

STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

TUESDAY, 29TH JANUARY, 2019

VERBATIM NOTES OF THE STANDING COMMITTEE ON JUSTICE LAW AND HUMAN RIGHTS HELD IN THE COMMITTEE ROOM (WEST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON TUESDAY, 29TH JANUARY, 2019 AT 9.13 A.M.

Submittee/ Interviewee: Retired Police Officers

In Attendance:

Mr. Marika Tauva

MR. CHAIRMAN.- Good morning Sir. Also good morning to the media officers who are present here to cover the submission. Before we start, Sir, I would like to introduce my Committee.

(Introduction of Committee Members by the Chairman)

Committee, before us is Mr. Marika Tauva, a retired Police Officer who is here to actually present to the Committee on the Code of Conduct Bill. He has a written as well as an oral presentation. So without any delay, we give the floor to Mr. Tauva and let us see what you have in store for us. Thank you, Sir.

MR. M. TAUVA.- The Honourable Chairman and all the Honourable Members of the Parliamentary Standing Committee on Justice, Law and Human Rights. A very good morning to you all. In fact there should be three of us here, Mr. Kitone Kuluvere is still on his way, I do not know if he is going to arrive or not and Mr. Jone Baravi is engaged in another commitment in Nausori so he would not be able to attend this morning.

MR. CHAIRMAN.- No worries, Sir

MR. M. TAUVA.- May I just introduce ourselves to you in their absence. Mr. Jone Baravi and Mr. Kitone Kuluwere and I are all former police officers. We happened to join the Fiji Police Force together on 26th January, 1976 after we each served for more than 36 years. We all retired upon reaching the official retirement age of 55 years. Sir, I have a six-page submission on behalf of the Retired Police Officers. Would you like me to read the whole document or would you like me to present it to the Committee.

MR. CHAIRMAN.- It is entirely on you, Sir. You have one hour. If you want to actually bring up points, it is up to you. If you want to actually read out everything, it is up to you.

MR. M. TAUVA.- Because I do not have any other points to add onto the presentation.

Sir, we understand that the Code of Conduct Bill was first proposed in Chapter 8, Section 149 Part A – Accountability of the 2013 Constitution of the Republic of the Fiji which states that:

“149. A written law shall -

- (a) establish a code of conduct which shall be applicable to the President, Speaker, Deputy Speaker, Prime Minister, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution or under any written law, members of commissions, permanent secretaries, ambassadors or other principal representatives of the State, and persons who hold statutory appointments or governing or executive positions in statutory authorities, and to such other offices (including

- public offices) as may be prescribed by written law;
- (b) establish rules, processes and procedures for the implementation of the code of conduct by the Accountability and Transparency Commission;
 - (c) provide for the monitoring by the Accountability and Transparency Commission of compliance with the code of conduct by the officers mentioned in paragraph (a);
 - (d) make provision for the investigation of alleged breaches of the code of conduct and enforcement of the code of conduct by the Accountability and Transparency Commission, including through criminal and disciplinary proceedings, and provide for the removal from office of those officers who are found to be in breach of the code of conduct;
 - (e) provide for the protection of whistle-blowers, being persons who, in good faith, make disclosures that an officer mentioned in paragraph (a) has contravened any written law or has breached the code of conduct or has engaged in fraudulent or corrupt practices; and
 - (f) provide for the annual declaration by the officers mentioned in paragraph (a) of the assets and liabilities and financial interests of the officer, and of such other direct relatives of the officer as may be prescribed, to the Accountability and Transparency Commission, and for such declarations to be accessible to the public.”

In view of understanding the above proposed Code of Conduct Bill, we humbly submit the following:

1. The interpretation of the officers mentioned in paragraph (a) are to be consistent with the interpretation of that, of public officers office holders, public officials, public officers, public servant, person employed in public services and employees of a public body as spelt out in the three corresponding law books:
 - (a) 2013 Constitution of the Republic of Fiji,
 - (b) Crimes Decree 2009
 - (c) FICAC Promulgation 2007.

To avoid confusion or misinterpretation for and to the concerned enforcement offices of the code of conduct and a possible mix up with the Police and FICAC investigators as their areas of responsibility in investigating are likely to overlap each other in the criminal aspect of the proposed Bill.

2. However, in paragraph (d), we fully believe and of the view that this Code of Conduct Bill is not to include criminal offence but solely and purposely for the disciplinary offences aspect only. The Code of Conduct to include personal unbecoming behaviour and mannerism of officers in their relative respective office and/or in general public view or knowledge at all times, which includes drunkenness, extra marital affairs, adultery, making bias and unfair decisions based on genders, race, religion, discrimination, living beyond means, owing long outstanding non-payment credit, nepotism, refusal or failure to provide verbal or written timely response, information or advice on relevant issues requested, making deliberate false statement in any form; verbal or written, et cetera.

3. As of the criminal aspect of paragraph (d), we submit that the two criminally investigative arms namely the Police and the FICAC are sufficient to carry out the breaches in any criminal offence as they are well empowered and well spelt out in the Crimes Decrees 2009 and the FICAC Promulgation 2007 rather than having another investigating arm as the enforcement officer.

The offence of abuse of office in Section 139 of the Crimes Decree 2009 caters well and enough for all and every officer mentioned in paragraph (a) which states:

“A person commits an indictable offence which is triable summarily if, being employed in the public service, the person does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another. Penalty - 10 years imprisonment.”

