

AFL 1992

KN

Rev 1
OUT 2

FIJI

95019921

In November 1991, the Government of Fiji promulgated several decrees and legal notices that represent a clear retreat in the protection of worker rights, including the fundamental right to freedom of association. Another decree approved by the Cabinet in May 1992 further confirms this retreat. On the basis of these extreme and unilateral actions unsanctioned by any representative government body, the AFL-CIO calls for Fiji to be stripped of the GSP status it now enjoys.

FOA

CONTEMPT FOR LABOR RIGHTS BY THE GOVERNMENT OF FIJI

Since 1987, when the democratically-elected government of Fiji was overthrown in a military coup, subsequent governments have ruled in a constitutional vacuum. The undemocratic nature of the government is evident in its citation by Freedom House that Fiji is among the more serious human rights offenders in the world.¹ As the U.S. State Department's Country Reports on Human Rights Practices for 1991 states, the first unelected interim government unilaterally imposed a constitution in 1990 with no popular validation, politically dividing the country along ethnic and racial lines in an effort to favor one group over another in the retention of power. In the past five years, Indian-origin citizens have seen the abrogation of some of their political rights through these machinations. However, in November 1991 the current Fiji government took a major leap backward by specifically attacking worker rights. Through three decrees and two legal notices (see Attachment I), the Fiji government restricted, among other things, the basic rights of freedom of association, and the right to strike. The bad faith of the Fiji government is seen in its pledges earlier in 1991 to the International Confederation of Free Trade Unions (ICFTU) that it would not issue such restrictions.²

FOA

The ICFTU has issued protests against the new restrictions on the labor movement, calling them the "most serious attack to date on union activities in Fiji"³ and saying "the Decrees and Legal Notices [are] specifically aimed at crippling the Fiji Trade Union Congress (FTUC) through eroding the union's ability to effectively operate and permitting unacceptable government interference in trade union decision-making affairs. . ."⁴ The new regulations clearly violate internationally-recognized labor rights Conventions 87 and 98 of the International Labor Organization (ILO) and a complaint about Fiji's new regulations has been lodged with the ILO. In this petition, the AFL-CIO will show how these international standards, and others involving basic worker rights, have been systematically violated by the Fiji government.

FOA

FREEDOM OF ASSOCIATION

The State Department's human rights report for 1991 has the following to say about freedom of association in Fiji: "Workers' rights to form and join unions, elect their own representatives, publicize their views on labor matters, and determine their own policies are protected by law. Strikes are legal." This bare-bones description resembles the actual situation in Fiji in the wake of the new decrees and legal notices as much as a skeleton resembles a living, breathing person. In fact, the wide, new restrictions are basic violations of worker rights as defined by the ILO.

For example, ILO Convention 87 says that workers shall have the right to establish and, "subject only to the rules of the organization concerned," to join organizations of their own choosing without previous authorization (Article 2); and public authorities shall not restrict the right or impede trade unions from organizing their own administration, and electing their own officials (Article 3). New Decrees 42 and 44, and Legal Notice No. 58, all place severe restrictions and limitations on these fundamental rights. They do so in the following ways:

Decree 42: This decree places vast, new restrictions on "associations" such as the Fiji Association of Garment Workers (FAGW) and the National Farmers Union, which have fulfilled the role of *de facto* unions in Fiji. Under the new decree, these associations cannot engage in "any trade dispute or matters connected with the regulations of relations between employees and employees or between employees and employers or between employers and employers." This means that workers banded together in associations have been entirely stripped of their rights to engage in collective bargaining, organizing, strikes, or grievance procedures against employers. As two of the largest components of the economy consist of garment manufacturing and sugar cane farming, these restrictions violate the rights of a very significant portion of the labor movement in Fiji.

