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CODE OF CONDUCT BILL 2018

**WRITTEN SUBMISSION – DEPUTY SPEAKER, HON.
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1.0 Introduction

Honourable Chair and Honourable Members of the Standing Committee on Justice, Law and Human Rights.

Happy New Year to all of you and thank you for your invitation to make a written submission on the *Code of Conduct Bill 2018* (Bill No. 33 of 2018).

From the outset, I would like to inform the Committee that this written submission will generally be based from a parliamentary context and I will focus mainly on the clauses relating to Schedule 2: Code of Conduct for Speaker, Deputy Speaker and Members of Parliament (MPs).

2.0 Background

National parliaments are regarded as an essential element in the efforts to combat corruption and unethical conduct by persons in authority and in the promotion of integrity.

As the main body representative of the interests of the citizens in a democratic society like Fiji, Parliament, has to fulfil the important function of keeping our democratic institutional systems accountable and effective in their decision-making processes.

The oversight role proper of Parliament over the Executive further places Parliament in a vital position. Parliament and its members have an interest in good governance and codes of conduct because they wish to reinforce the credibility and authority of their own institutions and to address heightened public expectations of accountability.

The adoption and enforcement of codes of conduct are often seen by the international and national actors (that have advocated against corruption and for the regulation of parliamentary behaviour and ethical standards) as an essential element to regain public trust in the efficacy, transparency and equity of public institutions.

3.0 Parliament Context and Code of Conduct

Around the world, parliaments are now increasingly regarded as an essential target in the efforts to combat corruption and in the promotion of integrity.

Indeed, parliaments maintain a key role to play in the fight against corruptions together with the duty to uphold the highest standards of integrity.

As such, parliaments are expected to set an example of incorruptibility to foster legitimacy of and citizen's confidence in the institution and ensure that MPs perform their functions in the public interest instead of private or partisan political interests.

To this end, in recent years an increasing number of countries¹ have established comprehensive ethical regimes to ensure that members of parliament perform their functions professionally.

The drafting and adoption of codes of conduct by parliaments have emerged as a common measure towards the codification of professional and ethical standards for parliamentarians.

As summarised in a World Bank working paper in 2012,

“... a legislative code of conduct is a formal document which regulates the behaviour of legislators by establishing what is considered to be acceptable behaviour and what is not. In other words, it is intended to create a political culture which places considerable emphasis on the propriety, correctness, transparency, and honesty of parliamentarians' behaviour...”

¹Countries that have adopted Code of Conduct include but not limited to the following countries: Canada, France, Germany, Italy, Norway, Poland, UK, USA, Netherlands, Sweden, Malta, Finland, Belgium, Australia, New Zealand and the European Parliament.

Where adopted, codes of conduct have the aim of contributing to the promotion of high standards of integrity in parliament by establishing standards for parliamentarians' behaviour, clarifying acceptable and unacceptable forms of conduct, and creating an environment that is less likely to tolerate unethical behaviour, often tackling issues such as conflict of interest, declaration of assets, gifts, conduct in the chamber, lobbying, as well as post-parliamentary employment.

In practice, rules addressing the conduct of members of parliament have always existed.

Often such rules have been included in parliamentary rules of procedures or common customary practices taken for granted, setting standards in regards to speech, behaviour in chamber or voting practices.

What appears to be innovative is the increasing practice followed by several national parliaments to codify and complement these standards of integrity into a unified set of norms and document, which aims at enhancing trust in the integrity of national parliaments.

4.0 An international framework for parliamentary codes of conduct

The public accountability and political credibility of Parliaments are cornerstone principles enshrined in a number of international documents.

Indeed, although no international regulation framework on the adoption and enforcement of ethical standards for members of parliaments exists, a number of important principles of parliamentary conduct have been codified over the last 20 years, in an effort to translate them into international good practices of democratic governance.

In 1996, the General Assembly of the United Nations adopted Resolution 51/59 Action against Corruption, outlining ‘a model international conduct for public officials’, including members of parliament, as a tool to guide efforts against corruption (UN General Assembly, 1996).

Similar calls for upholding standards of conduct for members of parliament and integrity were also made by the Inter-Parliamentary Union (IPU), body that also adopted a code of conduct for its own work (IPU, 2012).

In September 2006, the Global Organisation of Parliamentarians Against Corruption (GOPAC) resolved to create a taskforce on parliamentary ethics and conduct.