According to our reading and understanding of the Crimes Decree 2009, it has all the relevant required ingredients for a crime especially in the followings:

“Elements

Section 13 (1) An offence consists of physical elements and fault elements.

Physical Elements

Section 15

- (1) A physical element of an offence may be -

- a) conduct; or
- b) a result of conduct; or
- c) a circumstance in which conduct, or a result of conduct, occurs.

- (2) In this Decree -

"conduct" means an act, or an omission to perform an act or a state of affairs;
"engage in conduct" means –

- a) do an act; or
- b) omit to perform an act.

Omissions

Section 17 An omission to perform an act can only be a physical element if –

- a) the law creating the offence makes it so; or
- b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that by law there is a duty to perform.”

With all of those providing in the Crime Decree 2009, we fully believe that to have another Code of Conduct in the criminal aspect, is just a duplicity of the law that is already in existence. The only major problem we believe is the failure of the enforcement agencies; the Police and the Fiji Independent Commission Against Corruption. Why either the ignorant or arrogant or have compromised their positions for personal interests and may be purely inexperienced and lack qualification whereas other

office holders or those given the authority of power to receive reports and investigate cases as legally empowered by law including the President and the Chief Justice.

As mentioned above, Sir, we, on behalf of the former Police Officer's Association, I am making this submission through experience of being a victim through the laxity and non-performance of those concerned persons. Being employed in the public service that amounts to abuse of office, thus causing us losses.

Briefly for the information of this Honourable Committee, Sir, we attach here our submission several details and thorough written correspondence of unfortunate events where the members of the Former Police Officers Association (FPOA) and the current regular members of the Police Force in late 2009 and early 2010 were without our consent, some with consent but under duress directed to join the compulsory Police Group Welfare Scheme after being promised to be paid each \$10,000 as endowment retirement payment or \$11,600 maturity value upon retirement at 55 with only \$15 monthly premium across the board irrespective of age and rank. The directive was, any failure to join the said scheme would be disciplined.

This was according to the law and abuse of office and conspiracy between the two former Police Commissioners Esala Teleni and Iowane Naivalurua with the current Commissioner of Police, Sitiveni Qiliho together with the board members then of the said Welfare Scheme. Until to date no one has ever being paid the promised amount. Civil Court Action was taken by members of the FPOA and is still pending appeal in the High Court.

The criminal aspect of the matter was reported to FICAC on 9th June, 2018. On the 10th August, 2018 a follow up letter to the Deputy Commissioner of FICAC was dispatched to FICAC for non-reply or response to our report but still there was no response neither reply until to date. A letter of complaint was personally dispatched on 24th August 2018 to the Office of His Excellency the President as being the appointing authority of the Commissioner and Deputy Commissioner FICAC Promulgation 2007. There was no response or reply till to date.

On 24th September, 2018, I personally wrote to FICAC with the hope that by then there would be a change made to a Deputy Commissioner of FICAC. In the letter I complained against our Prime Minister and the Attorney-General for the abuse of office respectively in their ordering the FICAC investigators to release Alice Tabete the then Chief Executive Officer for Fiji Sports Council and Francis Herman CEO for the Fiji Broadcasting Commission from being arrested and criminally charge allowing the two to travel overseas but they failed to return and avoid possible prosecution until to date.

A couple of years or so later a strange coincidence happened when maybe on merit, the Prime Minister's daughter became the CEO for the Fiji Sports Council while the younger brother of the Attorney-General became the CEO of the Fiji Broadcasting Commission.

But since there was no change in the FICAC and no action was taken against the Deputy Commissioner of FICAC. I then on 26th September, 2018 wrote again and despatched another letter to His Excellency the President attaching the letter of 24th September, 2018 requesting that the FICAC be directed to investigate and take action. Until to-date there is yet to be a response or reply neither an investigation is carried out by the relevant enforcement agency.

On 11th October, 2018 after my request to have a personal audience with the Chief Justice was turned down, I then wrote and dispatched a letter to his office to seek advice and answers to the following questions:

1. Who and where else do I complain to against the President for failing to perform his duties thus abusing his office?
2. What and where is justice in Fiji?
3. Is the law are for every citizens or some are above the law and are exempted from being criminally investigated charged and prosecuted apart from those granted immunity.
4. How independent are the independent bodies and institutions that are established under the 2013 Constitution of the Republic of Fiji?
5. How about the rights to access to information so as that not to be unfairly discriminated against age, economic and social status?

Very sadly indeed there was no response or reply also until today from the Chief Justice. On 8th November, 2018, I even wrote to the Editor of the *Fiji Times* Limited requesting that my letter be published on my amazed and confusion on seeing the photograph in the two daily newspapers of His Excellency the President being sworn in as President by the Chief Justice for yet another term of receiving \$130,000 tax free salary to faithfully and bear true allegiance to the Republic of Fiji and its Constitution and all the Fijians to protect and promote their rights whilst in office. For that God to help him. They both were very much aware of our concern and grievances by then but they deliberately chose to ignore.

The *Fiji Times* Limited Editor exercised his rights and did not publish my letter which I respected. Because of all the above, it is only fair to say that we are very much reluctant to have confidence and faith in the justice legal system and we fully believe that there was, is and will be no independent commission anymore as all are being politically appointed and controlled.

