

D. Basis for Petition:

FOIA
As explained below, the Government of Fiji is not taking steps to afford internationally recognized worker rights, including the right of association and the right to organize and bargain collectively. On the contrary, the Fijian military regime has amended or plans to amend labor laws in ways that severely restrict and even eliminate internationally recognized worker rights.

Introduction

In 2006, Commodore Frank Bainimarama initiated a military coup to overthrow the democratically elected government of Fiji. Following the coup, Commodore Bainimarama appointed himself interim Prime Minister. In April 2009, the Fiji Court of Appeal found the coup and interim regime to be illegal. This decision required Commodore Bainimarama to step down as interim prime minister. Instead, Bainimarama abrogated the constitution and re-appointed himself as Prime Minister of Fiji. The entire judiciary was fired and a decree was introduced that prevents any court action that questions the validity of any decrees promulgated by the Executive.

The government legislates by decrees that continue to restrict human rights and to repress dissenting voices.¹ This includes the Public Emergency Regulations (PER) enacted in April 2009. The PER allows the regime to operate as an authoritarian regime. Powers under the PER include:

- Prohibition of and powers to disperse assemblies of more than 3 persons;
- Severe censorship of all Fiji media;
- Detaining persons, and the holding of people without charge for up to 10 days;

¹ See, e.g., Resolution No. 1, Trade Union Rights in Fiji, issued by the ITUC-AP Regional General Council, Singapore Meeting, Nov. 21-22, 2011.

- Det
- ‘Control of persons’, namely the power to place them under house arrest and similar restrictions;
 - The prohibition, restriction and regulation of movement of persons in and out of towns, districts, islands;
 - The right by any police officer or military personnel to search any person, vehicle or building; and
 - The imposition of curfews.

The interim regime has announced its intention to hold elections in 2014. However there has been no indication that the regime has begun preparing for elections.

The economic situation is having a considerable impact on communities. In 2007, in a year when most economies were performing well, Fiji experienced negative growth of 6.6 percent. It is estimated that growth figures for 2009 will show a decline of 5.5 percent and the trend is likely to have continued in 2010. Increases in the cost of food, water, and energy alongside rising unemployment and underemployment are contributing to new record levels of poverty. Today it is estimated that 40 percent of Fijians are now living on or below the poverty line.

While freedom of association is secured in the (abrogated) Constitution and the Employment Relations Promulgation (ERP) 2007 adequately protects workers against anti-union discrimination, many excessive restrictions have been introduced by the regime that curtail freedom of association. Amendments to the ERP (Employment Relations Amendment Decree 2011 (Decree No. 21)) introduced on 16 May 2011, exclude all public sector workers from its coverage. Overnight, approximately 15,000 workers in Fiji’s public service lost their fundamental rights. The amendments also prohibit public sector workers and their unions from taking any action under the ERP. In addition, the State Services Decree of 2009 abolished the Public Services Appeal Board and terminated all pending appeals, effectively eliminating any right to administrative review for public servants with regard to failure to promote, disciplinary actions, and similar matters.

Even worse is the Essential National Industries (Employment) Decree, introduced in July 2011 which provides broad, discretionary powers to refuse to register unions and cancel union registration; prohibits all strikes; voids current agreements within 60 days and allows employers to impose unilateral contract terms on represented employees. The decree applies to 11 corporations in the aviation, banking, telecommunication, and other essential services sectors. The PER have also severely limited the ability of trade unions to perform their essential functions.

The 15th Asia and the Pacific and Arab Regional meeting of the International Labor Organization (ILO), held in Kyoto on 4-7 December 2011, passed a resolution “strongly condemn[ing] the action of the Fiji government” as regards the trade union situation in Fiji.²

² The resolution can be accessed here: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_170338.pdf.

This petition argues that Fiji should be removed from the list of countries eligible to be beneficiaries under the Generalized System of Preferences (GSP) pursuant to 19 U.S.C. § 2426(d) because it has failed to take steps to afford workers internationally recognized worker rights as required by 19 U.S.C. § 2462(c)(7).

- I. The Fijian government has targeted, arrested, and intimidated trade unions and leaders and should be removed from the list of eligible beneficiary countries for the GSP for failure to take steps to afford workers internationally recognized worker rights.

