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Parliamentary Powers and Privileges Bill Submission

Introduction

The Fiji Women's Rights Movement (FWRM), established in 1986, is a multi-ethnic and multicultural non-governmental organisation committed to removing all forms of discrimination against women through institutional reform and attitudinal change, through targeted research and advocacy.

We take this opportunity to submit herein our analysis and recommendations in response to the proposed Parliamentary Powers and Privileges Bill 2016 (Bill No. 28 of 2016) (hereafter 'the Bill') with particular emphasis on section 24.

Issues of Concern

1. FWRM highlights its concern with section 24 on the constitutional premise that it is inconsistent with section 17 i.e. subsections (1) and (2) nor does it reasonably fall under the exceptions outlined in subsection (3).

The words "defame, demean or undermine" that give credence to the offence defined in section 24 are not defined in the Bill. By not having these terms clearly defined within the Bill suggests potential misuse and a subjective application or interpretation by a Member of Parliament that takes offence to any public utterance. Furthermore, as previous submissions may have highlighted, not only are these terms wide and vague (with no clear interpretation provided) but fails to acknowledge that there is an existing Defamation Act [Cap 34]¹ and extensive common law (including a recent case on social media based defamation) in regards to defamation. Both the Act and the extensive body of common law provide a standard as well as a burden of proof for defamation. Neither is established for terms such as "demean" and "undermine".

By allowing the use of terms "demean" and "undermine" the Bill undermines a person's right to *fair* comment as well as actively engage in political discussions and raise concerns on national issues

¹ http://www.pacii.org/fj/legis/consol_act_OK/da99/ (Accessed 12/5/17)

where these issues of concern are remarked upon by a Member of Parliament.

In particular reference to 'fair comment' we invite the Standing Committee on Justice, Law and Human Rights to consider Vayeshnoi v Fiji Television Ltd [2000] FJHC 237 where the Plaintiff, the Assistant Minister of Information at the time, instituted a legal action against the defendant claiming that actions of the defendant were defamatory of his credit and reputation. The Court in its ruling against the Plaintiff stated the following;

The right to fair comment: "is one of the fundamental rights of free speech and writing which are so dear ... and it is of vital importance to the rule of law on which we depend for our personal freedom." (Lyons v. Daily Telegraph [1943] 1 KB 746, 753.)

Where the matter commented on is, as it obviously is in this case, a matter of public interest and the person in respect of whom the comments are made is the holder of a public office then the latitude afforded to the commentator by the Courts is exceptionally wide.

In the words of Bain J in **Manitoba Press v. Martin** (1892) 8 Manitoba R 50:

"One who undertakes to fill a public office offers himself to public attack and criticism and it is now admitted and recognised that the public interest requires that a man's public conduct shall be open to the most searching criticism." (Emphasis added)

The Court's ruling reiterates the citizen fundamental right of free speech (encapsulated in s.17 of the 2013 Constitution) in relation to holders of public office and affirms the stance that the right to fair comment is crucial to the rule of law as well as a hallmark to a robust democracy.

2. Furthermore, section 24 of the proposed Bill fails to regard that Parliament is an institution made of the people's representatives, therefore its members, including the Speaker (who was also voted in prior to her appointment) should be open to public criticism as they were elected to speak on behalf of the people.

While section 3 of the Bill outlines Parliament and its members are protected from legal proceedings section 24 with its broad application and potentially broad interpretation bars Parliamentary accountability, which requires the freedom for people to openly express their views to Parliament openly.

3. On a broader international comparison, restricting people's right to fair comment also undermines international standards of human rights, which the 2013 Constitution's Bill of Rights is founded on,

particularly Article 19 of the Universal Declaration of Human Rights (UDHR)² of which section 17 of the 2013 Constitution is the national comparative. This section also further threatens to undermine Fiji's various global commitments to safeguard and adhere to international standards on respecting and safeguarding civil and political rights under a human rights framework.

Key Recommendation

1. In the interests of the public and in recognition of the other substantive efforts that Fiji has collectively made to return to democracy we strongly suggest the removal of section 24 from the proposed Bill for the reasons highlighted in detail above. In Summary, section 24 undermines Fiji's collective return to democracy as well as threatens the basic human right of *freedom of opinion & expression* and therefore in contravention of section 17 of the 2013 Constitution.

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² **Article 19.**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.