The Fijian Electoral Commission

Annual Report

2014

FIJIAN ELECTORAL COMMISSION

1 May 2015

The General Secretary to Parliament
Parliamentary Complex,
SUVA

Dear Madam,

2014 Annual Report of Electoral Commission

On behalf of the Electoral Commission and pursuant to section 75 (1) of the Constitution, I have great pleasure in submitting the 2014 Annual Report of the Electoral Commission.

Yours faithfully

Alisi Daurewa
On behalf the Chairperson

Enc.

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Executive Summary

(i) The Electoral Commission (EC) was established on 9 January 2014 by his Excellency Ratu Epeli Nailatikau, the President of the Republic of Fiji in accordance Part C section 75 of the Constitution of the Republic of Fiji. The 7 members appointed were:
Chen B. Young- Chairperson; ,David G. Arms – Member; Alisi W. Daurewa – Member; Vijay Naidu- Member; Jenny Seeto – Member; James Sowane – Member; Larry Thomas – Member.

(ii) From January till December 2014, EC used 31% of the budgeted allocation of $107, 760. The EC did not have a separate budget; this allocation came from the overall Fiji Elections Office (FEO) budget that was under the charge of the Supervisor of Elections (SoE). To ensure its complete independence, the EC must have a completely separate budgetary allocation.

(iii) The EC's work was affected by it not having the services of an independent legal adviser. Repeated requests for an independent legal consultant to the Minister of Elections remained unanswered.

(iv) The EC received considerable support from development partners and visits to the Australian and New Zealand Electoral Commissions to observe their respective electoral operations were instructive and beneficial.

(v) During the first three months of its appointment EC members were heavily involved in the process of recruiting senior and middle management staff for FEO.

(vi) As at 31 December 2014, the EC had 52 regular Commission business meetings as well as meetings (some multiple) with the Attorney General and Solicitor General, the Forum Ministerial Contact Group, the Papua New Guinea Elections Office, Australian, Indonesian and Japanese government delegations, representatives of the Media Industry Development Authority (MIDA) and media organisations, political parties and aspiring independent candidates, officials of NGOs, the Police Commissioner and senior police officers, bus company proprietors, and representatives of Multi-national Observer Group (MOG).

(vii) The EC developed the roadmap to elections, prepared the Code of Conduct for FEO, monitored pre-poll and polling avenues, reviewed the Result Management

Information System, oversaw the secure storage of electoral material including ballot papers, and monitored the electoral process from 15 September through to the allocation of seats and Return of the Writ on 22 September 2014.

(viii) The EC was informed of the impending appointment of the Supervisor of Elections, Mr Mohammed Saneem by the Minister of Elections and Attorney General in the presence of the Solicitor General. EC had indicated that the position be re-advertised. The Supervisor of Elections (SoE) was appointed by His Excellency, the President on 28th March 2014.

(ix) While 76 (2) of the Constitution clearly enables the EC to direct the SoE on matters concerning his/her performance, the current governance arrangement limits the EC from effectively fulfilling its role.

(x) The EC made representations on the draft 2014 Electoral Decree to the Solicitor General relating to the ballot paper and time frame to address candidate's Objections and Appeals and Reviews of decisions of the SOE.

(xi) The issue of time frame and the SOE's refusal to comply with the decisions of EC is the subject of litigation in the Fijian Court of Appeal.

(xii) The Electoral Decree 2014 was promulgated on Friday, 28 March 2014. Some political parties strongly objected to the ballot paper containing just numbers. The EC recommended a booklet which would contain the candidate's number, name, photo, and the candidate's party name or symbol but this did not eventuate.

(xiii) The EC received strong objections from civil society organisations about the application of Section 115 (1) and (2). The EC facilitated engagement of NGOs wishing to be engaged in voter education.

(xiv) Although the EC had the authority to make the final decision on the matter of ordinarily resident in Fiji with regards to candidates, Government narrowed the scope of this decision by its amendment of the Decree on 31 July 2014. The amended definition of 'ordinarily resident' affected the candidature of Ms Makareta Waqavonovono and possible potential candidates.

(xv) The EC submission to the Attorney General led to the repeal of the relevant part of the State Proceedings (Amendment) Decree, 2012 affording the Government Minister's immunity for any statement made along with the part of the Public Order (Amendment) Decree 2014, preventing a court review against a refusal to

grant a permit for public gathering by the police. See Public Order (Amendment) Decree, 2014 and State Proceedings (Amendment) Decree, 2014.

(xvi) The EC made media statements on public transport on polling day; campaign restriction 48 hours before start of polling; private transport to voters and clean campaigning.

(xvii) The EC being aware that "one person, one vote, one value" was a new concept for Fiji, actively engaged in voter education work with civil society groups, professional bodies, provincial councils, the media and through public meetings.

(xviii Pursuant to Section 22 of the Electoral Decree 2014 nominations were received from 4 August to 12:00pm 18 August, following which objections to candidate nominations were received by the EC;

1. Pursuant to Section 30 of the Electoral Decree the EC dealt with the objections as follows: Praveen Kumar- Objection was upheld.
2. Pursuant to Section 31 of the Electoral Decree the EC dealt with the appeals as follows: Steven P Singh - Appeal was allowed.

