

MIDA

MEDIA INDUSTRY DEVELOPMENT AUTHORITY

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To:

1. CEO-FIJI TV
2. PS-MINFO

HATE SPEECH April 3, 2014

I am quite perturbed by the level of public discourse in Fiji as we head towards the national elections. Masquerading itself as an exercise in freedom of expression, political discourse has, in fact, descended to unabashed racial vilification and in some instances its content is tantamount to injurious or hate speech. What is even more disconcerting is the complicity of select Fijian journalists and media either wittingly or those that remain oblivious to the laws of Fiji despite several awareness workshops on the *Crimes Decree*, the *Media Industry Development Decree* and the *Constitution*. The unfettered prominence given to Ratu Timoci Vesikula's intervention at the Tailevu Provincial Council meeting, aired on Fiji Television's Fiji One news segment on the 1st of April, is an indictment of this retrogression.

Ratu Timoci Vesikula's statements are nothing short of hate speech and in breach of the *Bill of Rights* provisions of the Fijian Constitution. In his words:

"From the past experiences, this group of people, known in Tebara as the Vasu (referring to Indo-Fijians) will try to pacify you, and assuage you just to have their aspirations met. These people do not want you to lead them. They only want a constitution and other investment initiatives done. Let me warn you that the upcoming elections will be a tough one. Because even though we have lived together for a long time, you can't mix water with kerosene".

How different are Ratu Timoci Vesikula's statement from that of Asenaca Caucau when she likened Indo-Fijian to obnoxious weed? Fiji TV ran the comments of Ratu Timoci Vesikula for approximately 3.00 minutes. Despite the fact that a response was made by Government, Fiji TV did not air it. My intervention this morning, however, it not because this was a complaint lodged by Government but emanates from the rather serious unconstitutional nature of statements made by Ratu Timoci Vesikula threatening racial and communal discord and the blatant breach of the Media Code of Ethics and Practice on the part of Fiji TV. My decision this morning **cannot be misconstrued** as an impingement on the freedom of expression or dismissed as yet another instance of gagging media freedom by MIDA as has been insinuated by some who are posturing as the praetorian guard of human rights but sadly very quiet over the issue of hate speech.

Section 17 (1) under *Freedom of speech, expression and publication* guarantees every person the right to freedom of speech, expression, thought, opinion and publication, which includes-

- (a) freedom to seek, receive and impart information, knowledge and ideas;
- (b) freedom of the press, including print, electronic, and other media;
- (c) freedom of imagination and creativity;
- (d) academic freedom and freedom of scientific research.

While 17 (2) crucially proscribes the following:

Freedom of speech, expression and thought, opinion, and publication does not protect-

- (a) advocacy of hatred that-
 - (i) is based on any prohibited ground of discrimination listed or prescribed under section 26; and
 - (ii) constitutes incitement to cause harm.

And imperative in preserving:

(3) to the extent that this is necessary, a law may limit or may authorize the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of-

- (a) national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including-
 - (i) the right to be free from hate speech, whether directed against individuals or groups; and
 - (ii) the rights of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law.
- (c) preventing attacks on the dignity of individuals, groups of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons;

(4) In this section, "*hate speech*" means an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed or prescribed under section 26.

Furthermore, MIDA finds Ratu Timoci Vesikula's speech in contravention of *Section 65 Urging political violence or inciting communal violence* provision of the 2009 Crimes Decree.

Section 65 [Subsection 2] states:

A person commits an indictable offence (which is triable summarily) if the person by any communication whatsoever including electronic communication, or by signs or by visible representation intended by the person to be read or heard-

- (a) makes any statement or spreads any report which is likely to-
- (i) incite dislike or hatred or antagonism of any community; or
 - (ii) promote feelings of enmity or ill-will between different communities, religious groups or classes of the community; or
 - (iii) otherwise prejudices the public peace by creating feelings of communal antagonism; or

(b) makes any intimidating or threatening statement in relation to a community or religious group other than the person's own which is likely to arouse fear, alarm, or insecurity amongst members of that community or religious group.

Penalty- Imprisonment for 10 years

Section 66 [Subsection 1] states:

A "seditious intention" is an intention-

- (iv) to raise discontent or disaffection amongst the inhabitants of Fiji; or
- (v) to promote feelings of ill-will and hostility between different classes of the population of Fiji.

