



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

“Good Governance: What and for Whom?”

An Address by the Director of Public Prosecutions for Fiji, Mr Christopher Pryde, at the Annual Public Forum Panel Discussion on Good Governance: a partnership between the University of the South Pacific, the Citizens’ Constitutional Forum and the Fiji Women’s Rights Movement at the USP Japan-ICT Centre, Laucala Campus, Thursday, 16th November 2017.

The Head of the European Delegation, Mr Julian Wilson,

The Head of the United Nations Development Programme, Ms Osnat Lubrani,

The CEO and staff of the Citizens’ Constitutional Forum,

Representatives from the Fiji Women’s Rights Movement,

Members of this Panel,

Ladies and Gentlemen.

1. First, my thanks to the promoters of this event for the invitation to speak on this panel this evening.
2. Good governance requires three things: a constitution, a culture of constitutionalism, and strong independent institutions of

accountability and I want to talk about these three requirements of good governance in the context of the office that I head, the Office of the Director of Public Prosecutions.

3. First, a written Constitution. The 2013 Fijian Constitution represents the skeletal frame for political organisation within Fiji and sets out the fundamentals for political governance including the State's relationship to the individual and the executive government's relationship to the other organs of government; the legislature and the judiciary.

4. Fiji's Constitution also contains a comprehensive statement of the rights of individuals within the State. Some of these rights are restatements of existing rights such as the right to life (s.8) or are modifications that enhance existing rights such as the right to silence (s. 13) and some are completely new rights such as the right to housing and sanitation (s. 35). No rights are absolute however and remain to be more fully developed by the courts. This is already occurring and the right to be free from torture (s.11) is an example where case law is developing in this area. The need for the courts of Fiji to be permitted to develop the law is the reason Fiji applied a reservation on Article 1 to the UN Convention Against Torture when it ratified the Convention not so as to avoid its responsibilities under the Convention but so that the courts of Fiji are given latitude to develop Fiji's local jurisprudence in a manner that is compatible with Fiji's Constitution.

5. Good governance to be effective, therefore, requires a separation of State functions, first, between the sovereign right of the State represented by the executive to sign an international convention, in this case the Convention Against Torture, second, for the parliament to endorse it (s.51), and, third, for the courts to determine its scope.

6. So the 2013 Fijian Constitution represents the basic framework that provides the platform for governance and in order for a Constitution to function it requires the courts to breathe life into its provisions and that in turn requires a citizenry who not only understand their rights but who are prepared to challenge government decisions and laws. In order for this aspect of governance to operate the citizenry must be provided with the political space to operate and that leads me to the second fundamental requirement for good governance; a culture of constitutionalism.

7. What I mean by constitutionalism is the existence of a common ethos amongst politicians, members of parliament, the heads of government agencies, the heads of institutions, civil servants, business leaders and citizens that (i) recognises, understands, and respects the body of rules, principles, conventions, and laws (both statute and judge-made) that govern the functioning of the State and (ii) embodies a commitment to adhere to the fundamental principle of the rule of law. Good governance requires (or demands) that all participants in society absolutely commit themselves to constitutionalism; to believing in it and to practicing it. In many ways, constitutionalism represents the

secular religion of the State. Without a firm belief in constitutionalism, the constitution and the principles underlying it, no matter how well written, will not work and will lie like an unopened book, pretty to behold but functionally inert.

8. In order for people, therefore, to be able to exercise their rights under the Constitution or to challenge administrative decisions of government, or laws passed by the parliament, they need to be able to access those laws and so an important component of constitutionalism and the rule of law is the requirement that those laws be written, published, and made readily accessible. In Fiji we now have 20 consolidated volumes containing the revised laws of Fiji, the first time this has occurred since 1985. We also have the judiciary publishing judge-made law in the form of the Fiji Law Reports which catalogues important judicial decisions. More needs to be done however. People must be aware of their rights in order to be able to defend them.

9. I want to now say something about the third requirement for good governance; that of strong independent institutions of accountability. The reason I describe institutions such as the Office of the Director of Public Prosecutions as an institution of accountability is because one of its critical roles lies in ensuring that all people, government ministers included, are made accountable equally for the actions they take and the consequences that may flow from those actions. We do this by enforcing the criminal law. An important element of being able to do our job effectively is being given the freedom to act independently

from government. Section 117 of the Constitution provides that the DPP has the power to initiate, take over or terminate criminal proceedings and, crucially, the exercise of those powers is not subject to the direction or control of any other person or authority, including the Attorney-General as the government's chief legal advisor. Good governance requires us to defend this independence at all times.

10. The power given to the DPP to commence, or terminate criminal proceedings however comes with responsibilities and, therefore, the governance structure of the ODPP is important. Decisions made by heads of offices of accountability must be made within a clearly defined and transparent structure of accountability. Before any decision on criminal proceedings is made, the police docket goes through a series of hands starting with the legal officer providing the initial advice through to a manager who vets the recommendations before forwarding the file to the DPP for final decision.

11. A decision is made based on the 2-step procedure. First, is there sufficient evidence touching on each element of the offence for a reasonable prospect of conviction and, second, notwithstanding the sufficiency of the evidence, is it in the public interest to prosecute? To assist the DPP in the decision-making process, we have a number of policy documents such as the Prosecution Code which inform the decision-making.

12. Although the decision making process is confidential, anyone examining a file would be able to trace clearly the methodology in which the decision was made. Each is accountable to the other. The police are accountable to the DPP's office to ensure the investigation is conducted properly and ethically. The legal officers are accountable to the managers to ensure the legal analysis is based on the correct applicable legal principles and there are no issues with the police docket. The managers are accountable to the DPP to ensure the legal advice is correct and the recommendations to the DPP are sound. And the DPP is accountable to the courts to ensure that no criminal matter is commenced unless there is sufficient evidence and it is in the public interest.

13. Good governance in the context of decision making in the ODPP means the absence of arbitrariness. The goal is to achieve ever greater consistency in deciding like cases in the same way judges decide similar cases on the basis of previous decisions. It is only in this way that the public can be confident that the administration of justice is conducted fairly, transparently, and equally to all people regardless of station in life and without regard to politics or sectional interests. The public should expect nothing less.

14. A strong constitution, a culture of constitutionalism together with an educated citizenry, and strong independent institutions of accountability are essential features of a democratic state and

underpin the good governance of the State. They need to be jealously guarded and vigorously defended at all times.

I thank you for listening to me.

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