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CCF ORAL SUBMISSION ON DRAFT MEDIA BILL

(Ministry of Labour Conference Room, Suva, 19-20 May 2003)

Mr Chairman, the government has sought submissions from civil society on a draft bill proposing the enactment of the Media Council of Fiji Act 2003. This submission from the Citizens' Constitutional Forum considers the bill in light of the provisions and expectations of the 1997 Constitution of the Republic of Fiji, enacted in July 1998. Other issues, including the contents of the proposed 'Media Code of Ethics and Practice,' the effectiveness of the current Media Council (Fiji) Ltd., journalist training, etc. are important but separate from constitutional concerns and are not raised here.

In brief, CCF submits that the bill is unnecessary and should be rejected for the following reasons:

- 1) In its current form it appears to be in conflict with important provisions of the Constitution;
- 2) The timing is premature as the Constitution requires an overall framework for freedom of information and this should precede any subsidiary media legislation;
- 3) Existing legal provisions to address and redress complaints against the media are sufficient; and
- 4) The basic purpose and intents of the draft bill are unclear.

These reasons are further considered and explained below.

1) The Bill is in Conflict with the Constitution

Chapter 4 of the Constitution (the Bill of Rights), **Section 30 (1)** states clearly that **“Every person has the right to freedom of expression, including: (a) freedom to seek, receive and impart information and ideas; and (b) freedom of the press and other media.”**

However, Section 7 of the draft Media Bill states that, “The functions of the Council are - (a) to regulate the content or conduct of the print and broadcast media according to the Code. ...”

According to the tenth edition of the Oxford Concise Dictionary:

Freedom is “the power or right to act, speak, or think freely.”

Regulate means “to control or supervise by means of rules and regulations.”

Control means “the power to influence people’s behaviour or the course of events; the restriction of an activity, tendency, or phenomenon.”

Thus in its draft form the bill quite explicitly seeks *to control or restrict* press content and conduct and thus contravenes the constitutional guarantee of freedom of the press.

2) Enactment is Premature

According to Part 5 (Freedom of Information), Section 174 of the Constitution, **“As soon as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies.”**

The Freedom of Information Act is a constitutional requirement. It would establish an overall legal framework regarding public access to government information and thus must precede the Media Bill, which is secondary and subsidiary.

Chapter 11 of the Constitution (Accountability), Section 156, requires Parliament to enact a **Code of Conduct** for the President, Vice President, Ministers, Members of Parliament executives of statutory authorities and others **“as soon as practicable after the commencement of this Constitution ... ”** to assure that performance of public duties does not conflict with their private interests. Among other things, the law must **“provide for the monitoring of standards of conduct in relation to the performance of public duties.”**

Both the Freedom of Information Act and the Code of Conduct are constitutional requirements “as soon as practicable” and should thus precede any Media Bill. Without these required laws, still not enacted nearly five years after Parliament approved the Constitution, access to information (i.e. media freedom) is effectively restricted.

CCF submits that both the Freedom of Information Act and the Code of Conduct should and must be passed before any further consideration of media legislation. The proposed draft Media Bill puts the cart before the horse.

3) Existing Limitations on Freedom of Expression are Sufficient

Section 30 (2) of the Constitution already provides the government with the power to limit freedom of expression in the interests of (among other things) national security, **“the right to be free from hate speech ...”** and **“the right of persons injured by inaccurate or offensive media reports to have a correction published on reasonable**

conditions established by law.” Such laws already exist and provide the necessary corrective power to the Government. The current bill is unnecessary.

4) The Bill’s Intent is Unclear

This draft bill has two main objectives: to regulate (i.e. control) the press and to safeguard press freedom. These objectives are in conflict and the draft is unworkable. The actual purposes of the bill are vague and open to abuse. The powers of the Council are unclear and the mechanisms for choosing Council members, redressing media abuses and protecting freedom are unclear. At the very least, any proposed media legislation, enacted after a Freedom of Information Act and Code of Conduct Act, must have clear and consistent aims.

Mr Chairman,

CCF will not comment today on the detailed provisions of the draft bill. As we have made clear, we feel that the bill in its current form is unconstitutional, premature, probably unnecessary and unclear regarding its purpose. We submit that it should be rejected.

Nonetheless, we understand that legislation which protects media independence while improving media responsibility may possibly be warranted. Therefore, CCF will also provide a written submission which assesses the current draft bill and provides suggestions which could help meet both of these objectives.

Yours Sincerely

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Rev. Akuila Yabaki
Executive Director