



**STANDING COMMITTEE ON JUSTICE, LAW AND
HUMAN RIGHTS**

**REPORT ON THE COMMUNITY-BASED
CORRECTIONS BILL 2016**

(BILL NO. 33 OF 2016)



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LIST OF ACRONYMS

| | | |
|---------|---|--|
| CBC | - | Community-based Corrections |
| CPO | - | Community Payback Order |
| CSO | - | Civil Society Organisation |
| DSW | - | Director of Social Welfare Department |
| FCS | - | Fiji Corrections Service |
| FPF | - | Fiji Police Force |
| NGO | - | Non Governmental Organisation |
| PCP | - | Pacific Centre for Peacebuilding |
| PS | - | Permanent Secretary |
| SODELPA | - | Social Democratic Liberal Party |
| SO | - | Standing Order |
| UNICEF | - | United Nations Children's Emergency Fund |

CHAIR'S FOREWORD

Fiji is not immune to the impact of over-crowdedness of prisons, the cost impact it has on the taxpayers and the negative impacts that are faced by persons incarcerated in the prison system. This gave way to initiatives being introduced by the Fijian Government and the institutions responsible for these incarcerated persons to look at alternative ways to decrease recidivism and assist in rehabilitation of offenders. However, the current laws are outdated and do not provide for vital provisions which have concrete effect on these initiatives.

Therefore the Fijian Government procured the assistance of local and international expert institutions in correction programmes, to try and fill this gap. Institutions such as UNICEF and the Fiji Department of Social Welfare under the Ministry of Women, Children and Poverty Alleviation, stepped up to assist the government in this bold venture. Thus the introduction of the *Community-Based Corrections Bill 2016*, which is a piece of legislation that aims to legislate community-based sentence options for courts in Fiji.

The Bill was referred to the Standing Committee on Justice, Law and Human Rights by this August House for review and scrutiny. Apart from its own deliberation on the Bill, the Standing Committee considered numerous submissions received by it that highlighted certain issues.

During public submissions the Committee was apprised of the fact that it cost about \$55 per day to keep one prisoner in the prison. That would equate to over \$20,000 per year per person. If there are for instance 1000 prisoners incarcerated, it would cost the taxpayers over \$20,000,000 per year. If someone committed a minor offence such as theft of a loaf of bread or a can of tuna worth \$1 and was sentenced to imprisonment, the taxpayers would pay \$20,000 to keep him or her in prison for one year.

The alternative sentencing regimes provided in the Bill by no means seek to keep every offender off the prison system. As the old saying goes, if you commit the crime you do the time. However, the Bill empowers the Courts in appropriate cases to hand the offender an alternative sentence such as community work such as weeding the local cemetery or cleaning the drains which is a way of giving back to the victims of crime.

The courts will be empowered to treat each case on its own merits. The Committee ensured that the views of the victims of crimes are also considered before an alternative sentence is considered by making it compulsory for victim impact statement to be considered by the courts.

The Committee through the Parliament Research Unit also looked into other jurisdictions that have similar set ups to that which Fiji is aiming for by the introduction of the Bill.

The Committee in its observation also consulted the drafters of the Bill and this assisted the Committee in its deliberation of the Bill.

This Report will cover the Standing Committees' role in reviewing the ***Community-Based Corrections Bill, No. 33 of 2016*** to ensure that all due processes regarding the Bill has been followed and to also ensure that the provisions contained in the Bill would contribute to the achievement of the Bill's objectives.

Some of the pertinent areas which the Bill addresses are as follows:


- The provision of a range of sentencing options and the means for dealing with offenders, other than imprisonment;
- The provision for a victim impact assessment to be introduced to court for consideration before sentencing;
- The establishment of conditions in order to facilitate and promote rehabilitation of offenders;
- The managing of rehabilitation programmes of offenders and their reintegration into society;
- The provision of useful and timely information to courts to assist them in making decisions relating community-based corrections;
- The administering of community-based sentences in a fair and effective manner; and
- The promotion of community participation and volunteerism in the community-based corrections programmes.

The review also highlights the reasons for needing such a Bill, such as the costly impact of having to provide for a prisoner whilst he or she is in custody. There was also consideration given to the gender perspective of the Bill and its impact on men and women.

I would like to also acknowledge that the Bill has been with the Committee for quite some time. In its pursuit to give the review due diligence, and due to the scarcity of time and the need for wider public consultations, a motion was moved to extend the time for the Committee to report back to Parliament.

At this juncture I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the staff and officers of the Research Unit and secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I on behalf of the Committee commend the ***Community-Based Corrections Bill, No. 33 of 2016*** to the Parliament and seek support of all the members of this August house for the Bill since it is designed for the greater good of all Fijians.



Hon. Ashneel Sudhakar
CHAIRPERSON

1.0 INTRODUCTION

1.1 Background and Committee Remit

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the ***Community-Based Corrections Bill, No. 33 of 2016*** for review on June 2, 2016. After the second reading, the Bill was referred to the Committee pursuant to Standing Order 85(4) (a) and was tasked with scrutinising the Bill and to report back to Parliament in a subsequent Sitting.

1.2 Objectives of the Bill

Clause 3 of the Bill clearly sets out its principal objective, which is to provide for the administration of a community-based corrections system that contributes to a just society by;

- (a) providing the courts with a range of sentencing options and the means for dealing with offenders, other than by imprisonment;
- (b) establishing conditions so that the rehabilitation of offenders may be promoted or facilitated;
- (c) reducing reoffending by managing the rehabilitation of offenders and their reintegration into society;
- (d) providing useful and timely information to courts to assist them in making decisions relating to the rehabilitation and reintegration of offenders;
- (e) ensuring that community-based corrections sentences are administered in a fair and effective manner; and
- (f) promoting community participation and volunteerism in the rehabilitation and reintegration of offenders¹.

1.3 Procedure and Program

In order to carry out its task, the Committee read through the Bill and conducted its own deliberation of the Clauses in the Bill. The Committee was briefed by the Ministry of Women, Children and Poverty Alleviation who are the initiators of the Bill. The Committee invited main stakeholders and called for submissions from the public and other interested stakeholders by placing advertisements through the local newspapers (Fiji Times and Fiji Sun) on 7 and 9 July, 2016 and again on 26 September, 2016.

Details of the Committees deliberations are provided in this Report.

¹ *Community-Based Corrections Bill, No. 33 of 2016.*

The Committee was also mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during deliberations and discussions to develop and finalise the Committee's observations.

1.4 Committee Members

The substantive members of the Standing Committee on Justice, Law and Human Rights are:

- i. Hon. Ashneel Sudhakar (MP) (Chairperson)
- ii. Hon. Mataiasi Niumataiwalu (MP) (Deputy Chairperson)
- iii. Hon. Lorna Eden (MP) (Member)
- iv. Hon. Semesa Karavaki (MP) (Member)
- v. Hon. Niko Nawaikula (MP) (Member)

For deliberation on the Bill, the following Hon. Members stepped in as alternate members, pursuant to Standing Order 115 (5):

- i. Hon. Mikaele Leawere (MP) (Alternate Member for Hon. Niko Nawaikula)
- ii. Hon. Balmindar Singh (MP) (Alternate Member for Hon. Lorna Eden)
- iii. Hon. Ratu Sela Nanovo (MP) (Alternate Member for Hon. Semesa Karavaki)
- iv. Hon. Aseri Radrodro (MP) (Alternate Member for Hon. Semesa Karavaki)
- v. Hon. Mohammed Dean (MP) (Alternate Member for Hon. Ashneel Sudhakar)
- vi. Hon. Alvick Maharaj (MP) (Alternate Member for Hon. Lorna Eden)

During the course of the deliberation on the Bill there was a change in the membership of the Committee, whereby Hon. Dr Brij Lal replaced Hon. Lorna Eden as a substantive member pursuant to SO 115(2).

2.0 ***COMMUNITY-BASED CORRECTIONS BILL, NO. 33 OF 2016***

2.1 Introduction

The *Community-Based Corrections Bill 2016* is the result of the review of the *Probation of Offenders Act 1952* ("Act") by the Ministry of Women, Children and Poverty Alleviation ("the Ministry") with the assistance of the United Nations Children's Emergency Fund ("UNICEF"). The Bill is the outcome of the review of the outdated Act, which was enacted in 1952 and has never been amended².

The Bill seeks to reflect in law the reforms by the Department of Social Welfare with regard to the administration of community-based corrections orders, commonly known as probation orders³.

² Bill Summary produced by the Parliament Research Unit.

³ Ibid 2.

2.2 Written and oral submissions received and heard

The Committee as part of its deliberation received and heard numerous submissions on the Bill.

The Committee heard submissions, from relevant stakeholders and interested individuals, on various dates falling between and including 7 October to 30 November, 2016. Organisations and individuals that made submissions to the Committee included:

- i. Fiji Police Force (FPF);
- ii. Fiji Corrections Service (FCS);
- iii. The Judiciary;
- iv. SODELPA;
- v. Pacific Centre for Peacebuilding
- vi. Methodist Church of Fiji and Rotuma (faith-based organisation);
- vii. Ministry of Women, Children and Poverty Alleviation – Permanent Secretary
- viii. Mr. Aisea Taoka (Former Commissioner of Prisons).

The Committee took into consideration the submissions made by the above mentioned organisations. The Committee would like to extend its gratitude to all those who participated and provided essential contribution to the Committee's work.

The submissions of the above-mentioned organisations are summarised and provided in this Report and copies of the submissions are attached as 'APPENDIX A'.

3.0 COMMITTEE'S OBSERVATIONS/DELIBERATION AND ANALYSIS OF THE BILL

3.1 Impact of the Bill

The Committee noted that the Bill aims to provide for the administration of community-based corrections programmes, which offer the courts in Fiji a community-based sentencing option for the rehabilitation and reintegration of offenders. It also noted that the severity and the circumstances of a crime committed is also taken into account and allows the court to sentence an offender to undertake community-based corrections programmes, such as:

- a) counselling;
- b) mentoring;
- c) programmes for the treatment of alcohol or drug abuse;
- d) personal development programmes;
- e) educational and vocational training programmes; and
- f) job placement or income generating programmes.⁴

⁴ Explanatory Note to the Bill; *Community-Based Corrections Bill* (Bill No. 33) 2016.

During the duration of a community-based corrections order, the offender will be obligated to adhere to strict reporting requirements and conditions⁵.

Furthermore the court may sentence an offender to an intensive community-based corrections order which imposes more strict reporting requirements and special conditions on the offender.⁶

3.2 Initial Reading of the Bill and Deliberation by the Committee

The Committee began its analysis of the Bill by reading through the Bill Clause by Clause and noting numerous issues mainly with respect to the policy behind the Bill.

Some of the initial issues noted were:

- Why was there a need for a community-based corrections legislation when there already exists a law that deals with such corrections system (the *Probation of Offenders Act 1952*)?
- How would the Bill improve on the current aspects of corrections as stated in the *Probation of Offenders Act 1952*?
- What would be some of the benefits of having such legislation?
- Are there other countries that have enacted such legislation and has it been effective?
- Why is the Ministry of Women, Children and Poverty Alleviation the main entity/Ministry responsible for the implementation of the Bill when it becomes law? Why not have the Corrections Service or Police handle this?

The Committee noted that these issues needed clarification thus resolved to formulate questions and suggestions on these, which were then sent to the Solicitor-General's Office.

The Solicitor-General's Office, who are the drafters of the Bill, responded and advised the Committee accordingly. The response is summarised as follows:

- *Need for the Community-Based Corrections Bill:*

The Community-Based Corrections Bill 2016 ("Bill") firstly deters low risk offenders from entering the prison system and being exposed to the prison system which could lead to recidivism.

It responds to the issue of overcrowding of correctional facilities. It also provides for an alternative to incarceration which was the main approach used for punishing offenders. The Bill offers alternatives which subject the offender to counselling or similar character building and life skills training, which in turn could improve the offender's life and character.

Furthermore the Bill will also be in line with the global trend of using alternative means of corrections which focus on restorative justice and reintegration.

⁵ Ibid 4.

⁶ Ibid 4.

- *Improvement in current law (Probation of Offenders Act 1952):*

The Bill will repeal the *Probation of Offenders Act*, which is an outdated legislation that does not include vital provisions such as the roles and responsibilities of probation officers. The Bill will introduce provisions for officers (community-based corrections officers) who will take up the role of looking after offenders ordered into a community-based corrections order.

- *Similar laws which have been effectively/successfully implemented in other countries:*

There are countries that have adopted such laws and it has been implemented successfully. Developed countries such as Australia, Canada and South Africa are some of those countries including even our Pacific Island neighbours Samoa and Papua New Guinea.

- *Previous community based penalties/laws in force in Fiji:*

There have been numerous times the courts have penalised offenders and have given probation orders. Probation orders, in practice are community-based corrections orders.

- *Benefits of having a such a law:*

There are several advantages of having such a law and these are:

- it promotes rehabilitation of the offender by maintaining contact with family and the community;
 - it facilitates access to treatment programs aimed at preventing further offending;
 - it avoids the negative effects of imprisonment, which often makes the process of reintegration more difficult;
 - it costs much less than confining an offender; and
 - it minimises the impact of conviction upon family and dependants of the offender.
- *Rationale for having the main responsibility of the Bill vested in the Ministry of Social Welfare ("Ministry") rather than other institutions such as the Fiji Corrections Service:*

The Act (*Probation of Offenders Act*) is currently administered by the Ministry and it spearheaded the review of the Act which resulted in the drafting of the Bill. The Ministry has always provided services to offenders on probation orders, therefore this role should be continued under the Bill.