We are now intending to write a petition to Parliament and a possible protest march in the city soon in this regards. We respectfully submitted, Sir for and on behalf of the FPOA members.

MR. CHAIRMAN.- Thank you very much, Sir for the submission that you have actually brought in front of the Standing Committee on Justice, Law and Human Rights. We note your submission and we have it in writing here. We will deliberate on the submission itself at a later date when the Committee actually sits in to do the deliberation. Thank you very much for coming and availing yourself to do the submission.

We will take five minutes break now to actually see of our submitter and then from there we will carry on with the Committee's work.

The Committee adjourned at 9.32 a.m.

The Committee resumed at 9.53 a.m.

Interviewee/Submittee: Reserve Bank of Fiji (RBF)

In Attendance:

- | | | | |
|----|--------------------------|---|-------------------------------------------------|
| 1. | Mr. Arif Ali | - | Governor |
| 2. | Mr. Esala Masitabua | - | Deputy Governor |
| 3. | Ms. Vilimaina Dakai | - | Chief Manager, Risk Management & Communications |
| 4. | Mr. James Baledrokadroka | - | |
| 5. | Mr. Mervin Singh | - | Manager, Corporate Communications |

MR. CHAIRMAN.- Good morning all. I would like to welcome the team from the Reserve Bank of Fiji (RBF), I think the biggest delegation to do a submission ever since we have started calling in for submissions for the Code of Conduct Bill, Bill No. 33 of 2018.

In front of us, we have Mr. Arif Ali - Governor Reserve Bank of Fiji; Mr. Esala Masitabua - Deputy Governor; Vilimaina Dakai; Mr. James Baledrokadroka and Mr. Mervin Singh. In front of us, on my far right, we have Honourable Ratu Suliano - Opposition MP (Member of Parliament); followed by Honourable Rohit Sharma - Deputy Chair; Deputy Government Whip and Government MP. On my far left, we have Honourable Mosese Bulitavu - Opposition MP; and myself, Honourable Alvick Maharaj, Chairman of the Standing Committee on Justice, Law and Human Rights. On my left and on my right as well, we have the Senior Secretariat staff.

Without further delay, I would like to give the floor to the team from the RBF to do their submission on the Code of Conduct Bill, Bill No. 33 of 2018.

MR. A. ALI.- Thank you very much, Honourable Chairman and Honourable Members for the invitation to make a submission on the Code of Conduct Bill, Bill No. 33 of 2018. Before that, let me congratulate all three of you on your re-election, and Honourable Rohit Sharma's election to Parliament and being Members of this Committee.

Yes, we are a big team here but our submission is quite short. I just want to start with the roles of the Governor and the Deputy Governor of the RBF which specifically stated as part of the offices and officials to whom the Act will apply, we are sincerely appreciative of this opportunity to make a submission on this Bill.

At the outset, the RBF welcomes the introduction of such a Bill. While we acknowledge that the Code of Conduct Bill, 2018 is established to give effect to Section 149 of the Fijian Constitution, we regard the initiative to establish the Codes of Conduct a positive way forward in strengthening public sector governance in Fiji.

The Code of Conduct has importance as both an internal and external guideline and an external statement of values and commitments. As public officials and senior ones at that, the proposed codes articulate the values that Government wishes to foster in us as leaders and our employees. In doing so, it defines the desired and expected behaviour and provides the benchmark against which our performance can be measured.

Honourable Chairman, we would like to highlight that having a Code of Conduct is not something new to the roles of Governor and Deputy Governor. The RBF has had in place for a very long time a Code of Conduct for all its employees, reviewed regularly to ensure its relevance to our vision and mission. We are therefore happy to note that the provisions of the proposed Code of Conduct relevant to our roles, are in line with our organisational Code of Conduct and there will be no challenges in complying with the requirements of the Bill.

However, we wish to highlight some matters for further clarification as listed below and which have been circulated to you. Firstly, let me go into the specific details of the Bill:

1. Part 1, clause 2: Interpretation - defines “public official” as an officer or employee of any statutory operation authority or of any commission established by, or continued in existence, under the Constitution. The RBF is one such statutory authority which continues in existence under Section 153 of the Fijian Constitution.

In this regard we seek clarifications, therefore, on whether the intention of Schedule 5, *Code of Conduct for Public Officials*, would apply only to the role of Governor and Deputy-Governor, or to all the officers and employees of the RBF. However, it is our understanding that the Code of Conduct under Schedule 5 will only apply to the Governor and the Deputy-Governor. The organisational Code of Conduct of the RBF, nonetheless applies to all officers and employees of the bank. So this is the clarification we would like to seek.

2. This leads to our second comment which is:

Part 3, clause 8: Compliance - we would like to seek clarification on this as well. For the purpose of compliance by the RBF, if the current definition of “public officials” stands, which would mean “all officers and employees of the RBF”, then the Code of Conduct contained in Schedule 5 may imply that all employees will need to be monitored by the Commission. We submit that such a situation would be a challenge to administer and propose for consideration that the monitoring and enforcement of compliance to the Code of Conduct containing Schedule 5 should not extend to all employees of statutory authorities but confined to the heads of authorities and boards of directors.

