



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

*An Address by the Director of Public Prosecutions, Mr Christopher Pryde, to
the Fiji Women Lawyers Association on
Saturday 8th July 2017 at the Tanoa Plaza, Suva.*

Sex Crimes in Fiji: Prevention, Detection, Prosecution and Defence

His Lordship, the Chief Justice;

The Honourable Minister for Women, Children and Poverty Alleviation;

The Police Commissioner;

The Permanent Secretary;

Fellow Panellists;

Ladies and Gentlemen.

1. First my thanks to the Fiji Women Lawyers Association for the invitation to speak to you this morning.
2. I want to talk to you this morning about how the Office of the Director of Public Prosecutions (ODPP) deals with serious sexual offences in the hope that it may inform the discussion afterwards. The approach we bring to the problem is different from many NGOs in that our approach is not a rights-based but rather a crime-based approach and I will say a little more about what I mean by this later.
3. As many of you will be aware, the ODPP last year started to publish statistics on the numbers of rape and serious sexual assault cases throughout Fiji. We gather a lot of information, not all of which is

published, but is nonetheless available to researchers and our Media Liaison Officer, Ms Farisha Ahmed, will be able to assist if anyone is interested in following up on this for research purposes.

4. The reason we began to publish the statistics was to inform the public and interested NGOs who work in this area of the extent of the problem; bearing in mind that the totals published each month are only the tip of the iceberg. This is because a statistic is only recorded if an Information (Indictment) is signed by me as the DPP. The Information will only be signed by me if after an assessment of the evidence by a legal officer and a vetting manager, I decide that the evidence amounts to a reasonable prospect of conviction. Of course, once the matter goes to court we must prove the charge beyond reasonable doubt but the decision to prosecute is based in the first instance on the lower threshold of a reasonable prospect of conviction. There are times when the evidence is insufficient and in those cases the charges will be withdrawn.
5. All of this is in line with the constitutional powers granted to the DPP under section 117 of the Fijian Constitution. It must be remembered that it is the DPP who makes the final decision on whether a matter will continue in court. In other words, in Fiji, it is the DPP that has the sole power to initiate, continue, or withdraw criminal proceedings from the courts (other than FICAC for certain offences) including those brought by other prosecuting authorities such as government ministries or departments. Therefore, if a lawyer wishes to make a representation on behalf of a client in regard to an indictably laid charge, the representation should be written directly to the DPP and not to the Police. It also must be noted that it is the State that represents the victim or complainant in court so we do not consider representations made by lawyers claiming to represent the complainant. Any communication by the complainant must come to us directly. All representations to the Office of the DPP are considered and I could say a bit more about how lawyers should frame their representations later if there is time since this may be helpful to lawyers working in this area.

6. What do the rape and serious sexual offence statistics tell us? In summary, the statistics show that the majority of rape and sexual assault cases in the country are committed by men against women in a rural or village setting and that at least one woman is raped by one man every day in Fiji; a sobering and distressing fact.
7. This bald statement does, however, need some clarification.
8. First, the numbers of rape cases will have increased in Fiji since 2009 in any event because the law that was introduced in that year, the Crimes Act, expanded the definition of rape to include offences that would have been sexual assaults previously. *(NB all references to Decrees, Promulgations, Ordinances, etc. are now Acts as per the Interpretation Act).*
9. Second, the Crimes Act eliminated the need for a victim of sexual assault to have her evidence corroborated and this meant the prosecution became easier. Traditionally, three types of witnesses were thought to be inherently unreliable without corroborating evidence; children, women, and criminal accomplices. Today, only accomplice evidence requires corroboration.
10. Third, the Police introduced and, importantly, began to enforce, a “no drop policy” in terms of complaints of sexual assault. What this means is that a complaint is always dealt with in terms of a criminal investigation and not in terms of a potential reconciliation.
11. Fourth, in cases of sexual assault in a domestic situation, any attempts at reconciliation are not determinative or, in other words, cannot affect the prosecution and are not factors to be considered at any point of the prosecution.
12. With these factors at play and combined with public awareness campaigns we would naturally expect to see an increase in the number of rape cases being reported and, indeed, we are.
13. One factor that remains troubling however is that the increase in reports of rape offences is more prevalent in the itaukei community than in other communities. More research is needed to

address this issue and possibly refine or refocus the message because it does not appear to be getting to all communities equally.