The response and issues were deliberated on extensively and the Committee resolved that it would be appropriate to invite and call for submissions from key and interested stakeholders in order to get a broader perspective on the Bill.

3.3 Issues noted from Submissions

Submissions heard from the above mentioned organisations greatly assisted the Committee in its deliberation. The main points noted from the submissions are summarised as follows:

***i. Ministry of Women, Children and Poverty Alleviation – Dept. of Social Welfare
– Permanent Secretary for Ministry of Women, Children & Poverty Alleviation***

The Ministry's submission was based on the policies behind the Bill.

As the implementer of the Bill, the Ministry had conducted consultations with relevant stakeholders with the assistance from the Australian Justice Programme in 2006 before the Bill was forwarded to the Parliament Standing Committee on Justice, Law and Human Rights. In this case, the Australian Justice Programme also helped in the formulation and development of the Standing Operating Procedures, training Manuals and the training of trainers' program. The Bill provides options to Courts in sentencing offenders according to the seriousness of the offence committed and avoids unnecessary incarceration of these crime-doers.

In the implementation of the Bill, the Ministry identifies the budgetary implications for both human and financial resources and therefore recommends for the inclusion of Community Volunteers remuneration into the Bill as this will carry out the effective output of the programme and to have a multi-agency working group established to monitor the functional execution of the Bill.

ii. Fiji Police Force (FPF)

The pertinent issues raised by the Fiji Police Force are as follows:

- A system of minimum qualification requirement be established and provided for in the Bill in order to avoid recruitment of unqualified community-based corrections officers or community volunteer supervisors.
- Recruited officers are to be well equipped with knowledge and tools to supervise probationers and managing their probation orders. This would ensure that the training they provide for volunteers is credible and of a good standard.
- That community-based corrections officers be vetted by Police before receiving training to further minimize the risk of re-offence influenced by unscrupulous community-based corrections officers.
- That the Police Force or the Permanent Secretary for Social Welfare (or the persons authorised by the PS) be the main authorities to carry out arrests and execution of warrants and orders.

iii. Fiji Corrections Service

The main issues raised by the Fiji Corrections Service (FCS) were as follows:

- It is very costly to incarcerate an offender (irrespective of the severity or gravity of the offence). A cost analysis of this was undertaken and it showed that it costs the economy \$55 per inmate per day, which means, more than \$20,000 Fijian Dollars is spent on one inmate per annum;
- FCS recommended for the title of the Bill to be amended as follows; that the word “*Corrections*” be removed and replaced with “*Reformative*” and the new title to be read as “**Community-Based Reformative Bill**”. This supports the purpose of the Bill which is to ensure the proper rehabilitation and successful integration of offenders back into their respective communities.
- It was also highlighted that the Bill is silent on who exactly does it apply to, when it comes to community-based corrections orders. The reasoning behind this is because a probation order would now be known as a community-based corrections order and under the *Probation of Offenders Act 1952*, Section 3 (5), it states “...if the offender is not less than 14 years of age, the court shall not make the order ...”.

iv. The Judiciary

The pertinent issues raised by the Judiciary are as follows:

- The Bill be amended to specifically set out projects that protect persons coming under the community-based corrections rehabilitation programme.
- That well trained probation officers with well-equipped skills are to be engaged to prepare pre-sentence reports that are to be submitted to the courts prior to the sentencing of offenders.
- A proper structure for rehabilitation programmes be designed in monitoring the tasks assigned to respective organisations and officers responsible for the programme.

v. Pacific Centre for Peace Building (PCPB)

The pertinent issues raised by the PCPB are as follows:

- The title of the Bill be amended from “Community-Based Corrections Bill” to “Restorative Justice Community-Based Bill”.
- That the Bill provide for a community-based restorative justice system that provides for restorative justice processes, rehabilitation and re-integration of offenders and also the healing of victims and their family.

- That certain parts of the Bill be amended, mainly Part 1 (dealing with definitions and objectives) and Part 2 (dealing with the administration of the Bill). The main focus of these proposed amendments is that specific provisions dealing with 'restorative justice' be added to the Bill.

vi. *The Methodist Church of Fiji and Rotuma*

The Church believes that in its current form, the aim of the Bill, which is to ensure rehabilitation of prisoners, is incomplete and ineffective. There needs to be more moral related aspects imbedded into the programs that the offenders are going to undergo as part of their sentence.

It is the Church's belief that having some form of Christian rehabilitation program fills this gap in the Bill. Therefore it is the Church's recommendation that a community-based corrections service should employ 20 – 30 Christian counsellors to cater for both offenders and victims and their respective families.

vii. *Mr. Aisea Taoka (Former Commissioner of Prisons)*

The pertinent issues raised by Mr. Taoka were as follows:

- That village elders and religious leaders be involved in the process of community-based correction programmes.
- That Provincial Councils be also consulted as well when dealing with community-based corrections.

viii. *Social Democratic Liberal Party (SODELPA)*

The pertinent issues raised by SODELPA are as follows:

- That the Bill to include a provision that victims' views be considered by the Court on the option of community-based sentencing before any order is issued and counselling be conducted to both victims and offenders.
- That the PS for Ministry of Women, Children and Poverty Alleviation be also tasked with the promotion of victim support and understanding to seek their view on the effectiveness of such community-based corrections program.
- That Restorative Justice to be an objective of the Bill, which would enable the State to save resources by having offenders diverted from prisons and acknowledging their wrong-doings.
- The Bill should establish an advisory committee that includes the faith-based organisations, NGO's, CSO's as well as community and victims representatives as deemed appropriate by the Minister who is to appoint the member of the Committee. The Committee is to advise the Permanent Secretary on the procedures undertaken on the community corrections and have an annual report compiled and submitted to Parliament annually by the

PS. This report is to provide the effectiveness of the scheme that monitors the re-offending rates of offenders who are sentenced to the programme.

- There should also be an implementation timeline and budgetary allocation for training and awareness for Magistrates, Judges and DSW, CBC officers and supervisors from NGO's and faith based organisations who will implement the program.

3.4 Research into foreign jurisdictions

The Committee noted that the Bill would have an impact on the people of Fiji, thus resolved that it would also be prudent to look into other jurisdictions to see how their laws have impacted corrections programmes.

Some of the jurisdictions that the Committee took note of were Australia (South Australia), New Zealand, England, Wales and Scotland. The pertinent points noted by the Committee with regards to these countries were as follows:

Australia (South Australia):

The Committee noted that the Department of Community Corrections is the main entity responsible for corrections systems and Courts are given the discretion of whether to impose a community-based sentence on an offender.

A community-based sentence depends on the type of offence that was committed and the level of risk the offender poses to public safety. It was also noted that community corrections officers are responsible for providing and preparing pre-sentence reports for the courts and bail reports for the Parole Board⁷.

New Zealand:

The Committee noted that for New Zealand, the Department of Corrections is the main entity responsible for corrections systems. It also noted that resorting to community-based sentences such as cleaning beaches, community parks and bush tracks, assisting food banks, schools etc. and working with the local council and their beautification projects are on the rise.

Sentences are based on the offence committed, the personal circumstances of the offender and their need and skills. Offenders are also given the opportunity to learn basic work and living skills while on community-based sentences⁸.

⁷ Australia Department of Community Correction. Excerpts from the Bill Summary provided by the Parliament Research Unit.

⁸ New Zealand Department of Corrections. Excerpts from the Adoption Bill Summary provided by the Parliament Research Unit.

England and Wales:

The Committee noted that in England and Wales, it is similar to the NZ trend that community-based sentence options are highly relied upon by the courts. This trend has led to the embedding and consolidation of community based sentence options into the law – *Criminal Justice Act 2003*⁹.

Scotland:

The Committee noted that in Scotland, community-based sentences are provided by law, in the *Criminal Justice and Licensing (Scotland) Act 2010*. One such community based sentence commonly used is a Community Payback Order (CPO); where offenders are said to payback to society in 2 ways; firstly, requiring offenders to make reparation – often in the form of unpaid work and secondly requiring offenders to address and change their offending behaviours.

There are a number of requirements of the CPO which the court can choose to impose, but consent from the offender is required before courts can impose a CPO¹⁰.

3.5 Outcome of deliberation

The following is the outcome of the Committee's extensive deliberation.

Main observation made by the Committee:

The Committee considered the Bill and its effect on Fiji and noted that there is a need for such a law. This view was supported by international practices as shown by trends in other jurisdictions. The jurisdictions that were looked into by the Committee had one thing in common and that is, there is a paradigm shift in the options relied upon by these jurisdictions for sentences and/or correction. Community-based sentence options and programmes are relied upon and are properly legislated for.

The Committee was also mindful of the types of crimes committed against the ordinary and the law abiding citizens of Fiji. The Committee also considered the submissions of various submitters of the need to consider the views of the victims of crimes before a non-custodial sentence is considered by the courts.

The Committee also heard from various civil society groups that prison sentences are seen as a deterrent to offenders and a non-custodial sentence may have an impact on the confidence of the public on the justice system.

Therefore the Committee deliberated at length on the need to include a section mandating that the victims' views are also considered by courts before considering imposing a community-based corrections order.

⁹ New Zealand Department of Corrections – *Community Sentence Patterns in New Zealand*. Excerpt from the Adoption Bill Summary provided by the Parliament Research Unit.

¹⁰ Scottish Government, *Community Payback Orders*. Excerpt from the Adoption Bill Summary provided by the Parliament Research Unit.

The Committee was also mindful of the fact that it costs a substantial amount of money to provide for a prisoner whilst he or she is in custody as shown in the submissions by the Fiji Corrections Service. Below is the table showing the costs of keeping a prisoner in custody:

“

| | | |
|-------------------------------------|---|-----------------------|
| Less than 12 months sentence | - | 215 inmates |
| Cost for one inmate per day | - | \$55.00 |
| Cost for one inmate per month | - | \$1,650.00 |
| Cost for one inmate per annum | - | \$20,075.00 |
| Cost for 215 inmates per day | - | \$11,825.00 |
| Cost for 215 inmates per month | - | \$354,750.00 |
| Cost for 215 inmates for six months | - | \$2,128,500.00 |

”

After considering all the submissions, the Committee felt that it is more advantageous to have a community-based corrections law.

Apart from the observations, there were also pertinent issues the Committee gave much consideration to. These issues, provided below, were discussed at length by the Members of the Committee and considered with the assistance of the initiating Ministry and the drafting team. This ensured that all these relevant issues were appropriately addressed.

1. *Should Clause 6 and 8 be amended to clearly state some minimum qualifying requirements for community-based corrections officers and community volunteer supervisors?*

Under clause 6(1) and 8(1) of the Bill the Permanent Secretary has powers to appoint public officials or such other suitably trained persons as community based corrections officers or community volunteer supervisors.

The minimum qualifying requirements within the Bill is therefore that the person to be appointed is suitably trained to carry out the role of either the community based corrections officers or community volunteer supervisors. It will be left to the Permanent Secretary to determine the minimum level of training suitable for that position.

Additionally, under section 127(8) of the **Constitution**, the Permanent Secretaries of each ministry, with the agreement of the Minister responsible for the ministry, has the

authority to determine all matters pertaining to the employment of all staff in the ministry, including the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit. Therefore pursuant to clause 6(1) and 8(1) of the Bill and section 128(8) of the **Constitution**, the Permanent Secretary is tasked with setting the minimum requirements for a position and to provide that the qualification requirements for that position. The Permanent Secretary must also ensure that the process to be followed for appointment must be an open, transparent and a competitive selection process based on merit.

Therefore, setting a minimum qualifying requirement for community-based corrections officers and community volunteer supervisors will not be necessary given that the discretion will be left to the Permanent Secretary to determine this depending on the different qualifications and tasks required to be performed for each position.

2. *Should Clause 8 also include a provision that allows the Fiji Police Force the authority to vet persons that wish to be community-based corrections officers or community volunteer supervisors?*

The vetting of persons wishing to be appointed as community-based corrections officers or community based volunteer supervisors is included in the powers of the Permanent Secretary. Additionally, as is the current practice, a prerequisite to being appointed into a position in the civil service is that one must not have been convicted of any crimes and/or currently facing prosecution and that you tender a police clearance from the Police, therefore this aspect of vetting is already within the current system.

Involving the Police will not only be reduplication of the work of the Permanent Secretary, but it will also lead to unnecessary delays and cost implications.

3. *Furthermore, if vetting is allowed, should the Bill also provide that the vetting process carried out should not be discriminatory to persons that have been previously convicted and have been rehabilitated?*

The vetting process for any position will be based on merit in accordance with Section 127 (8) of the **Constitution**. Therefore a person who deserves to be appointed under this Bill as a community-based corrections officers or community volunteer supervisors should be allowed to do so.

4. *Should Clause 9(3) be expanded to include the Fiji Police Force vetting reports considered by the PS for Social Welfare?*

Under clause 9 the Permanent Secretary has powers to authorise an individual, agency or organisation to provide community-based corrections programmes or services under this Act.

Therefore, there is no need to expand clause 9(1) to include the Fiji Police Force.

5. *Should Clause 13 be amended to include an additional sub-clause that provides for a probationer to stay at his or her known or submitted residence?*

Under clause 10(2), an order for community-based corrections and an order for intensive community-based corrections permit the court to name the area in which the probationer is to reside. An assumption can be made that this would include the probationer's known or submitted residence.

Additionally, under clause 14, if the court thinks that there is a significant risk of reoffending, the court may impose additional conditions which include that the probationer must live at a particular place. Assuming that there is no risk of reoffending, the court is likely to issue an order that the probationer stay at his or her known or submitted residence.

