

STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

MONDAY, 4TH FEBRUARY, 2019

VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE, LAW & HUMAN RIGHTS HELD AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON MONDAY, 4TH FEBRUARY, 2019 AT 8.33A.M.

Interviewee/Submittee: Fiji Womens Crisis Centre

In Attendance:

- | | | | |
|----|---------------------|---|---------------------|
| 1. | Ms. Stephanie Dunn | - | Legal Officer |
| 2. | Ms. Miliana Tarai | - | Legal Officer |
| 3. | Ms. Lavonne Goundar | - | Counsellor Advocate |

MR. CHAIRMAN.- Honourable Members, before us we have three ladies representing the Fiji Womens Crisis Centre (FWCC) this morning to do a submission with regards to the Code of Conduct Bill, Bill No. 33 of 2018.

(Introduction of Committee Members by Chairman)

Without further delay, I would like to give the floor to the ladies from the FWCC to introduce themselves and then we will go ahead from there.

MS. L. GOUNDAR.- Good morning all, my name is Lavonne Goundar, I am the Counsellor Advocate at the FWCC.

MS. S. DUNN.- Bula sia and good morning, my name is Stephanie Dunn and I am a Legal Officer with FWCC.

MS. M. TARAI.- Hello, my name is Miliana Tarai and I am Legal Officer as well with the FWCC.

MS. S. DUNN.- Now, as we begin, the first thing we would like to outline is who exactly are we?

As you all know, we are the FWCC. The main goal for FWCC is to eliminate violence against women in Fiji, as well as in the Pacific. We also implement this vision through an integrated and comprehensive programme which is designed to prevent and respond to violence. It is by reducing individual and institutional tolerance of violence against women and increasing available and appropriate services for our survivors.

One of the ways that we address the issue of violence against women is using our Human Rights and Development Framework. This focuses on the human rights which includes, gender and social analysis of the problem and permits all aspects of FWCC. It recognises the root cause of violence against women which is an unequal gender power relations and the lack of knowledge and belief in human rights.

As we all know Fiji's recent inclusion in the United Nations Human Rights Council and the recent appointment of Ambassador Nazhat Shameem Khan as Vice-President of the Council, should push Fiji to work towards strengthening its own human rights situation, take leadership in the region by lifting human rights standards which includes better-drafted laws. The effect of any law that

promotes accountability and transparency should create an environment where it protects freedom of expression, and not to put it into jeopardy.

While FWCC welcomes the concept of the Code of Conduct Bill 2018, we cannot support the passing of the Bill in its current state as it creates an environment that is conducive to corruption. The reason being, this Bill creates fear and apprehension for complainants as it does not provide true immunity.

It is important that the Government of the day rethinks this Bill and understand that while the concept of this Bill is admirable, the current draft is flawed. This submission will be focussed on the reasons that this current Bill should not be passed but sent back to the drafters or shelved unless these flaws could be looked at.

One of the things that we have looked at is immunity. If you want whistle-blowers to come through, if you want corruption to be nipped in the bud, you must allow immunity and give true immunity to the whistle-blowers or the complainants.

If you look at your current legislation, it says that the Commission will not investigate if they are of the opinion that the complainant is malicious, politically motivated, frivolous, inappropriate or inexpedient. However, the Bill does not indicate how does the Commission comes to this decision.

The legislation does give immunity to those who lodge a complaint, but it is dependent if the Commission finds that that complaint is malicious, politically motivated, frivolous, inappropriate or inexpedient. Looking at this, when a complainant lodges a complaint, he or she faces five years imprisonment or \$10,000 fine.

That creates fear in any person if they know that if they are going to lodge a complaint and if there is a chance that they may be sent to jail because their complaint may be seen as politically motivated or malicious, there is nothing in the legislation that defines or outlines how the will Commission come to that conclusion or what they should look out for. Who decides that this is politically motivated? Who then decides whether it is malicious or not?

That creates fear and when there is fear, no one will willingly come up and lodge a complaint, even if they see corruption occurring and that defeats the purpose of this Code of Conduct Bill.