These decrees have already been used to restrict trade union activity and violate Fijian workers' basic rights. For example, the Fiji government, citing the new November regulations, flatly refused to recognize the FAGW as the representative for garment workers striking the Hantex Apparel Company, despite those workers desire to be represented by the FAGW.⁵

Decree 42 also states that any officer of an association now cannot be an officer of any other association or trade union. This is a fundamental violation of the basic right of workers organizations to choose their own leaders and representatives. The general secretary of the largest Fiji trade union organization, Mahendra Chaudhry of the FTUC, has already been brought up on charges as a result of his previously being elected general

CTM 2

3

secretary of both the National Farmers Union and the Fiji Public Servants Association. If found guilty, Chaudhry could be fined and imprisoned. And under this new decree, the Fiji government could effectively ban him from holding any leadership positions in unions or associations for five years to come. In another case, the Lautoka Taxi Union lost a leader as a result of these decrees.⁶

Legal Notice 58: This notice, as well as Decree 42, imposes new restrictions and qualifications for unions electing their own officers, including supervision and dictation of the manner of elections by the government in the person of the Registrar of Trade Unions, and veto power over union elections and candidates for those offices by the same government Registrar. In the case where the government is the employer, this regulation actually puts the employer in the position of having veto power over union business and the conduct of union votes. These new powers that the Fiji government has arrogated to itself flagrantly violate ILO Convention 87 prohibiting interference in union affairs by any public authority.

Decree 44: This decree explicitly violates the right of unions to conduct their own business and associate with other organizations as they see fit, by subjecting "all matters relating to requests by unions for solidarity support from any person or organization outside Fiji"⁷ to a secret ballot of the union membership. New regulations also contained in this decree call for secret ballots, which must be conducted in a cumbersome and time-consuming manner. A knowledge of the geographic realities of Fiji reveals the new voting regulations as a pattern of systematic suppression. The work force is scattered throughout the country's hundreds of islands in small branches, making an emergency vote on an issue of international importance, for example, a near impossibility because of the difficulty of mail delivery. This, too, must be seen as a blatant government attempt to place restrictions on the ability of unions to conduct affairs with international organizations. Hence it is a clear violation of Articles 2 and 3 of ILO Convention 87 and the fundamental right of unions to associate with whomever they choose.

Further restrictions on the right of freedom of association are to be found in other decrees and legal notices passed in November 1991. Decree 43, for example, violates Article 2 of ILO Convention 98, which Fiji has ratified, by:

- o Granting government officials and employers considerable power to determine whether unions can be formed at all in work places. In resolving disputes in a work place over rival unions' claims to membership, for instance, final arbitration of the dispute is vested with the "Permanent Secretary" (the highest-level public servant under the Prime Minister's authority), with no recourse to a judicial authority.

- o Giving to an employer, according to the ICFTU protest to the ILO, "considerable scope. . . to inhibit the process of a union obtaining recognition simply by encouraging an application from a 'rival' trade union for recognition, there being nothing in the amended Act to guarantee protection from such a course of action by an employer."⁸
- o Denying the right of freedom of association to ". . . persons who are employed in a confidential capacity or who represent the employer in matters affecting industrial or staff relations." While some measure of power by employers to exclude certain employees from union activities on the basis of confidentiality is acceptable, Decree 43 gives tremendous leeway to employers to abuse this practice. Therefore, the effect of Decree 43 can clearly contravene both ILO Conventions 87 and 98, by stripping substantial numbers of employees, through employer fiat, of their right to belong to unions.

RIGHT TO STRIKE

Decrees 43 and 44, and Legal Notice 58, and the new May 1992 decree, all contain extremely broad and punitive redefinitions of the right of workers to strike. Despite the veneer of genteel legality in the language of these regulations, the truth is they create a chilling effect for workers who consider strikes, and effectively criminalize many internationally-recognized rights of workers to air their grievances.

Legal Notice 58, for example, outlines an elaborate and particular process for conducting a strike vote that, as with other regulations cited elsewhere, imposes severe restrictions on how unions must conduct their affairs. New requirements that any strike vote has a mandate of only six weeks, and any strike action must be taken with regard to the specific grievance cited in the strike vote, greatly restrict the possibility for union members to address grievances as they occur. This is amply demonstrated by the fact that under the Notice 58, there is no recourse to mechanisms for conciliation or arbitration, nor any obligation for an employer to negotiate in good faith during the period of the six-week mandate. Given the aforementioned geography and difficulties of communication in Fiji, this measure will weaken the ability of a union to use the strike option.