6. *Should Clause 18 be amended to be more specific that the Fiji Police Force or PS for Social Welfare be the main authorities that can carry out arrests and execution of warrants and orders?*

The general understanding is that the Police carry out arrests and execution of warrants and orders. They have the resources, the knowledge and experience to do this. This has been the general practice so perhaps amending section 18 may not be necessary.

7. *Should the title of the Bill be amended by removing the word "Corrections" from the title and inserting the word "Reformative" in lieu thereof?*

It should be noted that the term "Community-Based Corrections" is used internationally. Examples of countries that use that term include Australia, Samoa, Papua New Guinea, South Africa and USA.

One could argue that "Community-Based Corrections" is a type of reformative measure, however, that is not the case. Although "Community-Based Corrections" plays a reformative role through rehabilitation, it also extends beyond reformation.

"Community-Based Corrections" focuses on not only reformation but also reintegration. Reintegration is the process of integrating someone (in this case the offender) back into society which is one of the main objectives of the Bill.

8. *Should the Bill be amended to state and set out the projects that persons coming under the community-based corrections programme will go into?*

Clause 9 of the Bill lists authorised community-based corrections programmes which may include but are not limited to –

- (a) counselling;
- (b) mentoring;
- (c) programmes for the treatment of alcohol or drug abuse;
- (d) personal development programmes;
- (e) educational and vocational training programmes; and

(f) job placement or income generating programmes.

The intention behind clause 9 is not to limit the programme to certain projects but to allow the Permanent Secretary to authorise programmes provided by an individual, agency or organisation relating to any of the (a) to (f) above. In other words, it will allow the Permanent Secretary flexibility when approving projects or programmes when the need arises.

If we were to set out the projects that persons coming under the community-based corrections programme will go into, it would restrict flexibility in the programmes that are offered to different offenders.

9. Should the Bill be amended to provide a proper organisational structure for those who are to be involved in the rehabilitation programme?

A close scrutiny of the Bill would reveal that the Permanent Secretary is empowered to deal with the proper functioning of the system pertaining to the rehabilitation and reintegration of offenders. The Permanent Secretary has power to appoint community-based corrections officers and community volunteer supervisors. The courts are an integral part of this mechanism as they issue community-based corrections orders which the PS must implement with the assistance of community-based corrections officers and community-based volunteer supervisors.

10. Given the time lapse between when consultation with the relevant consultants (the Australia Justice Programme) on the Bill was done and the formulation of the Bill itself; is there a need for re-consultation on this 10 year-old corrections programme?

There is no need for re-consultation on this 10 year-old corrections programme because the Bill was prepared after a very critical and intensive review of the outdated **Probation of Offenders Act 1952** by the then Ministry of Social Welfare with the assistance of the UNICEF. A consultant who is an expert in corrections-based community laws namely Ms Shelly Casey was also part of the review.

Therefore the Bill caters for the present issues related to rehabilitation and reintegration of offenders and therefore re-consultation would not only delay the presentation of the Bill to Parliament but it would also be costly.

11. Should the Bill be amended to provide that there be established a multi-organisational body to look after the rehabilitation programme under the Bill?

There will be no need to establish a multi-organisational body since we already have people in the Ministry of Women, Children and Poverty Alleviation who were responsible for probation orders under the **Probation of Offenders Act 1952**.

12. Should the Bill be amended to remunerate all persons involved in the rehabilitation programme?

Apart from the community-based corrections officers and community volunteer supervisors, all other persons are already remunerated as they are full time civil servants. The payment of remuneration for community-based corrections officers and allowances for community volunteer supervisors is covered under Clause 6(2) and Clause 8(4) respectively.

13. Should the Bill be amended to include a timeline for a review process/performance audit of the whole rehabilitation/corrections programme?

Clause 4 of the Bill states that the Permanent Secretary is responsible for promoting the development of policies, procedures and services that are necessary under this Act.

Under this clause the Permanent Secretary can create a policy that makes it mandatory for a review process/performance audit of the whole rehabilitation/corrections programme.

14. Should the Bill be amended to include provisions for budgetary allocations for the implementation of the programme?

The budgetary allocation would come from the budgetary allocation provided to the Ministry of Social Welfare in the government budget every financial year.

15. Should the Bill be amended to include a provision that victims' views be sought and considered by the Court on the option of community-based corrections?

Under clause 10, the court, before issuing a community-based corrections order or an intensive community-based corrections order, has to consider the severity and circumstances of the offence. It is up to court to issue or refuse to issue either order.

Here an assumption can be made that if the court believes that the offence was too abhorrent and it was committed in total disregard to the victim's rights, then the court may refuse to issue a community-based corrections order or an intensive community-based corrections order.

Additionally, Clause 11 states that before issuing an order under clause 10, the court may request for a pre-sentence report. The victims' views can be included in this report.

However for clarity purpose, specific mention should be made for the opportunity to be given to the victim or victims of an offence to submit a 'victim impact statement' and that the court must consider such statement if submitted, before deciding whether an order under the Bill is appropriate. This opportunity would mean that the extra burden falling on the community-based corrections officer to prepare and submit a pre-sentence report which also acknowledges the victim's interests can be waived.

Therefore amendments are recommended for Clauses 10 and 11 respectively to allow for the above and these have been reflected in the draft Bill.

With the adoption of the above recommendation, other necessary amendments would have to be made to the Bill, including the insertion of an interpretation provision for the phrase 'victim impact statement'.

16. Should the Bill be amended to include provisions for counselling of victims as well as offenders?

The counselling of victims is not provided for in this Bill because that is a separate matter altogether. This Bill focuses on offenders only.

17. Should the Bill be amended to make it mandatory for the PS or the responsible Ministry in promoting victim's support and understanding of community-based corrections options and to seek the views of the victim on the effectiveness of such community-based corrections sentencing programmes?

The Committee notes that this Bill focuses on offenders only not victims. Promoting victim support is a different matter altogether.

18. Should the Bill be amended to specifically state that certain categories of offences, such as serious personal assault, assault occasioning grievous bodily harm, murder, rape or any offence which poses a serious threat to life and personal liberty, be exempted from the application of this Bill?

Under clause 10, the court has power to consider the severity of the offence and the circumstances in which it was committed before issuing a community-based corrections order or an intensive community-based correction order. The Bill targets low risk offenders and it is a matter of the courts to determine who a low risk offender is on a case by case basis.

The category of offences mentioned in question 18 are unlikely to attract a community-based corrections order or an intensive community-based correction order.

19. Should the Bill be amended to ensure that restorative justice is an objective of the Bill?

Restorative justice is a system of criminal justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

Restorative justice is envisaged to be achieved in this Bill where the offending person is able to receive counselling and mentoring within his or her own community therefore reconciling any ill feelings with the victims of the offending act and also any ill feelings within the community.

20. Should there be a provision in the Bill that establishes an 'advisory committee' on community corrections to advise the PS?

The Ministry of Women, Children and Poverty Alleviation which encompasses the Department of Social Welfare have been dealing with community-based corrections

for many years and therefore an advisory committee will not be necessary in this instance because the Ministry has the capacity to advice.

21. Should the Bill be amended to include provisions for training and awareness for Magistrates and Judges on the CBC Bill?

The Magistrates and Judges are already experienced in such matters as they have been dealing with these matters under the ***Probation of Offenders Act 1952***. Once the Bill becomes an Act of Parliament, the magistrates and judges will become aware of the Act as they will be dealing with the rehabilitation and reintegration of offenders under the new Act.

For that reason, there will be no need to include provisions for training and awareness for Magistrates and Judges.

22. Should Clause 20 and 21 be reviewed and amended so that the operations of these two Clauses in providing a blanket replacement with respect to the term 'Probation Order' being replaced by "Community-Based Corrections Order" be made more specific?

Clauses 20 and 21 do not provide a "blanket replacement" of the term "probation order". Clause 20 specifically states that the term "probation order" is to be replaced by the term "community-based corrections order" on all documents unless the context otherwise requires. Therefore, the term "probation order" may still be used in appropriate circumstances.

Under clause 21, any orders issued under the ***Probation of Offenders Act 1952*** continue in force until their expiry and any variation to an order, after the Community-Based Corrections Act has come into force, must be made in accordance with the new Act.

23. It was also noted that there be amendments made pertaining to drafting styles, grammar and redundant and misplaced phrases in numerous parts of the Bill.

The Committee recommended that these amendments pertaining to drafting styles, grammar and redundant phrases be made and this is reflected in the amended draft Bill.

Below is a tabulated form of the main amendments made to the Bill:

| CLAUSE | NEW CLAUSE - AMENDMENT | RATIONALE |
|--------------------|--|--|
| 2 – Interpretation | Insertion of new term: “ <i>victim impact statement</i> ” means a statement prepared by a victim of a crime containing particulars of the impact of the offence | The Committee saw the need to also consider the impact of the crimes to the victims, therefore a provision was inserted to ensure that the victim had the option of providing a ‘victim impact |

| | | |
|---|---|---|
| | on the victim and of any injury, loss or harm suffered by the victims as a direct result of the offence. | statement' for the court's consideration before a community-based corrections order was made. |
| <p><i>Community-based corrections and intensive community-based corrections</i></p> <p>10. (2)(c) – specify as a supervising court, a court of a resident or second class magistrate within the district in which the offender resides or is to reside.</p> | <p>Deletion of sub-clause (2)(c):</p> <p>“specify as a supervising court, a court of a resident or second class Magistrates within the district in which the offender resides or is to reside.”</p> | <p>The Committee noted that this provision should be deleted as it is redundant.</p> |
| <p><i>Community-based corrections and intensive community-based corrections</i></p> <p>10. Addition of a new sub-clause</p> | <p>Insertion of new sub-clause (4) as follows:</p> <p>“10. (4) Prior to making an order under this section, the court must provide the victim of the offence in question an opportunity to submit a victim impact statement, and the court must take into consideration any such statement in deciding whether an order under this Act is appropriate and the conditions to attach to the order.”</p> | <p>The Committee saw the need to also consider the impact of the crimes to the victims, therefore a provision was inserted to ensure that the victim had the option of providing a ‘victim impact statement’ for the court’s consideration before a community-based corrections order was made.</p> |
| <p>11 – Court may request pre-sentence report</p> <p>“Prior to issuing an order under section 10, a court may request that a pre-sentence report be prepared, orally or in writing, by the Permanent Secretary so that the court may - ...”</p> | <p>This clause had been amended twice by the Committee after deliberation:</p> <p>Initial change was for the word “may” to be replaced with “must”.</p> <p>After further consultation, the Committee resolved to change it back to its</p> | <p>After extensive deliberation, the Committee noted that the court already have procedures in place that cover for such processes and it would be ill-advisable to make something mandatory which should be left to the court’s discretion.</p> |

| | | |
|------------------------------|---|--|
| | initial draft; where the word “must” is replaced with the word “may”. | |
| Numerous Clauses in the Bill | Changes to various Clauses to reflect the suggestions for drafting styles, grammar and redundant phrases. | A number of Clauses in the Bill had to be amended to cater for changes pertaining to drafting style, grammar, and misplaced or redundant phrases. This would also include consequential amendments that are a result of the amendments stated above. |

3.6 Gender analysis

The Committee took into account the provisions of Standing Order 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

During its deliberation the Committee noted that the Bill will apply equally to every Fijian irrespective of gender. It will afford every person in Fiji that have been tried and convicted of a crime to have the option of a community-based sentence.

The Committee also noted that there are women offenders and prisoners there are separate prison facilities for men and women in Fiji and any impact of the Bill will be equitable in its application. The Bill follows the principle under the Crimes Act and other laws that the law will apply equally to all offenders and all will have access to community-based sentences.

4.0 CONCLUSION

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation saw that there was a need for the Bill. These deliberations led to consultations with the drafters so as not to upset the objectives of the Bill. Certain amendments were made as a result of the Committees deliberations and those amendments are reflected in red text in the amended copy of the Bill presented with this report.

The Committee through this report commends with certain amendments, the *Community-Based Corrections Bill*, No. 33 of 2016 to the Parliament.

APPENDICES

SUBMISSION TO THE STANDARD COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS ON THE
COMMUNITY-BASED CORRECTIONS BILL

The Ministry of Women, Children and Poverty Alleviation provides the following comments on the Community – Based Corrections Bill.

1. The Ministry features prominently in the Bill; in fact, it is the major stakeholder in the implementation of the Bill. Prior to the submission of the Bill to SG's office, consultations were conducted with the relevant stakeholders with assistance from the Australia Justice Program in 2006.
2. Consultations were conducted by SG's office with the relevant parties before the Bill was forward to the Parliamentary Standing Committee on Justice, Law and Human Rights.
3. Preparatory work has been done with the help of the Australian Justice program in the development of the Standing Operating Procedures, Training Manuals and the training of trainers.
4. The Bill, if passed will give the Courts sentencing options, especially when dealing with not so serious cases which will avoid the unnecessary incarceration of offenders.
5. Being the major stakeholder in the implementation of the Bill, there will be HR and cost implications on the Department. Bill was enacted in 1950s, however, through the years the role of the Department has expanded therefore it will be expected that additional resources will be needed to successfully implement the requirements of the Bill once passed.
6. The Ministry will therefore have to work in close collaboration with the Courts, and other relevant partners such as the Fiji Correctional Services, Fiji Police Force, I Taukei Affairs including the faith based and civil society organizations in the successful implementation of the legislation.
7. To give the Courts the sentencing options, there must be an existing platform and available institutions that can provide the relevant services that can assist the Courts. For example, the sentencing options include counseling, mentoring, and in cases of drug or alcohol addiction it may require rehabilitation programs. Do we have the expertise or established institutions and organization that could allow the Courts to confidently make those decisions?
8. The Bill does include remunerations for Community Correction officers and allowance for the Community Volunteer Supervisors but nothing on the Community Volunteers. If consideration be given for the payment of remuneration to the volunteer community officers also.

