**STANDING COMMITTEE ON**

**JUSTICE, LAW AND HUMAN RIGHTS**

**[Verbatim Report of Meeting]**

**HELD IN THE**

**COMMITTEE ROOM (EAST WING)**

**ON**

**MONDAY, 28TH JANUARY, 2019**

**VERBATIM NOTES OF THE STANDING COMMITTEE ON PUBLIC ACCOUNTS VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS HELD AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON MONDAY, 28TH JANUARY, 2019 AT 9.52 A.M.**

**Interviewee/Submittee: Biosecurity Authority of Fiji (BAF)**

In Attendance:

Mr. Hillary M.J. Kumwenda - Acting Chief Executive Officer

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MR. CHAIRMAN.- I would like to welcome the Acting Chief Executive Officer (CEO) of Biosecurity Authority of Fiji (BAF), Mr. Hillary, who is here in front of the Committee to present his submission on the Code of Conduct Bill, Bill No. 33 of 2018.

(Introduction of Committee Members by Mr. Chairman)

Without further delay, I would like to give the floor to you to present your submission with regards to the Bill. If there is any question following your submission, I will open the floor to the Honourable Members to ask, if there is any relevant question. Thank you.

MR. H.M.J. KUMWENDA.- Thank you, Honourable Chairman and Members of the Committee.

First of all, I would like to thank the Committee for giving BAF an opportunity to appear and make a submission on this very important Bill which is currently undergoing thorough consultations.

On behalf of the BAF, the Code of Conduct Bill is welcomed. The purpose of the Bill, as you understand, is to establish a code of conduct and for other matters as prescribed under Section 149 of the Constitution of the Republic of Fiji. In other words, it is to provide a legislated code of conduct of which public officers are held accountable for. In our view, it is a fair and transparent system which we, as an organisation, uphold and we duly support.

However, we are particularly pleased with Clause 12 of the Bill, whereby the Commission determines the validity and genuineness of a complaint before proceeding further. We feel this is important if this Bill is to stand the test of time. We also believe that as complaints may be trivial, vexatious, politically motivated and malicious in nature; we feel that this clause is very, very important to be included in this particular Bill.

However, the penalty imposed on persons laying malicious complaints, we feel that it is too low, in comparison to devastating effects that a “supposed complaint” has on a person’s career and standing in society. If you look at an organisation such as BAF, we have a lot of interactions with the public, different stakeholders, individual passengers, business people and also foreign nationals who come to visit our shores in Fiji, and we feel that that level of interaction, again, brings us closer to a whole host of complaints. For example, on a weekly basis, there are all sorts of complaints that are laid against our officers at our borders and again, when you look at BAF, we take responsibility for everything that happens at our borders, everything that happens when our staff are facilitating exporters and also any dealings with the business community. We feel that a person laying such malicious complaints, their penalty also has to be extremely equivalent in terms of the measure and also the damage that it can do to such a person holding a particular office.

Another issue that arises is that, whilst the Accountability and Transparency Commission has been established to investigate complaints made in accordance with the Bill, matters are referred to other authorities, for example, FICAC and DPP, for further investigation and for prosecution purposes and we refer to Clause 18 (1)(b). From a layman’s perspective, there seems to be duplicity in the roles. That is how we understand it.

The Commission investigates and if there is a breach that is found, it is then referred to the prosecuting authority for further investigation and prosecution. We feel that the Commission should be given enough tooth and power to be able to see to it that once they start their process, they complete it. So they should be given enough powers and teeth to be able to do that because the challenge that comes in is that, when they start their investigation and if they see merit in the complaint, once it goes to other wings, then they actually realise that there was no cause for such a complaint. Meanwhile, the damage would have been caused already or would have been made to that particular person, whose complaint is being laid against, and that is a serious concern that we feel should be looked at.

Another concerning issue is that, the statement of income, assets and liabilities of an office holder’s spouse and children. The main concern is that the spouse and/or children are not public office holders, yet information that is private to them will be required to be disclosed by law, as you understand the Bill seeks to do. We feel that this section may have to be re-looked at in the context of the purpose of the Bill, and whether this clause promotes its purpose or not.