3. Part 4, clause 9: Monitoring Compliance – Sub-clause 9(1) provides that the Commission monitors compliance with a Code of Conduct under the Act by investigating any complaint made to the Commission under the Act concerning an alleged or suspected non-compliance with the Code of Conduct by any person to whom a Code of Conduct applies. We are of the view that, in addition to initiating the monitoring of compliance through the investigation of a complaint, the Commission should also be empowered to initiate investigations on its own accord.
4. Part 6, clause 27(1): Disclosure of Statement provides that “any person or entity may, upon making a written request to the Commission and upon payment of such fees as may be prescribed by the regulations, obtain a copy of a statement and any other information given to the Commission by any person to whom this Part applies.

In our view, this clause is quite open in that anyone can request a copy of a statement from the Commission, as long as the required fee is paid.

We suggest that a list of plausible situations be included as grounds for making such a request to be allowed under sub-clause 27(1). This may include:

With the written consent of the person to which the requested statement relates:

- In the cause of any prosecution of an offence;
- in the course of any related bankruptcy or winding up by the Courts; or
- when lawfully required to do so under the provision of any written law.

5. Finally, Honourable Chairman, our last comment is on the request for an additional listing under Schedule 6 regarding officers and officials to whom Part 6 of the Bill would apply. We note that the Director, Financial Intelligence Unit (FIU), a role established under the Financial Transaction Reporting Act 2004, and administratively reports to the Governor of the RBF is not included in the list. We propose that this role be included and for your information. I have spoken to the Director, FIU and he is in agreement with this.

Finally, Honourable Chairman and Honourable Members, our submission is short as we stated earlier, that we support the introduction of such a Bill. The RBF is an advocate of good governance under our financial stability mandate, supports Government's initiative to improve accountability through the enforcement of the Code of Conduct for key offices in the public sector.

We look forward to receiving the relevant Regulations to be established under the Bill when it is passed and therefore make this submission for the consideration of the Standing Committee. Thank you.

MR. CHAIRMAN.- Thank you, Governor, for that presentation. I believe you have actually summarised everything in a table format as well as provided by the Committee. Thank you very much for actually availing yourself before the Committee. I would actually open the floor now to the Honourable Members if they have any question, queries or clarification that they would like to seek from the RBF, and this is the time to do so, Honourable Members.

I just have a clarification to make while the Honourable Members come up with some questions, with regards to the last one, inclusion of the Director of Financial Intelligence Unit, just for your consideration, Part 6 on Declaration of Income, Assets, Other Interests and Liabilities, Clause 25(2):

“The Minister may, by regulations, amend Schedule 6 and prescribe other public officials or civil servants or members or employees of statutory authorities and other State entities to which this Part applies.”

So at any point in time, the Minister has the powers to include anyone in that particular Schedule, so the Schedule is not just for those 64 prescribed people who are stated in Schedule 6 but it can be inclusive to others as well, as and when the Minister decides to include them according to the list.

There was another thing that you actually raised with regards to your submission. I believe the RBF wants that the Commission does not actually just work on the complaint but if they feel there is a need for an investigation to be carried out, they can actually initiate it on their own without any complaint, is that what you mean?

MR. A. ALI.- For each of the 64 individuals of our team, if they provide their assets and liabilities and if the Commission feels that something does not look good, they can initiate, that is what I am trying to say and not wait for somebody to make a complaint.

MR. CHAIRMAN.- So basically that is in conjunction with Part 6 only?

MR. A. ALI.- Yes, Sir.

MR. CHAIRMAN.- Not on the Code of Conduct Bill?

MR. A. ALI.-

MR. CHAIRMAN.- There are two parts of this Bill: one is the Code of Conduct; and the other one is the Declaration of Assets and Liabilities, which is limited to what is actually prescribed in Schedule 6, and as I stated earlier, as and when decided by the Minister himself to actually declare but the Code of Conduct portion of this Bill actually applies to all public officials, so are you saying that they can actually initiate an investigation on the Code of Conduct as well?

MR. A. ALI.- I hope it is extended because really that is the whole essence of this whole Bill.

MR. CHAIRMAN.- Are the employees of RBF recognised as public officials?

MR. A. ALI.- Yes.

MR. CHAIRMAN.- So they will fall under the Code of Conduct Bill?

MR. A. ALI.- Yes.

MR. CHAIRMAN.- Each and every officer at the RBF needs to comply with the Code of Conduct Bill, if they are recognised as public officials. It is just the declaration bit which is actually restricted at this point in time to the Governor and the Deputy Governor. Yes, so the normal staff do not have to do the declaration at this point in time.

MR. A. ALI.- That clarifies our first two points that we addressed.

MR. CHAIRMAN.- Until such time the Minister decides otherwise.

MR. A. ALI.- You know, it seems that the Commission may have a lot of people to look at and therefore, it must have the right teeth.

MR. CHAIRMAN.- Well, as you know that the Commission will do the investigation and send it over to the appointing authorities. So in this case, it will be sent over to the Governor for appropriate action to be taken if there is a breach of the Code of Conduct. Honourable Members, do you have any question or queries?

HON. RATU S. MATANITOBUA.- Honourable Chairman, through you, Mr. Ali, you mentioned that you have your own code of conduct for your employees or the whole staff.

MR. A. ALI.- The code of conduct applies to each and every staff of RBF and it has been there for a long time. It stipulates the requirements and expectations of each and every staff and how they need to behave.

HON. R.R. SHARMA.- Thank you, Mr. Chairman, the Governor and the team. I have a few questions. You can suggest or can you say anything about the part of this Code of Conduct Bill that includes the whistle-blowers? What do you think about that? Also, what do you think about the part on the declaration of assets and liabilities of the spouse, the children and other family members?