Fiji Television, in giving unfettered prominence to Ratu Timoci Vesikula's speech, has failed to comply with SCHEDULE 1 (Section [18(1)]) Media Code of Ethics and Practice provisions of the 2010 *Media Industry Development Decree*:

1. Accuracy, balance and fairness

- (a) Newspapers and magazines, radio and television broadcasting organisations, websites and internet newsletters, and journalists working for them, shall report and interpret news and current affairs honestly. They shall aim to disclose all known relevant facts and shall take care not to publish material which is inaccurate, misleading or distorted by wrong or improper emphasis or any other factor.
- (b) If a significantly inaccurate, misleading or distorted statement is published or broadcast, it must be corrected promptly with due prominence and, where appropriate, an apology must be published or broadcast.
- (d) Media organisations have a duty to be balanced and fair in their treatment of news and current affairs and their dealings with members of the public.

2. Opportunity to Reply

Media organisations have an obligation to give an opportunity to reply to any individual or organization on which the medium itself comments editorially.

6. Discrimination

- (a) Media organisations shall avoid discriminatory or denigrating references to people's gender, ethnicity, colour, religion, sexual orientation or preference, physical or mental disability or illness, or age.
- (c) Media organisations shall be sensitive to and particularly careful about the possible effects of discriminatory references to vulnerable minorities in prejudicial or pejorative contexts.

(d) While media organisations are free to report and comment on all matters of public interest, it is their duty not to publish or broadcast material in a form likely to promote or encourage communal hatred or discord.

Furthermore, under Part 4- CONTENT REGULATION- of the 2010 *Media Industry Development Decree, Section 22* explicitly stipulates the following:

The content of any media service must not include material which-

- (a) is against the public interest or order;
- (b) is against national interest; or
- (c) creates communal discord.

Section 24 on Offences relating to content regulation of the Media Decree states:

A breach of any of the provisions in or under Sections 22 and 23 by a media organization shall constitute an offense and the media organization shall be liable on summary conviction to a fine not exceeding \$100,000 or in the case of a publisher or editor to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

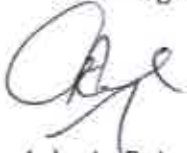
MIDA's decision:

1. As an immediate measure of redress, Fiji TV is required to comply with 1(b) of Schedule 1 (Section [18(1)] of the *Media Code of Ethics and Practice*
2. It is imperative that Fiji TV take cognizance of 1(f) under Schedule 1 (Section [18(1)] of the *Media Code of Ethics and Practice* and fully comply with its provisions, which stipulates:

Media organisations shall report fairly, the result of any legal action brought against them and have an obligation to publish or broadcast, without diluting the finding, any adjudication by the Media Tribunal on a complaint made against them.

3. MIDA will seek further legal advise on the possibility of imposing a fine in adherence with *Section 24 of the Media Industry Development Decree.*
4. While MIDA recognizes that it remains Government's prerogative to execute legal proceeding against Ratu Timoci Vesikula for inciting hatred and racial ill will, it will be closely monitoring the tenor of public discourse in the lead up to elections and the role of the media in this process. This will be a key task of the independent media-monitoring unit.
5. Furthermore, in the interests of transparency, the Authority will require full translation of speeches and texts presented in the vernacular at all political rallies and forum and it is incumbent upon the media in Fiji to ensure that there is no dissonance in the content of speeches and texts presented either in the vernacular or English in their various modes of delivery.

6. The Authority is now requiring all freelance journalists to register including a full declaration of the various organisations that they serve to the Media Industry and Development Authority. Since, they live and operate in Fiji, they are required to respect the laws of this country.
7. The conduct of a number of journalists on blog sites leaves much to be desired. One just has to see their contribution on *Friends of the Fiji Media* blog site. I am asking all editors to address this issue as a matter of urgency. The media must not antagonize but should play a much more productive role in fostering cohesion, engendering an ethos of robust debate, fostering a culture of deliberative democracy based on reason and respect for difference while upholding the law and adhering to the protocols of responsible journalism at all times .



Ashwin Raj,
Chairman, MIDA.

CC: SOLICITOR-GENERAL