In terms of specific issues that we would like the Committee to look at in our submission, we have noted that throughout the document, there is reference to the term “members” and members is used most often. However throughout the Act, no definition is provided for that or what we mean by the term “a member”. Also, I just alluded to the fact that as a result of this Bill, people will definitely be given an opportunity which is just fair, to lay complaints on any matter that they deem fit.

However, we are also very much alive to the fact that other complaints might be malicious in nature and such complaints might have a devastating effect on a person’s career and the standing of that particular person in society. Again, in the real world, it does not matter whether that person is eventually found not guilty but by a mere laying of that complaint, that label gives and remains at the back of that particular person forever and it might cripple their career that they have held over the years through great sacrifice. So we feel that the penalty that has been proposed which is about $10,000 is not sufficient enough to even deter people from laying such malicious complaints. So if their penalty is higher, then the Commission would be guaranteed that the complaints that will be coming to the Commission are genuine complaints. And then the Commission will just be busy now, dealing with complaints that are genuine in nature rather than to deal with complaints that could be malicious in nature.

I think BAF as I have said, we deal with so many stakeholders and these complaints is something that we face on a daily basis. Sometimes people might lay serious devastating complaints against my staff, especially those at the border, but the good thing is that with the modernisation that we have now in all our major ports of entry as well as Nadi Airport, there is also video footage. And I can tell you that 99.99 percent of those complaints are false and they are malicious because when we are dealing with border security, we are trying to enforce the law to the latter.

Other people or most travelling passengers do not believe that we have got such good systems in place and they always want to bypass the system. So once they are intercepted and they are imposed with the fixed penalty order or they are ordered to appear in court, they just lose it because firstly, they do not want to pay that fine and, of course, for BAF we do not force, it is just something that is already in the law. It is either a person pays a fixed penalty order or they go and fight off their case in the court of law, but usually people just cannot take that. There will be all sorts of complaints to say, ‘No it was an honest mistake’ or ‘No, I have been travelling for four hours, I did not realise’. But at the same time, the stakeholders know that BAF has done quite a commendable job in terms of trying to create awareness using different platforms.

Before the plane lands, there is an inflight video that is played, just 30 seconds. The second opportunity is on the declaration card. People willingly tick ‘yes’ or ‘no’. All their questions are being reviewed, it is very clear.

The third opportunity is in the landing zone. You will see our banners and posters trying to warn people to declare.

The fourth opportunity is after they have passed Immigration when they are coming down from Baggage Arrival, you can see that we have tried to also enhance the outlook of our awareness materials. There are LED screens that are being put, strategically positioned to make sure that every incoming passenger is able to see.

Still, people do not want to declare. Even by a mere fact that a person sees a BAF Officer, it should trigger them to make their right decision. But the moment they reach the BAF x-ray clearance area, once they are intercepted, then they started jumping up and down.

Believe me, our officers have undergone training. We know that we are a frontline agency, we know the importance of the tourism sector to the Fijian economy, it contributes greatly and when people come to Fiji we are the first people that they see. But even then, all these things still happen and every other time, we keep on dealing with the same issues.

I will give you an example. Just last year, about 1,971,248 bags were x-rayed screened and 569,286 passengers were intercepted. These are the people that we intercepted, while 257,596 bags were checked, so this is the level. So you can imagine in a year, the number of people that we deal with who are not complying with our laws.

Secondly, we feel that there is need to expand to other Government Ministries and Departments. We have noticed that it does not take into account members of other statutory authorities or the Judiciary and we feel that this is an important view which should cut across. By that, I mean, it has involved so many important position holders in Government and we feel that, other statutory authorities that are performing similar functions should be included in this particular Bill.

We feel that the role of the Commission should be reviewed, as we have seen that there is duplicity in their role. For example, if an investigation is conducted by the Commission and if there is a genuine complaint, it is then referred to other prosecuting authorities for further investigation and prosecution. We feel that the Commission should be given enough authority to be able to see the issue to its logical conclusion.

We feel that the requirement for the statement of income, assets and other interests that are required by spouse or any child, this should be reviewed and looked after.

We feel that the public office holder should be the only person subject to scrutiny. The public has no business dealings with the private affairs of the spouse or children unless they are public officers, and we feel that this has been ably included in Part 6 and Part 6 applies in this case.