A. Assault and Harassment of Trade Unions Leaders

On repeated occasions, the government has assaulted and harassed the highest-ranking trade union official in Fiji, Mr. Felix Anthony, National Secretary of the Fiji Trade Union Congress (FTUC) and General Secretary of the Fiji Sugar Workers. On February 12, 2011, Mr. Anthony was arrested and detained by military officers who threatened him and his family. On February 18, Mr. Anthony was told that Commodore Bainimarama wanted to meet him, and he attended the meeting together with two other top union officials. At the meeting, he was accused of being the cause of problems in the sugar mills. The three were later beaten for approximately two hours, and all three required medical attention.³

On March 2, 2011, International Trade Union Confederation (ITUC) General Secretary Sharan Burrow reported the matter to ILO Director General Juan Somavia, asking for his immediate intervention in the matter. The Director General wrote to the government of Fiji shortly thereafter, registering his serious concern and asking the government to investigate the incident and transmit any information in that regard. He further noted the ILO's Committee on Freedom of Association (CFA) had recommended a tripartite mission to Fiji and that the ILO fully supported such a mission.

In mid-August 2011, a High Level Delegation – led by Guy Ryder, Deputy Director of the ILO – visited Fiji in order to advise the Director General on the situation in Fiji. The timing of the delegation was soon after the introduction of the Essential National Industries (Employment) Decree. The delegation raised concerns about the Decree with the Government and advised it on the negative implications for Fiji's international obligations under ratified ILO conventions.⁴

³ These incidents have been widely reported internationally, including on Radio New Zealand, in Raw Fiji News (<http://rawfijinews.wordpress.com/>), and by the IUC.

⁴ In September 2011, the ILO reiterated its concern in a submission to the Pacific Islands Forum Ministerial Contact Group on Fiji, expressing serious concern with developments in Fiji: "The information available to the ILO reflects not only the gravity of the labor rights situation in Fiji within a context of a general denial of human rights and democratic freedoms, but also indicates the danger of a serious degradation of that situation in the near future... The Fijian trade union movement has been active in recent weeks in seeking solidarity from the international trade union movement and become more outspoken in its criticism of the Government and in its calls for an early return to democracy. A number of its leaders fear that this may lead to serious charges being brought against them soon. This comes at a time when intimidation against union activists is seen to be on the increase and when union meetings are apparently to be banned on a routine basis."

On April 1, 2011, the military officer responsible for Mr. Anthony's earlier beating approached him while he ate lunch and warned him of further beatings in the presence of friends. The interim Government's harassment of trade unionists continued when Mr. Anthony sought to participate in the 100th International Labor Conference (ILC) in June 2011. The government failed to deposit the credentials of Mr. Anthony, who had been nominated by the Fiji Trade Union Congress (FTUC), the most representative trade union body, to represent Fijian workers at the ILC. The Conference Credentials Committee examined an objection filed by the ITUC on this matter and concluded that, "*By the Government's own admission, it had purposefully ignored the nomination made by the organization that it had itself consulted for the purpose of the nomination of the delegation. As the Committee has stressed in the past, governments must accept the most representative organizations' choice regarding the persons to be nominated as the Employers' and the Workers' delegates. Refusal to do so is a clear violation of their obligation under article 3, paragraph 5, of the ILO Constitution*" (emphasis added).⁵ The Credentials Committee explained further that the government's actions "raise[d] doubts as to the Government's impartiality vis-à-vis the FTUC, considering the allegations that there [are] a deterioration of trade union rights in the country."⁶ The AFL-CIO agrees with the Credential Committee's conclusion that the decision to deny credentials to Mr. Anthony to attend the ILC was most likely in retaliation for his exercise of fundamental trade union rights in Fiji.

Immediately following the 100th ILC, military officers assaulted another union leader, **Mohammed Khalil, President of the Fiji Sugar and General Workers Union - Ba Branch**. On June 22, 2011, two army officers assaulted Mr. Khalil and denounced him and Mr. Anthony (who was not present at the time) for their union advocacy. During the beating, the military officers demanded that Mr. Khalil submit his resignation from the union, or he would face the same treatment again. He did not resign.

There is no question that physical assaults and threats against trade union leaders constitute a grave violation of the right to freedom of association. However, to the extent that the beating he received was in retaliation for statements made by his colleague Mr. Anthony at the ILC,⁷ as seems likely, this constitutes yet another violation of freedom of association. Delegates to the ILC have a right to express freely their point of view on questions within the competence of the ILO. If delegates or their associates suffer retaliation for the exercise of this right by their government, their work and the work of the ILO will be seriously undermined.⁸

On August 3, 2011, **Mr. Daniel Urai, President of the FTUC and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE)** and **Mr. Nitin Goundar, an organizer with NUHCTIE**, were detained and questioned at the

⁵ See International Labour Conference, Third Report of the Credentials Committee, Provisional Report, June 15, 2011, ¶ 49.

