

FIJI HUMAN RIGHTS COMMISSION

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1. Application of the death penalty

In the 1970s Fiji abolished the death penalty de facto for a number of crimes such as murder. However the mandatory death penalty for the crime of treason and related offences remained until early 2002 when the Attorney General introduced amendment to abolish the death penalty for treason and related offences, substituting a penalty of life imprisonment instead.

The Fiji Human Rights Commission sat in Parliament throughout the debates on the amendment and lobbied members on both sides of the House on abolition. Much of the FHRC's material in submissions was used by parliamentarians in the debates. Parliament abolished the death penalty for all offences in March 2002. The voting for the abolition was unanimous. The amendment had retrospective application.

However, in the High Court trial of Timoci Silatolu and Jo Nata, who in the company of George Speight had been charged with treason, the High Court sought submissions from the DPP's office, the Attorney-General and defence council on whether the death penalty still existed in Fiji notwithstanding its abolition by Parliament.

The Court's reasoning was that the amendment to the Penal Code has retrospective application and therefore infringed the legal principle of the rule against laws being drafted for specific class of offenders or offences under the Liyanage rule. Another point was whether the mandatory death penalty should have been replaced by a mandatory life imprisonment. The Fiji Human Rights Commission was invited to the amicus in the proceedings and made the following points by way of submissions:

- (1) Parliament has abolished the mandatory death penalty for the crime of treason. The courts could not overturn a law made by Parliament on the grounds of retrospectivity because the law as amended gave rights rather than took them away, as in Liyanage case.

- (2) The death penalty was cruel, degrading and inhumane and a breach of section 25 of the Constitution.
- (3) Mandatory sentences offended the independence of the judiciary and judicial discretion. A mandatory life sentence should not be a substitute for a mandatory death sentence.

The court accepted FHRC's arguments that Parliament has passed a valid law when it amended the Penal Code on the sentence for treason. But the court did not take the opportunity to declare the death penalty unconstitutional as we hoped because it did not find it necessary to do so since the law to abolish the death penalty was considered to be a valid law.

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Trafficking of women and children

Activities undertaken by the Fiji Human Rights Commission

Introduction

Currently there are no specific national legislation to deal with the trafficking of women and children in Fiji. However, Fiji is a party to the UN Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination Against Women. The above two conventions have particular provisions dealing with trafficking and when the need arises the Commission can alert the courts and other authorities dealing with such cases. Apart from that the Penal Code of Fiji and the Constitution contains specific provisions relating to the sale and trafficking of persons.

Activities of the Commission

Visit of the UN Special Rapporteur

In 1991 the Commission hosted Ms. Ofelia Calcetas-Santos, the Special Rapporteur on the sale of children, child prostitution and child pornography. The report prepared by the Special Rapporteur is used as a reference by the Commission.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Following the Special Rapporteur's recommendations, the Commission wrote to the Ministry of Foreign Affairs and External Trade and urged the Government to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The current status is that Fiji has not yet ratified the Optional Protocols of the CRC but Ministry of Foreign Affairs has asked the relevant ministries to comment which will be considered before a decision is made.

Immigration Bill

The Government is currently looking at amending the existing Immigration Act. The new Act will contain specific provisions dealing with transnational crimes such as trafficking and people smuggling.¹

Once the bill is open to comments from the public, the Commission would be making submissions so that the act is in line with the Trafficking Protocol 2000. Trafficking of women and children is not a serious problem in Fiji compared to some other parts of the world.

Trafficking Focal Point

The Commission also has an identified officer who is the focal point for trafficking. The officer is responsible for keeping the Commission p to date with the news on trafficking and alerting the Commission of any arising issues regarding trafficking.

Conclusion

The Commission has not undertaken many activities as yet, however, having identified a focal point for trafficking it is building up its literature on the issue. As the need arises the Commission will make submissions and urge the Government to comply with international standards and ratify the relevant conventions.

¹ Attached is a newspaper article on the Immigration Bill 2003