

25 November 2022

Law Council concern regarding judgment against Fijian lawyer Richard Naidu

The Law Council of Australia notes with grave concern that senior Fijian legal practitioner, Mr Richard Naidu, has been found guilty of contempt of court by scandalising the court in a judgment delivered by the High Court of Fiji on Tuesday, 22 November 2022.

The Law Council has monitored these proceedings closely since they were initiated by Fiji's Attorney General, Hon. Aiyaz Sayed-Khaiyum, in June 2022.

Mr Naidu is a senior Fijian lawyer who is renowned internationally for his character, intellect and dedication to human rights and the rule of law. This case has attracted significant concern among the international legal community.

The Law Council arranged for Nicholas Cowdery AO KC to observe the hearing, held in Suva on 10 November 2022, on behalf of the Law Council and the International Bar Association's Human Rights Institute.

Mr Cowdery has reported that in his observation, whilst there was formal procedural regularity, Mr Naidu was denied procedural fairness and was not afforded a fair trial for reasons including:

- concerns about the *bona fides* of the proceedings;
- the attempted reversal of the onus of proof;
- Mr Naidu's inability to test the evidence against him, having been prevented from cross-examining the sole witness, the Attorney-General; and
- Mr Naidu's inability to know in advance of the hearing the case against him for trial, with the Judge refusing to rule on Mr Naidu's challenges to the admissibility of evidence before proceeding with the hearing.

In particular, the Law Council is concerned that Mr Naidu's inability to test the evidence against him appears to be in breach of Article 14(3)(e) of the *UN International Covenant on Civil and Political Rights (ICCPR)* and section 14(2)(l) of the *Constitution of the Republic of Fiji (Constitution)*, which provide the right of an accused to examine and challenge the witnesses and evidence presented against them.

Further, Mr Naidu's inability to know in advance the case against him for trial denied him notice of which parts of the evidence would be before the Court when it made its determination, and which parts would not. By requiring Mr Naidu to proceed in such a state of unawareness and uncertainty, the Judge did not appear to comply with Article 14(3)(a) of the ICCPR and section 14(2)(e) of the Constitution, which provide that an accused person is entitled to minimum guarantees to be informed of the nature and cause of the charge against them and the evidence upon which the prosecution intends to rely.

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Media Statement



The ordinary legal requirements for criminal proceedings in Fiji support and reflect these rights as set out in the ICCPR and the Constitution.

The Law Council is extremely concerned that Mr Naidu's inability to test the evidence presented against him, and his inability to know in advance the evidence that would ultimately be sought to be used against him and accepted by the Court, has operated unfairly against him in the conduct of his defence and rendered the trial unfair.

The Law Council of Australia will continue to monitor this case, noting that the sentencing hearing has been set for 5 January 2023.

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