MR. A. ALI.- In each of our policies, we have whistle-blowers and the protection of whistle-blowers. With regards to the second issue on declaration of assets of spouses and children, I think, I personally feel that that is not a bad thing. I recently circulated a British Broadcasting Corporation (BBC) news article about the President of Mexico. The article states that he does not own a car or anything but his wife owns a number of houses and vehicles, et cetera. So really, sometimes people may not put assets under their names but instead put them under their spouse's names or children's names. So I think it is important that if you really want to practice good governance and benchmark it against the best practice, I think that should be

HON. M.D. BULITAVU.- Thank you, Honourable Chairman. Through you, I thank the Governor and the team from RBF for that quite specific presentation. Given that you have your own internal code of conduct and now we have a national code of conduct and its aims are transparency and accountability. It also aims to capture those who are rotten potatoes, not everyone, and the Bill mentions that once a case has been investigated by the Commission, either the Commission will direct it to the prosecuting authority, whether it is the Fiji Independent Commission Against Corruption (FICAC), the Criminal Investigations Department (CID) or whether it goes back to the appointing authority, for example, it goes back to RBF for the internal mechanism of RBF to kick in and deal with that particular case. In merging those two systems, how fast or how quickly can we dispose a case if it comes, given that there will be two organisations that will be dealing with that?

Also, as we all know, when it comes up to public opinion, you are already subjected to the court of public opinion and the toll that has taken on an individual psychologically, and in the end that individual is cleared off, how fast can we deal with that given our internal system merging with that?

MR.A. ALI.- Thank you for raising a very important thing. One of the things which the Deputy Governor can attest to. We already have a code of conduct policy in the bank and one of the things that we have stressed, personally I have stressed is that whenever there is an issue of anything to do with conduct, the instruction is to try and finish it within seven days. If it is more, then they need to come and explain why and the key thing is this, before the public starts scrutinising, you must investigate quickly, robustly and present your findings.

The key is making sure that you give priority to such things so that the public does not hold you accountable or starting making their own thing. The key is making sure that we put resources and in the RBF, we have sufficient resources. The Governor is appointed by the Constitutional Offices Commission, the Deputy Governor is by the Board, so we have a Board that can very quickly meet. The Executive Management is appointed by the Governor in consultation with the Deputy Governor and all staff are appointed by the Chief Executive. I think with the staff complement of 212 or so, we will be able to handle it and the fact that we already have things in place. I do not see a challenge of implementing unless it is a really complicated case, we have the Financial Intelligence Unit (FIU) in the bank and it deals with funds or things like that or if we need to get other expertise then we will get that but I can assure you that we should be able to do it in most cases, if not all cases, within seven days.

MR. CHAIRMAN.- Members, any other comments or queries?

HON. M.D. BULITAVU.- Honourable Chairman, probably the submittees have raised a very important issue in terms of compliance and how the Commission is well resourced to carry out its duty,

and also the issue of trying to initiate complaints. Given if you look at the Bill, it is like the public who will complain and the Commission itself does not even know or instigate an investigation to start. That is what the submittees want to include in the Bill - to include probably another function for the Commission to also investigate.

MR. CHAIRMAN.- Thank you very much Honourable Mosese Bulitavu for that comment. On behalf of the Committee and my members, the Secretariat, I would like to thank the team from RBF for availing themselves to do the presentation on the Code of Conduct Bill. I shall now invite you and the media team as well to join as for morning team before you depart.

The Committee adjourned at 10.13 a.m.

The Committee resumed at 11.08 a.m.

Submittee/ Interviewee: Citizens' Constitutional Forum

In Attendance:

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|---------------------------|---|-----------------------------|
| 1. Ms. Lusia Lagilevu | - | Policy and Research Officer |
| 2. Ms. Louchrisha Hussain | - | Programme Manager |
| 3. Ms. Vilisi Nadolo | - | Research Officer |
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MR. CHAIRMAN.- Good morning to you all. In front of us we have a team from Citizen Constitutional Forum Ms. Lusia Lagilevu, Ms. Hussain and Ms. Vilisi Nadolo. Thank you for availing your time to be present here before the Standing Committee on Justice Law and Human Rights.

(Introduction of Committee Members by the Chairman)

Without any delay, I give the floor to the ladies present here before the Committee to actually do their presentation on the Code of Conduct Bill, Bill No. 33 of 2018. Thank you.

MS. L. LAGILEVU.- The Chairman, Honourable Alvick Maharaj and Honourable Members of the Parliamentary Standing Committee on Justice, Law and Human Rights. A very good morning to you all.

My name is Lusia Lagilevu, I am the Policy and Research Officer at Citizens' Constitutional Forum. With me is our Programme Manager – Ms. Louchrisha Hussain and Ms. Vilisi Nadolo our Research Officer.

The CCF acknowledges the efforts of the Standing Committee to receive and consider submissions regarding Bill No. 33 of 2018. We also like to thank the Committee for giving us this opportunity to present our submission before you this morning.

You will find in the submission that we have highlighted that CCF has 20 years of experience in community education, advocacy on Fiji's Constitution, democracy, good governance, human rights and multiculturalism.

