



Inter-Parliamentary Union

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## Fiji

### FJI/01 - Ratu Naiqama Lalabalavu

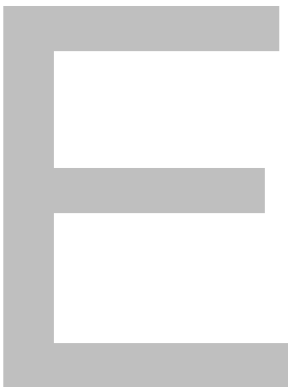
***Decision adopted unanimously by the IPU Governing Council  
at its 198<sup>th</sup> session (Lusaka, 23 March 2016)***

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Mr. Ratu Lalabalavu, a member of the Parliament of Fiji and a Fijian paramount chief, 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 detailed information provided in writing by the complainants and the parliamentary authorities, as well as orally by the Fijian delegation at the hearing held on 20 March 2016 with the Committee on the Human Rights of Parliamentarians:

- On 14 May 2015, the Social Democratic Liberal Party (SODELPA) held a public constituency meeting in Makoi. At the meeting, Mr. Lalabalavu allegedly made scurrilous and derogatory remarks in the iTaukei language about the Speaker of Parliament. Communications Fiji Limited, a news media organization, first covered the story and made audio recordings of the alleged incident;
- Following the constituency meeting, a matter of privilege was raised with the Speaker pursuant to Standing Order 134(1) on 18 May 2015. The Attorney General and Minister for Finance, Public Enterprises, Public Service and Communications moved a motion on the matter. The Speaker put the question to parliament for a vote. The motion was passed and the matter was subsequently referred to the Privileges Committee, which was given three days to report back on the matter to parliament. The Committee's proceedings, unlike those of the standing committees, were reportedly subsequently held in camera;
- On 19 May 2015, the Privileges Committee met briefly and called three of the ten witnesses on the list. The first two witnesses were from Communications Fiji Limited. The third witness was Mr. Lalabalavu. After concluding examination of the third witness, the Committee decided that it had sufficient evidence before it to deliberate and decided not to call the other witnesses. The Committee's Secretariat was requested to collate precedents from Fiji and other relevant jurisdictions to enable the Committee to consider the available options, including possible sanctions in the event the breach was substantiated;
- On 20 May 2015, the Committee met briefly to consider: (i) whether there was any breach and, if so, the severity; (ii) the available sanctions and appropriate sanction or penalty that should be recommended to parliament. The Committee, after deliberating at length, was not able to reach a consensus and resolved unanimously to make written submissions, which would be consolidated as the findings of the Committee. Opposition members reiterated that they had participated in the proceedings under protest: (i) because the Hon. Attorney General was part of the committee (notwithstanding the Speaker's ruling on the matter); and (ii) because of the Speaker's ruling (morning of 20 May 2015) regarding the matter of privilege raised by Mr. Draunidalo;



- On 21 May 2015, the Committee finalized and endorsed the report in which the majority held the following:
  - It is a well-established parliamentary principle that reflections on the Speaker inside or outside parliament are, inter alia, regarded as contempt of parliament;
  - It is undeniable from the audio recording that the scurrilous and derogatory statements were made by Mr. Lalabalavu;
  - It is clear that he referred to the Speaker as “vutusona”, which is an iTaukei term that is extremely obscene and gravely offensive, as it literally means anal sex. Following that statement, Mr. Lalabalavu then referred to the Speaker as “cavuka”, which means mentally retarded or mentally challenged, when he had mocked her by saying that she stood up when the opposition side stood up during a particular sitting. In all these instances, his reflections on the Speaker drew laughter from the audience;
  - Mr. Lalabalavu was unapologetic about the words and statements uttered against the Speaker;
  - By making such statements Mr. Lalabalavu has failed to uphold his expected duties and demeanour as a member of parliament; no member of parliament must be allowed to attack the Office of the Hon. Speaker anywhere and at any time;
  - 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 against any member in his or her capacity as such, commits an offence and such an offence warrants, inter alia, imprisonment for a maximum of two years. The Privileges Committee concluded that Mr. Lalabalavu’s remarks made a mockery of the institution of parliament and recommended that he be suspended from parliament for at least two years. During the period of suspension, it recommended that he should not be allowed to enter the parliamentary precinct and that he must issue a public apology in writing to the Speaker;
  
