



Inter-Parliamentary Union

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## Fiji

### FJI/03 - Ratu Isoa Tikoca

#### *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 Mr. Ratu Isoa Tikoca, 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 29 September 2016, the Parliament of Fiji decided to suspend Mr. Tikoca for the remainder of his term in light of the following remarks he made, and comments which ensued, in parliament on 5 July 2016, as recorded in the *Daily Hansard*:

- *“Fiji has recently adopted the title Minister of Economy. That is an appointment used in Arab countries, including Saudi Arabia, United Arab Emirates and Islamic State of Afghanistan. In the Fiji context, anything that is economy in Government, public and private enterprises comes under the Minister of Economy. This is unprecedented for Fiji. This self-proclaimed appointment will make the Minister of Economy the most powerful man in Fiji. He totally disregarded the democratic concern of the people of Fiji and of course this side of the House - a promotion of no separation of powers under the false pretence of a democratic Fiji. This was clearly demonstrated in the removal of two opposition members of parliament to the total disregard of their own Constitution and the standing orders of parliament. The Prime Minister must understand that such actions promote ill-will or hostility between communities in Fiji.*
- *Honourable Deputy Speaker, the Ministry of Economy has direct oversight over strategic sectors. One, sugar industry under the management of Mr. Abdul Khan. Two, the Fiji Hardwood and Fiji Pine under the management of Mr. Faiz Khan. Three, Fisheries PAFCO under the chairmanship of Mr. Iqbal Janiff and who is also the Vice-Chancellor of FNU. Four, Tourism, and I refer to Airports Fiji Limited by Mr. Faiz Khan as Board Chairman and CEO. Air Terminal Services chaired by Mr. Riyaz Sayed-Khaiyum. Border Security is managed by Mr. Xavier Khan. State broadcasting, managed by Riyaz Khaiyum, has been allocated \$6.7m for public service broadcast radio and public service broadcast TV \$4.6m. Seven, Commerce Ministry managed by Shaheen Ali. Eight, Commerce Commission has a board member, Mr. Feroz Ahmed Ghazali, who is a Pakistani deserter. The Central Bank is co-managed by Mr. Ariff Ali. Finance intelligence managed by Razim Buksh.*

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<sup>1</sup> The delegation of Fiji expressed its reservations regarding the decision.

*Elections office is managed by Mr. Mohammed Saneem. Government ITC managed by Mr. Nisar Ali. They are also digitizing the Vola ni Kawa Bula and TLTB. Our Geneva mission, where the World Trade Organization is based, is managed by Mrs. Nazhat Shameem Khan. Hamid, founder of the road contractor Naim from Malaysia – a close friend of some people on that side.*

- *Recently, FTCAC laws were amended and given same powers as police. Now Fiji has two police forces. One controlled by the Commissioner of Police and one controlled by the AG himself.*
- *The recent bickering in parliament has drawn concerns of the Fijians and negative feeling against certain elite groups in Fiji being the minority group, however assuming critical chairmanship and CEO leadership positions in Fiji. Honourable Speaker, there appears to be rampant cronyism of the economy. Fiji faces the biggest threat since independence. We have never faced such threats before in our history. Our civilization, lifestyle and culture is under threat. The nation is under threat. Honourable Deputy Speaker, the sunset clause is fully operational. Honourable Deputy Speaker, I am concerned about this important issue. It's not a laughing matter. Government needs to address this immediately, as Fijians are disgusted about this. The concentration of economic power seems to be with a few elite. There is animosity growing within our various Fijian groups questioning why this elite group is being advanced over others. The fury with the stigma of one man leading the nation with his kind. People of Fiji have started to build misconception about others within this group, but have failed to identify that it is only one man that we need to isolate as the real dictator.*

[...]

- *What are you afraid of? What is quite clear is that we are witnessing a coup within a coup. Understand that."*
- Following these remarks, member of parliament Mr. Sudhakar raised a point of order. The Deputy Speaker, who was presiding at the time, made the ruling that Mr. Tikoca should continue, with a warning that he should consider his words carefully so as to "confine the debate to the budget and not make implications against any other member of parliament",

Considering the following with regard to the complaint, which was subsequently submitted to the Privileges Committee:

- According to the complainant, the Deputy Speaker's ruling was also in accordance with an earlier ruling by the Speaker that matters should be brought up immediately after the action giving rise to the complaint and not two or three days later. On 9 August 2016, the Speaker confirmed the Deputy Speaker's ruling and that such rulings were not subject to appeal except by motion of parliament. Nevertheless, much later, the Prime Minister submitted an official complaint to the Speaker, asking that she refer the matter to the Privileges Committee, which she did in a letter of 27 September 2016. The Privileges Committee met in the afternoon of the following day and concluded the following in its report:
- "On Tuesday, 5 July 2016, the Hon. Ratu Isoa Tikoca made certain statements, which quite clearly and selectively and more importantly intentionally targeted Fijians who are Muslims or adherents of Islam, contrary to Standing Order No. 62(4)(a) and (d).
- Privilege is afforded to all honourable members as a matter of right. Standing Order No. 133, however, makes it clear that freedom of speech and debate in parliament is subject to standing orders. Therefore, any member can say whatever they wish in the House, but subject to the standing orders. The dignity and respect for the House must at all times be upheld.
- In this regard, Standing Order No. 62(4) states:  
"It is out of order for a member, when speaking, to use: offensive words against parliament or another member; treasonable words; seditious words; or words that are likely to promote or provoke feelings of ill-will or hostility between communities or ethnic groups within Fiji."