We should start taking notes from our neighbouring countries, like Australia and New Zealand, where the whistle-blowers are awarded immunity and do not face imprisonment. It is good practice that while whistle-blowers are provided protection under the law as whistle-blowers empower citizens against corruption, it encourages the reporting of misconduct, fraud and corruption.

However, when you have laws like the current Bill where immunity will only be given if the Commission does not find that the complaint is malicious, politically motivated, frivolous, then this creates fear to speak out and when fear exists, no one will speak out, even if it is the best and the right thing to do.

The other issue when we looked at the legislation was complaints. According to the Clauses in your Legislation, the Commission will not investigate any complaints if the complainant has already told someone. Now, there are some citizens who are not well versed with the law and they will need to seek legal advice in order to realise where they have to go.

An organisation such as us, where we provide counselling and we also point them to the right service providers, if we are reading your Clause as it is, this is what it is suggesting; that if we have a woman coming to our doorsteps and after counselling we found out that, yes, there is a Minister or yes, there is a public servant that is corrupt and is using their undue authority over this poor woman, we will then direct her to the Accountability and Transparency Commission. But if the Commission finds out that she has spoken to someone else before the Commission, that means the Commission will not investigate the matter. Then how does that help corruption? And that is one of the things that we thought that you need to look at, because at the end of the day, not everyone will come straight to the Commission.

Realistically speaking, most of your Commissions are based here in the Central Division. What will happen to those who are in the North or those who are in the West or those in the outer islands? What can you do if they are going to talk to someone else to get guidance and advice, and with the current legislation as it is, it does not give them the opportunity, because they know that if I they talk to the Crisis Centre and they direct me here, obviously my complaint will not be heard, neither will it be investigated because I have spoken to someone else. And how does that help corruption?

MS. M. TARAI.- I would just like to add on to what my colleague has said; with regards to counselling, one of our core services at FWCC is to provide counselling, that is actually our main core service and from our line of work, from what we see day to day, we have realised that a lot of women who come to our doorstep, it is actually a huge step for them to come and disclose whatever they are saying. So, if they do happen to share or say something in the counselling sessions whereby we then realise and say; "What you are facing, you need to go and report it to this particular forum", for them, again that is another huge step to take, to go and report it somewhere else.

The way Clause 12(c) of the current Bill is worded, it sort of puts a stop on that. It limits or restricts freedom of expression, freedom of speech, as well as it discourages women who have already been undergoing violence in their homes or have been undergoing power and control in their lives to take that second step. That is something that they will have to rethink about and is something that we are submitting to the Committee to consider as well in their submission to Parliament when you are tabling your report to also keep that in mind because here in Fiji, we still have that patriarchal mentality in our society so we have to also consider that.

Leading on from that, we would also like to address Clause 10(2) of the Bill, where it states that is it mandatory for all the complaints to be in writing. What we would like to raise to the Committee to consider is that not everyone in Fiji is literate. We have some citizens who are illiterate; they do not know how to read, nor do they know how to write and the prohibition clause, Clause 10(2) is something that is going to prohibit a lot of the complainants who would like to lodge a complaint. If they do not know how to write, obviously they would need someone else to write their complaints for them. And for that to happen they would need to disclose certain details about the names of the officers or whoever they are complaining about, to that other person.

The way the Bill is currently drafted in its wording format, it is going to prohibit that from happening as well. So, again it goes back to limiting and restricting freedom of speech, freedom of expression and it is going to stop people from coming forth and lodging a complaint and in this way, it is going to foster an environment that is conducive to more corruption and more oppression to happen.

MS. S. DUNN.- Now, the other thing that we have looked at when we looked at the Bill was the fact that the Commission is not the prosecuting authority, it is FICAC, which means that the

Commission will then take the complaint, investigate it, then hand it over to FICAC who does further investigation, then prosecute.