Decree 44 determines that the word "strike" now means "the act of any number of workers who are or have been in employment of the same employer or of different employers:

- "(a) in discontinuing their employment whether wholly or partially, or reducing the normal performance of it; or
- (b) in breaching their contracts of service; or
- (c) in refusing or failing after such discontinuance to resume or return to their employment; or
- (d) in refusing or failing to accept engagement for any work in which they are usually employed; or
- (e) in reducing their normal output or their normal rate of work--"⁹

These definitions were reconfirmed by the May 1992 decree. Under these broad categories, workers could be considered "on strike" for any number of reasons, including a reduction in productivity due to their health or other problems, or refusal to work in dangerous or hazardous conditions. The employer, under the new regulations, has great leeway in determining whether such workers are technically "on strike," and therefore subject to draconian treatment.

What can befall workers who find themselves on the other side of a disagreement with any employer over such issues? For conducting a "strike action," except under an official strike mandated by the union, the workers face a stiff fine and imprisonment of up to a year.¹⁰ And according to Taniela Veitata, the Fiji Minister for Employment and Industrial Relations, the workers' union can also be forced to pay damages to the employer.¹¹

Taken together, these various provisions could amount to a *de facto* ban on strike activity. Already over 160 garment workers have been fired for conducting a five-day strike and refusing to return to work. One of their chief grievances was the employer's unwillingness to recognize their union, the FAGW.¹²

Case 4

RESTRICTIONS ON ABILITY OF TRADE UNIONS TO OPERATE DUE TO A HOSTILE ENVIRONMENT

Through its new regulations, the Fiji government has created an environment of pervasive repression that is intrinsically hostile to the operation of trade unions, and may be used by employers to quash legitimate union activities. In addition, it has erected a punitive schedule of fines and imprisonment for trade union activities which will have a chilling effect on unions' abilities to do their business. As mentioned above, this has already happened in the case of the FTUC National Secretary Mahendra Chaudhry who

is also head of the opposition Labor Party. The sections of Decrees 43 and 44 and Legal Notice 58 regarding strikes enumerated above also give employers vast leeway in oppressing trade unions and their leaders for political purposes.

Another attack on trade union operations is contained in Legal Notice 59, which makes the process for dues check-off for unions far more complicated, burdensome and expensive. Time and resources formerly spent representing members' interests in relation to employers, will now be spent complying with new administrative regulations. By doing so, the government's aim is to reduce the ability of unions to collect dues, and thereby constitutes an attack on unions with intent to weaken them on a financial basis. This is not mere speculation. Already the Labasa branch of the Fiji Teacher's Union has been dealt a severe blow to its finances because the employer refuses to continue dues check-off.¹³ In another case, the Fijian Teachers Association discovered that even though it negotiated an agreement with the employer (the government), payroll deductions were stopped.¹⁴

The real intent of the Fiji government in these regulations is thus demonstrated by reports of employers withholding check-off if employees refuse to accept company-mandated policies, such as wage levels. The Fiji Bank Employees' Union was presented with such a demand, as was the National Union of Factory and Commercial Workers.¹⁵ Another example of such blatant blackmail is the attached Memorandum of Agreement (Attachment II) imposed by an employer on trade unions with which it deals. In return for dues check-off, the Memorandum of Agreement specifically demands from workers endorsement of the very laws that have stripped them of their rights, an a priori pledge not to strike for the indefinite future, a promise not to seek any support or international solidarity, and a ban on any criticism of Fiji by a union member either at home or abroad.

Were this a private sector employer, it would be bad enough. The Fiji government might even have recourse to say it is staying out of employee-employer relations. However, in this case, the employer is the Fiji government, itself. By making these demands in this Memorandum of Agreement, the Fiji government goes beyond the restrictive laws it has unilaterally passed, to interfere even more directly in what are properly reserved as the right of unions to conduct their own affairs.

CONDITIONS OF WORK

Working conditions in Fiji are severe, employees are subject to arbitrary dismissal, and employer abuses are rampant. The unilateral changes to the trade union and industrial association acts -- which make it more difficult for workers to form real, representative unions; for unions to effectively operate; and for organized workers to

legally engage in industrial action -- mean that workers will have even less recourse to remedy their situation. The new labor law is, in essence, a declaration of an "open season" on workers.

Wages and Benefits

MWSD

In violation of ILO standards, Fiji has no national minimum wage. Certain sectors have minimum wages established by the Ministry for Employment and Industrial Relations, yet this wage either "support[s] a barely adequate standard of living," in the words of the State Department's human rights report for 1991, or falls intentionally below the subsistence level, as in the garment industry.¹⁶ The government justifies this abuse with the twisted logic that garment workers are young people or married women who do not expect to support a household.