We note with the drafting of this Bill, this is to comply with Section 149 of the Constitution of the Republic of Fiji and we have also stated that in the submission before you. Without taking up further of your time we will now move on to the importance of having a Code of Conduct in Fiji.

The CCF believes that instilling guidelines, policies or laws regarding a standard of ethics and professionalism is a definite need within State institutions. These codes are needed to ensure that those employed for the purpose of serving the people of a nation (as in the Bill herein) do so with accountability and transparency.

The code of conduct fosters a standard of behavior and values that is expected from leaders in striving for the best interest of the people they work for which in this case are the citizens of the Republic of Fiji.

In enforcing a code of conduct it is crucial to also factor in the principle of good governance which is what CCF has been working on for more than 20 years as I had mentioned before.

There is no single definition of the principle of good governance but the Office of the United Nations Commissioner for Human Rights has stated that it has dependent on the context and the objective required. The explanation on the term good governance provided by OHCHR is provided in the submission before you and that reads:

“... good governance has been said at various times to encompass: full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability and attitudes and values that foster responsibility, solidarity and tolerance.”

With that being said the CCF believes that good governance principles play a big role when managing public resources with a human rights approach. The relationship with good governance, human rights and sustainable development can be seen in international treaties and laws by the international community. For instance, the International Covenant on Civil and Political Rights (ICCPR) which the Fijian Government passed in Parliament for ratification. This treaty states in Article 25 (a) that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives.”

We note that the ICCPR has not been ratified formerly yet, (it is at the accession stage) it has been at the accession stage since 16th August, 2018 but ultimately Fiji has now become a member of the Human Rights Council. Now, with that platform where Fiji is in, it gives more reason for our country to step up to best practices in upholding good governance.

It is the CCF’s submission that in upholding good governance through the code of conduct, eight principles of these needs to be applied and these are:

1. Participation;
2. Respect for the rule of law;
3. Consensus oriented;
4. Transparency;
5. Accountability;
6. Equity and inclusiveness;
7. Effectiveness and efficiency; and
8. Being responsiveness.

You will find that there is also a copy of our education manual before you with the submission. It contains further explanations on the principle of good governance and the eight elements within them. The reason why we have based our submission on good governance is that we have found that these principles have not ultimately been implemented in the Bill and so we have also included in our submission certain issues that we wish to be addressed.

For instance, Section 12 – Investigation by the Commission. Subsection 1(a) of Section 12 does not provide for an explanation or definition as to what qualifies a complaint to be ‘trivial, frivolous, vexatious and lacking in substance’. One needs to be aware of what these terms entail within the context of the Bill so that a potential complainant does not waste time or resources. Both his or her or the Commissions.

In addition to that, this Bill as I have said before is for the purpose of holding a state officials accountable and transparent in the work that they do. Now, if those who have access to this Bill do not understand the terms that have been used, this could be problematic.

Subsection 1(b) nor the entire Bill fails to specify what could be deemed as “politically motivated”. I have also given an example there. This is a hypothetical scenario. If a Member of Parliament finds a direct conflict of interest by the Prime Minister unaccounted, not declared and unresolved and if this were to be raised in a sensitive occasion, such as a year for Elections, would this be deemed as a politically motivated complaint? That is an issue that we would expect if the Bill is passed in its current form.

Subsection 1(d), this Bill may have not been widely consulted in Fiji. Therefore it would result in a lack of informed citizens. Should the Bill be passed in its present form, uninformed citizens with vital information, possible vital information and not knowing the processes available, will contribute to a delay in a complaint being made hence the Commission would not decide on the investigation to be carried out. You will find in Subsection 1(d) it contains a reasoning for the Commission not to go ahead with investigations should there be a delay with the person putting forward his complaint to the Commission. So, what we are basically trying to say here, since there is not wide consultations within Fiji, that itself would contribute to a delay, because citizens of Fiji do not know of this process.

So, going back to the eight principles of good governance, this would affect the principles of participation, responsiveness, effectiveness and efficiency. Participation being the public of Fiji participating through these processes are included in the Code of Conduct Bill. Responsiveness being that the public would be less responsive because they do not know these processes, effectiveness and efficiency being that resources and time by the State is not carefully utilised.

We now refer to clause 12(4). We have actually put together subclause 4 of clause 12 and clause 14(1). The reason being that both provisions use the term “politically motivated”. But here we repeat the reasoning provided before and we would also like to add that this subclause does not fully address the process that the prosecuting authority being FICAC. The prosecuting authority would need to consider in bringing about a charge for a complaint being made for the purpose of discrediting or defaming or causing reputational damage.

In alleging defamation or reputational damage, this would overlap with defamation laws already in place in Fiji. Therefore the person complained of would have the option of filing a defamation case and/or the Commission referring the same matter to FICAC, the prosecuting authority. So, we feel that there is an unfair repetition in this provision and there are also unclear processes within those provisions highlighted.

We now move on to the Code of Conduct, Schedules 1, 2 and 4. We have specifically highlighted Part 2.6, which says, and I quote:

“Since the person to whom this Code applies is usually the only person who knows whether he or she is in that situation, the person to whom this Code applies has a personal responsibility to:

- (a) be alert to any actual or potential conflict of interest; and
- (b) take steps to avoid such conflict.”

