

**SUBMISSION BY THE CITIZENS' CONSTITUTIONAL FORUM**

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

**CODE OF CONDUCT BILL NO. 33 OF 2018**

**TUESDAY 29 January 2019**

***INTRODUCTION***

The Chairman Honourable Alvick Maharaj and Honourable Members of the Parliamentary Standing Committee on Justice, Law and Human Rights.

The Citizens' Constitutional Forum ("CCF") acknowledges the efforts of the Standing Committee herein to receive and consider submissions on the Code of Conduct Bill No. 33 ("Bill"). With that said, we thank you all for this opportunity to make our submission today. The CCF is a local non-government organization with the vision to strive "to build a nation in which Fiji's people live together in equality, justice and peace, respecting the rule of law, under a Constitution that guarantees democracy and human rights". The CCF also has more than 20 years' experience in community education and advocacy on Fiji's Constitution, democracy, good governance, human rights and multiculturalism.

The CCF notes that the Bill has been introduced in fulfillment of Section 149 of the Constitution of the Republic of Fiji ("Constitution"):

*"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.”*

### **Importance of a Code of Conduct**

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. It fosters a standard of behavior and values that is expected from leaders (in this context) 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 amongst state officials listed under Section 149 (a) of the Constitution, it is essential that the principle of Good Governance is factored into the legislative framework of these codes.

Although there is no single definition of the principle of “good governance,” the Office of the High Commissioner for Human Rights has stated that it is dependent on the context and the objective required:

*“...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.”<sup>1</sup>*

On the same note, it is crucial that institutions utilize good governance principles 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 states in Article 25 (a):

*“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives...”*

Although, the ICCPR has only reached accession stage for Fiji as of 16 August 2018<sup>2</sup>, Fiji also being recently elected as a member of the Human Rights Council gives more reason for our Country to step up to best practices in upholding Good Governance.

It is our submission that in upholding Good Governance through the Code of Conduct, eight principles of this need to be applied:

- Participation
- Respect for the Rule of Law
- Consensus oriented

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<sup>1</sup> Office of the High Commissioner of Human Rights, “Good Governance and Human Rights”  
<https://www.ohchr.org/en/issues/development/goodgovernance/pages/goodgovernanceindex.aspx>  
[Accessed: 27 January 2019]

<sup>2</sup> Office of the High Commissioner of Human Rights, “Ratification Status for Fiji”  
[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=60&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=60&Lang=EN)  
[Accessed: 27 January 2019]

- Transparency
- Accountability
- Equity and Inclusiveness
- Effectiveness and Efficiency
- Responsiveness

We have found that a few of the above principles have been included in the Bill such as those outlined in the Schedules (1-5). However, the CCF also notes that there are issues existing in the current framework which affects the best practices and Good Governance principles.

### ***ISSUES ON THE CODE OF CONDUCT BILL NO. 33 OF 2018***

#### *Section 12 – Investigation by the Commission*

- i. Sub-section 1 (a) 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.
- ii. Sub-section 1 (b) nor the entire Bill fails to specify what could be deemed as “politically motivated.” For instance, 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? Therefore, this part of the Bill is unclear and problematic.
- iii. Sub-section 1 (d), this Bill may have not been widely consulted in Fiji hence resulting in a lack of informed citizens. Should the Bill be passed in its present form, uninformed citizens with 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 investigations to be carried out. This specifically goes against the principles of participation, responsiveness, effectiveness and efficiency.
- iv. Sub-section (4) and Section 14 (1) again uses the term “politically motivated.” We repeat the reasoning provide in part (ii) above. Also, this sub-section does not fully address the process that 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 having filing a defamation case and or the Commission could refer the complaint to the prosecuting authority to institute criminal proceedings.

#### *Code of Conduct Schedules 1,2 and 4*

- i. *“2.6 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.”*

For the purpose of transparency and accountability, it would be in the best interest of the people of Fiji to be informed of the “steps to avoid such conflict.” As any conflict of interest could give rise to corruptive actions. Therefore, clear measures or steps to be taken to address conflicts of interest need to be specified in these schedules.

#### **RECOMMENDATIONS**

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

- i. A clear and concise criteria of actions which would allow the Commission to decide on no investigation 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 to be considered and factored within this legal framework; and
- iv. Clear and concise provisions in terms of steps which need to be carried out in the event of a conflict of interest.