⁶ *Id.* at ¶ 51.

⁷ The ITUC accredited Mr. Felix as part of its delegation so that he was able to attend and participate in the 100th ILC.

⁸ The Committee on Freedom of Association (CFA) examined a similar case in which a worker delegate was arrested and sentenced following a speech to the Conference, finding that such acts violated the immunities afforded under Article 40 of the ILO Constitution. See *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, International Labour Office, Fifth (revised) edition, 2006 (hereinafter "CFA Digest of Decisions"), ¶ 174.

Nadi Police Station. They were charged with “unlawful assembly,” apparently for having met with and advised union members regarding pending collective negotiations with hotel management. They were released on bail on August 4, with a hearing date set for September 2, 2011. Of course, the arrest of trade unionists for conducting trade union activity is a serious breach of the right to freedom of association.⁹

On October 29, 2011, President Urai was arrested again, this time at the airport upon his return from the Commonwealth Heads of Government Meeting in Perth, Australia, where he spoke out against human and trade union rights violations perpetrated by the Fijian government. After being held for over a week without charge, Mr. Urai was charged with sedition and was released a week later, but has been ordered to report to police daily and abide by a curfew. Further hearings are pending. Further hearings (not yet scheduled) are also pending for Mr. Urai and Mr. Goundar on the charges stemming from the previous August 2011 arrest.

Each incident related above represents a violation of the fundamental right to freedom of association that calls into question the current Government of Fiji’s efforts to afford workers internationally recognized worker rights as required by 19 U.S.C. § 2462(c)(7).

B. Interference with Union Meetings

On August 13, police broke up a regular meeting of the FTUC after revoking its permit to assemble. Previous applications to hold meetings this year have also been rejected without explanation¹⁰ or on the basis that the trade union does not support government policy—which has been to eliminate by decree trade union rights in the country.

In September 2011, police disrupted a social gathering of some trade union leaders, including Felix Anthony, as it was deemed a meeting of three or more persons without a permit. The police action culminated in hours-long interrogations.

In addition to these instances, the Public Emergency Regulations 2009 give unchecked powers to the government to ban any and all assembly in Fiji. Article 3 grants the police the authority to prohibit any procession, meeting or assembly, and any such procession, meeting, or assembly may be dispersed by the police or the army even where there was no prior formal prohibition issued. The law gives the police and the army discretion to use force if the procession, meeting, or assembly has not been dispersed after giving due warning and makes participating in a prohibited procession, meeting, or assembly an offense punishable by up to two years in jail, or a fine up to \$1,000, or both. Also, Articles 5-7 grant police sweeping authority to limit the free movement of persons, and Article 18 grants similarly sweeping authority to arrest and detain. Article 16 puts all media under the control of the government by

⁹ See CFA Digest of Decisions ¶ 64 (“The detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.”); ¶ 62 (“The arrest, even if only briefly, of trade union leaders and trade unionists ... for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association.”).

¹⁰ See, e.g., Letter from the Ministry of Provincial Development and National Disaster Management to Mr. Felix Anthony, dated Dec. 12, 2011; Press Release (7) – FTUC Meeting Permit Revoked, Fiji Trades union Congress, Aug. 13, 2011.

requiring any broadcaster or publisher to submit all materials that may be published or broadcast for prior review and authorization.

In practice, these laws have greatly affected the regular work of trade unions in Fiji. Military personnel are present in all media outlets (TV, radio, and newspaper) and screen all news. Accordingly, trade union statements have been prohibited from being printed or aired, which interferes with their efforts to associate, organize, and advocate on behalf of workers. Trade union activities such as seminars, workshops and meetings, if they happen at all, require a permit and military officers attend the meetings, approve the meeting agenda, and even select who may speak or participate in such activities. On July 14, 2011, the FTUC applied to hold a two-day workshop on reforms to the employment law. The government denied the request explaining that “*FTUC had not supported the current government.*” On July 15, the National Union of Factory and Garment Workers applied for a permit to hold a union meeting. That request was denied, citing to the PER.