Going back to the principles of good governance for the purpose of transparency and accountability, we note that it would be paramount for the steps as stated in Part (b) to be made clear. If

we are going to implement the Code of Conduct, there is no point in having vague provisions in place. Therefore, clear measures or steps to be taken to address conflicts of interest need to be specified in the Schedules. The people have the right to know what steps are being taken or should be taken to address conflicts of interest in matters of State officials who are utilising the resources.

With the issues highlighted, the CCF submits the following recommendations:

- i. A clear and concise criteria of actions which would allow the Commission to decide on no investigations and a summary dismissal;
- ii. A wider awareness on this Bill around the divisions of Fiji before accepting of submissions and vote in Parliament for passing. After all, this Bill is to promote and hold State officials accountable to the people they serve;
- iii. The eight principles of good governance outlined before you need to be considered and factored within this legal framework; and lastly
- iv. We submit that there needs to be clear and concise provisions in terms of steps which need to be carried out in the event of a conflict of interest.

MR. CHAIRMAN.- Thank you very much, Madam, for that presentation. I believe that was a very in depth presentation by CCF. I will open the floor now to my Members, if they have any queries, comments or questions that they want to ask to the members of CCF present here before the Committee today.

HON. RATU S. MATANITOBUA.-for a well and constructive presentation this morning. My question is on one of your recommendations – Recommendation 2 where you talked about awareness. Do you think this Bill should have thorough consultation with the people in rural areas? I seek your view, Madam.

MS. L. LAGILEVU.- Thank you for your question. At CCF, part or majority of our work is to work with those at the grassroots level in communities. Within our works with the communities, we found that still prevalent in communities the lack of awareness on Bills and Legislations, even the Constitution. This is part of the reason why we have made a recommendation that Bills that affect the citizens of Fiji such as this - the Code of Conduct Bill, needs to be widely explained.

I understand that there would be issues of time, resources within the State to be allocated in going ahead with consultations or awareness programmes about this Bill around the country. But still the essence is to get the people to understand this Bill because this is holding the State officials accountable.

If the people you are serving do not understand the Bill before you, then there is no purpose of having this Bill, because how can you hold someone accountable if you do not know what the processes are? So, the CCF believes that wider consultation needs to be put in place, and if possible, the Civil Society Organisations (CSOs) could also assist in this area, because we feel that the grassroots people need to know what processes are available to them. I hope that answers your question, Sir.

MR. CHAIRMAN.- Thank you for that. Honourable Rohit?

HON. R.R. SHARMA.- Thank you, ladies, for your in depth presentation. Part (ii) of the Recommendations, you have said “A wider awareness on this Bill around the divisions of Fiji”, any suggestions or would you like to add to it? How can we have wider awareness?

MS. L. HUSSAIN.- Thank you for your question, Honourable Sharma. Just adding to my colleague’s comments, she had mentioned that Civil Society Organisations (CSOs) play a big role in

disseminating information and at times we get reports in the papers that say that CSOs are taking out wrong information. So this is really a good platform for us to collaborate with the State and we feel that a lot of these Bills are not taken out to communities for them to understand what it entails and how it affects them, an example is the Online Safety Act.

We feel that that was also not widely consulted in communities. We have social media users in the communities and so a Bill or an Act that affects them, we believe that they need to be taught how a Bill passed in Parliament will affect them, they could be fined for saying something on social media. Likewise, we feel that for this current Bill, we do acknowledge that the State has limited resources in terms of time and resource, therefore, we are putting forth the opportunity to collaborate with you. We go out to communities frequently, we have a community education team that is out currently, as we speak, so they could easily take out this information whether it is published by the State or by us, but this could be an opportunity to collaborate with you to take out the information. Thank you.

MR. CHAIRMAN.- Thank you for that explanation. I would like a clarification regarding Recommendation No.3: how do you actually think that we can actually factor-in these eight principles of good governance in this particular Bill? How can that be factored-in?

MS. L. LAGILEVU.- With regards to Recommendation (iii), we feel that implementing the eight principles could be done through at least first and foremost training with those who are drafting the Bill, the stakeholders involved, so that they have a fair idea of what these principles entail. This can also be done through the Office of the High Commissioner of Human Rights (OHCHR) because we have actually derived the eight principles from International Standards.

So as I have mentioned in our submission, Fiji is now a Human Rights Council Member. Now is the time more than ever for us to step up and showcase to the world that we can also implement these standards to promote the Human Rights of Fiji. Apart from that, the Civil Society Organisations (CSOs) again can help with informing the stakeholders within the State, legislative drafters, in understanding the 8 principles of good governance. But more so, as I have mentioned in our submission, for example, the participation arm of good governance to implement that in drafting up this Bill, the communities around Fiji, as I have mentioned, need to be aware of what is stated in this Bill.

We may not know what issues they have or what they may not understand out of this Bill, so these are some of the reasons why the ordinary citizens of Fiji need to participate in the formulation of this Bill. There is another example we can give: the responsiveness arm of good governance. Now if the participation bit is not implemented, the responsiveness of good governance cannot be expected.

All these eight principles are inter-linked so if one fails, the rest is expected to fail as well. But ultimately, to understand the eight principles of good governance and to implement them, there needs to be engagement with these international agencies and the Civil Society Organisations for us to work hand-in-hand and actually draft up a very concise and specific Code of Conduct Act.

MR. CHAIRMAN.- Honourable Mosese Bulitavu, any questions.

