

OPENING STATEMENT AT THE INTERACTIVE DIALOGUE ON FIJI'S 2ND UNIVERSAL PERIODIC REVIEW AT THE HUMAN RIGHTS COUNCIL BY CHRISTOPHER PRYDE, DIRECTOR OF PUBLIC PROSECUTIONS FOR THE REPUBLIC OF FIJI, GENEVA, 29TH OCTOBER 2014.

Mr Vice-President;

Members of the Troika;

Members of the Working Group.

1. The Fijian Office of the Director of Public Prosecutions (ODPP) is responsible for the conduct of criminal prosecutions in Fiji. The powers are outlined in the Fijian Constitution and allow the Director of Public Prosecutions (DPP) to initiate prosecutions, take over prosecutions brought by another agency, or terminate a prosecution. Decisions on criminal prosecutions are made by the DPP independently of the Government following a completed police investigation and according to a two-step process; firstly, whether there is sufficient evidence for a reasonable prospect of a conviction and, secondly, whether the prosecution is in the public interest.
2. Although other agencies in Fiji are permitted to bring prosecutions subject to their own specific laws, these prosecutions remain subject to the direction and control of the DPP other than a prosecution brought by the Fiji Independent Commission Against Corruption and are reviewed according to this two-step process. If the evidence is lacking or a prosecuting agency has brought a prosecution based on an erroneous understanding of the law, the DPP may intervene and end the prosecution. Earlier this year, for example, the DPP terminated a prosecution brought by the Ministry of Labour against a number of workers and trade unionists for what appeared to be an unlawful strike. It was clear there were basic errors in the charges brought by the Ministry of Labour and the prosecution was terminated.
3. In deciding whether a prosecution is in the public interest, the DPP is guided by its Prosecution Code. The Code sets out factors in favour or against a prosecution. Where the offence involves violence or a child victim, it will almost always be in the

public interest to prosecute. When the offence involves a child victim, processes are immediately put into place to ensure the child is supported through the criminal justice process. This often means ensuring that family members are not able to interfere with the procedure which will often mean that a restraining order under Fiji's Domestic Violence Decree is sought by the Police or DPP.

4. It is the DPP that makes the final decision on whether a prosecution proceeds or not. Often this may mean the wishes of the victim are overridden when it appears that traditional methods of reconciliation and forgiveness are being used to justify a withdrawal of the charge. This is because we recognise that institutional, cultural, and social barriers often force victims of domestic violence to say they have reconciled. For this reason, assault in a domestic violence context is not a reconcilable offence so any forgiveness sought or traditional apology offered will not affect the charge and cannot be considered by the court as a defence.
5. We also note the reporting of the incidence of domestic violence cases has been increasing in Fiji due to the strengthening of Fiji's laws in relation to gender-based violence which has given Fijian women the confidence to also report sexual assaults.
6. Sentences for sexual assault are higher now in Fiji than in the past due to an increase in the maximum sentence for rape to life imprisonment. Sentences are continually reviewed and where it is thought the sentence falls below the standard tariff or the judge has wrongly applied the law, an appeal will be lodged by the Office of the Director of Public Prosecutions.
7. NGOs and other members of the public may make applications for Domestic Violence Restraining Orders on behalf of a victim of domestic violence. DPP officers and the Police receive continual training on how to properly use the Domestic Violence Decree to protect women. Although the charge against a perpetrator will still be assault under the Crimes Decree since the Domestic Violence Decree does not create an offence of domestic violence, there are important provisions that can be used to protect women where the offender is in a domestic relationship.
8. We accept the need for continuing gender competence training for law enforcement officials because we know that legislative reform does not necessarily on its own change attitudes.

9. Whilst the public interest in most cases of violence will mean the prosecution will continue, the reverse is true for prosecutions where the evidence has been obtained in breach of a person's Constitutional right to a fair hearing or if they have been assaulted whilst in police custody.
10. Recently there have been cases alleged where people have been assaulted by the Police. This is not a new problem in Fiji. Where evidence is obtained by these means the prosecution will not continue and the matter will be referred to the Police Commissioner for investigation and possible criminal charges against the officers. The DPP has prosecuted and secured convictions against Police officers who have acted in breach of a suspect's rights most recently in 2013 when 3 police officers were convicted of murder by joint enterprise and 2 were convicted of being accessories after the fact when a young man died in Police custody.
11. If an accused person claims his or her confession was obtained unfairly or as a result of police brutality, the accused person may make an application for a trial within a trial before a judge to determine whether the confession was voluntarily given. If the court finds it was not voluntarily made meaning without duress, the confession is excluded from the trial process.
12. There are currently a number of such cases being investigated by the Police; one case involving a video of men allegedly beating two prisoners; one of a man claiming to have been beaten by the Police; and one involving a death in custody. There have also been isolated claims of harassment against trade union officials and human rights workers yet no formal complaints have been received by the Police. Once a complaint is received by the Police, the Police file is reviewed by the DPP and returned to Police for further investigation if needed.
13. It is important to note that the Police under the Constitution are also independent of the Government and the DPP with regards to how Police investigations are conducted. The Police will not act however unless a formal written complaint is made by a person claiming to have been unfairly treated by the Police. The investigations must be properly completed before a prosecution will be filed in the courts by the DPP.

14. Currently there are 11 police officers facing assault charges in the courts of which 4 are domestic violence related assaults. Since 2008 the courts have sentenced or otherwise dealt with 30 officers of which 5 were domestic violence related assaults.
15. The Police have acknowledged deficiencies in Police investigations and aspects of Police culture that in the past has excused or ignored Police brutality. We recognise that greater training of Police is needed particularly in the areas of Police interrogations and with domestic violence issues. The Police Commissioner supports these initiatives. In 2012 the Fiji Police introduced a pilot scheme for the video taping of police interviews and Police are currently being trained to conduct such interviews. This will mean gradual less reliance on the trial within trial procedure to determine admissibility of confession statements.
16. A review of the Police Act is also planned for 2015 to be considered by the new parliament and will consider strict procedures for custody at the police station and better interrogation guidelines.
17. Finally, it should be noted that there are no political prosecutions in Fiji. Whilst politicians or political leaders or trade unionists may find themselves charged with a criminal offence from time to time, they are charged on the evidence objectively applied to the law and not due to their status in society. All criminal prosecution cases are reviewed on a regular basis to ensure the charges match the evidence. If a case falls below the evidentiary threshold for whatever reason, the charge is withdrawn.
18. The Office of the Director of Public Prosecutions recognises the ongoing need for continual training for the Police and DPP officers by specialised organisations to promote international standards in terms of dealing with human rights issues.

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