Fiji Labour Party

Submission to the Electoral Commission on Review of the Electoral Laws

The Fiji Labour Party, National Federation Party, Freedom Alliance and Sodelpa, presented a joint submission dated 18 May 2017 addressed to the then Chairperson of the Electoral Commission, Mr Suresh Chandra.

The submission dealt with electoral reforms to facilitate free and fair elections and was in response to the Chairperson's request inviting "collective written submissions from the political parties" as per his letter dated 15 May 2017.

The 61-page submission was replied to the next day with the Chairperson emphasising that the Commission "will follow the law and apply the law as it is". The Chairperson's position was that it was Parliament's responsibility to amend or enact laws and not that of the Commission.

Infuriating as the response was, it must be judged in the context of the political situation prevailing at the time. Our attempts to engage the Commission to take a more proactive stance, consistent with its mandate to deliver free and fair elections, were rebuffed as you will discover from your own files.

Madam Chair and the Commissioners are well acquainted with the (imposed) promulgation of the 2013 Constitution and the Electoral Decrees just before the elections in 2014. These enactments were conceived, and mandated, with the sole intent to continue the autocratic rule of the Bainimarama administration. Many of their provisions are, therefore, deeply flawed in terms of democratic values and principles; and need to be corrected.

A number of questionable electoral provisions were deliberately entrenched in the Constitution, making it next to impossible to alter them. These are mentioned at pages 39,40 and 41 of the Electoral Commission's Annual Report 2014.

Given that the prescribed processes for amending the Constitution are enormously difficult to achieve in the existing political landscape, nonetheless, an avenue has to be found to deal with it. It is, of course, a matter for the government to decide whether it wants to proceed with it as this stage.

However, work on amending the Electoral, Political Parties and the Registration of Voters Acts can be proceeded with and, hopefully, completed well before the next scheduled general elections in 2026.

Reverting to the issue, the submission dated 18 May 2017 identifies the various electoral provisions in the Constitution and the Acts that we consider need to be amended or repealed to facilitate the conduct of free, fair and credible elections.

Going forward, we propose that the Commission give priority to implementing the Recommendations of the Electoral Commission Report 2014 concurrent with the unactioned recommendations of the MOG Reports of 2014, 2018 and 2022.

For example, the 2018 MOG Report made 21 recommendations of which only 5 were implemented by the previous government.

Recommended Amendments to the Constitution

S53 - (1),(2) Proportional Representation System

The multi-member Open List System of Proportional representation in a single national constituency be replaced to provide for single or multi-member constituencies from boundaries to be determined by a Constituency Boundaries Commission.

The number of members to be elected be fixed at 55 and reviewed every five years.

We have gathered from our discussions with the people that they are unhappy with the current system of a single national constituency. They prefer representation through electoral districts as in the past which makes the member of each electoral district or constituency accountable to their voters.

The present system does not guarantee fair representation of MPs from all the districts and regions of Fiji. It is heavily centred around the Party leader.

S53- (3) - Threshold

The threshold of 5% of total number of votes cast be altogether removed. This was also recommended by the Electoral Commission in its 2014 Report. There should not be any threshold in a truly proportional representation system. In our context, a Party able to secure 2% of the votes cast should be able to have one member elected to the House of Representatives. In this way Unity Fiji and Fiji Labour Party would have been represented in Parliament in the 2022 general elections.

S56-(2) (g) – Candidates for election to Parliament

Disqualifies a person who has been convicted of any offence under any law for which maximum penalty is a term of imprisonment of 12 months or more.

The disqualification is for a period of 8 years from the date of conviction and would apply even if the person was not sentenced to imprisonment but fined or discharged. This section should be deleted. Only persons serving a sentence of imprisonment on the date of nomination should be disqualified.

S61 – Date of Polling

The 30 day period between the last day for the filing of nominations and polling should be extended to 40 days as recommended by the Electoral Commission in its 2014 Annual Report.

Fiji Labour Party fully endorses the recommendation of the Multinational Observer Group (2014) for Fiji to frame its changes to the Electoral and related laws within the standards and guidelines of the International Covenant on Civil and Political Rights (ICCPR). Indeed, it should expedite consideration of becoming a party to the ICCPR.

To this end, the Commission may consider seeking external assistance of a reputable inter-governmental organization (such as International IDEA) to assist in the process of aligning Fiji's electoral laws within the standards and guidelines of the ICCPR.

Recommended amendments to Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 (Decree 4/2013)

1. **Section 2 Interpretation**

   "Registrar" means the Supervisor of elections appointed under S76 of the Constitution.
   We submit that the office of the Registrar of Political Parties should not be held by the Supervisor of Elections. Under S3 (b) and (g) of the Electoral Act 2014, the Electoral Commission has the responsibility and the authority in respect of registration of political parties and monitoring and enforcing compliance with regard to any law governing political parties.

   We support the recommendation of the MOGs and the Electoral Commission of 2014 that the Commission be allocated a Budget separate from that of the Fijian Elections Office; to maintain its independence (p39 of the Fijian Electoral Commission Annual Report 2014) and enhance its operational efficiency.

   The Commission should undertake this function leaving the Supervisor to focus on the registration of voters and the conduct of elections.

