

Statement regarding the conviction of Richard Naidu by the High Court of Fiji

The CLA has been observing the contempt proceedings against Mr. Richard Naidu over a post on his Facebook. The post was a comment on a spelling error in a judgment. Mr. Naidu was convicted by the High Court of Fiji on 22 November 2022 for scandalizing the court and he is to be sentenced on 6 January 2023.

The CLA are concerned over the invoking of criminal contempt for scandalizing the court, which has been repealed in many parts of the Commonwealth. In this regard, it has been accepted that prosecution for this contempt will deter comments on judicial errors or misconduct and will have a chilling effect on the freedom of speech and expression.

The CLA notes that in jurisdictions where prosecution for this contempt is still available, it has only been instituted in exceptional cases where there is a real risk of undermining public confidence in the administration of justice. Its application has also been narrowed by the overriding right to comment in good faith on matters of public concern and importance.

The CLA, while respectful of the court, considers that Mr Naidu's comment could not satisfy the stringent threshold for the offence alleged. The court's decision amounts to an unreasonable and disproportion restriction on freedom of speech and expression.

The CLA notes the international response to Mr. Naidu's conviction, and supports the statements issued by LAWASIA and the Bar association of India on 24 November 2022 and the statement of the Law Council of Australia issued on 25th November

The CLA also notes that the Commonwealth Law Ministers, in their meeting in Mauritius on 24 November 2022, unanimously endorsed the Commonwealth Principles on Freedom of Expression and the Role of the Media in Good Governance, which among others, provides that *"The criminal law and contempt proceedings should not be used to restrict legitimate discussion on matters concerning the judiciary and the courts"*

The CLA:

- Urges the government of Fiji to respect the freedom of speech and expression.
- Urges the Attorney General of Fiji to withdraw the charge of contempt against Mr. Naidu and to move to quash the conviction

Commonwealth Lawyers Association (CLA)
25th November 2022

NOTE TO EDITORS:

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