

Baroness Catherine Ashton
High Representative of the Union
for Foreign Affairs & Security
Policy

European External Action Service
1046 Brussels
[Letter sent by e-mail]

Fiji Continues its Long March Backwards on Democracy and Human Rights

Dear Ms Ashton,

Despite promises by Fiji's military government to hold democratic elections in 2014 and to respect the human rights of its citizens, including labour rights, it has done exactly the opposite. The constitutional reform process, over which many in the international community already expressed concern, turned out worse than expected. The machinery for the upcoming elections remains in the hands of regime, rather than an independent commission. Opposition political parties have been decreed out of existence. Restrictions on freedom of assembly and speech are expected to be re-imposed shortly with the conclusion of the constitution reform process. At the same time, the government has made no progress on the numerous serious issues reported by the International Labour Organization, and continue to refuse to allow the organization into the country to verify allegations by Fijian and international unions.

We urge you to call upon Fiji to implement as soon as possible the measures set forth below. If such measures are not taken, we fear that any chances of a free and fair election in Fiji will be remote at best.

1. Fiji is NOT making progress towards free and fair 2014 elections

a) Constitution

The government is not making progress towards free and fair elections in 2014. On July 18, the government issued two decrees regulating the process by which to produce a new constitution - the Fiji Constitutional Process (Constitution Commission) Decree (amended on October 31) and the Fiji Constitutional process (Constituent Assembly and Adoption of Constitution) Decree. We and many others raised concerns at the time about these decrees, especially the fact that they include provisions requiring immunity from prosecution for those who participated in the coup.

After receiving a draft constitution that was the product of a highly-participatory process – including over 7,000 public submissions – the government in December confiscated copies of the draft published by the Constitution Commission, led by constitutional scholar Yash Ghai, and announced that it would instead write its own. On March 20, the Prime Minister unilaterally issued a new draft constitution, which is substantially inferior to the draft presented by the Ghai Commission, in particular its fidelity to principles of international law. The government also decided to do away entirely with the Constituent Assembly, which was charged with reviewing, amending and adopting the constitution. This left only a brief period, from March 20 to April 30 for the public to submit comments on the government's lengthy and complex new draft. Few expect that the government

will fairly consider those comments or reflect them in the final document. When that process is over, the decrees restricting public meetings and speech, which were suspended during this period, will come back into force.

There is much to be concerned about with the new constitution. First, it concentrates much of the power of the state in the offices of the Prime Minister and Attorney-General. Secondly, many of the fundamental rights set forth in the Bill of Rights include extensive limiting language so broad as to effectively undermine these rights. The provisions as to labour are an example. For example, Articles 19 and 20, while first providing that all persons have the right to associate, to join a union, to bargain collectively and to strike, include exceptions so broad that they could be invoked to limit severely those fundamental labour rights and indeed to justify the existing harmful decrees harshly criticized by the ILO.¹ Third, the judiciary is put tightly under the control of the Prime Minister. The Chief Justice and President of the Court of Appeal will be appointed by the Prime Minister in consultation with the Attorney-General alone and can be removed by a process which the Prime Minister controls. Judicial independence is already a concern, and this constitution will only deepen that concern. Fourth, important public participation and transparency mechanisms in the Ghai Commission draft are completely missing in the new constitution. Finally, immunity from prosecution for past crimes committed by those carrying out the coup is deeply entrenched in the constitution.

b) Political parties

In January 2013, the government promulgated the Fiji Political Parties Decree (Decree 4 of 2013). Of particular concern to trade unions, the decree excludes public officers from applying for, being a member of, or holding office in a political party. Article 14.2(d) defines as “public officer” any elected or appointed trade union officer, or of any federation, congress, council or affiliation of trade unions or employers. A subsequent amendment to that decree (Decree 11) broadened the scope of unionists and employers barred from the political process. Under Art 14.1(c), a trade union official or staff (or official or staff of any federation, congress, council or affiliation of unions or employers) cannot even express support for a political party. If a public officer does become an applicant for or member or officer of a party, they will be deemed as having resigned from their trade union or employer association office under Art 14.5. Anyone defying this decree faces a \$50,000 fine, 5 years imprisonment or both. The decree is in clear violation of the right of freedom of association defined by ILO Convention 87.

