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REGIME'S PROPAGANDA ON ENI REGULATION THROUGH MinInfo MEDIA RELEASE NO.1742

(ENI Decree & Designated Corporations Regulations 2011 Announcement)

Frequently Asked Questions

The media propaganda No.1742 of 9th September, 2011 with fictitious heading titled Frequently Asked Questions (FAQ's) is tailor made by the regime to justify to all and sundry by asking questions themselves and providing their own answers. These are acts of desperation and everyone can see the mockery of this exercise. It starkly demonstrates that they are putting the media spin for self-assurance or simply put disseminating more lies.

Our 2nd response against regime's lies are direct responses to the ENI Regulations as follows:

Q1: By definition, the sugar industry in Fiji must qualify as an "essential industry." Why has it not been named in the Regulations?

A1: The Sugar Industry has not been named in the Regulation not because they are currently devoting their full energies due to crushing season but are scared of EU's involvement under the Cotonou Agreement and the EU's Commissioner has given a timely warning at the Pacific Islander Leaders Forum in Auckland that Fiji must embrace democracy, the sooner the better, before any EU aid fund is granted to them. Large amount of EU Aid is at stake. Moreover, the British TUC and its affiliate GMB have also issued a stark warning that human and trade union rights must be observed and they are watching the deterioration carefully to consider sanction on Fiji Sugar distribution in EU Countries. However it is up to the government as and when they would like to include sugar industry as an essential national industry.

—(1) The Minister, following consultation with the Minister responsible for Industry and Trade, may make regulations to give effect to the provisions of this Decree.

Without affecting the generality of subsection (1), regulations made under this section may—

- (a) declare any industry to be an essential national industry for the purposes of this Decree;
- (b) designate any corporation or company or employer to be a designated corporation or designated company for the purposes of this Decree;
- (c) impose conditions, require acts or things to be performed or done to the satisfaction of the Minister or any officer authorized by the Minister; or
- (d) impose fines and penalties for any action or omission by any person under this Decree.

According to Part 1 Section 2 (a), one may wonder why the sugar industry has NOT been included while it so much fits into the description of essential national industry.

“essential national industry” means those industries:

- (a) which are vital to the present and continued success of the Fiji national economy or gross domestic product or those in which the Government has a majority and essential interest; and

Q2: Did the declared corporations have input in the Decree and did they lobby to be included in the Regulations?

The regime has answered this question itself that there have been lobbying by the employers to be in the Regulations. We certainly know that FRCA, FBC and the Banks have been successful in their lobby. At least two Banks are known to have curried favour with the regime; one by arranging overseas bonds and another by advancing millions to the regime to have vehicle leasing scheme with Asco Motors. The FBC inclusion is about all in the family.

Q3: Other industries likely will clamour to be included in the Decree. Are concerns founded that the Government will progressively extend its scope?

A3: The regime has again admitted and answered itself that there have been lobbying by the employers to be in the Regulations and as we note a number of them have been successful. Recent media reports inform us that the Water Authority of Fiji (WAF) welcomes the inclusion of the WAF into the essential national industry. In Sugar Industry the FSC is a highly potential candidate and is almost waiting in the wings to be included as a designated Corporation. Other statutory authorities and government commercial companies with their power of influence will join the cue sooner than later.

Q4: Is it true, as some have alleged, that the Decree will be “extended to cover all unions in all sectors of Fiji’s economy”?

A4: The regime will definitely and progressively extend its scope. The first casualty will be Sugar Industry after the crushing season ends. As for private sector the inclusion of the Commercial Banks opens the door for other private sector commercial entities to

approach the government for inclusion as designated Corporation under Schedule 1 of Legal Notice 81 as published in Gazette Supplement dated 8th September, 2011. As is known the private sector always takes the cue from the government in order to maximize profits. Section 31 Sub-section 2 (a) allows them to include any industry at any time. Under Section 31(2) the Minister can:

- (a) Declare any industry to be an essential national industry for the purposes of this Decree;
- (b) Designate any corporation or company or employer to be a designated corporation or designated company for the purposes for this Decree;
- (c) Impose conditions, require acts or things to be performed or done to the satisfaction of the Minister or any officer authorized by the Minister; or
- (d) Impose fines and penalties for any action or omission by any person under this Decree.

Q5: Are concerns valid that the Decree effectively abolishes trade unions and bans professional trade unionists in Fiji?

A5: yes, the Decree effectively abolishes the functions of trade unions as a free trade union movement cannot exist under a regime which curtails the fundamental rights, denies the right of trade unionist to hold meetings (PER) curtailment of freedom of opinion expressed through speech and the press (Media Decree). Part 2 Section 6 demolishes the right for professional full time qualified and experienced trade unionists to lead unions.

