

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.**

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)  
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21 December 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the situation of Mr. **Daniel Urai**, President of the Fiji Trade Unions Congress; Mr. **Felix Anthony**, General Secretary of the Trade Union's Congress and the General Secretary of the Fiji Sugar and General Workers Union; and Mr. **Ruru**, Deputy General Secretary of the Fiji Sugar and General Workers Union. Furthermore, we would like to draw the attention of your Excellency's Government information regarding the **refusal of entry for trade union representatives from Australia and New Zealand**.

Messrs. Urai and Anthony were the subjects of an allegation letter sent on 1 September 2011, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We regret that we have not yet received a response from your Excellency's Government.

According to the information received:

On 29 October and 4 November 2011, respectively, Mr. Urai and Mr. Anthony were arrested at the Nadi International Airport following their return from Melbourne, Australia, where they attended meetings held on the margins of the

Commonwealth Heads of Government Meeting (CHO). Both men reportedly held meetings with union groups about the disempowering of public sector unions by the Government of the Republic of the Fiji, following the promulgation of the Essential National Industries (Employment) Decree, and to solicit support from Australian union groups and others. Messrs. Urai and Anthony were arrested and detained under section 18(1) of the Public Emergency Regulations (PER) in which the police have extraordinary powers to detain people for up to ten days without charge.

On 9 November 2011, Mr. Daniel Urai appeared at the Suva Magistrates Court, charged by the State for 'urging political violence' under section 65 (1) (b) of the Crimes Decree (No. 44 of 2009). The case was first called in the morning, but later adjourned by the court to the afternoon of the said date. When the court reconvened, bail was granted to Mr. Daniel Urai, with conditions including that he:

- i) report to the Lautoka Police Station between 6:00 a.m. and 8:00 p.m. daily;
- ii) surrender his passport to the court and not travel out of Fiji unless prior approval is obtained from the court; and
- iii) provide a surety of \$5,000 to the court.

On 11 November 2011, Mr. Urai re-appeared in a Nadi magistrate's court, following his arrest on 4 August 2011, after holding a meeting without a permit. He was charged with unlawful assembly under the PER.

On the same day, Mr. Anthony was released without charge. He has reportedly since been put under travel restrictions without any reasons being provided. For instance, he was prevented from travelling to Singapore to attend the International Trade Union Confederation Asia Pacific Regional Council Meeting, although no charges were held against him.

On 16 November 2011, Mr. Anthony and his deputy Mr. Ruru met with the human resources manager of a company which plans to lay off 115 workers. The police then arrived at the premises of the company, and demanded that the meeting cease and that Messrs. Anthony and Ruru leave the building.

On 17 November 2011, Messrs. Anthony and Ruru were summoned to the Lautoka Police Station for a caution statement to be taken concerning their visit of the day before.

On 13 December 2011, an international trade union delegation, composed *inter alia* of the Presidents of the Australian Council of Trade Unions (ACTU) and of the New Zealand Council of Trade Unions (NZCTU), was refused entry to Fiji upon arrival in the country. The delegation had sought to meet the Attorney General to discuss the situation of trade unions in the country. ACTU and

NZCTU had previously expressed concerns regarding the treatment of unionists in Fiji, and the Attorney General had responded that they were speaking without knowing the situation since they had never been to Fiji.

Concern is expressed that the arrest and detention of Messrs. Urai and Anthony, the charges held against Mr. Urai, and the police summoning of Messrs. Anthony and Ruru, may be linked to the exercise of their rights to freedom of association and expression. Given the public emergency laws in place, concerns are further raised that unionists cannot freely discuss the effects of the Essential National Industries (Employment) Decree or employment related issues in Fiji and that attempts to secure permits for meetings have often been refused by the Government. In addition, serious concerns are reiterated that the promulgation of the Essential National Industries (Employment) Decree may illegitimately restrict the exercise of workers' rights to freedom of association and of expression, to collectively bargain and to strike. This Decree appears to form part of a wider campaign by the State authorities to curtail the activities of trade unions in the country. In this connection, concerns are expressed that the refusal of entry in to Fiji for international trade union representatives, who sought to engage with the Attorney General on the situation of trade unions in the country, may further form part of such a campaign.

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly, as recognized in article 20(1) of the Universal Declaration of Human Rights, which provides that "[e]veryone has the right to freedom of peaceful assembly and association."

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs."; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Regarding the right to access and communicate with international bodies, we would like to draw the attention of your Excellency's Government to article 5, paragraph c) of the Declaration which states that in order to promote and defend human rights and fundamental freedoms everyone has the right, individually or collectively, both nationally and internationally, "c) to communicate with non-governmental or intergovernmental organizations." Similarly, article 9, paragraph 4, states that "(a) (...) everyone has the right, individually or collectively, in conformity with applicable international instruments and procedures, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate?

2. Has a complaint been lodged by the subjects of this allegation letter? Please provide information about any investigations undertaken to this end.
3. Please indicate what measures have been taken to ensure that the rights to 1) defend human rights peacefully, 2) freedom of association, and 3) freedom of opinion and expression, are respected, and that the physical and psychological integrity of those exercising these rights is guaranteed.
4. Please indicate the legal basis for the refusal of entry for the international trade union delegation, and how this measure is compatible with international human rights norms and standards.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue

Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and  
of association

Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders