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## Fiji

### FJI/02 - Tupou Draunidalo

#### *Decision adopted by consensus by the IPU Governing Council at its 199<sup>th</sup> session (Geneva, 27 October 2016) <sup>1</sup>*

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Ms. Tupou Draunidalo, a member of the Parliament of Fiji, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

*Considering* the following information provided in writing by the parliamentary authorities and the complainant, as well as at the hearing that the Committee on the Human Rights of Parliamentarians held on 24 October 2016 with the Fijian delegation, led by the Speaker,

*Considering that*, on 3 June 2016, the Parliament of Fiji decided to suspend Ms. Draunidalo for the remainder of her term in light of the following remarks she made in Parliament on 1 June 2016 as part of an exchange, as recorded in the *Daily Hansard*:

“Hon. Dr. M. Reddy (Minister for Education): Madam Speaker, we have also recognized our toppers<sup>2</sup>, our great minds who are the ones who will be pushing the frontier, Madam Speaker. Therefore, we have got a policy for them, to look after these people who will come and push the frontier in this country, Madam Speaker. I cannot see any toppers from the other side, Madam Speaker, I cannot see, Madam Speaker.

*(Laughter)*

If there was any toppers from the other side, Madam Speaker, they would not have raised this issue of petition, Madam Speaker, unfortunately, there are no toppers there, Madam Speaker, I tell you in another ten years' time, five years' time, there will be some toppers sitting that side but they will be part of this side, Madam Speaker.

Hon. T. Draunidalo: fool...

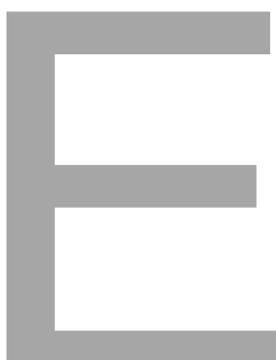
Hon. A Sayed-Khaiyum<sup>3</sup>: Hey, do not call him a fool. Do not call him a fool.

Hon. Dr. M. Reddy: Madam Speaker, as the Finance Minister has said, is the last... Madam Speaker, I was a topper.

Hon. A Sayed-Khaiyum: Madam Speaker, a point of order.  
Hon. Draunidalo called the Minister for Education “a fool”.

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<sup>1</sup> The delegation of Fiji expressed its reservations regarding the decision.  
<sup>2</sup> Tertiary Scholarship (TOPPERS) Programme  
<sup>3</sup> He is also Fiji's Attorney General



Hon. T. Draunidalo: And he provided worse in his speech, calling us “dumb natives, you idiot”,

Considering the following information on file regarding the complaint which was subsequently submitted to the Privileges Committee:

- On 2 June 2016, a matter of privilege was raised with the Speaker pursuant to Standing Order No. 134(1). In response, the Speaker ruled that, in her opinion, there had been a *prima facie* breach of privilege, and so she referred the matter to the Privileges Committee and ordered a report to be tabled in parliament no later than the following day, 3 June 2016;
- The opposition insisted that Ms. Draunidalo should attend. The Attorney General proposed that both he and Ms. Draunidalo should withdraw as members of the Privileges Committee and allow substitutes in their place. Both sides sought time to secure substitutes and the Chairperson also took the opportunity to seek the advice of the Speaker. The Committee reconvened at 5.50 pm. Mr. Karavaki advised the Committee that, unfortunately, a substitute could not be arranged and indicated that he would not participate in the proceedings, as he believed that there was little point in continuing and the opposition would raise their view in the House, considering that the Committee had prejudged Ms. Draunidalo, which is denied by the parliamentary authorities, including during the hearing on 24 October 2016 with the Committee on the Human Rights of Parliamentarians;
- The Attorney General presented his views to the Committee on the witness evidence. He tendered as evidence a copy of the audio recording of the exchange in parliament, previous cases from the High Court of the Republic of Fiji<sup>4</sup> and social media postings. Ms. Draunidalo was invited to present her views on the matter. She asked to be excused because she had chosen to exercise her right to silence and believed that she would not receive a fair hearing;
- The Secretariat provided collated precedents from Fiji and other relevant jurisdictions to enable the Committee to consider the available sanctions, ranging from the mild to the most severe. The research team were asked to find similar offences in other jurisdictions and were given an hour to research. After reconvening, the Committee was informed that there was very little that could be gathered specific to the members' request – with the only similar circumstance being the suspension of a British Labour member of parliament from her party duties for anti-Semitic statements on social media;
- The Committee, after deliberating, was able to reach a consensus and resolved unanimously to endorse the following findings and recommendations:
  - (i) “What you say in parliament is subject to the standing orders. The dignity and respect of this House must at all times be upheld:
  - (ii) In this regard, Standing Order No. 62(4) states: It is out of order for a member, when speaking, to use – (a) offensive words against parliament or another member; (b) treasonable words; (c) seditious words; or (d) words that are likely to promote or provoke feelings of ill-will or hostility between communities or ethnic groups within Fiji;
  - (iii) The use of the words “fool” and “dumb natives” and “you idiot” are matters that are out of order in this parliament. The words “dumb natives” and “you idiot” are clearly offensive to any member of this House and has the potential to promote or provoke feelings of ill-will or hostility between communities or ethnic groups and constitute a *prima facie* breach of privilege”;
- In Fiji, there is a pressing need to strengthen institutions, and in particular parliament or the legislature, which was directly and physically attacked in the coups of 1987 and 2000;
- As the Committee noted in its report last year, given the implementation of the Constitution, which has been internationally recognized, and the fact that Fiji finally has true democracy, contempt for matters such as this must be taken seriously to protect the dignity of the legislature;

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<sup>4</sup> This concerns the cases of Mr. Sakeasi Butadroka and Mr. Anand Baba, who were suspended in the 1990s from parliament for two consecutive meetings and, in the second case, for three sittings and subsequently for two months.

- The comments of Ms. Draunidalo have led to a flurry of social media responses that bring parliament into serious disrepute. It is not the example to be set as the standard or acceptable pattern of behaviour for members of parliament, and equally for the Fijian population, because it will undermine the very institution that the Constitution and all people need to protect to ensure that there is sustained parliamentary democracy and respect for this very critical branch of the State;
- It is also critical that children and the younger population are not exposed to these types of racial slurs as the norm, or do not see that this parliament is condoning such behaviour by an honourable member of parliament;
- It should be noted that under section 20(h) of the Parliamentary Powers and Privileges Act (Cap.5), any person who utters or publishes any false or scandalous slander or libel against parliament or any member of parliament is committing an offence, and such an offence warrants, inter alia, imprisonment for a maximum of two years;
- Standing Orders Nos 62(4)(a) and (d) are progressive provisions, which seems to be quite rare and made it difficult to find contempt of a similar nature in other jurisdictions. However, the Committee was unanimous in its finding that contravention of the standing orders in question in these circumstances was not only a grave and serious breach of privilege, but a contempt of parliament;
- Given that the Privileges Committee has unanimously found that Ms. Draunidalo has contravened Standing Order Nos 62(4)(a) and (d) in circumstances that were not only a grave and serious breach of privilege, but a contempt of parliament, the Privileges Committee strongly recommends that:
  - Ms Draunidalo must formally apologize in parliament, while under formal censure and before leaving the parliament precincts, to the following: (i) the Minister for Education, Heritage and Arts; and (ii) the people of Fiji;
  - The apology must reflect the severity of the breach and the fact that it has had far-reaching effects and gone viral on social media here and abroad. The apology should also recognize that the honourable minister did not, in fact, utter the words “dumb natives”;
  - Ms. Draunidalo should be suspended for the remainder of the term of parliament, with immediate effect from 3 June 2016, upon tendering of the apology and imposition of the censure by parliament;
  - During the period of suspension, Ms. Draunidalo is not allowed to enter the parliamentary precincts, including the Opposition Office. Immediately upon her suspension, Ms. Draunidalo must be ordered to leave the precincts of parliament and to remain outside of the parliament precincts; and
  - If Ms. Draunidalo fails to comply with any of the above, necessary enforcement measures must be imposed to ensure compliance,

*Considering* that the complainant disagreed with the Privileges Committee’s findings and recommendations for the following reasons, which were also stated on 3 June 2016 in parliament by Ms. Draunidalo and others:

- (i) The recording of the exchange in parliament was not heard in parliament. In this regard, Ms. Draunidalo claims that *Hansard* does not pick up all of the free-flowing discussions, interjections and words spoken at the time, with the audio recording being clearly different. She says that the recording underscores that, in response to the Attorney General’s complaint, she said, “And he implied worse in his speech”. Then she asked, “Calling us dumb natives?” before she said, “You idiot”. It was also pointed out that it is not clear to whom the words “idiot” or “dumb natives” were addressed;
- (ii) When Ms. Draunidalo made the alleged remarks addressed to Minister Reddy, the latter did not raise a point of order in that regard, as the Speaker had remarked during the debate, which is why the Speaker did not ask for a withdrawal of the comments, but allowed the debate to continue;
- (iii) The minister’s initial remarks were degrading for the opposition, which is composed almost exclusively of indigenous Fijians and iTaukei. The remarks are part of a pattern of

humiliation and mocking, through words and gestures, that the minister and Attorney General have used against the opposition in parliament;

- (iv) The recommended suspension for the remainder of Ms. Draunidalo's term is not provided for in law: Standing Order No. 76 provides for a maximum suspension of 28 days;
- (v) Ms. Draunidalo apologized in parliament by saying, "If anyone in this House or outside, or anyone else in Fiji, takes offence for what they think they have heard or manufactured to have heard, I unreservedly apologize",

*Considering* that, on 3 June 2016, parliament accepted the Privileges Committee's recommendations with 28 votes in favour and 16 against, after an amendment had first been defeated proposing that Ms. Draunidalo: (i) immediately withdraw the words "dumb natives"; (ii) apologize to the Honourable Minister, Dr Mahendra Reddy, the House and Fiji; (iii) be subject to a suspension from the House for a term that is allowed within Standing Order No. 76 and to the maximum of 28 days,

*Considering* the following relevant legal provisions in the Standing Orders:

"Article 75:

(1) The Speaker may order any member whose conduct is highly disorderly or repeatedly violates the standing orders to withdraw immediately from parliament or a period of time that the Speaker decides, being no more than the remainder of that sitting day.

Article 76: Naming of member and suspension for grossly disorderly conduct

(1) The Speaker may name any member whose conduct is grossly disorderly and call on parliament to judge the conduct of the member by immediately putting the question "That [member] be suspended from the service of parliament". There is no amendment or debate on the question.

[...]

(3) If the majority of all members vote in favour, the member is suspended, -

(a) on the first occasion, for three days (excluding the day of suspension);

(b) on the second occasion during the same session, for seven days (excluding the day of suspension); or

(c) on the third or any subsequent occasion during the same session, for 28 days (excluding the day of suspension).

[...]

(5) The fact that a member has been suspended under clause (3) or (4) does not prevent parliament from also holding the member's conduct to be in contempt.",

*Considering* also that Article 73(2) of the Constitution states that: "(2) parliament may prescribe the powers, privileges and immunities of members of parliament and may make rules and orders for the discipline of members of parliament",

*Considering*, finally, that the complainants claim that the exaggerated suspension imposed on Ms. Draunidalo is the culmination of a long-running effort to silence indigenous voices in parliament and to leave it to the non-indigenous minority to run the country, which allegation the authorities fully deny,

1. *Thanks* the parliamentary authorities for their cooperation and the information they provided, including during the hearing with the Committee;
2. *Is deeply concerned* about Ms. Draunidalo's suspension for the remainder of her term; *considers* that Article 73 of the Constitution, read together with Standing Order 76(5) of parliament, does not provide sufficient legal certainty and clarity as a basis for such a suspension; *considers* also that the suspension is wholly disproportionate, as it not only deprives Ms. Draunidalo of her right to exercise her parliamentary mandate, but also deprives her electorate from representation in parliament for a period covering half the parliamentary term; *is also concerned* about what appears to be a recent trend in Fiji to impose long-term suspensions on vocal opposition parliamentarians and the serious consequences this has for the opposition's ability to carry out its work effectively;

3. *Reaffirms* that freedom of expression is absolutely essential to the parliamentary mandate and that the exercise of this right includes not only statements that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others;
4. *Considers* in this regard that, although Ms. Draunidalo could have responded differently to the situation at hand, her words fall squarely within her right to freedom of expression; *considers* also that any concern about her words would have been best settled directly and immediately in the plenary of parliament;
5. *Believes* that, in light of the above, the best way forward is for parliament to swiftly lift Ms. Draunidalo's suspension; and *calls on* parliament to take the necessary action;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.