The ENI empowers the PM or Minister of Trade & Industry or AG to determine who office bearers of Unions will be determine terms and conditions of employment of workers if after 3 years of negotiations between the Union and Employer fails. While the registration of the Unions shall be only valid for two years. New applications for registration of Unions will be required. This again will be at the discretion of the PM.

According to Part 2 Section 7 subsection 1,

7.—(1) Any and all officer-bearers, officers, representatives, executives, and members of a union which represent workers employed by designated corporations must, at all times, be employees of the designated corporation which they represent.

It is now a requirement that officials must be employed in the corporation itself, which means being at the mercy of the employer at all times. How could they then work for the protection of workers' rights when they will not have independent status of professional trade unionist who deal with employers without any fear as they cannot be victimized. Once terminated or even a complaint or issue is brought against the official worker representative he would cease to be the union representative as per Part 2 Section 7 subsection 1. Part 2 and Part 3 leave all independent union business to the discretion of the government including re-registration, determination and composition of a bargaining unit, officials seeking positions, supervising elections, and the list goes on.

Q6: Does the Decree run counter to the Government's *People's Charter*, which commits to upholding a just and fair society and social justice?

A6: The Decree is inconsistent with the *People's Charter*. It denies the workers' their fundamental rights:

- (i) the right to organise and form a union,
- (ii) the right to collectively bargain,
- (iii) the right to open and fair dispute resolution
- (iv) the right to strike.

It defies the principles of accountability, transparency and good governance. Social justice is the cornerstone of the trade union movement and its very existence is based on improving the lives of workers and ensure that they are not made a commodity but are given a right for a decent work as espoused in the ILO Decent Work Agenda. On the other hand the Decree has overt objectives of neutralizing the trade unions in Fiji.

Q7: Is there any foundation to the claim that the Decree bans overtime pay for workers in a 24/7 operation?

A7: Yes. According to Part 5 Section 24 (2):

(2) No person employed in any "designated corporation" that operates on a full-time (7 days per week or 24 hour per day) basis shall, unless otherwise mutually agreed upon by the employer and the representative, be entitled to any overtime pay for work performed on Saturdays, Sundays or public holidays.

This leaves the overtime payment completely at the mercy of the employer. Even currently many employers do not abide by the overtime rule for a 45 and 48 hour week as per the ERP and it is unimaginable to think that employers will now pay when it is entirely up to them to exercise their discretion vis a vis their corporate greed. Part 5 S24 (5) removes Wages Council from the jurisdiction of the ENI therefore there is no guarantee even a living wage will be paid.

The designated corporation employers ought to know that if they require their employees to work overtime without pay will tantamount to Forced Labour and they will be violating ILO Convention No.29

Q8: Does the Decree take away workers' rights to collectively bargain through unions? If so, doesn't it blatantly violate ILO Conventions?

A8: Yes the Decree violates ILO Core conventions. Unions have been replaced by "bargaining units". Part 2 (6) asks for re-registration of unions, Part 4 Section 21(4)

states that if either party is unable to reach an agreement the Minister will decide the terms and conditions.

ILO Convention 87 Article 2 on Freedom of Association states that

“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”

However government dictates this through the ENI Decree 35/1. The ILO Conventions quoted below totally dismantles their propaganda that the ENI Decree does not violate the Conventions.

ILO Convention 98 Article 1 & 2 on Collective Bargaining as below states that:

1. *Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.*

2. *In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.*

The ENI Decree is clearly in breach of the above 2 articles and is in total violation of ILO Conventions 87 & 98.

Q9: Does the Decree remove workers' right to strike, as some have claimed?

A9: Yes . According to Section 27 (1), no strikes or union activity are allowed at all for unions.

27.—(1) No job actions, strikes, sick outs, slowdowns or other financially or operationally harmful activities shall be permitted at any time for any reason; and any such actions are expressly prohibited in connection with—

- (a) a union's efforts to obtain registration as a representative of a Bargaining Unit
- (b) a union's efforts to influence the outcome of collective bargaining, or in the course of any collective agreement negotiations; or
- (c) disputes over the interpretation or application of any collective agreements.

The Minister also has the right to declare any strike unlawful.

27 - (5) The Minister, following consultation with the Minister responsible for Industry and Trade, may, by order, declare any strike or lockout in any essential national industry to be unlawful.

Sections 27 Subsections 2, 3, 4 & 6 after an exhaustive list of procedures may allow a strike to take place. That includes the Minister's written permission under Section 27(b) and as a consequence it allows the employer to lock out the employees. All in all the question of allowing strike action is a red herring by the regime.

Q10: Are employers allowed to impose terms and conditions on workers?

Yes, the ENI decree states:

Section 27 – (3) If a union or the workers who are members of a union engage in a strike, the employer may, in addition to all other remedies, lock out the striking workers and unilaterally impose terms and conditions of employment different from those set out in the relevant collective agreement.