Additionally, the decree imposes deeply onerous provisions meant to make exceeding difficult the reregistration of political parties. One provision required existing political parties to gather 5,000 signatures within 28 days of its promulgation, and from over the whole of the country. The Decree also requires parties to disclose the names of their members, which may expose the party member to reprisals by the government – a legitimate fear in the case of Fiji. The government, rather than an independent body, is given broad discretion to deregister parties. The decree provides that existing political parties that fail to successfully reregister under the decree’s cumbersome new

¹ For example, the right to join a union and bargain collectively can be limited for the following reasons: (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purposes of protecting the rights and freedoms of others; (c) for the purposes of imposing reasonable restrictions on the holders of public offices and members of a disciplined force in order to secure their impartial service; (d) for the purposes of regulating the registration of trade unions, or of any federation, congress, council or affiliation of trade unions, or of any federation, congress, council or affiliation of employers; (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or (f) for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

requirements will have their assets confiscated by the government. To date, none of Fiji's 17 existing parties have been reregistered.

The motivation of this decree is obvious – to eliminate as much of the political opposition as possible from participating in the political process. Failure to quickly adopt a new political party decree consistent with international norms, and to register the parties under that decree, will only call into further question the government's professed commitment to democracy. Any election in 2014 where the vast majority of political parties are deregistered and thus unable to participate must be viewed as a sham.

2. Labour Rights Remain Under Attack

In November 2012, the ILO Committee on Freedom of Association, following the ejection of an ILO mission from the country, designated Fiji as one of five serious and urgent cases regarding freedom of association. At the same time, the Governing Body issued a resolution condemning the serious violations of workers' rights in the country. This year, the ILO Committee of Experts once again expressed its serious concerns and urged the government to make progress on several issues.

Regarding the civil liberties of trade unionists, the ILO reiterated its deep concern about the numerous acts of assault, harassment, intimidation and arrests of trade union leaders and members for their exercise of the right to freedom of association. Concerning the physical attacks on trade unionists, the Committee noted that no investigations have been initiated and urged the Government to conduct without delay an independent investigation into the alleged acts of assault, harassment and intimidation against several trade union leaders. In relation to arrest and detention of trade unionists – namely Mr Felix Anthony, Mr Daniel Urai, and Mr Nitendra Goundar - the Committee has explained that the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention or criminal charges and urged the Government to take the necessary measures to ensure that all charges against them are immediately dropped.

So far, the government has failed to implement either recommendation.

The ILO also observed that many of the powers found in the recently repealed Public Emergency Regulations (PER) of 2009 are included and expanded in the 2012 Public Order (Amendment) Decree (POAD). In particular, the broad definition of "act of terrorism" which could be used for charging trade unions, the increased prison sentence of up to five years for holding a meeting without permission and the circumstances in which the police may refuse a permit. The Committee has considered that the wording of this provision could be used in such a way as to make it difficult for trade unions to hold public meetings.

The Government continues to refuse to amend this law.

The ILO again took note of the devastating impact of the Essential National Industries Decree issued in 2011. Under the decree, collective bargaining agreements were abrogated, some bargaining units were completely eliminated as they did not meet new minimum membership requirements, and new elections were held to create new bargaining units. The law also prohibited in practice pre-existing unions from representing their members in bargaining. These measures, as well as the elimination of dues deductions, have struck a severe blow to workers' rights and their institutions. The Employment Relations Promulgation of 2007 (ERP), the basic labour law, also is not in conformity with the international law. There were tripartite discussions in 2012 to review and propose amendments to these and other laws. However, the committee has not met for months and there appears no current intention on the part of the government to revise the laws.

The regime has made it clear that has no intent to play by the rules. It has made a mockery of the constitutional reform process, has eliminated much of the political opposition, will re-impose draconian decrees that limit speech and assembly, and has put in place a new constitution that will limit the fundamental rights of its citizens and shield the government from prosecution for its crimes. Trade unions continue to suffer from laws and practices that have been sharply condemned by the ILO, and the government refuses to allow the ILO to even visit the country to verify the allegations made by the Fijian and international unions.

The international community can no longer pretend that the government is making progress towards democracy. The international community must send an unambiguous signal that it will not accept this behaviour. Therefore, in order to ensure a framework for democracy and the exercise of fundamental rights we urge you to call on the government of Fiji to:

- establish an independent electoral commission;
- revoke the Political Parties Decree, re-register all deregistered parties and register new parties under previously established criteria (or new criteria consistent with international law);
- revoke the Public Order Amendment Decree and revise the previous Public Order Decree so that it is consistent with international norms;
- establish a legal framework that allows for a free and independent media; and
- revoke the ENID and establish a process for the reform of the ERP.²

If Fiji fails to take these measures by one year before the planned date for elections, September 2014, we believe that you should indicate that you will not consider the subsequent elections to be free and fair. Further, we believe that you should indicate that you will withdraw any financial or technical support for this process in the absence of these necessary reforms.

Yours sincerely,



Bernadette Ségol
General Secretary

² Notably, the draft constitution prepared by the Ghai Commission specifically called for the repeal of the Essential National Industries Decree. No such recommendation is found in the PM's version.