9. The implementation of the Bill will need a carefully developed governance mechanism both for supervision, operation, monitoring and evaluation.
 10. The implementation of the Bill has budgetary implications for both human resource and financial too.
 11. A multiagency working group could be established to watch over the functional execution of the Bill.
-



FIJI POLICE FORCE

Police Headquarters, Vinod Patel Complex, Centrepont

GPO Box 239, Suva, Telephone: (679) 334 3777 Fax: (679) 334 3818

A/38

The Chairman
Parliament Standing Committee on Justice & Human Rights
on Community Based Correction Bill No. 33

**POLICE SUBMISSION TO THE PARLIAMENT STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS ON THE COMMUNITY-BASED
CORRECTIONS BILL No33 - PARLIAMENT COMMITTEE ROOM, 29 NOVEMBER
2016**

The Chairman and Honourable members of the Standing Committee on Justice, Law and Human Rights. At the outset, I want to extend our appreciation for the invitation to attend today's session. I would like to apologise for requesting the deferment to this afternoon.

At the outset the Fiji Police Force would like to express its support for this Bill.

Mr Chairman sir, Community Based Correction is not a new idea in as far as policing is concerned. It was once part of the Fiji Police Community Policing strategy some years ago. It was also part of the 'Vanua-rai-ki-liu' Community Policing Concept that was inculcated as part of the Community Justice Approach.

Recently, (4 years ago) the Fiji Police Force developed a Standard Operating Procedure on Diversion of Youth Offenders. The belief behind this, supported by empirical evidence, that young people who fronts the courts too often tend to develop a degree of confidence; confidence to appear before the courts and confidence to continuously commit crime and each time committing a more serious crime.

In that regard, the Fiji Police Force through the Juvenile Bureau has been diverting young offenders when they commit petty crimes. One of the challenges in the implementation of the police diversion programs is the absence of a legal framework that legitimizes it.

A Community Based Correction Law will give legitimacy to this initiative in the Fiji Police Force.

Under section 32 of the Juvenile Act the courts when convicting a young offender, the court can impose the following: discharging the offender; by ordering the offender to pay a fine, compensation or costs; by ordering the parent or guardian of an offender to pay a fine, compensation or costs; by ordering the parent or guardian of the offender to give security for the good behaviour of the offender; by making a care order in respect of the offender; by making a probation order in respect of the offender; where the offender is a young person, by ordering him to be imprisoned; or by dealing with the case in any other lawful manner.

When young people are placed on probation or they are dealt with by other lawful means monitoring is not always effective. According to our Juvenile Bureau most of these young people re-offend. Having this Community Based Correction Law will allow effective monitoring of young offenders. It will assist in their rehabilitation and re-integration into the community.

The Community Based Correction Bill will also create employment for young people. To the police, it would mean less number of unemployed young people who are at risk of committing crimes. On the flip side, appointment of Community Supervisors is also good as it lessens the number of idle community members.

Furthermore, with regards to clauses 6 and 8, we would recommend that the implications of the term "suitably trained persons" be more clearly established to avoid the recruitment of unqualified persons. This would mean considering clearly stating some minimum qualification requirements for community-based corrections officers appointed under clause 6 and community volunteer supervisors under clause 8.

This is submitted for the following reasons:

1. ensuring they have minimum standards of education and knowledge given that community-based corrections officers responsible under clause 7 for supervising probationers and for managing their probation orders;
2. ensuring that the training they provide for volunteers is credible and of quality; and
3. given that the community-based corrections officers and community volunteer supervisors are to be paid.

We would recommend that clause 8 have an additional requirement that standards be clearly stated within the Bill or otherwise for training by community-based corrections officers for volunteers.

Furthermore, training is to be provided by certified trainers, including having community-based corrections officers receive certification.

Moreover, we would also recommend that all community-based corrections officers be vetted by Police before receiving training to further minimise the risk of recidivism influenced by unscrupulous community-based corrections officers. We would ask if this can also be considered for inclusion in the Bill.

Furthermore, in pursuance of clause 9, sub-clause (3) we would recommend that the PS for Social Welfare be open to considering vetting reports that may be provided by the Fiji Police Force relating to any organisation seeking to take part in rehabilitating offenders. Clause

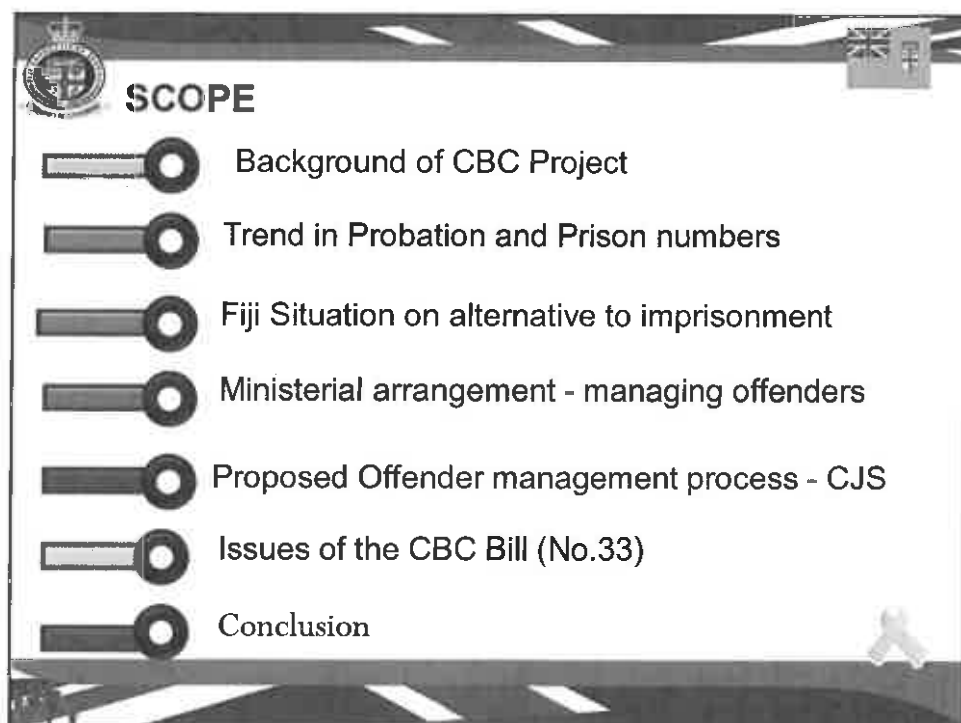
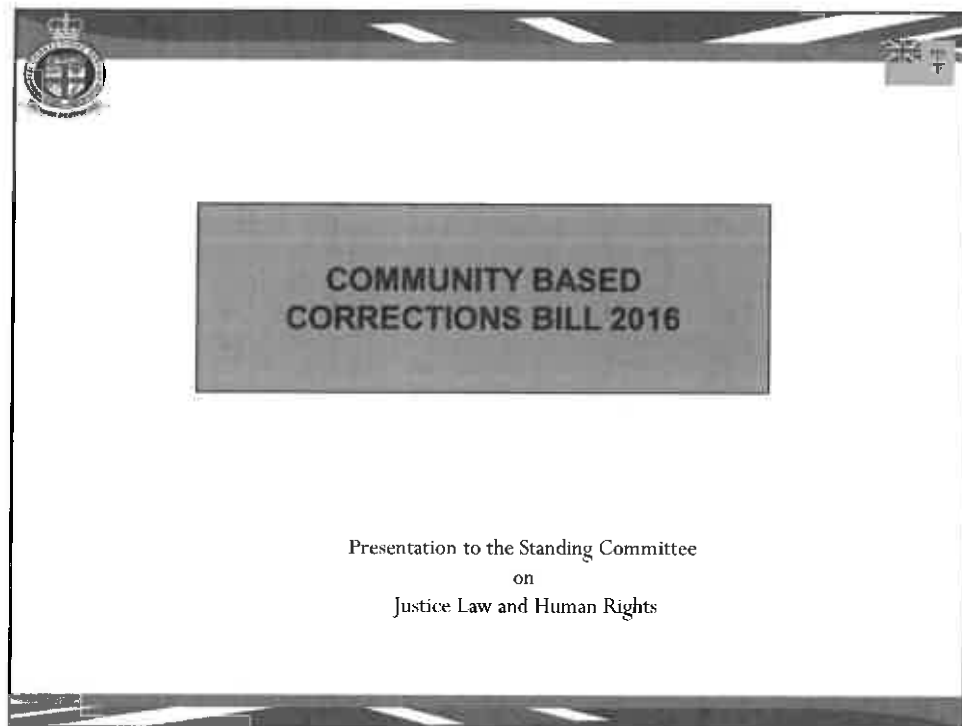
Additionally, clause 13 must also include an additional sub-clause stating that the probation order must include an order for the probationer to stay at his or her known or submitted residential address. This is in line with current court cases such as *State v Senimoli* [2015] FJHC 204 where the probationer is mandated to stay at a known residential address.


Moreover, clause 17 must state that either the offender or the Permanent Secretary for Social Welfare – as employer of community-based corrections officers – may make applications to court to vary or cancel probation orders.

Likewise, clause 18 must state that either Police or the Permanent Secretary for Social Welfare may inform the court that the offender has either breached or is likely to breach a probation. In the event of a warrant for an arrest being issued under sub-clause (1) of clause 18, Police alone shall make arrest. Nevertheless, community-based corrections officers may make arrest under civilian powers of arrest under section 22 of the *Criminal Procedure Decree* 2009 where the offence is indictable or trial by summary.

In conclusion, we hope our submission would be given some attention in order to alleviate some administrative and operational challenges currently faced.


Mr. Chairman, sir and honourable members, thank you for listening.





Background of the CBC Project

- ❑ A/FLJP - Prison Data Analysis
 - ❖ Gross overcrowding
 - ❖ High representation of young offenders
 - ❖ High imprisonment cost
 - ❖ Non utilization of alternative to imprisonment
 - ❖ Lack of confidence by the court
 - ❖ Lack of infrastructure in place
 - ❖ Expose young offenders to re-offending cycle

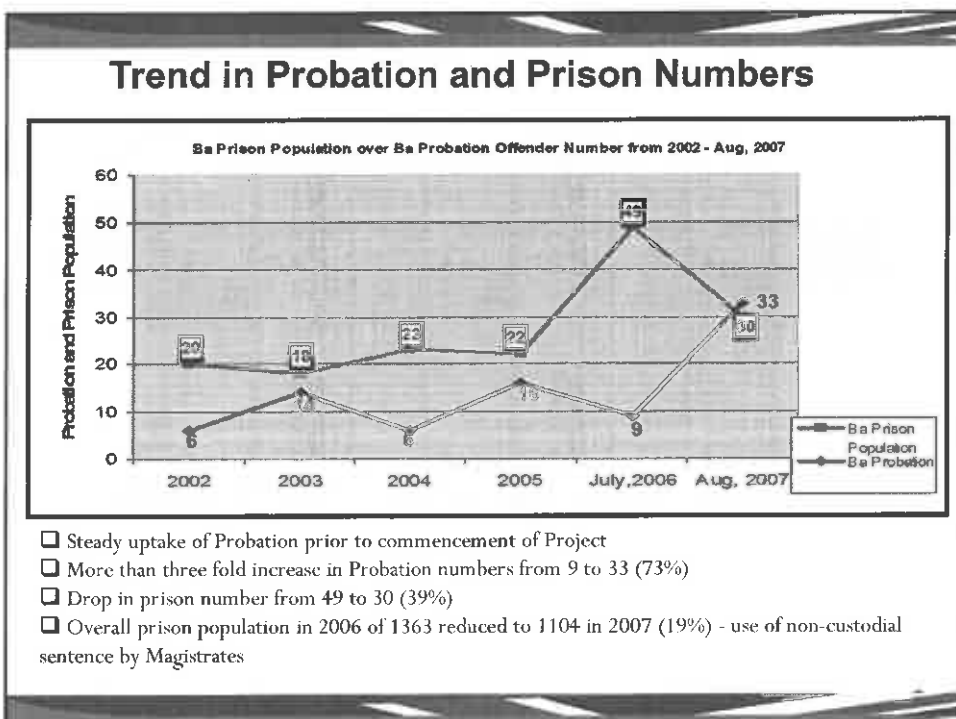



IMPRISONMENT COST

- ❑ Less than 12 months sentence - **215**
- ❑ Cost for one inmate per day - \$ 55.00
- ❑ Cost for one inmate per month - \$ 1,650.00
- ❑ Cost for one inmate per annum - \$ 20,075.00
- ❑ Cost for 215 inmates per day - \$ 11,825.00
- ❑ Cost for 215 inmates per month - \$354,750.00
- ❑ Cost for 215 inmates for six months - **\$2,128,500.00**

Background of the CBC Project

- ❑ Established a Cross Sectoral Project Team
 - ❖ Youth and Sports
 - ❖ Social Welfare
 - ❖ Court
 - ❖ Fiji Prison Service
- ❑ Primary Objective was to:
 - ❖ Pilot and evaluate Probation and Community Work Orders in Ba, Navua and Suva
- ❑ Develop a model of operation of CBC and Parole Board
- ❑ Support the ongoing implementation and evaluation of pre-release reintegration and rehabilitation programs for prisoners and offenders