These are serious violations of the rights of unions and workers. The CFA has stated on several occasions that “The right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or impede its exercise...”¹¹ Moreover, the CFA has cautioned against public authorities attending trade union meetings, finding that “where a representative of the public authorities can attend trade union meetings, this may influence the deliberations and the decisions taken (especially if this representative is entitled to participate in the proceedings) and hence may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings.”¹² The strict limitations on media also violate freedom of association, as “the right to express opinions without previous authorization through the press is one of the essential elements of the rights of occupational organizations.”¹³ Further, “the application of measures designed to control publication and means of information may involve serious interference by administrative authorities with this activity.”¹⁴

II. Fiji should be removed from the list of eligible beneficiary countries for the GSP because the Fijian government has issued several decrees since 2009 that violate the principles of the fundamental right of freedom of association by collectively eliminating most labor rights for workers in the public service and limiting the rights of workers in other key industries.

Since 2009, the government of Fiji has issued several decrees that curtail fundamental labor rights (and others), largely for public service workers, and simultaneously eliminate access to judicial review and redress for past, present and future violations of those rights. These include:

1. State Services Decree 2009 (No. 6)

¹¹ See CFA Digest of Decisions ¶ 130.

¹² See CFA Digest of Decisions ¶ 132.

¹³ See CFA Digest of Decisions ¶ 156.

¹⁴ See CFA Digest of Decisions ¶ 166.

2. Administration of Justice Decree 2009 (Decree No. 9)
3. Administration of Justice (Amendment) Decree 2009 (Decree No. 10)
4. Administration of Justice (Amendment) Decree 2010 (Decree No. 14)
5. Employment Relations Amendment Decree 2011 (Decree No. 21)
6. Essential National Industries (Employment) Decree 2011 (Decree No. 35)
7. Critical Industries in Financial Distress Decree 2011 (proposed)

These decrees collectively eliminate most labor rights and remedies for workers in the public service (and in some other public entities), and severely limit the rights of workers in several key (and unionized) industries such as sugar and air transportation. We understand that all of these changes, which are inimical to the rights and interests of workers, were made without any prior consultation with the relevant trade unions.¹⁵ The most critical aspects of these decrees are described below.

A. State Services Decree 2009 (Decree No. 6) (April 14, 2009)

Article 17 of Decree 6 abolished the Public Services Appeal Board, which was established under the Public Service (Amendment) Act 1998 to review complaints by public service workers with regard to the failure to promote, disciplinary actions undertaken by the employer or transfers between districts.¹⁶ Decree 6 also terminated all pending or partly heard appeals. Thus, public servants lost the right to any administrative review with regard to those matters.¹⁷ Article 17 of Decree 6 also immediately lowered the mandatory retirement age from 60 to 55. Over 2,000 public servants were forcibly retired and new recruitment and advancement is taking place on a contract basis. Senior positions are also being filled by non-civilian personnel.

B. Administration of Justice Decree 2009 (Decree No. 9) (April 16, 2009), Administration of Justice (Amendment) Decree 2009 (Decree No. 10) (May 12, 2009) and Administration of Justice (Amendment) Decree 2010 (Decree No. 14) (February 18, 2010)

The Administration of Justice Decree of 2009 re-established the nation's judicial system. However, under Article 5, courts were divested of their jurisdiction to hear any challenges whatsoever to the Fiji Constitution Amendment Act of 1997, Revocation Decree of 2009, and any decrees made or to be made by the President after April 10, 2009. Article 23(3) of the decree terminated any pending challenges to the legality of any decrees or declarations made between December 5, 2006 and April 9, 2009 and most decisions made by any executive branch official during that time. Decree 9 specifically referenced any decision to terminate any employment on any grounds between December 5, 2006 and January 7, 2007. Decree 9 affected several public sector unions that were unable to pursue justice arising out of work related grievances.

¹⁵ The CFA has on several occasions "emphasized the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights." *See* CFA Digest of Decisions ¶1074.

¹⁶ *See* Public Service (Amendment) Act 1998, Article 5.

¹⁷ A Public Services Disciplinary Tribunal was later established, but only to review disciplinary actions.

Article 3 of Decree 10 extended Decree 9 by terminating the review of any proceedings, claims, disputes, or grievances that challenge any decision made by the Public Service Commission between December 5, 2006 and April 9, 2009 in relation to the terms and conditions of employment of public officers, including any changes to remuneration.