With regards to statements to be provided by spouse or children, we feel that this should be deleted as the holder of the position is already outlined in Schedule 6. And where statements are needed, we feel that this should only be disclosed if it is required for any investigation and no other purpose.

At this point in time, I would like to thank you, Honourable Members, for giving me an opportunity and to allow me to come and make this submission. In addition to that, I will also submit a written submission to the issues that I have already presented.

Thank you.

MR. CHAIRMAN.- Thank you, Acting CEO, BAF, for your presentation. Just on your presentation, I would like to actually get this clarification. You said in your submission that “the Commission will refer the case to the DPP for further investigation and prosecution. Where did you actually find that reference from within the contents of the Bill?

MR. H.M.J. KUMWENDA.- Thank you very much, Mr. Chairman. I think it is in Clause 18(1)(b).

MR. CHAIRMAN.- I believe there are two parts to it. What you are actually looking at is the decision after investigation, and then this investigation by the Commission. If you look at Clause 12(4), it clearly states, and I quote:

“… the complaint to the prosecuting authority for the prosecuting authority to institute such criminal proceeding under section 13.”

So you are referring to Clause 18(1)(b), is it not?

MR. H.M.J. KUMWENDA.- Yes.

MR. CHAIRMAN.- Alright.

MR. H.M.J. KUMWENDA.- Because in our understanding, these are inter-related and they mean the same thing in terms of their procedures. There will always be a point whereby, after they look at the matter, then they will have to refer to other agencies to again conduct further investigation. Meanwhile, our understanding is that for the Commission to determine whether the complaint is genuine or not, they would have conducted a thorough investigation.

MR. CHAIRMAN.- Thank you for the clarification. Honourable Members, do you have any clarification or questions for the Acting CEO?

HON. M.D. BULITAVU.- Through you, Honourable Chairman, Acting CEO, you mentioned something in layman’s perspective on an interpretation of a clause. Can you repeat what was said there, Sir?

MR. H.M.J. KUMWENDA.- Thank you, Honourable Member. With regards to the layman’s perspective, I was actually making reference to the same issue that has been raised by Mr. Chairman regarding the duplicity of roles.

What I had indicated is another issue that arises that whilst the Accountability and Transparency Commission has been established to investigate complaints made in accordance with the Bill, matters are referred to other authorities. I gave an example, in this case, of FICAC/DPP for further investigation and for prosecuting purposes as referred to in Clause 18(1)(b). I did indicate that from a layman’s perspective, there seems to be a duplicity in the roles. The Commission investigates and if there is a breach that is found, it is then referred to the prosecuting authority for further investigation and prosecution.

We feel that the Commission should be empowered to do that because our understanding is that, you do have the competency to look at those particular issues relating to such types of complaints. We feel that the nature of their complaints, some of them could be highly malicious and depending on how fast those cases are discharged. If they are not discharged timely, it means that it may have some devastative effects on a person’s career. Some of these aspects can even extend to a person’s social life because in reality as I had indicated, it does not matter the outcome of that case or the complaint, assuming that person is not guilty of the allegation laid against him or her, but that label forever depending on the gravity of that complaint, might forever live with that person and staff might start looking at the person differently.

In the eyes of the society, that person might be guilty; that is such the reality of life. That is why I was saying that I link this to the penalty that is also imposed on any person laying malicious complaints or they discover through their investigation that the complaint has no merit. So we feel that $10,000 is just too low a figure because it is not enough to deter or hinder any person from coming forward and lay any malicious complaint because they can pay it off.

MR. CHAIRMAN.- Five years jail term, would that work together with $10,000?

MR. H.M.J. KUMWENDA.- Thank you very much, Mr. Chairman. I think when you look at five years, I can still recall the things I did five years ago. Even if it is mixed with $10,000, in five years’ time, he or she will come out. And the person might be on bail, so we have to look out at all these things. So, if it is a penalty, it really has to be harsh and I can give an example.