(xiv) The EC's decisions on the objections and appeals on nominations were delivered by the EC at 7:30pm on Friday 22 August 2014.

(xx) The EC then unanimously resolved to take out court proceedings to determine the validity of the SoE's decision to ignore the directions of the Electoral Commission vide its letter 22 August 2014.

(xxi) Following the dismissal of the EC proceedings by the High Court, the EC resolved to appeal the decision of the High Court to the Fiji Court of Appeal, Civil Appeal No. ABN0069 of 2014.

(xxii) Pursuant to Section 35 of the Decree, the EC issued a notice of poll in the Gazette, daily newspapers, radio and free-to-air television, beginning in August and repeated several times thereafter.

(xxiii) 549 pre-polling stations were identified and pre-polling commenced on the 3rd of September. The EC visited pre-poll stations in all four Divisions.

(xxiv) A low number of postal ballots were received by the FEO; substantial remedial measures need to be taken to avoid a repetition of the difficulties encountered regarding the postal ballots for the next General Election.

(xxv) On the 17th September 2014, the members of the EC went individually to observe voting at various polling stations throughout Fiji. Commissioners also observed the completion of counting and the posting of the Protocol of Results at the polling stations.

(xxvi) Although certain political parties formally complained to the EC about possible tampering with ballot papers, this matter was not followed up with substantive evidence.

(xxvii) On the morning of 22nd September the EC received the Final National Results Tally. It then allocated the seats in Parliament and announced the names of the 50 candidates elected to Parliament. At 12 noon it returned the writ to the President. The EC were invited to the President's residence again at 3pm that day for the swearing in of the Honorable Prime Minister.

(xxviii) The resignation of Dr. Jiko Luveni led the EC to exercise its powers under Section 64 (1) of the Constitution; the EC then awarded her seat to LaiseniaTuitubou.

(xxiv) The 2014 General Election was successfully conducted through a combination of efforts. The high voter turnout (84%) demonstrated the will of the people to be governed by a democratically elected government.

(xxv) The EC makes significant recommendations to improve electoral processes and outcomes including amendments to the electoral provisions of the 2013 Republic of Fiji Constitution relating to the threshold of 5% of votes cast, time period between the issue of writ and polling, and by elections. The other recommendations are for amendments to the 2014 Electoral Decree. These cover disqualification of candidates based on the period of conviction; the first number on ballot paper to be changed from 135 to 140, voters being allowed to carry a card or small piece of paper into the polling station, alphabetical listing of candidates, requirements relating to multiple citizenship holders and postal voters, provisional national tally, the role of Minister of Elections in deciding on independent observers, the number of signatures and divisional requirement of signatures for political party registration.

(xxvi) The EC in overseeing the 2014 General Election sought to be independent and feels strongly that its authority to oversee future national elections as stipulated in the 2013 Republic of Fiji Constitution must be respected by all. To reinforce its independence, the EC must have a separate budget from the FEO, and an independent legal adviser.

1.0 INTRODUCTION

This annual report excludes the finer operational aspects of the 2014 General Election which are captured in the Supervisor of Elections October 2014 Report and the joint Electoral Commission and Supervisor of Elections Report of December, 2014. As at 31st December, 2014, total expenditure for FEO including the Donor funds was $27,763,815.

The Fijian Electoral Commission was appointed by the President of the Republic of Fiji on 9 January 2014. Following their appointment, the 7-member team was given a briefing by the Attorney General and provided with a folder containing sundry information on where things were at and what was at that time, required. This included a comprehensive listing of the structure of the Elections Office and all the staff needed.

At the outset the Electoral Commission (hereinafter referred to as EC) was fully aware of the great challenge that lay ahead. It had responsibility for the conduct of a free and fair General Election, under a new electoral system, by September 2014. The members of the Electoral Commission formally committed themselves to being truly independent and to doing their very best to ensure that the General Election would be free, fair and credible.

For the first three months, the work of the EC was made more difficult by the fact that there was no Electoral Decree in place to provide a framework and reference point for its work. In addition, a Supervisor of Elections (hereinafter referred to as SoE) had not yet been appointed. Mohammed Saneem, as the Acting Permanent Secretary for Justice had been carrying out the functions of the Supervisor of Elections.

Immediate staffing of the Elections Office was required, so the EC under the guidance and training by the Technical Advisors from Australia, New Zealand and the European Union divided up into teams (usually consisting of two Commission members and an independent professional from the private sector) to interview applicants, assess them according to a neutral and pre-agreed standard, and recommend the successful candidates for appointment.

Once the Electoral Decree was promulgated and a SoE was appointed (both took place on 28 March 2014), preparations for the General Election proceeded quickly and effectively.

2.0 ABOUT THE ELECTORAL COMMISSION

2.1 Legislative Framework

Pursuant to Section 75(1) of the Constitution of the Republic of Fiji 2013 (hereinafter referred to as "The Constitution") the Chairperson and six other members of the Electoral Commission were appointed on 9 January 2014 by His Excellency, the President.