Fiji situation

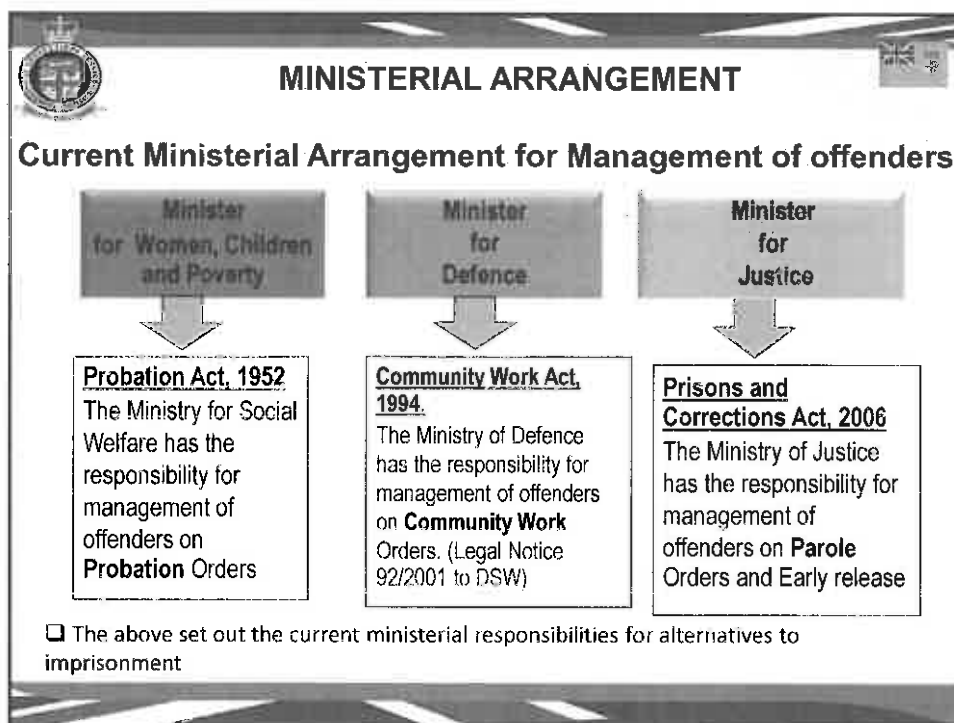
Fijis' current alternatives to imprisonment:

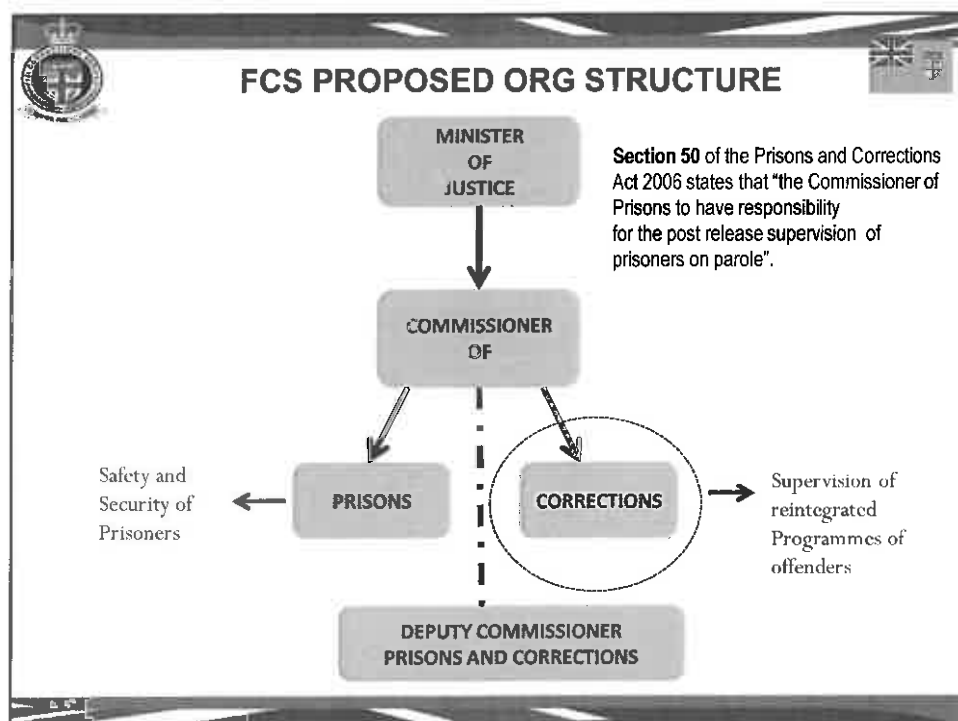
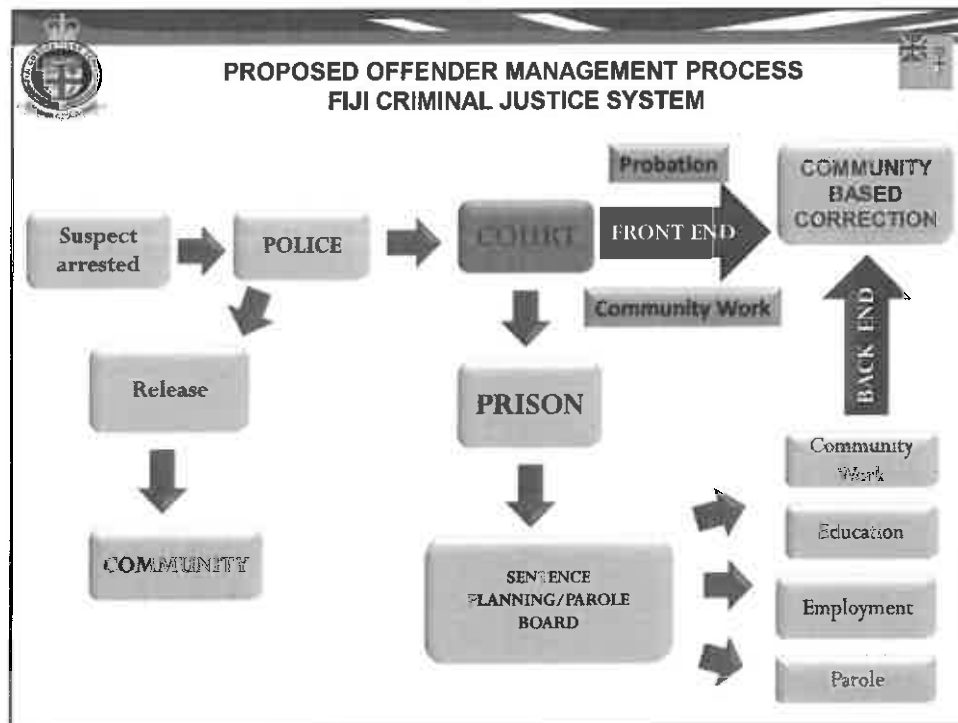
Front end diversion


- i. Community Work - Community Work Act 1954
- ii. Probation - Probation of offenders Act 1994

Back end diversion

- i. Parole - Fiji Corrections Act 2006
- ii. Weekend Release - Fiji Corrections Act 2006
- iii. Short term release - Fiji Corrections Act 2006
- iv. Early Release - Fiji Corrections Act 2006








ISSUES ON THE CBC BILL (No.33)

- ☐ Adult Probationers -
- ☐ Power to apprehend offenders - Section 9 sub sect 1(f) of the Corrections Act 2006
- ☐ Duplication of Rehabilitation Programme
- ☐ Term reintegration
- ☐ Use of the term '*Correction*'



CONCLUSION

- ☐ FCS has a plan in place to introduce its own CBC - Change the name of bill to **Community Base Reformativ Bill**
- ☐ Enabling Legislations - Harmonize legislations so that the FCS is responsible for the management of offenders both inside and outside the prisons.
- ☐ Formulation of Parole Board Regulation - Submitted to SGO in late 2014
- ☐ Paradigm Shift - Containment to Corrections (FPS -FCS)
- ☐ Commissioners Order 15 and 16 - Provisions of CBC

Community-Based Corrections Bill [No. 3 of 2016]

Some observations from the Judiciary

1. An appropriate reduction of the Prison population is a desirable aim. Some offenders inevitably will need to be incarcerated because of the serious nature of their offending.
2. However minor offenders and first time offenders need not be so treated.
3. The Community-Based Corrections Bill supports the Community Work Act 1994 in its intentions and purpose, and reforms the Probation of Offenders Act Cap 22.
4. Among its advantages is that the offender:
 - (i) can remain within his or her community and receive support from that community.
 - (ii) avoid contamination, especially for 1st offenders, with older or more experienced prisoners.
 - (iii) has some hope of engaging a job or retaining a job.
 - (iv) has an opportunity for reflection, expression of regret, apology, and reconciliation with those who may have suffered from the crime committed.
 - (v) has a chance to overcome addictions, behavioural problems, whilst under supervision.

Cautionary Matters

1. The courts will need to be properly informed prior to sentencing. The persons charged with preparing the pre-sentence reports will need to be supported by a sufficient cadre of report-writers for the work, by transport, particularly in the rural areas, and by full and thorough training. Previously these matters were lacking in the probation service.

2. Whilst the courts will place much reliance on the recommendations made in the pre-sentence report on the suitability of the offender for the orders proposed, there must be a properly identified project generating useful [community work] or programme [community corrections order] to be followed.
3. Both sets of orders need sufficient hands-on supervision to see tasks or programme are satisfactorily completed.

Without this amount of care and a sufficient application of resources, the intentions of the Bill will fail.



AHCT Gates
Chief Justice

30 November 2016

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Restorative Justice Program

Brief Organization Context

The Pacific Centre for Peacebuilding works with peace builders in the Pacific to transform, reduce and prevent conflict. We vision to create a just, peaceful and sustainable Pacific. The organisation actively works to promote gender justice through inclusive decision making, empowerment and participation. The Centre currently has three national programs and one regional program which focus on community peacebuilding, women's peacebuilding leadership and restorative justice. The focus of our submission is on the restorative justice program.

Restorative Justice Program

PCP has been working with the Fiji Correction's Services (FCS) on institutionalizing Restorative Justice (RJ) since 2010. The principles of Restorative Justice view offences and violence as an act of harm, and are concerned about who is hurt during the harm. Restorative Justice places special emphasis on the victim who is often left out in the re-integration process in the retributive justice systems.

The Justification For Restorative Justice

Restorative justice is best integrated in a peacebuilding strategy and its actions are effectively fully realized when it is used with conflict analysis, trauma awareness, and peacebuilding practice skills such as dialogue, negotiation, and mediation.

The purpose of utilizing peacebuilding with restorative justice as a specific focus has two main strategic reasons.

Firstly, in the current context of our criminal justice system, we need to engage the principles of peacebuilding and restorative justice into the currently prevalent use of violence within the

work closely on common interest and needs. The identified needs and interests are to deal with problems and issues without fear, without the use of violent means and to have an amicable solution for all. The process will be more respectful and dignified as attention will be paid to how you get there not just the outcome itself.

I would now like to hand over to PCP's Program Manager to present on the specific sections & clauses of the community based bill that we feel should be amended.

RESTORATIVE JUSTICE – COMMUNITY BASED BILL 2016

(BILL NO. 33 OF 2016)

CLAUSES

PART 1 – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objectives

A BILL

FOR AN ACT TO PROVIDE FOR A COMMUNITY-BASED RESTORATIVE JUSTICE SYSTEM THAT FOSTER RESTORATIVE JUSTICE PROCESSES AND THE REHABILITATION AND REINTEGRATION OF OFFENDERS AND THE HEALING OF VICTIM, VICTIMS FAMILY AND VICTIMS COMMUNITY OF CARE.

FOR THE ACT TO FOSTER AMMENDMENT OF THE BROKEN RELATIONSHIP BETWEEN THE OFFENDER AND THE VICTIM WITH COMMUNITY OF CARE.