In certain authorities, you will find that there are penalties that they have which is so high, so it forces people to comply. For BAF, our penalties are not so high, so this is why you see people easily getting away with it because most of them are not forced to comply. But the more we make it stiffer, and I am glad that our Administration Section will be doing their review of the policies very soon, what we intend to do is to make sure that the penalties or the fixed penalties are quite enough because we are not interested in getting those fines, but for people to comply because if people comply, that is the only way we can keep out all sorts of pests and diseases away from Fiji because people will be complying.

On that basis, that fine or that penalty has to be high enough to act as a deterrent for any person coming forth because they would know that this is a very professional Commission. They will investigate, they will get all their facts and figures and if they discover that it is of no merit, then the law would be against him or her. Essentially, matters that would be coming to the Commission are only those that are of merit in them and we feel that the Commission will operate effectively by looking at things that indeed needs to be looked at rather than dealing with all sorts of complaints. Thank you.

HON. M.D. BULITAVU.- Through you, Honourable Chairman, just another question. If I refer you to Clause 9 of the Bill which is before the Committee, it talks about the ability of the Commission to monitor compliance. And it jumps into trying to investigate any complaint, but the suspected cases for any non-compliance can be very broad – non-compliance of what? Of an instruction from a customer who came to your front desk and asked something and then you did not act, you turned that away or you were supposed to meet him but you had another commitment somewhere but that particular person decides that it is a bad conduct? It is too broad. What do you think about it? Should there be a limitation or a broader definition or a very specific definition as to what kind of conduct actually suits a non-compliance of the Code of Conduct?

MR. H.M.J. KUMWENDA.- Thank you very much, Honourable Member. I think you have raised a very pertinent and fundamental question in terms of the scope of the complaint.

With that, yes, I think it has to be narrowly defined than to leave it too broad. I will give an example. I think being in BAF, we are dealing with people who have commercial interests. We are dealing with people whom, majority of them are very good and they comply. But because of the interaction that we have and I have already given numbers, some of them range into millions just per year, so that tells you in terms of the level of interaction that BAF has.

For example, just for the issuance of permits, most of these permits have to meet certain conditions and in a situation that a person does not satisfy those conditions, some of them go out and can lay all sorts of allegations against our staff. There have been previous allegations, especially with our auditing team. We audit to make sure that all the stakeholders are complying in accordance with the Act and Regulations that BAF imposes in accordance with the law.

There have been instances whereby one rival company is complying, the other rival company is not complying and then they start accusing our staff to say, “Why did this happen, you people are favouring this person”, because by the very nature, that also could amount to misconduct because it means that you are not performing your duties in an ethical manner. So people might have all sorts of complaints that will be coming to the Commission so we feel that it has to be properly defined.

There should be like a qualifying test; whether a particular complaint requires the Commission to look at or if it is just a general operational issue. Certain general operational issues that deals with complying to certain procedures of an organisation or certain standard operating procedures, those should be left out because it is practically an operational matter of that institution. Because if it is also included in that, it means that it would be difficult to deal with stakeholders. Our officers will feel they are not protected and in discharging their lawful duties, they should also feel protected by the law.

MR. CHAIRMAN.- Thank you very much Acting CEO for that presentation, and thank you very much for availing yourself to present yourself in front of the Committee to do the presentation on the Code of Conduct Bill. On behalf of the Committee, I would like to thank you for that. We will now break for five minutes and I believe we have FICAC waiting to do their submission.

The Committee adjourned at 10.21 a.m.

The Committee resumed at 10.35 a.m.

**Interviewee/Submittee: Fiji Independent Commission Against Corruption (FICAC)**

In Attendance:

1. Mr. Rashmi Aslam - Manager Legal
2. Ms. Frances Puleiwai - Senior State Counsel
3. Mr. Sam Savumiramira - State Counsel

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Thank you Honourable Members, welcome back. We have in front of us the team from the Fiji Independent Commission Against Corruption (FICAC). We have Mr. Aslam, Manager Legal; Ms. Puleiwai, Senior State Counsel; and Mr. Savumiramira, a State Counsel as well.

(Introduction of Committee Members and Secretariat by Mr. Chairman)

Without further delay, I give the floor to the team from FICAC to do their submission. If there is any question, we may interrupt in between but if not, then at the end of the submission we shall ask for clarification if there are questions from Honourable Members. Thank you, the floor is yours.