The Handbook on Parliamentary Ethics and Conduct – A Guide for Parliamentarians (GOPAC 2009), developed by GOPAC and the Westminster Foundation for Democracy further provides reform-minded parliamentarians with clear and useful guidance to develop effective codes of conduct for members of parliament.

Although most of these frameworks do not have a legally binding nature, the UN Convention against Corruption adopted

in 2005 stand out as an important set of legally binding obligations for signatories, providing a benchmark for anti-corruption initiatives by setting out comprehensive standards, measures and rules for countries to implement.

With reference to Article 8 – Codes of Conduct for public officials, the Convention states expressly that ‘each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions (UN General Assembly, 2005), promoting principles of integrity, honesty and responsibility.

The launch of agenda 2030 and the SDGs in 2016 further included Goal 16, known as “Sustaining Peace and Good Governance Goal, has special significance for parliamentarians.

SDG 16 aims to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

To achieve this goal, parliamentarians, will need to explore different ways of improving their work processes and systems.

5.0 Codes of Conduct, a growing parliamentary practice

As highlighted, the last two decades have witnessed a growing attention on the role of parliaments in promoting the principles of integrity and good governance.

International standards and platforms for parliamentary cooperation have embraced this dynamic, with consequently a number of documents and international commitments emerging under different forms in recent years articulating common democratic norms and ethical standards relating to parliamentary institutions.

Looking at available data, with the exception of USA², notable parliaments which have taken concrete measures to set out ethical values and principles to better inform the conduct of their elected members in the past two decades include UK, Canada, Western Australia and New Zealand - other parliaments include Belgium, Estonia, Finland, France, Germany, Iceland, Norway, Poland, Italy, Ireland, the European Parliament and several more.

The data appears to signal a systematic trend, i.e. an increasing number of parliaments are adopting codes of conduct for members of parliament with sharp positive increase in the past 15 years.

Moving to a more substantive analysis and looking in particular at USA, UK, Western Australia, Canada and New Zealand parliaments, the format in which their provisions have been adopted.

For USA, Canada and New Zealand, the rules of procedure have been adopted and incorporated into the rules of procedure in place.

² USA's code of conduct was adopted in 1968.

In the case of UK, the alternative format to adopt codes of conduct appears to be through a parliamentary resolution as done in Bosnia, Estonia, Iceland, France and Slovenia.

Countries like Georgia, Italy, Sweden and Norway had opted for outlining their set of ethical standards in the form of a declaration.

Western Australia is one parliament which has opted to adopt its code of conduct through legislation.

The second substantive analysis on the characteristic of ethical regimes is in the fact on the types of enforcement mechanism.

In the majority of parliaments, self-regulation is the monitoring and enforcement mechanism adopted to enforce the code of conduct.

Based on available data, three systems typically involve the indication of a special committee in charge of dealing with reporting, investigations and sanctioning of members of parliament breaching the code.

Alternatively, another form of internal oversight involves having the speaker of parliament or the speaker's office to oversee the code as in the case of Germany, Finland, Iceland, Malta and Sweden.

Self-regulation has traditionally been preferred largely because of the need to protect parliaments' independence from the

executive branch. Moreover, self-regulation systems have some benefit, on one side, of empowering members of parliament with the ownership of the applicable ethical regime, while on the other hand challenging them with the need for an objective enforcement.

Only three parliaments decided to adopt a different monitoring and enforcement systems, namely the United States of America where the external office for the Congressional Ethics is responsible for the application of the code, and the UK and France, countries that have adopted hybrid co-regulation systems, where parliament retains some of the benefits of self-regulation while also introducing some elements of external regulation.

6.0 Conclusion

On the basis of data and findings outlined above, codes of conduct prove beneficial in introducing a healthy debate on standards and integrity within our Parliament, its members and the State. Such a debate, starting with the drafting process and continuing with the following application of the document, ultimately rests and feed into the creation of a cultural, political and administrative context conducive to transparency and integrity on the part of the politicians and civil servants.

Adopting a code of conduct provides a clear set of rules and integrity standards for our Members of Parliament, the State and its public officials.

A Code of Conduct law will bring about higher standards of accountability, transparency, probity and public service in Parliament and therefore, I fully support the Code of Conduct Bill 2018 (Bill No. 33 of 2018).

Thank you.

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