PART 1 – PRELIMINARY

Short title and commencement

1. – (1) This Act may be cited as the RJ – Community Based Act 2016

Interpretation

2. In this Act, unless the context otherwise requires –

“restorative justice” is a model of justice for conflict resolution, based on a set of principles that provides, through techniques and rituals:

- a. Participation, dialogue, deliberation, consensus, inclusion and gratification;
- b. The parties to take responsibility for the conflict;
- c. Restoration of interpersonal relationships strengthening the community

“restorative justice community based officer” a community-based corrections officer appointed under section 6

“restorative justice – community based order” means an order issued by the court in accordance with section 10;

RSETORATIVE JUSTICE – COMMUNITY BASED - of 2016

Court, minister Ministry, Permanent Secretary, pre-sentence report, supervising officer – **As per the Bill page 4**

Offenders – who by common law committed “an act, attempt or omission punishable by law” and had been sentenced and convicted to imprisonment by law. The offender is currently serving a rehabilitation period as sanctioned by the Rehabilitation of Offenders (Irrelevant Convictions) Act, 1997 and on the advice of the Fiji Corrections Services Rehab Officers (or) Social Welfare Officer, hereto referred as ‘Officers’, for the Restorative Justice Program

Victims – who had been violated and suffered a loss psychologically, economically, socially and physically by the hands of the offenders who are currently serving a rehabilitation period as per on the advice of the offices for the Restorative Justice Program

Objectives

3. The principle objective of this Act is to provide for the administration of a restorative justice system that contributes to societal healing by -
 - a. Providing the courts with a range of pre-sentencing options and the means for dealing with offenders, other than by imprisonment
 - b. Encouraging the offender to understand and take full responsibility for the harm caused
 - c. Keeping central the needs and interests of the victim
 - d. Involving dialogue and the community
 - e. Promote individual healing
 - f. Providing an opportunity for victim and offender to discuss the offense, get answers to their questions, express their feelings, and gain a greater sense of closure
 - g. Providing a restorative conflict resolution process which actively involves victim and offenders in repairing the emotional and material harm caused by a crime
 - h. This is because of the crime that was due the respect of those who was involved
 - i. Reducing the prevalence and effects of crime on the victim and offender's community of care
 - j. Reducing the rate of criminal offences within the County with the reduction of the recidivism rate
 - k. Developing strategies to increase the awareness of and commitment to reducing the effects of criminal offences on the victim and offender's community of care in partnership with other relevant stakeholders
 - l. Providing other related technical assistance to facilitate the overall implementation and incorporation of the Restorative Justice program

PART 2 – ADMINISTRATION OF RESTORATIVE JUSTICE – COMMUNITY BASED BILL 2016

Duties of the Permanent Secretary

The Permanent Secretary is responsible for promoting the development of policies, procedures and services that are necessary under this Act, including to –

- a. encourage a collaborative approach between government authorities, non-government organisations, faith-based organisations and communities in the development of restorative justice – community based services;
- b. formulate policies, guidelines, plans and standards for restorative justice programmes and services
- c. promote the development of programmes and services for the rehabilitation, education and vocational training of offenders and services for victims – counselling in partnership with government agencies, non-government organisations, faith-based organisations and community leaders;
- d. ensure the development and administration of restorative justice training programmes for the training of restorative justice officers and community volunteer supervisors to ensure the highest degree of professionalism amongst staff;
- e. promote research on effective models for rehabilitation and reintegration of offenders with protection and safety of the victims

Duties of restorative justice community based officers

7. A person appointed as a restorative justice – community based officers under section 6 must perform the following duties in accordance with this Act –

- k. must undergo Training of Trainers on RJ programme that will be undertaken by FCS

Restorative Justice – Community based programmes

9.- (1) The Permanent Secretary may, by written approval, authorize an individual, agency or organisational to provide restorative justice programmes or services under this Act.

1. Restorative justice programmes provided by individuals, agencies or organisations authorized in accordance with subsection (1) may include, but are not to be limited to, any of the following –
 - a. Counselling;
 - b. Mentoring and Coaching
 - c. Training of trainers for officers
 - d. Developing restorative justice curriculum
 - e. Circle Process
 - f. Victim Offender Conferencing
 - g. Family Group Conferencing

PART 3 – RESTORATIVE JUSTICE – COMMUNITY BASE ORDERS

Restorative Justice – community based corrections

10.-(1) Where a person is found guilty of an offence punishable by imprisonment a court may, taking into account the severity and circumstances of the offence, with or without recording a conviction, sentence the offender to –

- (a) restorative justice – community based in accordance with section 13; or
- (b) intensive community based restorative justice corrections in accordance with section 15,
- (c) engage in Victim Offender Conferencing and Family Group Conferencing as detail in the RJ programmes in accordance to section 13

Rev. Iliesa Naivalu

METHODIST CHURCH SUBMISSION ON BILL NO. 33 ON COMMUNITY-BASED SENTENCING

Bill No. 33 is for an act to provide for a community-based corrections system that fosters community-based sentencing options and the rehabilitation and reintegration of offenders.

While we agree generally with the draft bill as submitted, we are concerned that in its current form, the process of rehabilitating prisoners in the community will be incomplete and ineffective. We respectfully submit the following for consideration and inclusion:

Prisoner rehabilitation in the community as well as prisons can only truly work when we teach the prisoner morality; this is most effectively taught through faith.

It is an established fact that according to prison experts, there is a direct connection between religion and successful prisoner rehabilitation. This is because Christian theology is compatible with a law-abiding lifestyle, and faith gives prisoners hope towards changing their lifestyles for the better.

Christian rehabilitation seeks to instil in people the values of integrity, trustworthiness, accountability, personal responsibility — those are the same values that any type of prison rehabilitation program would want to foster. So through these Christian religious supervision and rehabilitation in the community, prisoner rehabilitation programs can be bolstered and heightened for prisoners under community supervision orders. By confessing past wrong doing and determining to do better, the inmate is ready to make a new start and be of service to others.

Studies have shown that when prisoners see meaning and agree with their community rehabilitation program, the outcomes are better, and they will respond appreciatively. Recidivism, or returning to prison for ex-prisoners can be reduced considerably through a community rehabilitation program that is meaningful to the life of the prisoner, and through their association with Christian mentors they perceive as good and in whom they can put their complete trust.

Christian rehabilitation programs offer a way of thinking that is non-aggressive, non-violent and that counters criminality of behaviour, integrating the prisoner into a God-fearing, peace-loving, non-criminal society. Through such positive environment, faith based programs offer inmates and prisoners in the community a supporting, nurturing environment towards their integration to become law-abiding and useful members of society.

Every day Christians pray for justice and mercy in the prayer that Jesus taught us: "Thy kingdom come, thy will be done, on earth as it is in heaven." Every day Christians recognize both that we are guilty of sin and that we are forgiven: "Forgive us our trespasses as we forgive those who trespass against us." This common prayer, the Lord's Prayer, recognizes our failures and offenses, and acknowledges our dependence on God's love and mercy.

St. Paul outlined our task when he told us to "test everything; retain what is good. Refrain from every kind of evil" (1 Thes 5:21). He calls us to affirm the demands of both justice and mercy, the place of punishment and forgiveness, and the reality of free will and poor choices.

We cannot and will not tolerate behavior that threatens lives and violates the rights of others. We believe in responsibility, accountability, and legitimate punishment. Those who harm others or damage property must be held accountable for the hurt they have caused. The community has a right to establish and enforce laws to protect people and to advance the common good.

At the same time, a Christian approach does not give up on those who violate these laws. We believe that both victims and offenders are children of God. Despite their very different claims on society, their lives and dignity should be protected and respected. We seek justice, not vengeance. We believe punishment must have clear purposes: protecting society and rehabilitating those who violate the law.

We believe a Christian vision of crime and criminal justice can offer some alternatives. It recognizes that root causes and personal choices can both be factors in crime by understanding the need for responsibility on the part of the offender and an opportunity for their rehabilitation. A Christian approach leads us to encourage models of restorative justice that seek to address crime in terms of the harm done to victims and communities, not simply as a violation of law.

Scriptural Foundations

The Old Testament provides us with a rich tradition that demonstrates both God's justice and mercy. The Lord offered to his people Ten Commandments, very basic rules for living from which the Israelites formed their own laws in a covenant relationship with God. Punishment was required, reparations were demanded, and relationships were restored. But the Lord never abandoned his people despite their sins. And in times of trouble, victims relied on God's love and mercy, and then on each other to find comfort and support (Is

57:18-21; Ps 94:19).

Just as God never abandons us, so too we must be in covenant with one another. We are all sinners, and our response to sin and failure should not be abandonment and despair, but rather justice, contrition, reparation, and return or reintegration of all into the community.

The New Testament builds on this tradition and extends it. Jesus demonstrated his disappointment with those who oppressed others (Mt 23) and those who defiled sacred spaces (Jn 2). At the same time, he rejected punishment for its own sake, noting that we are all sinners (Jn 8). Jesus also rejected revenge and retaliation and was ever hopeful that offenders would transform their lives and turn to be embraced by God's love.

Jesus, who himself was a prisoner, calls us to visit the imprisoned and to take care of the sick (including victims of crime), the homeless, and the hungry (Mt 25). His mission began with proclaiming good news to the poor and release to captives (Lk 4). In our day, we are called to find Christ in young children at risk, troubled youth, prisoners in our jails, and crime victims experiencing pain and loss. The story of the Good Samaritan (Lk 10), who did all he could to help a victim of crime, a stranger, is a model for us today. We must be willing to stop and help victims of crime recover from their physical and emotional wounds.

The parable of the Prodigal Son (Lk 15) shows God's love for us and models how we should love one another. In spite of his younger son's reckless life and squandering of his inheritance, the father celebrates his return home, recognizing that his son has shown contrition and has changed his life. The lost who have been found are to be welcomed and celebrated, not resented and rejected. Pope John Paul II said

What Christ is looking for is trusting acceptance, an attitude which opens the mind to generous decisions aimed at rectifying the evil done and fostering what is good. Sometimes this involves a long journey, but always a stimulating one, for it is a journey not made alone, but in the company of Christ himself and with his support. . . . He never tires of encouraging each person along the path to salvation.²⁹

Centuries ago, St. Thomas Aquinas taught us that punishment of wrongdoers is clearly justified in the Christian tradition, but is never justified for its own sake. A compassionate community and a loving God seek accountability and correction but not suffering for its own sake. Punishment must have a constructive and redemptive purpose.

Today these traditional teachings still shape our understanding of punishment. We begin with a belief in the existence of a natural moral law that resides within the hearts of individuals and within the life of the community. This moral code is common to all peoples and is never fully excused by external circumstances. All are born with free will that must be nurtured and informed by spiritual, intellectual, emotional, and physical disciplines and by the community. Although not everyone has the same ability to exercise free will, each person is responsible for and will be judged by his or her actions according to the potential that has been given to him or her. We believe that it is God who ultimately judges a person's motivation, intention, and the forces that shaped that person's actions.

Christian Social Teaching

Human Life and Dignity: The fundamental starting point for all of Christian social teaching is the defense of human life and dignity: every human person is created in the image and likeness of God and has an inviolable dignity, value, and worth, regardless of race, gender, class, or other human characteristics. Therefore, both the most wounded victim and the most callous criminal retain their humanity. All are created in the image of God and possess a dignity, value, and worth that must be recognized, promoted, safeguarded, and defended. For this reason, any system of penal justice must provide those necessities that enable inmates to live in dignity: food, clothing, shelter, personal safety, timely medical care, education, and meaningful work adequate to the conditions of human dignity.³⁰

Human dignity is not something we earn by our good behavior; it is something we have as children of God. We believe that because we are all created by God, "none of us is the sum total of the worst act we have ever committed. . . . As a people of faith, we believe that grace can transform even the most hardened and cruel human beings."³¹

Victims, too, must have the help of the faith community in recovering their dignity. To be excluded from the proceedings against their offenders, to be ignored by friends and family, or to be neglected by the community of faith because their deep pain is unsettling only serves to further isolate victims and denies their dignity. All of us are called to stand with victims in their hurt and in their search for healing and genuine justice. This includes, of course, the children of the incarcerated, who themselves are seriously harmed by their parents' misdeeds.

In setting up Community-Based Corrections Services, we have to employ 20-30 Christian counselors to cater for both offenders and victims and their respective families.

Human Rights and Responsibilities: Our tradition insists that every person has both rights and responsibilities. We have the right to life and to those things that make life human: faith and family, food and shelter, housing and health care, education and safety. We also have responsibilities to ourselves, to our families, and to the broader community.

Crime and corrections are at the intersection of rights and responsibilities. Those who commit crimes violate the rights of others and disregard their responsibilities. But the test for the rest of us is whether we will exercise our responsibility to hold the offender accountable without violating his or her basic rights. Even offenders should be treated with respect for their rights.

Family, Community, and Participation: We believe the human person is social. Our dignity, rights, and responsibilities are lived out in relationship with others, and primary among these is the family. The disintegration of family life and community has been a major contributor to crime. Supporting and rebuilding family ties should be central to efforts to prevent and respond to crime. Placing prisons in remote areas diminishes contacts with close relatives and undermines the family connections that could aid in restoration, especially for young offenders.

Likewise, maintaining community and family connections can help offenders understand the harm they've done and prepare them for reintegration into society. Isolation may be necessary in some rare cases; but while cutting off family contact can make incarceration easier for those in charge, it can make reintegration harder for those in custody.

The principle of participation is especially important for victims of crime. Sometimes victims are "used" by the criminal justice system or political interests. As the prosecution builds a case, the victim's hurt and loss can be seen as a tool to obtain convictions and tough sentences. But the victim's need to be heard and to be healed are not really addressed.

Insisting that punishment has a constructive and rehabilitative purpose.

Our criminal justice system should punish offenders and, when necessary, imprison them to protect society. Their incarceration, however, should be about more than punishment. Since nearly all inmates will return to society, prisons must be places where offenders are challenged, encouraged, and rewarded for efforts to change their behaviors and attitudes, and where they learn the skills needed for employment and life in community. We call upon government to redirect the vast amount of public resources away from building more and

more prisons and toward better and more effective programs aimed at crime prevention, rehabilitation, education efforts, substance abuse treatment, and programs of probation, parole, and reintegration.

Renewed emphasis should be placed on parole and probation systems as alternatives to incarceration, especially for non-violent offenders. Freeing up prison construction money to bolster these systems should be a top priority. Abandoning the parole system, combined with the absence of a clear commitment to rehabilitation programs within prisons, turns prisons into warehouses where inmates grow old, without hope, their lives wasted.

Finally, we must welcome ex-offenders back into society as full participating members, to the extent feasible, and support their right to vote.

Encouraging Spiritual Healing and Renewal for those who commit crime.

Prison officials should encourage inmates to seek spiritual formation and to participate in worship. Attempts to limit prisoners' expression of their religious beliefs are not only counterproductive to rehabilitation efforts, but also unconstitutional. As pastors, we will continue to press for expanded access to prisoners through our chaplaincy programs, including by dedicated volunteers.

The denial of and onerous restrictions on religious presence in prisons are a violation of religious liberty. Every indication is that genuine religious participation and formation is a road to renewal and rehabilitation for those who have committed crimes. This includes contact with trained parish volunteers who will help nourish the faith life of inmates and ex-offenders.