In other words, the complainant has to go through two Commissions for corruption to be addressed. They have to talk to two different Commissions, they have to talk to so many different people in the process before they actually get their day in court. And when you have survivors who have already been dealt with the blow, imagine repeating your story not once, not twice, not three times but almost close to ten times because you have to talk to so many different people to get to court.

Our suggestion is, you have already got FICAC, why is it then are you are using the Accountability and Transparency Commission as a filter? So all that the Commission is doing at the moment is collecting the complaints, investigate them and then they decide which one goes to FICAC and which one does not, so in other words, it is a filter.

It is not deciding which one goes and which one does not. That is why it gets us a bit worried when you have not accurately defined in the legislation what is malicious or how would the Commission come to find a complaint as malicious? Who then also decides that it is politically motivated?

If someone says something about SODELPA or about the Honourable Members of the Opposition or someone says something about the current sitting Government, who then decides that it is politically motivated? It is not clearly outlined in the legislation, and that creates fear. No one will stand up and no one will stand out if fear continues to rule their lives. If we have not given true immunity to the whistle-blowers or to the complainants, then how we are going to nip corruption in the bud?

One of our recommendations is immunity. You need to give true immunity to the whistle-blowers. If they are here to lodge a complaint, they do not want to have that constant fear that, “yes, *e va qo na* complaint”, I might end up going to jail and I might get a \$10,000 fine. Not only that, if their superior finds out that he or she was the one who lodged the complaint, imagine what the person will get when they are at work, especially if the person is reporting against their superiors.

The other issue is that complaints should be considered regardless to whom it is reported to first; that should not be an issue who they reported it to first. The issue should be what is the complaint about, that is important. If they are complaining that there is a public servant who is corrupt, that is more important than who they said it to first.

All our submissions so far we have given that if you are going to set up the Commission anyway, you need to be gender-sensitised. It is to ensure that the service provisions are able to respond sensitively and appropriately. There is a difference between customer service and being gender-sensitised. The way in which you speak to any person is where gender-sensitivity comes into play. The questions you ask and the way you approach the person is important. That is how you get a person to open up and to speak truthfully with you.

Our last issue is, we have noticed from the Constitution that the test here is good faith test. Now, we are suggesting that, that should not be used as a threshold but a person be required to have a reasonable belief of the existence of disclosable conduct to receive protection.

Honourable Members, that is all and do you have any questions?

MR. CHAIRMAN.- Thank you very much. I believe while doing the submission, it was expected that we actually have a contribution towards it. We actually give time to the submitters and after that, the Committee gets involved with the discussions. Then following that, an informal discussion definitely over tea.

You have actually mentioned quite a few things over there which you did actually explain with regards to a true immunity. The Commission is only present in Suva, complaints to be in writing when we have Commission and then FICAC as the prosecuting authority. Something that you actually mentioned the Bill being fraud. Why did you actually say that the Bill is fraud?

MS. S. DUNN.- Not fraud but flawed.

MR. CHAIRMAN.- Alright, I actually heard fraud, that is why.

MS. S. DUNN.- I am sorry my apologies, it is flawed.

MR. CHAIRMAN.- No worries. With regards to writing, I think Clause 10(2) as far as I believe and I stand to be corrected with regards to this, at this pointing time is, what we actually mean in writing is actually someone can actually present themselves to the Commission but then whatever he actually speaks out needs to be in writing. Not actually someone calling over the phone and then trying to actually lodge a complaint because as we say that any person who is actually complaining to the Commission must reveal his identity. So, a phone call with respect to the Bill will not be accepted as a formal complaint.

So, those are some of the things that once the Commission is set up then they actually can come up with a regulation. I believe similar things with regards to that clause which actually states about “malicious complaints”. I believe a whole set of regulations would be develop as to how the Commission is going to decide whether a complaint is malicious or not because that is a very vague section and as we go through and as time changes, there would be a lot of regulation that needs to be changed in order to actually decide the way the complaints are lodged and as the maturity of the Commission grows, it will be better for them to actually change the regulation rather than trying to change the Act if a complaint is lodged. So, that is on the Commission when the Commission is set up as to how they are going to come up with the regulations to decide whether that particular complaint is malicious in nature or whatever actually Clause 13 prescribes as per the Act once it comes into force.