Hours of Work

Fiji has no regulation specifying maximum hours of work for adult males. As a result, according to the State Department's 1991 human rights report, "Certain industries, notably transportation and shipping, have problems with excessive hours of work. A number of fatal accidents have been attributed to excessive working hours for drivers."

As documented below, workers in the mining and garment industries are routinely forced to work overtime, on weekends, and holidays, often without overtime compensation.¹⁷

Safety and Health

MWSDT

The imposition of the decrees will take its toll on the lives and health of workers. The State Department report cited above states that "Government enforcement of safety standards under the direction of the Employment Ministry suffers from a lack of trained enforcement personnel" and leaves unions to do the job of monitoring safety standards in organized work places.¹⁸ It is bad enough that unorganized workers cannot depend on the government to monitor and enforce workplace safety and health. Now, in the wake of the decrees, many organized workers (those in "industrial associations") as well will be completely unprotected. In industries where industrial associations -- which have been stripped of their powers as *de facto* unions -- are the norm, who will monitor safety standards in the absence of a worker organization that can take action? Even where unions are allowed to function, if they are channelling their very limited resources to administrative burdens foisted on them by the denial of dues check-off, there will be less time to devote to workers' interests.

As described below, two groups of workers, miners and garment workers, toil under particularly appalling conditions. When they protest, the Fiji government acts on behalf of management. Workers in both industries have suffered prior to the November 1991 decrees and are still suffering. Their conditions are bound to worsen as a result of the drastic curtailment of workers' organizations' activities.

Garment Industry

Following a 1989 study of conditions in the garment industry, the government ordered many employers to improve working conditions.¹⁹ Not surprisingly, the government did little to enforce its orders. Recent accounts prove that conditions for garment workers are still deplorable. Garment unions have complained that it is insufficient for the government to simply order employers to improve working conditions, employers must be subject to criminal prosecution.²⁰

In the past 18 months some obvious employer abuses and government bias and negligence in the garment industry have included:

Case 9 o *Justcham Garments Ltd.*: Refusal to pay workers overtime for working holidays (on the grounds that if the promised overtime was paid, employees would be overpaid); harassment and dismissal of employees and union representatives; refusal to talk to strikers and to recognize their union.²¹

10 o *Hantex Apparel*: Fired over 160 workers who struck against long working hours (up to 24 hours without a break and regular hours of 7:30 AM to 7:30 PM); forced overtime by locking the main doors and keeping workers in, with no overtime pay; mandatory Sunday work; poor pay; failure to punch time cards resulting in non-payment for entire day's work; miscalculated wages; and unhygienic and hazardous workplace.²²

The Fiji Association of Garment Workers general secretary noted that when government labor officers visit garment factories, "they [do] not interview workers, but side with management." Management refused to discuss any proposals with or recognize the union. The Ministry of Employment and Industrial Relations refused to recognize the union as the representative of strikers or to meet with its general secretary.²³

11 o *Lotus Garment*: Unionists have been victimized and frequently arbitrarily dismissed. Working conditions included wages of U.S. cents 35 per hour - half that of most other employment in Fiji; working 24 hours at a time;

guide

forced overtime, weekend and holiday work with no overtime compensation; random strip searching of women; no sick pay.

The Fiji government supported the company even though complaints of unfair labor practices had been filed. There were no reports of government prosecution of Lotus management. The company owner is reported to be a staunch financial supporter of the Fiji regime and to have very strong links with government ministries.²⁴

Mining Industry

Working conditions for miners are especially unsafe and unhealthy. Noxious fumes, dangerously high temperatures and high humidity are part of daily life for these workers. Conditions for miners and their families are not much better above ground. Company-run housing and facilities for miners and lower paid workers are poor, overcrowded, and unsanitary.²⁵

The case of the 1991-1992 Fiji Mine Workers Union strike demonstrates how mine owners and the Fiji government act in concert to deny workers the opportunity to ameliorate their miserable situation. Miners employed by Emperor Gold Mining Company struck in protest against poor wages and working conditions. The employer retaliated by firing 420 striking workers. The government gave the company additional ammunition by arresting and, according to press reports, beating striking miners and prohibiting the union from holding solidarity marches.²⁶

Case 12

CONCLUSION

The introduction to this petition cited the Fiji government's utter lack of regard for worker rights and has proceeded to document resulting abuses in case after case -- in its representations to international workers organizations, its condoning terrible working conditions, and to its own employees through the Memorandum of Agreement cited above.