We believe a Christian ethic of responsibility, rehabilitation, and restoration can become the foundation for the necessary reform of our broken criminal justice system.

Mr. Chair, ladies and gentleman. I thank you sincerely for the opportunity given to the Methodist Church to present its views and stand to this honourable Committee.

The Parliament Standing
Committee

On Justice, Law and
Human Rights

COMMUNITY – BASED
CORRECTIONS BILL 2016
(Bill No: 33 of 2016)

Introduction

The advertisement in the media for the final call for written submissions last week prompted me to respond to your call. Also Thursday last week 20th October 2016, was the second last day of the committee meetings of the Lau Provincial Council and was a bit late in the day to include it in the agenda for discussions.

However the opportunity allocated by the Secretariat to appear before you is much appreciated.

The Bill

It is stated in the explanatory note that this Bill No: 33 of 2016 is to replace the Probation of Offenders Act (Cap. 22) which was enacted in 1952.

Various sections of the Cap. 22 alluded the offenders of the age groups between 14 and 17 years of age and the legal structure thereof to protect and nurture them into adulthood and good law abiding citizens of this country.

It is noted that this Bill No: 33 is rather open-ended and does not mention any age or offence discrimination. This is a breath of fresh air into the Legislative framework for the rehabilitation and re-integrate of offenders into our community. The age, the offence and punishment or order of the Court is important to address the offending behaviour displayed by the offender so as to maintain the cohesiveness of peaceful co-existence. ft

Lau Islands

There are 13 Tikinas in the Lau Group in the Eastern Province of Vitilevu. It is served by the Government for which the people are very grateful. Money is scarce but people live in communal life from agricultural produce and marine resources.

Migration to urban centers on Viti Levu have been steady over the years for better education and security of employment to cater for daily sustenance. Village population is a constant concern of the elders left behind on the islands because of their traditional duties and responsibility that used their attention and contribution.

In most cases, after about the fourth generation, relocation back to the islands is difficult for various reasons. If one is not attentive to urban village group meetings, duties and responsibilities, one tends to drift away from his village's urban community and identity which identifies him as Lauan – his village, his tikina and his relatives. Some end up on *the wrong side of the law and are serving their sentence in our Correction Centers in Suva*. Currently there are 121 prisoners in Suva that are from Lau. I attach a copy of statistics supplied by the Department of Corrections as *appendix 'A'* for ease of reference.

Submission

The Government is proactive in their development and awareness programmes is appreciated by the people. Perhaps this Bill No: 33 legislation can be the conduit of operationalizing the Govt. Policy to reverse the rural to urban migration.

The intentions and objectives of the Bill will be realized and the village community will be stronger and richer with extra pair of hands and improved agricultural output for communal sustenance. The Offender will gladly abide by the Court orders, as he will be content of removing the feeling of guilt in him at the same time enjoying the love and affection of his relatives on the island – very much different from the urban centers.

The submission have mainly focused on the Lau group because I am from Lau, but the situation could be similar to the other Provinces in Fiji.

CONCLUSION

The Lau Provincial Council Meeting sits every year. The last official duties of the Elders before returning to the islands is a visit to the Corrections Centers in Suva. Their last visit was completed last Friday 21st October 2016. This underlines the importance of family members wherever they maybe. The address by the elders to the offenders are always fatherly and urging them to complete their sentence and come back home to the islands to their families. The sessions are always charged with emotions as the groups exchanged greetings, testimonies and ends in a jovial mood as they part for another year.

The involvement of the communal administrative structure is very important for the success of these policies. The village elders of the offenders, Tokatoka, Mataqali, Yavusa, Turaga ni Koro, Priests have to be involved in the execution of the Court Orders. Although the Bill as defined Community – Based Correction Officers, Community Volunteer, Supervisors etc, the elders and religious leaders also have a major role to play in the rehabilitation and reintegration of the offender. Their selection and training remains before these duties can be carried out successfully.

The Parliamentary Standing Committee may have received submissions from other Provincial Councils I do not know but if it has not, I respectfully submit that it will be prudent to write and call for their views before enacting the Bill into Law. We have waited since 1952 to review and amend this Act, I am sure we can wait another year, just to ensure that all the views of our community leaders have been canvassed and considered in the final collation of views and opinions.

Mr Chairman, this presentation and the views expressed are my own personal views and is not the views of my village of Ketei, or my Tikina of Totoya or my province of Lau. May this be noted in your records for clarity.



(AISEA TAOKA)

**Lot 1 Davuilevu Agriculture Development Sub Division
Davuilevu.**

Summary of Information

APPENDIX 'A'

| | 16-20 | 21-25 | 26-30 | 31-35 | 36-40 | 41-45 | 46-50 | 51-60 | 61-70 | 71+ | TOTAL |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-----|-------|
| 100 | | 2 | | 1 | | 1 | 1 | | | | 5 |
| 101 | | 2 | 1 | 1 | | | 1 | 1 | | | 6 |
| 102 | 1 | 6 | 5 | | 1 | 3 | 2 | 2 | | | 20 |
| 103 | | 3 | 4 | | 1 | 1 | 2 | 1 | | 1 | 13 |
| 104 | | 7 | 4 | 2 | 3 | 2 | | 1 | | 1 | 20 |
| 105 | 1 | 2 | 2 | 2 | 1 | 1 | 2 | 2 | | | 13 |
| 106 | | 1 | | | | | | | 1 | | 2 |
| 107 | | 3 | 6 | 2 | | 1 | 1 | 1 | | | 14 |
| 108 | | | | | | 1 | | | | 1 | 1 |
| 109 | | | | | | 1 | | 1 | | | 2 |
| 110 | | 1 | 5 | 1 | 2 | 1 | 1 | | | | 11 |
| 111 | | 3 | 4 | 1 | 1 | | | 1 | | | 10 |
| 112 | | 1 | 1 | | | 1 | 1 | | | | 4 |
| TOTAL | 2 | 31 | 32 | 10 | 9 | 12 | 11 | 10 | 1 | 3 | 121 |

Marital Status VS Age

| MARITAL STATUS | 16-20 | 21-25 | 26-30 | 31-35 | 36-40 | 41-45 | 46-50 | 51-60 | 61-70 | 71+ | TOTAL |
|----------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-----|-------|
| Married | | 2 | 8 | 7 | 7 | 9 | 10 | 8 | 1 | 3 | 55 |
| Single | 2 | 29 | 23 | 3 | 2 | 2 | 1 | 1 | | | 63 |
| Defactor | | | 1 | | | | | 1 | | | 3 |
| Divorcee | | | | | | | | | | | 0 |
| TOTAL | 2 | 31 | 32 | 10 | 9 | 12 | 11 | 10 | 1 | 3 | 121 |



SUBMISSION

**TO THE PARLIAMENTARY STANDING COMMITTEE ON LAW, JUSTICE & HUMAN
RIGHTS**

**ON THE COMMUNITY-BASED CORRECTIONS BILL 2016
BILL NO. 33 OF 2016**

BY THE SOCIAL DEMOCRATIC LIBERAL PARTY OF FIJI

17 November 2016

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SUBMISSION ON THE COMMUNITY CORRECTIONS BILL NO. 33 OF 2016
BY THE SOCIAL DEMOCRATIC LIBERAL PARTY OF FIJI

17 November 2016

Salutations

The Chairman and Members of the Parliamentary Standing Committee on Law, Justice and Human Rights, this submission on Bill No. 33 of 2016, the Community Corrections Bill is made by the Social Democratic Liberal Party of Fiji.

On behalf of the Party Leadership and its members, I thank you for this opportunity to make known the Party's views on the Bill.

At the outset, the party commends the tabling of this Bill which is aimed at providing the Courts with community corrections sentencing options and at improving the administration of community based sentencing.

Community based sentencing is aimed at rehabilitating and reintegrating offenders back into the community.

The Party views the Bill as a good initiative by the Government, to improve on the existing community sentencing options and its administration.

Community based sentencing diverts non-serious offenders away from prison, where they are more likely to reoffend and to step up on the ladder to commit more serious crimes.

We are also gratified that the Bill is not being fast-tracked, that Parliament has referred the Bill to this Committee for consultation, which is an opportunity for the public and our community to make known their views on the proposed change to the law on adoptions in Fiji.

Introduction

The Bill repeals and replaces the Probation of Offenders Act, Cap. 22, enacted as a Colonial Ordinance in 1952, sixty-four years ago, and which has never been amended. The Bill is intended to work alongside the Community Work Act of 1994 passed by the SVT government.

The Party commends the Ministry of Social Welfare for reviewing this archaic piece of legislation in partnership with the United Nation's Emergency Fund for Children (UNICEF).

Consultation

Before we delve in detail into the Bill, we wish to discuss briefly the benefits of effective consultations on reform of legislation, as well as any policy reform.

One of the benefits of effective consultation, is that the people are fully aware of and have contributed to the reforms you are making, so they are supportive of the changes. This aids in the implementation and respect for the reforms and new laws, because you have the buy-in and participation of the affected community, so they can consider that they have 'ownership' of the reform. We therefore urge and we highly recommend that consultations are undertaken in all legislative drafting and government reform programs.

While we appreciate the current consultation process, we are concerned that some provisions of the Bill would have benefitted from more consultation.

In this regard, we note that the consultation process undertaken by the Ministry of Social Welfare and UNICEF have not been outlined. From the party's recollection, we are unaware of any wide ranging consultation undertaken in the process of the drafting of this Bill.

So we urge the Committee to enquire with the Ministry of Social Welfare to detail the consultative processes undertaken in the drafting of this Bill.

Now on to the substantive review of the Bill. We hope not to take up too much of your time, we have only eleven recommendations in total on the Bill, which we commend on the whole. This presentation will focus only on the sections of the Bill that require re-consideration.

General comment on community sentencing options

The Party recognises that there are various positive benefits arising out of providing community sentencing options to the Courts and offenders:

- When offenders are punished in the community, the state saves valuable correctional resources; and
- The offender is able to continue (or seek) employment, and maintain ties with his or her family.

Offenders have much to gain from serving their sentences in the community.

Whatever the benefits for offenders, however, victim interests must not be overlooked. From the victim perspective, community based penalties may allow the offender to work (and pay compensation to the victim), if the Bill enables the Court to so order.

In appropriate circumstances, a community sanction might also facilitate restorative justice objectives of acknowledgment and reparation of the harm done to the victim.

Impact of community sentencing on victims

The presence of an offender in the community - especially if he lives in the same neighbourhood or community as the victim, may cause additional suffering for the victim.

This concern is only partially addressed by including as a condition of the sentence, that the offender is not to have contact with the victim.

If the offender has been convicted of a personal injury offence, particularly one of the more serious crimes like rape or other serious assault against the person, the victim may fear further offending and traumatisation by the mere fact of the offender's presence in the community and the offender's continued proximity to the victim.

In addition the imposition of a community sanction, even a community term of imprisonment, may depreciate the seriousness of the offence.

Some victims may link the severity of the sentence to the harm inflicted; if the harm is considerable, and if a community sentence is perceived to be lenient or not properly enforced, community sentencing may exacerbate the suffering of crime victims.

Recommendation 1

The party respectfully recommends that the draft law include a provision that victims' views be sought and considered by the Court on the option of community based sentencing, before any community based corrections order is issued by the Court; and that this provision be included in the Bill - that the Court seek the views of victims before it issues such an Order.

The party respectfully recommends that the objectives of the Bill include the provision of counselling for victims as well as offenders

The party respectfully recommends that the Permanent Secretary also be tasked with promoting victim support and understanding of community based corrections options and to seek their views on the effectiveness of such community based corrections sentencing programs.

Does the CBC Bill apply to all offences?

The Bill is silent on whether community based sentencing applies to all crimes, including serious personal assault or offences against the person like assault occasioning grievous bodily harm, murder, sexual offences like rape, or violent robberies.

Recommendation 2

It is recommended that community based sentencing orders cannot be ordered in cases of serious personal assault or offences against the person like assault occasioning grievous bodily harm, murder, sexual offences like rape, or violent robberies.

Principles on effective sentencing and corrections policy

The National Conference of State Legislatures (NCSL) in the United States established seven principles to guide legislatures or Parliaments when considering effective sentencing and corrections policy. These are summarised below for ease of reference, to guide the Committee in considering the Community Based Corrections Bill ("CBC Bill").

A summary of the Principles is below, and the full extract is attached to this submission as Appendix 1.

PRINCIPLES OF EFFECTIVE SENTENCING AND CORRECTIONS POLICY

Preamble

Providing for justice and protecting the public are fundamental concerns of criminal justice systems. Sentencing and corrections policies should be designed with the goals of preventing offenders' continued and future criminal activity. State approaches to sentencing and corrections have been characterized by traditional views that lean toward incapacitation or rehabilitation. More contemporary policies to reduce recidivism look to evidence-based strategies that hold offenders accountable, are sensitive to corrections costs, and reduce crime and victimization. The intended purpose of these Principles is to provide broad, balanced guidance to lawmakers as they review and enact policies and make budgetary decisions that will affect community safety, management of criminal offenders, and allocation of corrections resources.

Seven Principles

- 1. Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity.**
- 2. Legislatures should convey a clear and purposeful sentencing and corrections rationale. The criminal code should articulate the purpose of sentencing, and related policies and practices should be logical, understandable, and transparent to stakeholders and the public.**
- 3. A continuum of sentencing and corrections options should be available, with prison space for the most serious offenders and adequate community programs for diversion and supervision of others (less serious offenders).**
- 4. Sentencing and corrections policies should be resource-sensitive as they affect cost, correctional populations and public safety. States should be able to effectively measure costs and benefits.**
- 5. Justice information should be a foundation for effective, data-driven state sentencing**

and corrections policies.