Article 2 of Decree 14 went further still by divesting the courts of jurisdiction to hear any challenge by any person regarding any decision or order by the government to restructure or reform the public service, alter or amend the terms and conditions of employment of any person in any public office or public service, or any changes to terms of services, including remuneration. Any pending claim with regard to those issues was immediately terminated.¹⁸ Notably, Decree 14 went beyond the public service workers and included other public entities—and thus more unionized workers.

C. Employment Relations Amendment Decree of 2011 (Decree No. 21)

On May 16, 2011, the government of Fiji promulgated the Employment Relations Amendment Decree (Decree No. 21) which amended Article 3 of the Employment Relations Promulgation (ERP) of 2007 to exclude all public service workers from its coverage. By this decree, roughly 15,000 workers in Fiji's public service lost overnight their fundamental labor rights as well as other rights. To appreciate the extent of the losses, the following is a brief description of the main sections of the ERP 2007 which no longer apply to public sector workers:

1. Fundamental Rights at Work
2. ER Labor Advisory Board and functions of officials
3. Valid Contracts of Service
4. Protection of Wages
5. Rights to Minimum Conditions of Work, i.e. hours of work, holidays, leave, etc.
6. EEO and Protection from Discrimination
7. Protection from Redundancy or Unfair Treatment
8. Registering of Employment Grievances and Disputes
9. Protection from Sexual Harassment
10. The establishment, registration and operation of trade unions
11. Right to Collective Bargaining and Collective Agreements
12. Right to Challenge Employer's Decisions
13. Right to Report Disputes to Mediation, Tribunal or Labor Court
14. Right to Appeals at all levels
15. Subsidiary ERP legislation no longer applicable

Further, Decree 21 prohibits public service workers and their unions from taking any action, proceeding, claim, dispute, or grievance of any kind that arose or could arise under the ERP before any tribunal. The Decree also nullifies any order of any competent tribunal in any action that arose under the ERP. The only protections not eliminated by Decree 21 are those arising under the Workmen's Compensation Act and the Health and Safety at Work Act. In addition,

¹⁸ Following this series of decrees, the dispute settlement provisions of the Employment Relations Promulgation Act became the only forum for relief on individual cases. That situation would turn out to be short lived.

as of August 4, 2011, the government prohibited automatic dues deduction for all public service workers by a decree amending the Civil Service Act. The effect and probable intent of the decree is to financially weaken public sector unions, requiring them to collect dues from each member by hand.

D. Essential National Industries (Employment) Decree of 2011 and its Regulations

On July 29, 2011, the government of Fiji promulgated the Essential National Industries (Employment) Decree 2011. On September 9, the government gazetted the decree and it came into full effect. It designated 11 corporations in the finance, telecommunications, aviation, and public utilities sectors as essential industries and allows the regime to include any other industries as and when it wishes.

Under this Decree, as described below, trade unions in essential industries will be forced to re-register under onerous new rules and hold new elections. Collective bargaining agreements will also be abrogated. These measures strike a severe blow to workers' rights in many economic sectors in Fiji and abrogate Fijians' rights to free association and collective bargaining under international labor law.

On September 13, ILO Director General Juan Somavia said the following with regard to the decree:

By going ahead with this Decree the 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 labor 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.

Unfortunately, the regime has ignored the ILO's entreaties and appears wholly committed to the dismantling of the trade union movement by force and by decree. Included below are some of the most objectionable provisions.

Union Registration and Recognition

Under Article 6, all union registrations in designated industries will effectively be cancelled; in order to operate, unions are required to re-register under new and highly problematic procedures. The CFA has on many prior occasions opined that the cancellation of a union registration by the executive branch constitutes a serious infringement of the principles of freedom of association.¹⁹

¹⁹ See, e.g., CFA Digest of Decisions ¶ 689 ("Legislation which accords the minister the complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association."). Here, the legislation automatically cancels the registration and requires all existing unions to reregister under a deeply flawed system that grants the government considerable discretion.

Under Article 7, the leaders of re-registered unions, including officers, representatives, and executives, must be employed by the designated corporations they represent, which conflicts with ILO jurisprudence on workers' ability to elect representatives of their choice.²⁰ Those that run afoul of this provision face steep civil and penal sanctions—a fine of up to \$50,000 or imprisonment of up to 5 years for individuals and up to \$100,000 for the union.