14. How does the ODPP deal with violence against women cases?
15. I mentioned before that we take a crime-based approach rather than a rights-based approach and this informs how we deal with a prosecution. (This is not to say that a rights-based approach is not an effective or desirable approach to take in some circumstances but it is not the approach that the criminal justice system takes, or ever has done.)
16. The role of the ODPP in the criminal justice system is as a filter to the courts. There is no right for a criminal matter to go to court and a matter will only go to court if there is (i) sufficient evidence for a reasonable prospect of a conviction and (ii) it is in the public interest. This is because the rights of all persons, including the accused, must be respected. For this reason, therefore, the police “no drop” policy cannot apply to the ODPP or the DPP’s decision to prosecute. What we have instead when it comes to rape complaints is a presumption of truth, in other words, if a complainant alleges she has been raped, she will be believed on her own evidence without the need for corroboration or even supportive evidence such as medical evidence.
17. If a woman says she has been raped, we will take her at her word. However, this comes with a price and that price is that she must continue with the matter to the end of the trial process. This can be daunting, traumatic and incredibly stressful for a victim but it is necessary. There is no option for the complaint to be withdrawn. This is because a crime is an unlawful action against the State and therefore the State takes control of the proceedings. Our system of criminal justice is a State driven and not a victim driven system. I also use the word State here which is not to be confused with Government. It is the State and not the Government that initiates and drives the proceedings. A rights-based approach would see a different outcome and, in fact, this is how the civil courts operate but not the criminal courts. (In fact, that is why a rights based

application for constitutional redress is referred to the civil jurisdiction of the High Court).

18. The criminal justice process is a difficult journey for a victim of violence to take but we do try to alleviate the worst of it as much as we can within the constraints of the system. It does need to be remembered that, although stressful for the victim, the system must be allowed to complete its course which means the accused must also be allowed to exercise his rights because, if convicted, he will lose his liberty for a considerable period of time.
19. At this point, it is worth mentioning that sentences in Fiji for rape are amongst the highest in the region. A man convicted of the rape of an adult can expect to receive a sentence of between 7 to 15 years. The sentences in Fiji increased markedly after the Crimes Act came into effect in 2009. Where once a convicted rapist could often expect to receive a very lenient sentence the tariffs for rape have increased greatly since 2009. I think they are at about the right rate because any higher and you risk unintended consequences which can potentially jeopardise the safety of the victim and any deterrent effect is lost.
20. There are certain things we cannot eliminate, the most important being the need for the victim to give her evidence in court and be cross examined on her evidence. This is because often the only evidence against the accused will be the evidence of the victim.
21. There are protections however; a witness cannot be cross examined on her sexual history except with leave of the court and that would be highly unusual. But the essential characteristic of Fiji's criminal justice system is not about delivering justice to the victim but a system for testing the credibility of evidence against a named individual who, if convicted, will lose his liberty for a considerable period of time. The system therefore must work for all those who enter it.
22. What more can we do? Plenty. At present, we do not have an organised system for dealing with the victims of sexual assault. Whilst we do have NGOs and religious organisations that are very

committed and do a lot of good in terms of assistance and counselling, it is ad hoc and many people fall through the gaps. Neither the police nor the ODPP also provide much in the way of contact from the moment of the arrest of the suspect to the trial.

23. What this means is that contact with the victim is sometimes lost or the victim decides it is all too much and does not wish to proceed. This is very understandable. She often has to contend with perpetrators who continue to try to intimidate her, who try to isolate her, and who continue to control her through economic dependency as the perpetrators are in many cases the sole breadwinners. Intimidation, isolation and control are common dynamics exercised by the perpetrators of domestic violence and sexual assault against women. It is these tactics that we have to find a way of dealing with and countering.
24. One thing we can do is put in place a better co-ordinated system where a victim has a person assigned to her, perhaps a social welfare officer, that can maintain close contact throughout the period from the time of the complaint to the trial and even afterwards. This person would be available to refer the victim to any counselling that might be available or perhaps put her in contact with other support groups for people facing a similar situation.
25. Perhaps one of the most important tasks would be to simply stay in touch each month. Sometimes, just knowing that there is someone there for you, if you need that person, can be of great comfort. A support person would be there to also help counter the tactics of intimidation, isolation and control that victims are subject to after they have made their complaint and before the matter has come before the courts. The period between complaint and court trial is often the most difficult.
26. I remain hopeful that a victim support officer post can be established at some point either within the organisation of the ODPP or perhaps within the Ministry of Women. It is certainly something that could do with further discussion.

27. I thank you for listening to me.

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