6. Sentencing and corrections policies should reflect current circumstances and needs.

7. Strategies to reduce crime and victimization should involve prevention, treatment, health, labor and other state policies; they also should tap academic and private resources and expertise.

Source: NCSL 2011, Report available online at <http://www.ncsl.org/research/civil-and-criminal-justice/principles-of-sentencing-and-corrections-policy.aspx> Accessed on 8 Sept 2016

Restorative Justice Considerations

Community based sentencing or corrections is seen in some countries as having a restorative justice component. Restorative justice has been defined by the Canadian Supreme Court in *R. v. Proulx* ([2000] 1 S.C.R. 61) as:

"Restorative justice is concerned with the restoration of the parties that are affected by the commission of an offence. Crime generally affects at least three parties: the victim, the community and the offender. A restorative justice approach seeks to remedy the adverse effects of crime in a manner that addresses the needs of all parties involved. This is accomplished, in part, through the rehabilitation of the offender, reparations to the victims and to the community, and the promotion of a sense of responsibility in the offender and acknowledgment of the harm done to victims and to the community."

The Court in *R. v. Proulx* also stated that "In determining whether restorative objectives can be satisfied in a particular case, [and hence whether a conditional sentence is imposed] the judge should consider the **offender's prospects of rehabilitation, including whether the offender has proposed a particular plan of rehabilitation; the availability of appropriate community service and treatment programs; whether the offender has acknowledged his or her wrongdoing and expresses remorse; as well as the victim's wishes as revealed by the victim impact statement**" (at para 113; emphasis added).

Recommendation 3

The Party respectfully recommends that restorative justice be an objective of this CBC Bill. The objective should not be merely that the State will save resources by having offenders diverted from the Corrections (Prison) system, but also that community and victims have a stake in the operation of the community corrections scheme - that the Court must consider whether the offender has acknowledged his or her wrongdoing and express remorse, that the offender's life is seriously constrained and to ensure that the community corrections scheme does not result in a lax system where offenders flout the conditions of their community sentence order, or if it

appears to the victim and the community that the Court has little involvement with the administration and supervision and implementation of the community based corrections scheme.

The need for community input into the Community Based Corrections Scheme

The Party recommends that given the wide ranging impact of the Community Based Corrections Scheme ("CBC Scheme"), that the law establish an advisory committee to advise the Permanent Secretary on the operation of the scheme. We respectfully submit that this not be left to the PS to decide in his sole discretion, but that the advisory committee be established in the law, and that the committee is to contribute to the development of policy and the administration of the CBC Scheme by the PS.

Recommendation 4

The Party respectfully recommends that the law establish an advisory committee on community corrections to advise the PS. The advisory committee should include representatives of Faith Based organisations, NGO, CSO and community representatives as well as a victim representative, as deemed appropriate by the Minister who is to appoint the members of the Committee.

Annual Report on the CBC Scheme

For transparency and to test the efficacy of the CBC Scheme, we recommend the PS be required to prepare an annual report on the operation of the scheme be submitting to Parliament annually.

Recommendation 5

The Party respectfully recommends that an annual report on the CBC scheme be compiled and submitted to Parliament annually by the Permanent Secretary, on the effectiveness of the scheme including its effect on the recidivism rates (re-offending rates) of offenders who are sentenced to community based corrections scheme.

Training of Judicial Officers, staff of DSW, Corrections, Police

The Party considers that training of Judicial Officers (Magistrates and Judges) as well as officials of relevant agencies is a necessity - we recommend the Committee inquire with the Ministry of Social Welfare as to the projected timeline for coming into force of the Bill and if there is provision in the timeline for a period of education and awareness. Training will also be required for Department of Social Welfare (DSW) staff, Corrections and Police personnel as well as for the faith based, NGOs and other community organisations involved in the scheme.

In addition to training for DSW CBC officers and supervisors, it is recommended that sufficient budgetary allocation be sourced for this purpose. — Budget

Recommendation 6

The Party respectfully recommends that there be provision in the implementation timeline and budgetary allocation for training and awareness for Magistrates and Judges on the CBC Bill, in

addition to training for DSW CBC Officers and supervisors from both ngos and faith based organisations who will implement the community based sentencing program.

Reparation to Victims

Reparation (compensation) to victims is an important issue that the CBC Bill is silent on.

Recommendation 7

The Party respectfully recommends that reparation or compensation to victims of crime be considered by the Committee, in particular to be included in the CBC as an element of restorative justice, if offenders are allowed to work and earn money during the period of their community based sentencing, that a sum or percentage be ordered by the Court to be paid as compensation to the victims, and that the Court consider the issue of reparation and seek the views of the victim when considering the grant of an Order of Community Based Sentencing under the CBC Bill.

Five-yearly assessment of the effectiveness of the CBC Scheme

Once operational, it is important to review the effectiveness of the CBC Scheme, on a regular basis. This is important to gauge the extent to which its objectives of meeting principles of justice and protecting the community.

Recommendation 8

The Party respectfully recommends that a review of the effectiveness of the CBC Scheme be undertaken five years after the coming into force of the CBC Bill and thereafter every five years. That the review be undertaken by an independent consultant or institution like the University of the South Pacific or other outside agency as appropriate and that this review be required to be implemented by the PS under the CBC Bill.

Analysis of the Community Corrections Bill No. 33 of 2016

Part 1 Preliminary

Section 1 of the Bill

The party seeks clarification on the Ministry's projected timeline and preparations for the coming into force of the Bill.

The Party respectfully recommends a one - year period of public and community awareness, before the new Act comes into force.

We recognise also that specific training is required for Magistrates, Judges, as well as the Ministry of Social Welfare officials, Police and associated government departments and that the Ministry probably already has plans in place and funding for this.

The Party respectfully requests the Ministry to seek the requisite budgetary allocation and to plan for a wide-ranging national campaign to inform the community about the new law, before it comes into force.

The Party is willing to work with the Ministry to ensure that the information and education materials of this awareness campaign reach all of our people in all parts of Fiji and we are happy to

discuss with the Ministry ways to make the campaign effective, for the good of all the people of Fiji.

Recommendation 9

The Party respectfully recommends that the new Community-based Corrections Act undergo a period of public awareness before the law comes into force. We also respectfully submit that the committee consider recommending to Government for sufficient budgetary allocation be made for this in-depth and extensive public awareness campaign.

Awareness programs must be budgeted and carried out for at least one year before the provisions come into force.

Section 17

The Party is concerned that section 17 requires the offender to engage a lawyer to seek variation of the order. In the interest of increasing access to justice, the Party recommends that the Committee consider whether it would be appropriate to have the drafters design simple language form that the convicted offender can fill in and file himself (similar to Family Law Court simplified Forms) in order that he does not have to find and pay for a lawyer to do this.

Recommendation 10

The Party respectfully recommends that the simple language forms be designed to enable application for variation of CBC Orders (similar to Family Court Forms) in order that avoid the cost of engaging a lawyer to file an application for variation.

Section 20 and 21

The Party is of the view that Section 20 and 21 of the Bill be reviewed - that all laws where Probation Order is mentioned to be reviewed individually rather than a blanket replacement of the "Probation Order" with "CBC Order" in order that those laws continue operating as intended (to avoid unintended consequences of a blanket replacement).

Recommendation 11

The Party respectfully recommends that section 20 and 21 be reviewed and rather than a blanket replacement, that each law where "Probation Order" is used, it will be replaced by "Community Based Corrections Order" rather than a blanket replacement by the operation of sections 20 and 21.

These are the eleven recommendations that I present to you today on behalf of the Social Democratic Liberal Party, on the Community Based Corrections Bill.

Conclusion

To conclude Honorable Chair and Members of the Committee, on behalf of the Party Leadership and our members, I express again our gratitude for the opportunity to appear before you today.

I hope our observations and recommendations are helpful to the committee, and that we have effectively communicated the concerns we have about this Bill to you.

We are happy to answer any questions you may have regarding this submission.

Vinaka vakalevu.

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APPENDIX 1: PRINCIPLES OF EFFECTIVE SENTENCING AND CORRECTIONS POLICY

PRINCIPLES OF EFFECTIVE STATE SENTENCING AND CORRECTIONS POLICY

Preamble

Providing for justice and protecting the public are fundamental concerns of criminal justice systems. Sentencing and corrections policies should be designed with the goals of preventing offenders' continued and future criminal activity. State approaches to sentencing and corrections have been characterized by traditional views that lean toward incapacitation or rehabilitation. More contemporary policies to reduce recidivism look to evidence-based strategies that hold offenders accountable, are sensitive to corrections costs, and reduce crime and victimization. State legislatures set both the tone and the framework for sentencing and corrections policies. The principles identified and described below resulted from the bipartisan NCSL work group and are not aligned with any particular opinion or approach. Their intended purpose is to provide broad, balanced guidance to state lawmakers as they review and enact policies and make budgetary decisions that will affect community safety, management of criminal offenders, and allocation of corrections resources.

Seven Principles

1. Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity.

- Establish sentences that are commensurate to the harm caused, the effects on the victim and on the community, and the rehabilitative needs of the offender.
- Strive to balance objectives of treating like offenders alike with allowing discretion to select correctional options that meet individual offender needs and contribute to crime reduction.
- Consider whether sentencing and corrections policies adversely or disproportionately affect citizens based on race, income, gender or geography, including, but not limited to, drug crimes.
- Review policies that affect long-term consequences of criminal convictions, including housing and employment opportunities.

2. Legislatures should convey a clear and purposeful sentencing and corrections rationale. The criminal code should articulate the purpose of sentencing, and related policies and practices should be logical, understandable, and transparent to stakeholders and the public.

- Provide for agency mission statements that reflect the goal of recidivism reduction and the intended balance of surveillance, incapacitation, rehabilitation and victim restoration.

- Articulate corresponding requirements of agencies and expectations of courts.
- Include in stated objectives that programs and practices be research-based, and provide appropriate oversight.
- Encourage collaboration among criminal justice, health and human services, and other relevant government agencies with intersecting (not conflicting) missions and goals.
- Include criminal justice system stakeholders in planning and deliberations. Consider a coordinating council or other structured body to facilitate policy development that includes input from a broad array of stakeholders.
- Engage and educate the public by providing meaningful and accurate messages about issues and approaches.

3. A continuum of sentencing and corrections options should be available, with prison space for the most serious offenders and adequate community programs for diversion and supervision of others.

- Ensure assessment of offender risk, needs and assets in order to provide appropriate placement, services and requirements.
- Strengthen placement decisions and supervision by encouraging coordinated interbranch efforts among courts, corrections departments, and state and local supervision agencies.
- Establish policies that consider an offender's risk and criminal history as the basis for sentencing options and program eligibility.
- Provide clear policies for violations of community supervision. Consider administrative remedies and court options for technical violations, and offer incentives for compliance with conditions and requirements.
- Consider time-served requirements and ensure that release mechanisms and policies are clear and complete. Allow incentives for prisoners who complete prescribed programming, treatment or training.
- Provide appropriate levels of supervision and services for all offenders as they reenter the community.

4. Sentencing and corrections policies should be resource-sensitive as they affect cost, correctional populations and public safety. States should be able to effectively measure costs and benefits.

- Consider how state-level policies affect state and local correctional populations, costs, and state-local fiscal partnerships.
- Target resources to make the best use of incapacitation, interventions and community supervision.
- Partner with and consider incentives to local jurisdictions as part of adequately funded and accountable community programs and services.
- Take into account how funding reductions to prison services or to state or local supervision programs affect short-term operations and long-term program benefits.
- Consider the appropriate role of private industry in providing correctional services, and

leverage re- sources and expertise of nonprofit, faith-based and other community organizations.

5. Justice information should be a foundation for effective, data-driven state sentencing and corrections policies.

- Build legislative and executive capacity to consider the fiscal impacts of policy actions (or inaction).
- Provide a framework for data collection, analysis and technology improvements that support and fulfill information needs.
- Facilitate and require research and evaluation of programs and practices. Use measurements and in- formation to hold systems and offenders accountable, with a focus on and expectation of reducing recidivism and increasing public safety.
- Measure successes as well as failures, and use information and data to develop policy and make budget decisions.
- Build justice information systems that allow intergovernmental sharing of critical case and client information. Pair with policies that enable appropriate information exchange at key discretion points.

6. Sentencing and corrections policies should reflect current circumstances and needs.

- Review and consider whether policies of a different era should sunset or be modernized.
- Allow adaptations to the criminal code to reflect current needs, standards and values.
- Provide for policy updates that allow use of new technologies and ways to supervise offenders and protect the public.
- Consider whether some criminal offenses warrant redefinition or reclassification, and examine proposals for new crimes or sentences in the context of whether the current criminal code is adequate.
- Ensure that victims' rights are enforceable, and that services for victims are reviewed and refined in line with current policies, technologies and needs.

7. Strategies to reduce crime and victimization should involve prevention, treatment, health, labor and other state policies; they also should tap federal, academic and private resources and expertise.

- Consider investments in education and juvenile justice systems as part of efforts to reduce crime.
- Consider as part of crime prevention the needs of and the opportunity for services to children and families of incarcerated offenders.
- Connect health, employment and other related agencies to those providing correctional supervision, reentry services and prevention programs at state and local levels.

Source: NCSL 2011, Report available online at <http://www.ncsl.org/research/civil-and-criminal-justice/principles-of-sentencing-and-corrections-policy.aspx> Accessed on 8 Sept 2016