

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL/FJI/1/2021

31 March 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/3, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the deportation of **Professor Pal Ahluwalia**, the Vice-Chancellor from the University of the South Pacific's, and his spouse **Sandra Jane Price**.

According to the information received:

In 2019, Professor Pal Ahluwalia, who holds Canadian and Australian citizenship, joined the University of the South Pacific's (USP) as the Vice-Chancellor (VC). From the beginning of his tenure, Professor Ahluwalia promoted reform of the university's governing bodies. Moreover, he conducted investigations that resulted in the exposure of alleged mismanagement and abuse of process at USP under the previous Vice-Chancellor and current Pro-Chancellor and links with the highest government levels, allegations of corruption and financial mismanagement under the USP university administrations, exposing connections to the highest levels of government.

In a confidential report that was later leaked to the media, Professor Ahluwalia alleged widespread financial irregularities under the previous USP head and including alleged salary increases, misappropriation of allowances and unearned promotions under his predecessor and the current pro-Chancellor. The report prompted an investigation by USP which substantiated some of his findings and called for stronger oversight by the university council.

In June 2020, an executive committee of the USP, led by the pro-Chancellor, suspended Professor Ahluwalia of his mandate over alleged malpractice. After weeks of protests by students and staff at Laucala campus in Fiji and regional concern, the USP Council ruled that due process had not been followed in the suspension and reinstated Professor Ahluwalia. Subsequently, the Council cleared Professor Ahluwalia of all the allegations.

On 3 February 2021, the Fiji Immigration Department declared Professor Ahluwalia and his spouse Mrs. Price prohibited immigrants. The charges were under section 13 (2) (g) of the Immigration Act 2003, which establishes that no foreigner is permitted to conduct themselves in a manner prejudicial to the

peace, defence, public safety, public order, public morality, public health, security, or good of Fiji. At around 23:30 on that day, while Professor Ahluwalia and his spouse Mrs. Price were sleeping in their house, the police executed the order, made them pack their personal belongings and escorted them to the airport. At around 10:30 the next day, the police forced them to board a flight to Australia. Currently, Professor Ahluwalia is in Nauru with his spouse Mrs. Price.

After their deportation, the Fijian authorities reportedly stated: “after repeated breaches by both individuals of the stated provisions of section 13 of the immigration act, their actions have clearly violated the terms of their work permits”.

On 5 February 2021, the University Council discussed the reforms initiated by the Professor Pal Ahluwalia as Vice Chancellor. After the meeting, the Council stated that it had not dismissed Professor Ahluwalia and expressed disappointment that it, as his employer, had not been made aware of the Fijian Government's decision.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern regarding the deportation of Professor Pal Ahluwalia and his spouse Sandra Jane Price, allegedly for his actions in office and legitimate efforts to investigate mismanagement, financial irregularities and misappropriation of allowances, with the aim to bring about institutional reform of the university administration. If the allegations were true, there would be a violation of rights related to academic freedom and freedom of expression, in an apparent attempt to stifle his efforts to promote and strive for a more equitable and transparent university administration.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek and clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide any additional information about the deportation charges against Professor Ahluwalia, including what conduct he engaged in that was considered a violation of section 13 (2) (g) of the Immigration Act 2003.
3. Please also provide any additional information regarding Mrs. Price's residence permit, and what conduct she engaged in that was considered a violation of section 13 (2) (g) of the Immigration Act 2003.

4. Please provide information on the safeguards in place in Fiji to guarantee that academics, professors and staff from academic institutions can discharge their work free from intimidation or retaliation.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Koumbou Boly Barry
Special Rapporteur on the right to education

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

We would like to draw your attention to article 13 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Fiji on 16 August 2018, recognizing the right of everyone to education. As noted by the Committee on Economic, Social and Cultural Rights the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, staff and students throughout the education sector are entitled to academic freedom. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction (General Comment para 38 and 39).

Furthermore, “the enjoyment of academic freedoms requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.” (Ibid. para 40).

In addition, academic freedom is also to be protected in accordance with article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Fiji on 16 August 2018, relating to the right to freedom of opinion and expression. In a recent report on academic freedom and freedom of expression, the Special Rapporteur on the right to freedom of opinion and expression noted that many restrictions involve more than one ground of non-compliance with the requirements of article 19 (3) of the International Covenant on Civil and Political Rights. Where that is the case, the restrictive measure is often assessed under the tests of necessity and proportionality. Restrictions are often unsuitable and improper for achieving the legitimate aim, fail to use less restrictive means available to the Government or simply constitute excessive interference in the right to academic freedom. He added that: “The criminalization of or retaliatory disciplinary procedures against academics for their activities “can have a serious chilling effect on the autonomy of higher education institutions” and the “applicable meaning of academic pursuit”. (A/75/261, paras. 44 and 46).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the

protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, we would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.