MR. R. ASLAM.- Thank you. The Honourable Chairman and Honourable Members of the Committee, first of all, thank you very much for having us here and giving us an opportunity to provide our submissions on behalf of FICAC.

Let me introduce my team, Senior State Counsel, Ms. Frances Puleiwai and State Counsel, Mr. Sam Savumiramira, in fact, assisted me in drafting this submission and studying the proposed legislation in detail. We have handed our submission as well to the Committee and in brief, we are not going to go through each and every provision of this Bill. We will give an overall proposal and submission by FICAC and in fact, Honourable Chairman, you will notice that we have two minor proposals to enhance the powers of the Commission which can be taken into consideration in the due stage. These are the FICAC’s submissions.

A transparent and accountable public service is the bastion of an efficient public administration. It helps to enhance the public confidence and ultimately assist in the economic growth and the development of the country. Therefore discipline in Public Service can never be compromised. The Code of Conduct for public servants at all levels will ensure that those who hold responsible offices in public service act in the public interest with honesty, integrity and impartiality

The code of conduct legislation would bring about those higher standards required of a public officer. At the outset, FICAC wishes to state that it fully supports the initiatives as provided in the Constitution and is ready to take on those additional responsibilities given to FICAC as the prosecuting body. The draft legislation and the schedules thereto are comprehensive and we do not intend to revisit every provision of the Bill in this submission. In this submission FICAC has two proposals for minor amendments that would further enhance the powers of the Commission which we think are essential in handling its statutory functions.

FICACs role as prosecuting body. The Bill has recognised FICAC as a prosecuting body of the Commission except in circumstances where the complaint is against the Commissioner or the Deputy Commissioner of FICAC. FICAC’s recognition as a prosecuting body is complementary to the primary mandate given to FICAC under the FICAC Act and the Prevention of Bribery Act, which is to deal with bribery, corruption and other fraud related offences in the public service.

Once the complaints are referred to FICAC after the initial investigation by the Commission, FICAC as a prosecuting body will commence its proceedings and that would include conducting further investigations where necessary and instituting proceedings in the court of law. We understand that the criminal proceedings in Court by FICAC is parallel to any other action the Commission or the appointing authority of the public servant may take.

Now, some salient points on the importance of the Bill. The proposed legislation is very important in smoothing out the wrinkles of the fabric of public administration. For example, there were many instances where the convicted criminals continue to occupy their respective offices and their superiors or the appointing authority did not take any action against them disciplinarily. We have also seen in some occasions where public officers continue to hold senior positions in civil service in statutory authorities even after being criminally charged for abusing their office.

Such inactions by the heads of the organisation will bring nothing but lack of public confidence in their administration, discrimination in treating its own employees and serious instability in their administration. This is a serious concern. However, the Bill provides solutions to those issues. The Commission is empowered to take actions and advise the relevant organisations to take appropriate disciplinary action, if the Commission thinks that there is a breach of the Code of Conduct.

The proposed amendments: Section 15 gives powers to the Commission the rights to access material. Having such powers is important in fulfilling the functions of the Commission, however, the power is only limited to access the material in any Government ministry or a department. It does not extend to other statutory authorities, commissions or other offices which are created under law.

Since the definition of the “public servant” is wide and it covers those who work in those authorities and the commissions, it is imperative that those institutions are also included in this section. This will give far more wide accessibility to the relevant material. As such, we suggest that section 15(a) could be read as:

(a) is entitled to full access at all convenient times, to all minutes, records, contracts, documents, books, accounts and other material of any Government ministry or department, any statutory authority or commission established under written law, that relate to and are relevant to the investigation.

Now, what we suggest here is to include, in addition to Government ministry or department, any statutory authority or commission thereto.

Moving on to section 17: section 17 provides confidentiality of the complainant and the person subject of the investigation. This provision is unconditional and is a standalone provision without any proviso. However, section 5 of the Bill provides four instances where the details could be revealed.

However, it appears that section 17 again prohibits the disclosure and referral allowed under section 5 of the Bill as well. There is, in our opinion, a slight ambiguity. In order to avoid any confusion, we suggest that section 17(2) could be read as follows. We suggest simply including the first line:

(2) Subject to the provisions of this Act or perhaps subject to section 5 of this Act, any member, staff, employee, agent or consultant of the Commission must not disclose, report to any person or entity, any details concerning an investigation of any complaint by the Commission under this Act, including the name of the complainant and the name of the person, the subject of the complaint.