- The report of the Privileges Committee contains a separate chapter with the views of its members belonging to the opposition, who held the following:
  - On the morning of 20 May 2015, the Speaker made a Ruling on Privilege in which she ruled that all matters of privilege were confined to the parliamentary precinct and this did not include the members’ constituency visits;
  - The standard of proof of “beyond reasonable doubt” required for charges carrying penalties like breaches of parliamentary privilege was not met in the case at hand;
  - The quality and state of the recording raises doubts about its accuracy and/or veracity; it should therefore have been subjected to expert, forensic scrutiny;
  - The recording was made by Communications Fiji Limited and has not been made public;
  - If the recording is to be accepted as evidence, the opposition members state that it is clear that Mr. Lalabalavu never made reference to the Speaker or any one person in the allegedly incriminating part of his speech (but rather to several persons);
  - There were many questions during the constituency meeting about the Speaker, and Mr. Lalabalavu responded to placate the mood towards her from the audience. His remarks were therefore words of wise counsel of restraint and forbearance and understanding from a paramount chief;
  - The opposition members concluded that there had been no breach of privilege and that, due to the lack of consensus in the Committee, the House needed to hear the recording in question and read the minutes and verbatim of the Committee’s proceedings to pass judgement in their deliberations on the motion fairly;
  - If the House were to find a breach, the opposition members noted that the usual practice would be to ask the member to withdraw his/her comments, which would be the end of the matter. Standing Orders 75 and 76 contain the penalties that are available to members to deal with breaches of privilege;

- On 21 May 2015, the House decided, apparently without listening to the recording, to suspend Mr. Lalabalavu for two years;
- On 15 July 2015, Mr. Lalabalavu launched a constitutional challenge against the suspension order issued by the Speaker and the Attorney General, which was heard by Chief Justice Anthony Gates,

*Considering* the following relevant legal provisions in Fiji:

- “Article 75 of the Standing Orders of the Parliament of Fiji:  
Disorderly conduct
  - (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.
  - (2) A member ordered to withdraw before or during questions for oral answer may not return to the Chamber to ask or answer a question and no other member may ask a question on that member's behalf.
  - (3) Any member ordered to withdraw from Parliament may not enter the Chamber and may not vote on any question put during the period of his or her withdrawal.”
- “Article 76 of the Standing Orders of the Parliament of Fiji:  
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.
  - (2) If the naming occurs while Parliament is in committee, the committee must first resolve itself into Parliament before the question is put.
  - (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.”
- “The Parliamentary Powers and Privileges Act:  
Article 20: (Notwithstanding the provisions of section 17, any person who [...] (h) utters or publishes any false or scandalous slander or libel on \*Parliament or upon any member in his capacity as such [...] shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred dollars or, in default of payment thereof, to imprisonment not exceeding two years or to such imprisonment without the option of a fine or to both such fine and imprisonment. [...] \* Amended by Order 8th October, 1970”

*Considering*, finally, that the complainants affirm that the exaggerated suspension imposed on Mr. Lalabalavu 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 Fijian delegation and parliamentary authorities for their cooperation and the extensive information they provided;
2. *Unequivocally* denounces gender slander; and *recognizes* that Mr. Lalabalavu may have used words that were offensive and degrading and therefore totally unacceptable;

3. *Considers* nevertheless that the decision by parliament to suspend him for two years for remarks made outside of parliament at a local party meeting is both inappropriate, also in the absence of a clearly legal basis for the two-year suspension, and wholly disproportionate, as it not only deprives him 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; *considers* also in this regard that alternative, regular legal avenues could have been pursued instead to obtain redress for the slander or libel in the case at hand;
4. *Sincerely hopes* therefore, all the more so given that Mr. Lalabalavu has already been excluded from parliament for 10 months, that his suspension will soon be lifted, either through a new decision by parliament, or as a result of the outcome of the pending constitutional challenge; *eagerly awaits* to receive feedback on this prospect;
5. *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;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.