MS. S. DUNN.- Thank you. The only issue I have with that is this. When it is legislated, it is there in writing. It is very difficult like you rightly pointed out to change. With regulations it is easily changed. Imagine what atmosphere that creates. That means with every complaint that comes in, there is always a chance that the Commission will change the regulation to suit how they want to decide. When it is enacted and legislated, they know, it does not matter who complains, when its complained the Commission will deal with them equally and it will be across the board because it is harder to change what is in the Act than is to do with the legislation. So it still creates that fear that, “okay, if I lodge a complaint today, they can change the regulations tomorrow and then if I lodge a complaint after that, it will not have the same effect as you did before the regulations were changed.”

So, when it is enacted and it is put in the Act it is very difficult to change but not only that, it gives a peace of mind to the citizens. It gives a peace of mind to us knowing that it is in the Act and whether the Commission likes it or not, if a complaint is lodged today, 10 years from now, 50 years from now it will still be treated the same way.

MR. CHAIRMAN.- As rightfully pointed, if anything comes into Act, changing is not easy especially when it comes to debate. What we have actually seen in the past, through experience is, majority of valid complains that investigations are carried out or in terms of natural justice to someone, just because it is in the Act and it cannot be change because politicians are debating, people they tend to wait for years and years before justice is served to them just because it is an Act.

So, this can be my personal opinion in regards to this. If it is in the regulation to serve the people with the natural justice that they actually deserve, it is better to have it in a regulation form so that it can be amended so that justice can be reached at a much earlier stage rather than the person having to wait for a number of years. We have seen the cases in the past where decades have gone by but there was not a review of the legislation since people were not able to get it passed in Parliament and justice was denied.

MS. S. DUNN.- The issue here is corruption. That will never change, so that is why it is important that when you are letting the citizens know, you can lodge a complaint. If you lodge a complaint, this is how we are going to reach "malicious complaints and this is how we are going to decide whether it is politically motivated.

The issue here will never change and that is the code of conduct was drafted in a way to ensure that corruption is removed and is no longer an issue with the public service, with our Judiciary, with our members of Parliament and with our Government. That is the picture that we should paint to everyone that regardless of what happens, this is how we are going to deal with it. When you create a regulation, you are saying that that is fine, this is what we have listed out, this is how we are going to make our decision. But please note this is easily changed, so if you lodge a complaint now and we will decide now and we do not like how we are deciding, we can always change down the line.

That is why we need a good foundation and if your foundation is not strong, as we all know, if a foundation to a house is not strong the whole house crumbles down. That is why it is very important that you make sure that your foundation, which is this legislation, is very strong. Otherwise with each Government, every time a new Government comes in, your regulation changes. That means every time a new Government comes in, the citizens have to know that there are new regulations, new laws in which they have to follow. Then you spend so much money trying to educate people that the regulations have changed now, it is not how it was before, but if it is an Act it remains the same regardless of what Government comes in. That is the issue here. You need to make sure that there is some sort of consistency. With regulations, with every change of Government, there will always be a change of the regulations which means you will have to re-educate. Imagine the bulk of money that you are wasting there to re-educate someone, not only that, in re-drafting regulations every time.

So that is why I am saying that it is important that when you draft a legislation, outline it there clearly. Do not have a lot of room or lot of loop holes where lawyer can dip in, where people can use it. You already have a current system in which you have the more educated using the system. How is there justice when you have the powerful using the system against those who are not so powerful? That is our issue here. Let your foundation be strong.

There is no harm in your outlining it here because at the end of the day, this legislation, the key issue here is corruption. That will not change 10 years from now or 50 years from now.