In conclusion, we say that the Code of Conduct legislation is the need of the hour in shaping the public administration of the country, and FICAC looks forward to the establishment of it and work closely with the Commission in its statutory functions. Thank you very much, Honourable Chairman.

MR. CHAIRMAN.- Thank you very much, Mr. Aslam, for that brief presentation that you have done before the Committee. I would just like to get a clarity, not actually with regards to the submission, but section 18(b) which I will read out to you and then I will actually get some clarity on that:

“Refer the complaint to the prosecuting authority and the appointing authority of the person, the subject of the complaint if the Commission decides that the conduct of that person warrants further investigation and must provide a copy of the written notice to the complainant and the person, the subject of the complaint.”

When the Commission is actually referring a case to FICAC for further investigation, do you believe there would be a duplication of work that is already carried by the Commission or do you think moving forward, will it not be a duplication of work once the case is referred to FICAC?

MR. R. ASLAM.- Honourable Chairman, it is a very important question. In brief, there would be no duplication in terms of work, however, in practicality what we understand is, for example, in the investigation of the Commission, it can only call for the document and assess the document but when it comes to further investigations by FICAC, it is becoming a criminal investigation so we will have to abide by the criminal procedure rules, such as going for a search warrant and issuing a search list, et cetera. So what we take as the investigations done by the Commission is merely a preliminary investigation. Thereafter, a proper, full, thorough investigation will be commenced by FICAC, rather than a duplication. The FICAC investigation is complementary, if we have to go further into details, so there is no duplication in my opinion.

MR. CHAIRMAN.- Thank you for that clarification. So, basically what we are saying is that the Commission is not a prosecuting authority, whatever investigation they will do, they will just refer that to FICAC, and FICAC will take it from there onwards ...

MR. R. ASLAM.- That is correct.

MR. CHAIRMAN.- … as per the criminal procedures?

MR. R. ASLAM.- That is correct.

MR. CHAIRMAN.- Thank you very much for that clarity. Any other Members have any questions for FICAC, with regards to the submission?

HON. RATU S. MATANITOBUA.- Thank you, Mr. Chairman. Through you, Part 6 of the Bill - Declaration of Income, Assets, Other Interests and Liabilities, what is your view? I am a public office holder, but my spouse (wife) and children are not public office holders, I need your view on that.

MR. R. ASLAM.- Thank you for that question, Mr. Chairman. We understand that the concerns may have come from the immediate family members of the public officers, but let me share my experience as well.

The importance of this Code of Conduct is mainly not to share the behaviour of an honest officer, this is to prevent any action by a dishonest officer. So when it comes to dishonest officers, sometimes we have seen that their actions are a bit suppressed. They would not keep any assets they acquire through criminal actions in their own bank accounts, or they would not transfer into their own names, they would keep it under their immediate family members, like spouses, de facto partners or children.

If the breadwinner of the family decides to become a public officer, then there is some sort of compromise that the family also will have to do, and the family inevitably will become in the public eyes as well. So they have to sacrifice certain liberties they may have, if the transparency should be fully ensured of that public officer.

MR. CHAIRMAN.- Thank you for that answer. Honourable Matanitobua, that is why under the Electoral Act, you actually have to give everything for Mrs. Matanitobua as well.

(Laughter)

MR. CHAIRMAN.- Any further comments?

HON. R. SHARMA.- Mr. Chairman, what is the view of FICAC regarding whistle-blower; also regarding the fines, currently it states $10,000 and a 5-year imprisonment, any comment on that?

MR. R. ASLAM.- Mr. Chairman, the policy on whistle-blower is very important, it is not a new thing to Fiji.

The FICAC, in fact, has a whistle-blower policy and we entertain anonymous complaints. The importance of having a whistle-blower policy or giving the ability for anyone to come clean without fear, that it prevents for the victimisation because sometimes there can be time gaps, for example, a person can make a complaint and when the complaint is given due consideration by any authority, it takes some time. But, in between, the suspect or the subject of the complaint gets to know about this and within this transition time period, there can be certain victimisations. We have seen this in the practical scenarios, so apart from handling complaints efficiently, having a whistle-blower policy is important.

