

**The Essential National Industry
(Employment) Decree 2011:
Violations of Human and Trade
Union Rights**

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OUTLINE

- Concerning provisions in the ENI
- The Rationales given by Interim Government
- The Responses from National and International Agencies

ENI	DESIGNATED CORPORATIONS
Financial Industry	<ul style="list-style-type: none"> i. ANZ ii. Bank of Baroda iii. Bank of the South Pacific iv. Westpac Banking Corporation v. Fiji Revenue & Customs Authority
Telecommunications Industry	<ul style="list-style-type: none"> i. Fiji International Telecommunications Ltd. ii. Telecom Fiji Ltd. iii. Fiji Broadcasting Corporations Ltd.
Civil Aviation	<ul style="list-style-type: none"> i. Air Pacific Ltd.
Public Utilities Industry	<ul style="list-style-type: none"> i. Fiji Electricity Authority ii. Water Authority of Fiji

The Essential National Industry (Employment) Decree 2011 (ENI)

- Eliminates existing collective agreements
- Many workers awaiting decisions on their problems like unfair dismissals and pay disputes for years have their cases terminated without decisions
- E.g. In a bank, workers have lost on around a million dollars in outstanding pay disputes

The Essential National Industry (Employment) Decree 2011 (ENI)

- Specifically attacks trade Union Organisations concerning designated industries
 - Existing and registered unions must have officer bearers employed by that industry
- Bargaining units introduced
 - Must have a minimum of 75 members in a job classification
 - Job classifications that don't meet the criteria are unrepresented
 - E.g. Air Pacific - only cabin crews and Pilots meet the criteria

- **Collective Bargaining**
 - Violates Good Faith
 - Employers may re-negotiate in times of financial distress
 - If bargaining fails in new collective agreement, employer may submit proposals for a new/amended CA to the PM
- Bans overtime payments & other allowance for workers in 24 hr. operations

- Severely restricts industrial action
 - No Job actions, strikes, sickouts or slowdowns permitted in case of union registrations and collective bargaining
 - Strike is allowed for bargaining units if they fail to reach a collective agreement after three years of bargaining
 - Employer, has the power to lock out strikers and make changes unilaterally.
 - Reference to external forums to settle disputes are not allowed
 - unresolved cases (only costing \$5m or more) referred to the PM for final determination
 - PM is not the line Minister.
 - Judicial and quasi-judicial bodies cannot review decisions

- ILO definition of an Essential Service applies only to;
 - Public servants exercising authority in the name of the State
 - Essential services in the strict sense its interruption would endanger the life, personal safety or health of the whole part of the population
 - E.g. electricity services, water supply services, hospitals and telephone service
 - Prohibited from holding strikes because of the nature of their services

ENI – essential industries are those that are vital to the present & continued success of the Fiji National Economy...

includes radio, television, banking and transport corporations.

The background features a series of vertical lines in various shades of blue and grey, creating a textured, rain-like effect. A solid teal horizontal band spans the width of the slide, containing the title text. The overall color palette is cool and professional.

Rationales for the ENI and its Responses

Rationales for the ENI 2011

- Allows industries to solve their differences without the involvement of a third party
- Ensures sustainable job & increased investment
- Ensure development, viability & sustainability of Important Industries
- Upholds Human Rights of workers
 - Workers are still being represented
 - Provides for dispute resolutions

Responses

- Fiji Trade Union Congress (FTUC)
 - Employee representatives cannot fully represent workers rights
 - No proof that union actions & workers have harmed any company or industry in Fiji.

Responses

- Fiji Women Rights Movement
 - Erosion of fundamental rights and freedoms puts disadvantaged women at risk of exploitation and unfair treatment

Responses

- Human Rights Commission Fiji
 - Regime is misusing Human rights
 - Most important human right principle is violated – access to justice
 - Human rights principles of ‘generality’ ‘equality’ and ‘certainty’ required in law are violated

Responses from Employers

- Fiji Commerce and Employers Federation
 - Lobbying done by FTUC to New Zealand and Australian Counterparts - destructive for the Economy
 - Actions by international trade union affect free flow of persons, trade & services – have an immediate effect on union and non-union members.
- The economy is fragile but is showing recovery
- Industrial action only reduces investment , confidence & efforts of the private sector to grow the economy.

- ANZ
- “As an organisation, we have acted and will continue to act in good faith with all our stakeholders, including employees, unions and the Government. The inclusion of ANZ as an essential national industry under the Decree does not change this”

- Norman Wilson
Fiji Chief Executive

Responses from International Unions

- Australian Council of Trade Union (ACTU)
- demanded explanation from Qantas as to why Air Pacific paid for drafting of the ENI
- Qantas owns 46% shares in Air Pacific
- Not much response
- Qantas spokesman - "Qantas is a minority shareholder in Air Pacific and we have no involvement in the day-to-day running of the airline."
- Australian Transport Workers Union (ATWU) threatened industrial action in support of the calls by FTUC

International law response (ILO)

- Relevant Conventions Fiji has ratified:
 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (in 2002)
 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (in 1974)
- ENI violates core Conventions

The Infringements

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
 - Article 2: Right of workers and employers, with out distinction to establish organizations
 - Article 3: Right of employers' and workers' organizations to draw up their constitution and rules, to elect their representatives in full freedom and to organize their administration and activities

- Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (in 1974)
- Article 1: Protection against acts of anti-union discrimination
- Article 4: Promotion of collective bargaining

- Fiji situation was discussed by the 'ILO Committee on Application of Standards' in 2011
- ILO process will take its time for responses and reactions etc.
- Not discussed in 2012 International Labour Conference due to postponement of all debate on freedom of association cases
- But ILO Director General Juan Somavia expressed regret with decision of Gov't to proceed with publication of regulations to implement the essential industries
 - ENI demonstrated lack of concern towards the views of the international community as well as its own people.

Conclusion

- The ENI constitutes a stark breach of many ILO Conventions and Human Rights
- “What is really essential for Fiji is that it change course now. That means reversing this and other restrictive labour decrees, a return to dialogue with trade unions and employers.... and the immediate restoration of basic civil liberties.”
- - Juan Somavia
 - Director General of the ILO