- The selective naming of Arab countries in reference to the usage of the name Ministry of the Economy, the naming of only Muslim officials serving in the offices of State listed, the use of the words “my kind” and “this elite group” make it clear that Mr. Tikoca was not only in breach of Standing Order No. 62(4) but that this breach was an intentional abuse of the parliamentary privilege of freedom of speech that this parliament cannot ignore, and he must therefore be dealt with decisively.
- 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 this Committee had noted in both its previous reports, given the implementation of the Constitution, which has been internationally recognized, and the fact that Fiji finally has true democracy, contempt matters such as this must be taken seriously to protect the dignity of the legislature.
- The thinly veiled attack by Mr. Tikoca against a minority community must not be tolerated. The absolute privilege enjoyed by members must not be used to incite racial discord, as was so often done in the past. It is not the example we want to 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 we all need to protect to ensure that there is sustained parliamentary democracy and respect for this very critical arm of the State.
- It is also critical that our children and the younger population are not exposed to this type of racial profiling and vilification 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 on parliament or upon any member of parliament commits an offence, and such an offence warrants, inter alia, imprisonment for a maximum of two years. That is how important the reputation of parliament is. This privilege protects our right to freedom of speech in the House by protecting our very reputations, and this privilege must not be abused to incite ill-will or hostility between the communities.
- Government Members were firmly of the view that Mr. Tikoca's actions were not only a grave and serious breach of privilege but a contempt of parliament.
- Given the above, the Privileges Committee recommends by majority that: Hon. Ratu Isoa Tikoca be suspended for the rest of the term of parliament; during the period of suspension, Hon. Ratu Isoa Tikoca is not to be allowed to enter the parliamentary precincts; and if Hon. Ratu Isoa Tikoca fails to comply with any of the above, that necessary enforcement measures must be imposed to ensure compliance”,

*Considering* that, on 29 September 2016, parliament accepted the findings and recommendations of the Privileges Committee, after first defeating a proposed amendment to reduce the penalty to a 30-day suspension,

*Considering* that the complainant considers that the suspension is arbitrary for the following reasons:

- The Privileges Committee made it clear that it found Mr. Tikoca guilty before hearing him first, which allegation was denied by the parliamentary authorities;
- Mr. Tikoca's remarks were not directed at the Muslim community as such and were not likely to provoke and promote feelings of ill-will or hostility, as was also borne out by the comments made on social media in the weeks and months that followed;
- Mr. Tikoca made an apology in parliament;
- The Deputy Speaker, as confirmed by the Speaker, had already ruled on the matter, so it therefore cannot be reopened;
- The recommended suspension for the remainder of Mr. Tikoca's term is not provided for in law: Standing Order No. 76 provides for a maximum suspension of 28 days;

- If the House finds that a member has been in breach of privilege, then the usual practice, which is also borne out by Fiji case law, is to ask the member to withdraw the comments, which would be the end of the matter,

*Considering* that the parliamentary authorities, in their letter of 18 October 2016, as well as during the hearing with the Committee, have stated in response that:

- The Privileges Committee minutes note that, although they had deliberated and come to a conclusion on the first day of their proceedings, and initially did not wish to call any witnesses, they had decided on the second day that they did want to hear from Mr. Tikoca;
- The Privileges Committee, and later parliament, were in no doubt as to whom the remarks were directed;
- Mr. Tikoca's apology was noted;
- The Deputy Speaker did not rule on any matter of privilege;
- The standing order deals with gross disorderly conduct. Article 76(5) of the standing order clearly states that being suspended under clause (3) or (4) does not prevent parliament from also holding the member's conduct to be in contempt. It is therefore clear that matters of privilege and contempt are not covered by that particular standing order; and
- Ultimately, the sanction imposed by parliament is for parliament to determine. Section 73(2) of the Constitution of Fiji states: "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* the following 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).

(4) A member who is suspended who refuses to obey a direction of the Speaker to leave the Chamber is, without any further question being put, suspended from the service of parliament for the remainder of the calendar year.

(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",

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 Mr. Tikoca's suspension for the remainder of his term; *considers* that section 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 Mr. Tikoca of his right to exercise his parliamentary mandate, but also deprives his electorate from representation in parliament for a period covering half the term of parliament; *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 do 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 Mr. Tikoca's words, although touching on sensitive societal matters, fall within his right to freedom of expression; *considers* also that any concern about his words would have been best settled directly and immediately in the plenary of parliament, as seemed to have happened at first;
5. Believes that, in light of the above, the best way forward is for parliament to swiftly lift Mr. Tikoca'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.