MS. M. TARAI. - If I may just add, it all comes back down to transparency. The reason why laws or Acts are very difficult to change is because of public consultation. You will need people's

opinion before you can actually go ahead and change it. For regulations, it is quite easy because it does not have to go through the entire process, so again it comes back down to transparency. The more transparent a process is, the more it leads to a robust democracy. Judging from the way that we have now joined the UN Human Rights Council, we are actually making a statement on an international platform in terms of human rights. So, again this is all a reflection on our State. If we are making transparent laws, transparent systems is in place, it will show that we are leading a robust democracy.

Again, if I may just point out, the Honourable Chair had pointed out Clause 10(2) on; “The complaint must be in writing”. If I may just highlight the word that is in that particular subclause. It says, “must be in writing”, which means it is mandatory. It is very good that this Committee has already picked out that it does not necessarily mean that the complainant has to write it down; that is very good. But the thing is, it has to be clarified in the Act itself. The way the Bill is in its current form, for anyone who reads it, that onus is on the complainant himself or herself to put it in writing. It does not clarify that that, “No you can come to us and we will put it down in writing for you”. That is something that is going to restrict and limit people from coming forth and making a complaint especially when they know that they have a barrier in place. That needs to be something that has to be clarified in the current Bill and that is what we have also been submitting thus far.

MR. CHAIRMAN.- Any questions from the floor or any clarification that you would like to seek?

HON. RATU S. MATANITOBUA.- *Vinaka*, Honourable Chairman through you, I thank the submittees for a very constructive submission they have made. On gender issue, Part 6 of the Bill - Declaration of Income and Assets, Other Interests and Liabilities. For example, I hold a public office, I have to declare all my assets, in this Bill my wife and my child have to declare their assets as well. I want to hear what is your view on this? Because I am public officer, they are not, explain your views on that?

MS. S. DUNN.- Thank you for that. That is another thing we had discussed on it and I do thank you for bringing that up. One of the things with the code of conduct is keeping the public service intact. It is my opinion, I am not too sure whether my fellow colleagues will hold this, but I think it is important that you hold a public servant accountable not their families, because in any case, if a public servant is corrupt, who then goes to jail, is it him or his whole family? Because at the end of the day, it is only him.

So the ones that should be having their assets declared should be the public servant or the Minister or the Member of Parliament, unless, both he holds an asset together with his wife. In other way, he will still disclose it himself because his name is on the asset. Because in other words you are saying, because my husband has now decided to become a Minister, I then now have to be scrutinised. I did not run for Parliament, I did not agree to be under the spotlight but because we are a loving wife, we then support him.

So that means, say for example, if my children are 30 years old and they had built up their assets, I now then have to ask them to disclose it and make it public to everyone. I am not too sure how comfortable my children will be in that place and how many good people you will discourage from joining the public service just because you have that particular section there. It is important to hold the public servant accountable, it is good to also hold their family accountable, if they play a part in that corruption, but, if they are innocent then why are we then subjecting the innocent to this.

MR. CHAIRMAN.- That can be taken as hypothetical actually when the Electoral Act came into place, similar sentiments were actually passed by the general public that not quality people would end up in politics, because we actually have to declare our assets, our fiancée or spouse and our kids, everything is basically declared.

So similar thing is happening with regards to the civil servant as well and as rightfully stated by another submittee, I think they were FICAC, that they have actually come across when someone is actually involved in corrupt practise, but their bank account is very clean. Whatever they earn, whatever their expenses is and whatever their savings is, but as soon as they went to the spouse's account, then there you see it, this is just like previously when things used to be kept under the mattress. Now, wives and children's accounts are used. That is why the immediate family needs to declare. Another issue that was actually raised is whether it should be accessible to the general public after paying a fee. That is valid going forward but just stopping them from not declaring as you actually stated earlier is a loophole to allow people to be involved in corrupt practises by not keeping it in their account but passing it to the wife's account and just safeguards it.

Honourable Members, any more questions or queries?

MS. S. DUNN.- Mr. Chairman, if I may just add on to that point; I actually do agree with you, Mr. Chairman. The main issue here is declaring the assets public, as for them declaring it to the Commission or declaring it at that time, that is not an issue. You rightly pointed out that their account can be clear as a whistle, it is not only that, even conflict of interest. If you are a minister and your son owns a certain construction company and if you are to award it to your son, then that in itself is corrupt because you are not following the procedures that are in play. Now, my issue here is not the declaring part, it is making the declaration public.