The Decree allows the employer to lock out strikers and impose new terms and conditions unilaterally under the ENI Decree : Simply put strike is impossible and the workers have a “Hobsons Choice.”

Q11: Does the Decree provide for a meaningful dispute resolution process?

A11: Part 5 Section 26 requires all collective bargaining agreement to include a dispute resolution procedure of discipline and discharge and the interpretation and application of the agreement. Such disputes must be resolved internally, over by the employer’s designated reviewing officer. Section 26(4) really means that the employer will impose the decision as the Review Officer will be an employee of the designated corporation and as such employees who face termination will have no real recourse to seek a fair remedy. The Prime Minister may hear and issue a binding determination in disputes involving an issue of over \$5million. In no case, however, can any worker or union bring a claim to a judicial or quasi-judicial person or body. This all but ensures that there will be no access to industrial justice.

Q12: Some have complained that the penalties provided for in the Decree are excessive. Does the Government believe these concerns have merit?

A12: The reason for the provision of stiff penalties is to scare and terrorize the unions who dare to stand up to protect the workers’ rights and welfare. Severe penalties are for unions: strikes (\$100,000), persons (\$50,000) as per Part 5 Section 27 Subsection (4),

Section 27 – (4) Any person, body, union representative or any worker who fails to comply with this section shall be guilty of an offence, and shall be liable upon conviction in the case of a natural person to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years imprisonment or to both, and in the case of a union, or a body corporate to a fine not exceeding \$100,000.

Section 27 (6) states \$250, 000 for unions, and \$100,000 for persons if involved after an illegal strike.

(6) Any person, body, union, representative or any worker who remains on strike, or any employer who continues to impose a lockout, after a declaration by the Minister under subsection (5) that any such strike or lockout is unlawful, shall be guilty of an offence, and shall be liable upon conviction in the case of a natural person to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 10 years imprisonment or to both, and in the case of a union or a body corporate to a fine not exceeding \$250,000.

Q13: What is your response to the claim that the Government has wiped out decades of advances for its workers?

A13: The current terms and conditions of employment that workers enjoy are a result of decades of struggles. All these gains will disappear and employers and the PM can impose new working conditions. These include wages, salaries and several benefits one over years of struggle and heartache.

The ERP took twelve years to be enacted. It went through all legitimate processes and involved all stakeholders including international organizations like ILO, EU and NZ Ministry of Labour. It has been destroyed in one fell swoop by a stroke of a pen.

We painfully experience all forms of impediments in our desire to protect the rights of workers in this country but even Wages Council Order for the lowly workers have been stumped by the ENI Decree which affects all those in the lower paid, semi-skilled areas without any recourse.

Think of any aspect of life in Fiji, one will find that they have gone through an economic tumble dryer and made slaves to the fetishists behaviour of the regime. Social welfare benefits have been slashed and the FNPF pension benefits are on the chopping block. Needless to say some people in the corridors of power are doing extremely well for themselves. On the other hand, the life of the working poor has simply got harder, poorer and meaner. The social ramifications of this are poverty, abject poverty, poor health, poor education and a broken society.

CONCLUSION

The Regime's agenda to shut the collective voice of the trade unions and to test the patience of trade union leaders should not make us cynical but should make our resolve ever much stronger to survive against the odds that we now face. I have no doubt that all workers of this country will never forget the despicable onslaught by this regime on their human and their trade union rights.

The Fiji Chamber and Employers Federation (FCEF) is also reminded that they have a responsibility towards their workers. The job losses and redundancy will not help anyone but will take the nation into the guagmire of poverty and heartache. The FCEF should tell the public what they are prepared to do for the working poor as most designated corporations are members of the federations.

In a recent statement by the ILO Director-General which is quoted below reinforces our claim of ENI violation of various ILO Conventions:

“The DG highlighted the importance of the communiqué issued by the 42nd Pacific Islands Forum Leaders’ Meeting (Auckland, New Zealand, 7-8 September) which expressed their “continuing deep concern at the deteriorating human rights situation and serious political and economic challenges facing the people of Fiji”. The ILO had presented a submission on Fiji to the Forum in which it warned of “the danger of a serious degradation of the situation in the near future”.

“Mr. Somavia added that “the Government must understand that meeting these challenges, and the success of the reforms to which it claims to be committed, cannot be achieved through the denial of fundamental rights. The people of Fiji deserve better.”

As a responsible trade union organization the FTUC has the moral obligation to call for all forms of assistance from the ILO and its international affiliates including UN agencies and institution like Amnesty International.

The actions of the regime are frightening but our fight for human and trade union rights and the rule of law and democracy must continue.

Felix Anthony

NATIONAL SECRETARY