Once a model of high worker rights standards for its fellow emerging island nations of the South Pacific, Fiji has forfeited this leadership role with its recent actions. The respect for workers and protection of their rights are being systematically destroyed by the 1991 and 1992 regulations.

The political aim of these wholesale violations of worker rights is patently clear. The State Department's human rights report cites labor unions as among the few organizations in Fiji that actively promote human rights. Predictions of abuse of workers

by employers and the government through these new regulations are unnecessary; such abuse is already taking place.

The Fiji government's willingness to use these restrictions for political aims and, in some cases, go beyond the very regulations they promulgated in an effort to strangle the trade union movement constitute a dire situation for Fiji's workers.

It is on this basis that the AFL-CIO calls on the U.S. Trade Representative to remove GSP benefits from Fiji until such time as a legally-constituted government reinstates protections and decent working conditions for the people of Fiji.

1. Conversation with Joe Ryan, Freedom House, New York, May 18, 1992.
2. Letter from ICFTU General Secretary Enzo Friso to Michel Hansenne, Director-General, International Labor Organization, April 15, 1992. The ICFTU undertook missions to Fiji to investigate the worker rights situation there in 1988 and 1989, and received written assurances from the Fiji Government that there would be no restrictions on worker rights of the sort recently decreed.
3. Letter from ICFTU General Secretary Enzo Friso, April 15, 1992.
4. ICFTU Resolution on Fiji, adopted at the ICFTU 15th World Congress, March 17-24, 1992.
5. "Government snubs garment union," The Fiji Times (FT), November 22, 1991, p. 3.
6. "Labor Reforms Force Resignation," FT, November 26, 1991.
7. Decree No. 44, "Trade Unions Act (Amendment) Decree 1991, Section 9, Fiji Republic Gazette, p. 879.
8. Letter from ICFTU General Secretary Enzo Friso, April 15, 1992.
9. Decree No. 44, "Trade Unions Act (Amendment) Decree 1991, Section 2, Fiji Republic Gazette, p. 878.
10. Legal Notice No. 58, Section 3, 10A, (b), Fiji Republic Gazette Supplement, p. 290.
11. "New Laws Give More Powers," FT, November 9, 1991.

12. "Garment Workers Dismissed," FT, November 27, 1991.
13. "New Laws Hit Labasa Union," FT, March 30, 1992.
14. ICFTU-APRO LABOUR FLASH, ICFTU-Asian and Pacific Regional Organization, January 15, 1992.
15. Personal communication from Mahendra Chaudhry, May 14, 1992.
16. Country Reports on Human Rights Practices for 1991, U.S. Department of State, 1992, pp. 857-858.
17. "Miners Work on Sunday: Navuso," FT, January 30, 1992.
18. U.S. Department of State, op. cit., p. 858.
19. Ibid, p. 858.
20. Ibid, p. 858.
21. "Garment Workers Walk Off Jobs," FT, January 28, 1992; "Justcham Strike Continues," FT, January 29, 1992; "Strikers Staying Put," FT, January 30, 1992; "Justcham Strikers Face Dismissal," FT January 31, 1992.
22. Letter from Fiji Association of Garment Workers General Secretary Siteri V. Tuilovoni to International Textile, Garment and Leather Workers' Federation (ITGLWF) General Secretary Neil Kearney, November 24, 1991; "Strikers Seek Government Help," FT, November 30, 1991; "Garment Talks Deadlock," FT, November 26, 1992.
23. "Government Snubs Garment Union," FT, November 22, 1991; "Garment Workers Dismissed," FT, November 27, 1991.
24. TWARO NEWS, ITGLWF, February 1991, pp. 2-4.
25. "Mine of Tears," FT, February 8, 1992.
26. "Miners Strike Over Pay, Poor Conditions," FT, January 3, 1992; "Miners March," FT, December 1991; "Brutality Alleged in Second Raid," The Daily Post, February 7, 1992; "Police Arrest 37 Emperor Strikers," FT, April 19, 1991.

