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Hon. Aiyaz Sayed-Khaiyum
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BY EMAIL

8 November 2022

Open Letter to the Chief Justice, The Honourable Kamal Kumar, and the Attorney-General, The Honourable Aiyaz Sayed-Khaiyum, of Fiji¹

The Honourable Kumar and The Honourable Sayed-Khaiyum,

We are writing to express our concern over the charge of lawyer Mr. Richard Naidu with contempt of court, who faces trial on 10 – 11 November 2022 in the case of *The Attorney-General of Fiji v Richard Krishnan Naidu* (Civil Action No. HBC 202 of 2022).²

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 170 countries. The International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI understands that:

1. On 2 February 2022, Mr. Richard Naidu posted a photo on Facebook of an excerpt from a High Court of Fiji judgment.³ The Facebook post brought attention to the fact that the word 'injunction' in the judgment had been misspelled as 'injection', with the caption: "Maybe our judges need to be shielded from all of this vaccination campaigning. I'm pretty sure all the Applicant wanted was an injunction [Thinking face Emoji]."
2. On 22 June 2022, the Attorney-General of Fiji sought leave *ex parte* to apply for an order of committal (contempt of court) against Mr. Naidu in the High Court of Fiji. This application was based upon grounds set out in an affidavit of the Attorney-General sworn on 10 June 2022. The Attorney-General's affidavit expressed, *inter alia*, that he believed Mr. Naidu's conduct was deliberately designed to scandalise the Court and the Judicial Officer and to bring into disrepute and lower the reputation of the Judicial Officer and the administration of justice in Fiji.
3. On 27 June 2022, the Presiding Judge, Hon. Mr. Justice J Nanayakkara, heard the Attorney-General's *ex parte* motion and granted leave to apply for an order of committal.

¹ Please note that this is an open letter and will be published on our website.

² Mr. Naidu is a senior legal practitioner in Fiji, partner at Munro-Leys, and member of the International Bar Association's Bar Issues Commission's Policy Committee.

³ In the case of *Naidu v Gulf Investment (Fiji) Pty Ltd* [2022] FJHC 23. The Plaintiff in this case was Krishna Sami Naidu.

4. On 15 July 2022, Mr. Naidu's legal team applied to set aside the *ex parte* order on the basis that the Attorney-General had failed to make full and frank disclosure to the Court of all material facts, including that the Attorney-General is a well-known critic and political rival of Mr. Naidu.
5. Among other interlocutory matters, Justice Nanayakkara ruled against the application by Mr. Naidu's legal team to apply to be granted the opportunity cross-examine the Attorney-General. Mr. Naidu's legal team have sought leave to appeal this ruling.

With regard to the above issues, we respectfully draw attention to Fiji's international law obligations under the [International Covenant on Civil and Political Rights](#) (ICCPR), including the right to a fair trial (Article 14) and the right to freedom of expression (Article 19).

Under Article 14(1), ICCPR, "[a]ll persons shall be equal before the courts and tribunals...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". The UN Human Rights Committee has held that the right to equality before the courts guarantees, *inter alia*, equality of arms, which demands, *inter alia*, "that each side be given the opportunity to contest all the arguments and evidence adduced by the other party".⁴

Article 19(2), ICCPR, provides for the right to freedom of expression. Under Article 19(3), ICCPR, the right to freedom of expression may be subject to certain limited areas of restrictions that are provided by law and are necessary and proportionate for a legitimate purpose. The UN Human Rights Committee has held that "[c]ontempt of court proceedings relating to forms of expression may be tested against the public order (*ordre public*) ground. In order to comply with [Article 19(3)], such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court's power to maintain orderly proceedings. Such proceedings should not in any way be used to restrict the legitimate exercise of defence rights."⁵

We also respectfully recall Principle 23 of the [UN Basic Principles of the Role of Lawyers](#), which emphasises that lawyers, like other citizens, are entitled to freedom of expression and, in particular, shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.

In line with the above, we call on the Fijian government to immediately drop the contempt charges against Mr. Naidu. We further urge the Fijian authorities to uphold their obligations under international human rights law, including to respect, protect, and fulfil the rights to freedom of expression and to a fair trial.

We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.

Yours Sincerely,



Anne Ramberg Dr Jur hc
Co-Chair, International Bar Association's Human Rights Institute

⁴ UN Human Rights Committee. *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial* (23 August 2007) UN Doc CCPR/C/GC/32, paras. 8 and 13.

⁵ UN Human Rights Committee. *General comment No. 34, Article 19: Freedoms of opinion and expression* (12 September 2011) UN Doc CCPR/C/GC/34, para. 31.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

Mark Stephens CBE
Co-Chair, International Bar Association's Human Rights Institute