MR. CHAIRMAN.- So, that is noted. Honourable Dr. Salik, any comments or queries?

HON. DR. S. GOVIND.- Mr. Chairman and the team from the Fiji Women's Crisis Centre, I think you raised some very important issues. I thought that the role of the Committee is to listen to you and those are very valid points as far as I think and while drafting the legislation, of course, those points will be taken into account because I thought the Bill is going to go through the legal process of drafting. There were some issues like immunity, gender, and I am sure all those will be taken into account. It is not that we are defending, what you were saying that we are defending, it is not like that, that was my understanding. We are not defending what they are submitting but we are taking note of it and trying to make the Bill as appropriate as possible.

Secondly, my understanding was that, for the declaration of assets, for children, it was only up to 21 years old, is that not so? Not for all children.

MR. CHAIRMAN.- Yes, I believe there is the clause for dependent children basically.

HON. R. SHARMA.- Thank you, Mr. Chairman. Good morning, ladies. Earlier on, when you started, you said that the Code of Conduct Bill has not been known publicly. Can you give us some suggestions as to how can we, in the future, engage with the public because there are more Bills coming, so, can you give us some positive suggestions or ideas regarding that?

MS. S. DUNN.- Thank you. As the Committee might be well aware that for Civil Society Organisations (CSOs) such as ourselves, we conduct community education whereby we go out into the community. Like for Fiji Women's Crisis Centre, we conduct education on gender, domestic violence and rape. These sorts of issues are currently epidemic in Fiji at the moment. So, there are,

in these instances, we also receive public interest from these communities about certain legislations, Bills which are coming out. Just last week, we were holding a training with some youths down in Lautoka and they were very interested with the laws that were being passed and one of the things that they had raised was the Code of Conduct Bill.

Apart from other Bills like the Online Safety Act, how it was a Bill and now it is an Act, the Adoption Bill, all these things were being discussed and this was a way in which we were able to then discuss the Bill with them. So, in terms of public awareness, we suggest that maybe it might be prudent to consider involving CSOs and NGOs who go out into society and the public and conduct trainings and community education to also talk to them about the Bills which are coming up so that everyone is made to be well aware and have knowledge on what the Parliament is trying to pass and what is the current status quo about a certain Bill or legislation.

MR. CHAIRMAN.- Thank you for that.

HON. S.R. GOVIND.- Honourable Chairman, when a Bill like this is for public consultation, why do we not organise to have it on the mass media that this Bill is now for consultation and anybody could submit.

MR. CHAIRMAN.- Sir, that is actually for the Committee deliberation, we are at a submission stage at the moment. We will come to Committee deliberation and that is part of the agenda.

MS. M. TARAI.- When I was answering Honourable Rohit Sharma on the point about public awareness, we would just like to make it clear, the reason why we talked to the public and society about the Bills and the legislations which are coming out is because we believe that women's spaces are everywhere. It is not just limited to one certain place and that is why we talk to the public about Bills and legislations. That is also why we had addressed it with the youths last week when they had informed and questioned us about the Code of Conduct, for example. I would just like to make that clear so that we are all on the same page.

MR. CHAIRMAN.-So, if you have nothing else, I would like to thank the team from the Fiji Women's Crisis Centre for presenting their submission before the Committee on the Code of Conduct Bill, Bill No. 33 of 2018. It was a very good and robust discussion and people have raised some of the very valid points that the Committee has noted at this point in time and once we are at the Committee deliberation stage, we will definitely deliberate. For some of those things, we might actually need to go back to the drafters and see the best way forward for the Bill, because at the end of the day, the Bill is for the general public and for the betterment of our society, so we will definitely take note of those things.

Thank you very much for availing yourself before the Committee. *Vinaka*.

We will adjourn for five minutes and then we will resume again.

The Committee adjourned at 9.14 a.m.