Under Article 10, a union first must apply to the Prime Minister to seek to be elected or re-elected as representative of the bargaining unit and supply specified information. Upon receipt of an application, the Prime Minister has complete discretion, under Article 11, to decide the composition and scope of the bargaining unit, and workers have no opportunity to appeal that decision.

Once a union is elected, the Registrar will have the power to cancel the registration of the union and force a new election at any time if, upon receipt of a complaint from an employer, it finds there is sufficient evidence that the union no longer enjoys the requisite minimum support.²¹ In such case, the collective agreement is voided and the employer may impose the terms and conditions of employment.

Overall, there seems little doubt that the re-registration process is an attempt to depose current trade union leaders and interfere with the capacity of unions to represent their members, thereby denying workers their fundamental right.

Collective Bargaining

Under Article 8, all existing collective agreements are void 60 days after the decree enters into force.²² The parties are to negotiate a new agreement under new procedures before the expiry of the 60 days; however, the decree provides that if no agreement is in place following collective bargaining under the new procedures, the corporation may unilaterally implement new terms and conditions through a new collective agreement or individual contracts. This will only encourage unscrupulous employers to *appear* to bargain in good faith while they wait for 60 days to pass,

²⁰ See e.g., CFA Digest of Decisions ¶¶ 407-408 (“The requirement of membership of an occupation or establishment as a condition of eligibility for union office are not consistent with the right of workers to elect their representatives in full freedom.”); (“If the national legislation provides that all trade union leaders must belong to the occupation in which the organization functions, there is a danger that the guarantees provided for in Convention No. 87 may be jeopardized. In fact, in such cases, the laying off of a worker who is a trade union official can, as well as making him forfeit his position as a trade union official, affect the freedom of action of the organization and its right to elect its representatives in full freedom, and even encourage acts of interference by employers.”).

²¹ Dissolution for insufficient membership must allow for an appeal by a court of law, not the administrative authorities. See e.g., CFA Digest of Decisions ¶ 402 (“A legal provision which requires the dissolution of a trade union if its membership falls below 20 or 40, depending on whether it is a works union or an occupational union, does not in itself constitute an infringement of the exercise of trade union rights, provided that such winding up is attended by all necessary legal guarantees to avoid any possibility of an abusive interpretation of the provision; in other words, the right of appeal to a court of law.”).

²² See e.g., CFA Digest of Decisions ¶ 942 (“A legal provision which allows the employer to modify unilaterally the content of signed collective agreements, or to require that they be renegotiated, is contrary to the principles of collective bargaining.”).

at which point they can then impose terms in the absence of a mutually accepted collective agreement.

Part 4, which sets forth rules for collective negotiation, also raises several major concerns. First, Article 21(3) provides for a bargaining period of up to three years.²³ If there is no agreement after three years, either party may seek the intervention of the Prime Minister under Article 21(4), who may impose a final and binding agreement.²⁴ That agreement shall be binding on the parties for two years. Under Article 22, collective bargaining agreements do not expire; instead, they are subject to amendment every five years in the absence of an agreement to the contrary.²⁵ There appears to be no mechanism to amend an agreement by mutual consent if not during the amendment period.

Right to Strike

Article 27(1) of the decree is categorical in stating that “no job actions, strikes, sick-outs, slowdowns or other financially or operationally harmful activities shall be permitted at any time for any reason,” a prohibition which is on its face inconsistent with core labor standards.²⁶ Notably, there is no such categorical prohibition on employers’ economic weapons, such as lock-outs. The decree goes further to state that such actions are “expressly prohibited” in connection with efforts to obtain registration, efforts to influence the outcome of bargaining or in the course of collective bargaining, and in disputes over the interpretation or application of a collective bargaining agreement, even though the ILO has recognized the legitimacy of strikes in connection with registration and collective bargaining.²⁷

Despite Article 27(1), 27(2) provides that a union may strike if the parties failed to reach a new collective agreement after *three years* of bargaining, and even then only after a 28-day notice period *and* prior written approval from the government. Moreover, the Minister has to verify the results of the secret-ballot vote to authorize the strike. In the highly unlikely case there is a strike, the employer is permitted to lock-out the workers and unilaterally impose terms and conditions of employment, which effectively abrogates the entire right to strike. The Minister

²³ A two-year period for collective bargaining may be excessive. *See e.g.*, CFA Digest of Decisions ¶ 1046 (“In one case where the legislation contained a provision whereby a time limit of up to 105 days was fixed, within which employers had to reply to proposals by the workers, and a time-limit of six months fixed within which collective agreements had to be concluded (which could be prolonged once for a further six months), the Committee expressed the view that it would be desirable to reduce these periods in order to encourage and promote the development of voluntary negotiation, particularly in view of the fact that the workers in the country in question were unable to take strike action.”).