Coming to the second question, the fines or the imprisonment stated in the Act are not excessive. We have compared this with other provisions in other laws as well, for example, the FICAC Act, the Crimes Act, the Electoral Act, the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, and the fines are, in fact, not as high as the other Acts as well.

On the other hand, at the end of the day, the fine or imprisonment is imposed by the Judiciary and the Judiciary will take all the matters into consideration and impose a very fair punishment following the usual practice that the Judiciary takes in the sentencing process, for example, there is a two-tier process; there is a tariff that the court must first establish and accept. In that tariff, there must be a starting point and when the court has considered all these things and also gauge the seriousness of the offence, it may not necessarily come up to $10,000 or $50,000 or 5 years, it will even remain within $500 or may be two months or three months imprisonment, or even a suspended sentence.

It will entirely be the discretion of the court, for example, we have seen similar situations like in the Crimes Act, where there is an offence called “abuse of authority” and the maximum punishment is 17 years, but the courts rarely impose 17 years on the general abuse of office offences. It may vary from non-custodian sentences like suspended sentences to maybe a maximum of 10 years of imprisonment except for exceptional cases.

At the end of the day, it is the discretion of the Judiciary and my short answer to that is, the fine or the imprisonment is not excessive.

MR. CHAIRMAN.- Thank you. Honourable Mosese Bulitavu?

HON. M.D. BULITAVU.- Thank you, Mr. Chairman. Through you, thank you Manager, Legal and the team from FICAC.

My question will be the time that FICAC will eventually dispose a case given it is investigated by this Commission, and it is also referred to FICAC and FICAC deals with corruption cases and other political cases, and the time that a particular officer who is alleged to be non-compliance for his/her case to be finally discharged rather than to be on a hanging charge, already subject to the court of public opinion, and also could be facing a suspension from the organisation pending investigation of the outcome of the case. How fast can FICAC dispose these cases if FICAC is ready as you have said?

MR. R. ASLAM.- Thank you, Honourable Chair. It is a very challenging issue. FICAC is a very small organisation when you compare with all other law enforcement agencies and we have a complex fraud investigation going on and the resources are very limited. Given that, we wish to say that we take it as a challenge, and I am sure that the Deputy Commissioner and FICAC will prioritise the matters referred by the Transparency and Accountability Commission. That is one of the ways that we can address the issues if there is any delay. Sometimes there are legitimate delays that occur because if we look for a particular document, for example, from a bank; a bank statement sometimes takes 3 weeks to 3 months, depending on the size of the document we ask for. Those are certain things beyond our control but within our control, what we can say is, if there is a complaint referred by the Commission, FICAC will prioritise those Commissions and within a reasonable time period, we will conclude the case and refer our findings to the Commission.

HON. M.D. BULITAVU.- Probably a final one, Honourable Chair, just through you again, given that this Code of Conduct also subjects in Schedule 3 the Judiciary and the Judicial Officers, and if it happens that one of the Judicial Officers or a Member of the Judiciary falls within the scope of this and is referred to FICAC, what challenges does the legal team and FICAC will face given the independency of FICAC and also the independency of the Judiciary? Do you see it as a challenge?

MR. R. ASLAM.- I believe we will take our normal course, and we will not take it as an exceptional case. Given that there are sufficient provisions in the Bill to protect the identity of the complainant, and also the persons subject to the investigations, we are very mindful of that and it is very important to have those provisions.

Given the availabilities of those provisions, I believe the best course of action would be taking the normal course of action. I am sure in our past experience, we have investigated and prosecuted non-judicial officers within the Judiciary but the Judicial Officers, including the Honourable Chief Justice, have given their cooperation and fullest assistance in our investigation, and we hope that the same assistance will be given to us.

MR. CHAIRMAN.- Thank you, Honourable Members, and thank you team from FICAC, for availing yourself this morning to present your submissions before the Committee on Justice, Law and Human Rights. On behalf of the Members, I would like to thank you.

The Committee adjourned at 10.56 a.m.