HON. M.D. BULITAVU.- Thank you, through you, Honourable Chairman, thank you for the submission this morning, Team from CCF. My concern probably, I have raised a few drafting issues that have come up pursuant to clause 12 of the Bill, and also there is a lack of foundation when you are trying to meet a threshold of what potentially becomes the alleged offence and how that requirement is met per the elements of the offence and plus what will come later. You know when we deal with the offence, there are physical elements and other elements. Probably how would CCF like that particular provision to be reflected, if you are given the opportunity?

MS. L. LAGILEVU.- If we are given the opportunity, we would definitely be able to assist.

HON. M.D. BULITAVU.- Honourable Chairman, that would be important. If you go down to the issues of, that is on page what? It is on page 4?

MS. L. LAGILEVU.- Yes.

HON. M.D. BULITAVU.- On issues on the Code of Conduct Bill, Bill No. 33, Clause 12 (a) (i), (ii), (iii), (iv). If CCF can also provide further context as to what kind of format they will suggest, substitute to the current form that the Bill has. That can be done through our Secretariat once it is ready, probably.

MS. L. LAGILEVU.- Thank you.

MR. CHAIRMAN.- Committee Members?

MR. CHAIRMAN.- One thing that you mentioned is with regards to public consultation and awareness. I believe we have been going around asking for submissions and one thing that lacks in the general public is the interest to know what is happening. They know that a Bill is coming in, it will come in, they do not actually turn up to do the presentation. So, how do you think the civil society can work together with the Committee to ensure that people turn up to do submissions because for us, at a Committee stage, we cannot be going to each settlement and each village? At least we do go to district levels but even people staying within the districts in urban and peri-urban areas, they do not come to do their submissions. So, how do you think the civil society can help or work in collaboration with Committees to ensure that more people, first of all do their submission before an awareness is created about the Bill?

HON. M.D. BULITAVU.- Mr. Chairman, before you give time for the answer to come, not only that and how else can CCF assist the Parliamentary Committees in terms of when these Bills come out, immediately before the Committee goes out, that this Bill goes to the people to crunch first and when we come, at least, they have a background of what we are there for, given the problems that we normally face when we sit there and people want us to just talk about the Bill. After that then they will give a comment on what we have been discussing and that is not what a well-informed consultation or submission.

MS. L. HUSSAIN.- Thank you for your question. So for civil societies specifically CCF, some of the ways we go out and inform people about these Bills is not by one-way conversations but they are through interactive measures so it does not have to look like us sitting behind a table and talking about the Bill straight off the cuff but it could be sitting around on a mat, really breaking the law down for them and telling them, this is how it affects you.

We also try to link the Bills to human rights and we feel that human rights is still a concept that needs to be grasped by communities, but when we do take curriculum down to communities, we ensure that it is in a manner or a format that they will receive it. So like Lusua said earlier, we go out and advocate for the rights in the Bill of Rights as stated in the Fiji Constitution and using some of the concepts straight off the Constitution itself, is really new for them. So we do this through role play, about how it will affect you, so a lot of these needs processing and we do not expect them to grasp the concept in a one or two-hour session, but we spend time in the same community throughout, say a three-year project and we see the changes that they are beginning to question and engage in conversation. We feel that the process of taking this builds down to the communities is a very important process, so in order for them to be informed, they need to understand first and then they can engage and participate.

If I might just add to the eight principles of good governance, we would like to see this factored in the legal framework but also the process itself. I mean this process right here would be good if we could have had community members come here and put forth submissions but again for transparency, accountability and effectiveness of a Bill, we need to have everyone included in the process and not just the legal framework or the Bill itself, but the process. Thank you.

HON. M.D. BULITAVU.- Just another question through you Honourable Chair, probably if you see the Bill, it covers everyone from the President to even anyone who is a public official. If you look at it, it also covers the three arms of the State; legislature we are covered, the executive arm of Government and the judiciary. Given that this will be a uniform of conduct, under the provisions of the Constitution, what is CCF's view in terms of bringing in the Judiciary also to be part of this Code of Conduct when it comes to practical practise could be affected in terms of separation of powers, what is the view of the CCF on this?

MS. L. LAGILEVU.- In terms of the Judiciary, we find that it is pertinent for the Judiciary to be involved in terms of what processes are present for them to be held accountable, it is essential because they also provide services for the interest of the people. Ultimately in consultation periods as well, we would expect the Judiciary to also provide their submissions in these terms because it affects them.

Like the Honourable Bulitavu has mentioned, it affects all state officials and then we go back to the heart of the matter; the people. They are the reason why the state officials are here, so they have the right to know about this Bill.

HON. M.D. BULITAVU.- Last one Honourable Chair, in terms of anonymous complaint, probably in Clause 10 (3), what is your view on that proposition where there cannot be complaints made where there is an anonymous complainant. Will that encourage people to complain?

MS. L. LAGILEVU.- The CCF believes that there could be two sides to this actually. One perspective would be that sub-clause (3) would not really encourage people for the fear of their safety and security. That is one perception. The second perception, we go back to transparency. That factor of principle of good governance. Then again, you would have to weigh the balance between the two - the security of a person or the transparency basis of good governance and the credibility of this complaint.

MR. CHAIRMAN.- Thank you very much team from CCF for being present here today and submit their presentation on the Code of Conduct Bill. We do note your input on the Bill and will we deliberate at a later date when the Committee convenes. Thank you very much for availing yourselves.

The Committee adjourned at 11.45 a.m.