

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

6 August 2013

AI Index: ASA 18/002/2013

FIJI: ILO Commission of Inquiry should be set up to protect workers' rights

Alongside the International Trade Union Confederation (ITUC), and ten national trade union centres including from Australia, Indonesia, Japan, New Zealand, South Korea and the United Kingdom, Amnesty International is calling on the International Labour Organisation (ILO) to immediately set up an ILO Commission of Inquiry regarding the Fiji government's persistent and egregious non-observance of the fundamental workers' rights contained in the ILO Convention No 87 on Freedom of Association and the Protection of the Right to Organise.

Trade unionists in Fiji have been subjected to ongoing detention, harassment, and arbitrary dismissals since December 2006 and continue to be prosecuted on spurious grounds, in violation of their fundamental rights to freedom of association. In July 2013, Fiji sugar workers voted in favour of a strike to support increased wages for the struggling industry. Sugar and General Workers Union General Secretary, Felix Anthony, said that there was intimidation by police and military officers, who were present at polling places and threats from management to forward the names of those participating in the ballot to the military. In another case, Daniel Urai, President of the Fiji Trades Union Congress is awaiting trial pending criminal charges under the Public Order Amendment Decree 2012, which places severe restrictions on freedom of expression, freedom of association and peaceful assembly.

In November 2012, the ILO Governing Body called on the Fiji government to "find solutions in practice and in law which are in conformity with freedom of association principles". However, the Fijian authorities responded by showing on-going non-observance of fundamental workers' rights and non-cooperation with the International Labour Organisation. For example, in June 2013, the Fijian authorities again prevented the ILO from completing a direct contacts mission on its own terms to verify complaints concerning workers' fundamental rights.

Under international law, all workers have a human right to form and join trade unions, to bargain collectively, and to strike. These rights are an essential foundation to the realisation of other rights, and are enshrined in the Universal Declaration of Human Rights and conventions adopted by the ILO, including core Conventions 87 and 98, which have been ratified by Fiji. However, a range of laws in Fiji are currently restricting these rights, and preventing workers from exercising their rights as workers.

The *Essential National Industries Decree*, enacted in 2011 has cancelled union recognition across key economic sectors including public utilities, aviation finance and telecommunications, and the Decree further prevents trade unions from electing full time union officials and requires the prior approval of the Prime Minister for the establishment of bargaining units. On 30 July 2013, the Attorney General commented that work must go on at the sugar mills regardless of a strike. Union officials have seen this as a potential threat to expand the scope of the Decree to include, amongst others, the sugar industry where labour conditions are exceedingly poor and workers are currently organising to seek improved salary and working conditions.

The *Public Order Amendment Decree 2012*, meanwhile, requires trade unions amongst other organisations, to seek prior permission from authorities before holding meetings and these provisions could be brought into force at any time. Other decrees severely restrict trade union and labour rights in both the public and private sectors, including removal of the right to redress for past, present or future violations of fundamental workers' rights. The *Political Parties Decree 2013* also excludes trade union officers from being a member of, or holding office in a political party. Under this Decree, a trade union official cannot even express support for a political party.

Amnesty International also regrets the failure to respect workers' rights in the Fiji government's draft constitution, released in March 2013. Articles 19 and 20 of this draft, for instance, severely restrict the rights that all persons have to form and join trade unions, to collectively bargain and to strike. Amnesty International calls on the Fiji government to ensure that the new constitution, due to be published imminently, is fully in accordance with international law and standards.

Amnesty International also urges the authorities, security forces and employers to respect workers' rights in the current dispute concerning low pay in the sugar industry. In particular, Amnesty International calls on the authorities to respect the right of workers to collectively bargain and to strike, and to desist from further harassment, intimidation, detentions or dismissals of workers exercising their fundamental rights to freedom of association.

Given the current context of lack of protection in law and practice of workers' rights in Fiji and non cooperation with the ILO, Amnesty International considers that a Commission of Inquiry, under Article 26 of the ILO Constitution is appropriate and necessary to address workers' legitimate concerns.

BACKGROUND

As a member of the ILO, the Government of Fiji has a commitment, through the 1998 ILO Declaration on Fundamental Principles and Rights at Work, to respect, promote and realize the fundamental rights set out in the organization's core conventions. Moves to limit fundamental workers' rights in Fiji are also at odds with commitments made under the Cotonou Agreement which defines the European Union's relations with 79 countries from Africa, the Caribbean and the Pacific, including Fiji.

ILO Commissions of Inquiry, constituted under Article 26 of the ILO Constitution, are the organisation's highest level of investigative procedure. They are generally set up when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 11 Commissions of Inquiry have been established. See <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm>, for prior Commissions of Inquiry see http://www.ilo.org/dyn/normlex/en/f?p=1000:50011:0::NO:50011:P50011_ARTICLE_NO:26

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In June 2013 national trade union centres from Australia, Belgium, Colombia, France, Indonesia, Japan, Kenya, New Zealand, South Korea and the United Kingdom formally called for the setting-up of a Commission of Inquiry by raising a complaint against Fiji under Article 26 with the Director-General of the ILO. Their initiative is supported by the ITUC and its other affiliates.

In 2011, Amnesty International has expressed concerns regarding the non-conformity of the Essential National Industries Decree with Fiji's international human rights obligations and has documented cases of harassment, intimidation, detentions or dismissals against workers exercising their legitimate freedom of association rights. see <http://amnesty.org/en/library/info/ASA18/003/2011/en>

Amnesty International has outlined its concerns about the Public Emergency Regulations in its detailed report in 2009, *Fiji: Paradise Lost, A tale of ongoing human rights abuses April-July 2009*, available at <http://www.amnesty.org/en/library/info/ASA18/002/2009/en>

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