²⁴ *See e.g.*, CFA Digest of Decisions ¶ 861 (“The imposition of a compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of Convention No. 98.”).

²⁵ *See e.g.*, CFA Digest of Decisions ¶ 1047 (“The duration of collective agreements is primarily a matter for the parties involved, but if government action is being considered any legislation should reflect tripartite agreement.”).

²⁶ *See, e.g.*, CFA Digest of Decisions ¶ 521-23, 525 (“The prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87.”).

²⁷ *See e.g.*, CFA Digest of Decisions ¶ 522. The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests); ¶ 535 (“The fact that a strike is called for recognition of a union is a legitimate interest which may be defended by workers and their organizations.”).

may also declare illegal any strike in an essential industry at any time.²⁸ A person who violates the law may be subject to a fine of \$50,000 and 5 years in jail; the union may face a \$250,000 sanction.²⁹

Additional Concerns

Article 24(2) & (3) provide that no person in a designated company that operates full-time shall be entitled to overtime pay for work performed on the weekends or on public holidays. In the airline industry, workers are not entitled to overtime pay under any circumstances, unless otherwise agreed by the employer and union.

Article 24(4) prohibits automatic dues deductions unless the employer agrees to do so, which seems unlikely given the overall anti-union legal scheme.

Article 30 provides that the validity of the decree itself, decisions by government officials taken under the decree, and the decisions of any corporation taken under the decree are not reviewable by anyone before any tribunal. The decree goes so far as to extinguish any pending claims under the ERP 2007. Thus, workers and unions in essential industries have absolutely no redress for any violation of what little is left of their rights at work.

E. Critical Industries in Financial Distress Decree of 2011 (proposed)

Pursuant to Article 23 et. seq. of the Critical Industries in Financial Distress Decree 2011, employers that have applied for and have received a declaration of financial distress from an arbitrator would be able to apply to terminate unilaterally existing collective bargaining agreements. To overcome concerns about the employer's application raised by a union, the employer would need only show, pursuant to Article 26, that the decision to terminate the agreement is "a reasonable exercise of the company's business judgment," that the collective agreement "in any way reduced the productivity of the company, or makes it uncompetitive, or is not an industry norm," that "the balance of convenience favours rejecting the agreement" or that "reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution." Although Article 27 would require the employer to make a proposal to the union regarding the modifications to the agreement it deems necessary, to provide the union with information necessary to evaluate the proposal, and to make an effort to meet and confer with the union, the union would have very little opportunity or leverage to bargain collectively to reach truly necessary, fair and equitable modifications.

Together, these decrees completely undermine the principles of freedom of association for workers in the public service and increasingly workers in the private sector. Indeed, the incremental loss of trade union rights by decrees issued in 2009-10 was surpassed by the

²⁸ A strike should only be declared illegal by an independent authority. *See e.g.*, ILO CFA Digest of Decisions ¶ 628 ("Responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved.").

²⁹ *See e.g.*, ILO CFA Digest of Decisions ¶ 672 ("No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.").

complete elimination of trade union rights for public service workers effectuated by Decree 21 in 2011. Today, public service workers, a majority of the workforce of Fiji, enjoy none of the rights set forth in Conventions 87 and 98. As the CFA has repeatedly observed, "Public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests." Of course, workers must also have access to competent tribunals to assert their rights under law (which no longer exist). The inability to challenge even the validity of the loss of these fundamental rights by decree, which is clearly contrary to the country's obligations under international labor law, in addition to extinguishing all pending claims, is only further evidence of deepening authoritarianism in Fiji.

III. Conclusion

The Government of Fiji is failing to take adequate steps to afford to Fijians internationally recognized worker rights as is required by 19 U.S.C. § 2462(c)(7). In fact, by using its military to detain, injure, and threaten labor leaders as well as amend prior labor law, the Government of Fiji is taking active steps to nullify internationally recognized worker rights under law as well in practice. As such, the AFL-CIO urges the President to suspend the application of the duty-free treatment accorded under the GSP until such time as the Government of Fiji amends its laws to reinstate core labor rights, effectively enforces its law consistent with those rights, and abandons all government activity designed to deter workers from exercising such rights.