2. **Section 4** - Delete the entire Section 4 which is no longer relevant

3. **Section 5** - (2)(a)&(b) - no person should be deprived of his/her right to be a member of a political party.
   The restriction in the subsection should apply to applicants of a proposed political party with the proviso that he/she should not be serving a term of imprisonment at the time of application.

4. **Section 5- (3)(a)&(b)** – Office holders of political parties should be disqualified under 3(a) but 3(b) should be amended to read: "is serving a term of imprisonment for a period of not less than 6 months".

5. **Section 6 - (3)(a)-** delete "in the English language"

6 - (3)(i) - delete 5000 and substitute 500 and delete all the words after the word "party" in the second line.

6 - (3)(i) - delete all the words after the word 'sent' in the second line. Providing membership confirmation by administrative regions and establishing offices in the four divisions is not necessary when there is only one national constituency.

6 - (3)(k) -Delete this subsection. There should be no registration fee for application.

6. **Section 14-(2)(d)(i),(ii),(iii)** Delete the entire subsection. The persons holding the offices named in the subsection are not public officers. This provision was deliberately inserted to ban trade unionists from seeking political office and is a gross contravention of the International Covenant on Civil and Political Rights.

7. **Section 14-(6) and (8)** – Delete these subsections as they relate to Section 14(2)(d)(i)(ii)&(iii)

8. **Section 16-(4)** delete all the words after 'media' in the second line. If the State wants to publicise the information then it should pay for it.

9. **Section 17** – <u>Records of Political Party</u>

Membership of a political party should be regarded as personal and private information protected by the individual's right to privacy under S24 of the Constitution of Fiji. As such, membership details should not be published for public information or be made available to persons other than the member.

Part 3 Funding & Accounts of Political Parties and Candidates

10. **Section 21- (1)(c)** Delete existing provision and substitute: "proceeds from any investment, project or undertaking in which the political party has an interest"

11. **Add 21-(1)(d)** fund raising activity undertaken by the political party

12. **Section 22- (2)** The limit of $10,000 on individual contribution be increased to $15,000 to take account of inflation since it was fixed some 10 years ago in 2013.

13. **Section 22-(5)** Delete this subsection to ensure consistency with the other provisions

Publishing source of Funds

14. **Section 23-(1) -** Delete this subsection as S26(2) requires political parties to submit audited accounts to the Registrar within 3 months after the close of each financial year. It makes no sense to submit unaudited accounts just when audited accounts are required to be submitted. It's unnecessary additional work.

15. **Section 23-(2**) – Add after must deregister the political party …"in accordance with Section 19(2)".

16. **Section 24** – Delete the entire section. There is no justification for requiring officials and/or candidates whether independent or those nominated by political parties to submit the financial disclosures prescribed under this section in the absence of such a provision for the elected members of Parliament and Ministers. The requirement for the publication of such information in the media at the expense of the officials or candidates is absurd. The section requires the submission of 3 sets of disclosures by candidates and 2 sets by political parties spanning 30 days before and 30 days after polling in the case of political parties and 7 days after nomination and 30 days after polling in the case of candidates.

In an election year the political parties would be required to file 4 sets of disclosures including its audited accounts. All are to be published at their expense.

We submit that audited accounts should be the only requirement and its publication costs should be borne by the Registrar's Office.

Simply put, these requirements are intimidatory and were deliberately enacted by the Fiji First government to discourage and deter qualified, competent people from contesting elections.

17. **Section 25** - Delete this section for reasons stated in respect of S24

18. **Section26** -Delete subsection 2A. If the Registrar wants the accounts published, it should then do so at its own expense.

Delete subsection 3 it serves no purpose in light of S26(2)

Delete subsection (5) as it is a matter of professional standards which should be dealt with under the provisions of the Crimes Act.

19. **Section 26A** - such wide powers can be abused and the public must be protected by requiring the Registrar to obtain a Court order in such cases.

20. **Section 27**- Delete subsections (1),(2),(3) and (4). The sanctions provided therein are already incorporated in the various sections that deal with compliance by political parties, corporate organisations and their officials/employees with the provisions of the Act.

21. **Section 30 Appeals against the decision of the Registrar**

The right of appeal to the High Court against the Registrar's decision should be restored.

Access to Courts to obtain redress from the decisions of the Agencies of the State should not be curtailed as such rights are protected by the Constitution – S15(2).

22. **Section 30A Dispute Resolution**

This section should be deleted. It is not the function nor the responsibility of the Electoral Commission to mediate or arbitrate in disputes between political parties on campaign issues. As a rule, for mediation or arbitration to take place the consent of both parties is essential. However, in this case, a political party can approach the Commission on its own without the consent of the other party.

Subsection (3) leaves matters hanging in the air by simply stating that the decision of the Commission on whether to mediate or arbitrate is final and is not subject to any further appeal to, or review by any court, tribunal or any other adjudicating body.

The Commission should maintain its independence and not involve itself in political disputes of whatever nature.

NOTE: A number of the recommendations above, if accepted, will require consequential amendments to other associated sections.

Mahendra P. Chaudhry
Registered Officer

18 January 2021