Section 75(2) of the Constitution provides:

"The Commission has the responsibility for the registration of voters and the conduct of free and fair elections in accordance with the written law governing elections and any other relevant law, and in particular for —

(a) the registration of citizens as voters, and the regular revision of the Register of Voters;

(b) voter education;

(c) the registration of candidates for election;

(d) the settlement of electoral disputes, including disputes relating to or arising from nominations, but excluding election petitions and disputes subsequent to the declaration of election results; and

(e) monitoring and enforcing compliance with any written law governing elections and political parties."

2.2 Establishment of the Electoral Commission

The Electoral Commission (EC) was established on 9 January 2014. The members appointed were:

Chen B. Young- Chairperson

David G. Arms - Member

Alisi W. Daurewa - Member

Vijay Naidu- Member

Jenny Seeto – Member

James Sowane - Member

Larry Thomas – Member

2.3 Institutional Support

2.3.1 The Secretariat

At the outset the EC had only one staff seconded to it from the Fijian Elections Office (FEO) in the form of a Personal Assistant. From May 19 another Personal Assistant was appointed and a third joined in July 2014.

The staff at the secretariat of the EC are appointed by the Supervisor of Elections. As employees of the FEO, they technically report to the SoE and not to the EC. Therefore, their terms of employment are determined by the SoE.

2.3.2 Electoral Commission Budget

Sitting allowances for the Commissioners were determined by a meeting between the Minister of Elections, the Chairperson of the EC and the Supervisor of Elections using the guidelines of sitting allowances of other Commissions. Two of the Commissioners resided in the West so their travel and accommodation costs were included as part of the EC's expenditure.

The FEO provided secretariat services to the EC and also funded its operations from the Elections Budget. The allowances of the EC are as follows:

i. Sitting allowance per day -$500
ii. Meal allowance per day - $50 per person
iii. Travel allowance where transport is not provided by FEO - $0.65per km
iv. Accommodation in Suva for West based Commissioners – up to maximum of $390 per night

No meal allowances were claimed by the Commissioners for meetings, as morning tea and lunch was provided by the FEO.

The EC's expenditure for travel, accommodation, meeting expenses and sitting allowances totaled $292,511 as at 31st December, 2014.

i. Attorney General and Solicitor General regarding the Electoral Decree and the appointment of the Supervisor of Elections
ii. Commonwealth Secretariat
iii. Forum Ministerial Contact Group
iv. Papua New Guinea Elections Office delegation
v. Media Industry Development Authority (MIDA) and Media organisations
vi. Diplomatic Corp and international agencies
vii. Indonesian, Japanese and Australian delegations
viii. Political Parties and aspiring Independent Candidates
ix. Non-governmental Organisations (NGOs)
x. Police Commissioner
xi. Transparency International
xii. Fiji Bus Operators Association, Fiji Taxi Union Association and Ministry of Transport
xiii. Samabula East Methodist Church
xiv. Fiji Law Society
xv. Lau Provincial Council
xvi. Multi-national Observer Group (MOG)
xvii. New Zealand & Australian High Commissions

2.4.2 Other Matters

The Commission had to review and attend to electoral matters that could only be done in their private time.

Besides the above meetings, the Commission was also involved with the following:

i. Human Resources FEO staff interviews
ii. Developing and reviewing the 2014 Election roadmap
iii. Preparing Code of Conduct for the FEO
iv. Presentation to the President
v. Presentation to the Prime Minister
vi. Printing of ballot papers
vii. Liaising with the Fiji Retailers Association about working hours on Elections Day
viii. Engaging with both the print and broadcast media for interviews on voter education and awareness on the electoral processes
ix. Monitoring pre-poll and polling venues in all four Divisions during voting
x. Attending to and delivering decisions on Objections and Appeals according to Sections 30 & 31 of the Electoral Decree 2014

xi. Holding public consultations in Suva and Nausori
xii. Reviewing the Result Management Information System
xiii. Reviewing security arrangement for storage of electoral material including ballot papers
xiv. Liaising with the University of Fiji, Fiji National University and the University of the South Pacific about possible recruitment of polling day workers
xv. Monitoring the electoral process from 15 September through to the allocation of seats and Return of the Writ on 22 September 2014

3.0 Legislative Framework for the Supervisor of Elections

The Supervisor of Elections was appointed by His Excellency the President, on 28th March 2014.

Section 76 subsection 2 and 3 of the Constitution states:

> 2. The Supervisor of Elections, acting under the direction of the Electoral Commission, —
>
> (a) administers the registration of voters for elections of members to Parliament;
>
> (b) conducts —
> (i) elections of members of Parliament; and
> (ii) such other elections as Parliament prescribes; and
>
> (c) may perform such other functions as are conferred by written law.
>
> 3. The Supervisor of Elections must comply with any directions that the EC gives him or her concerning the performance of his or her functions."

3.1 Appointment of the Supervisor of Elections

The Attorney General as Minister of Elections advised the Commissioners that the overseas applicants who had applied for the position were either not suitable or now not available due to the passage of time and the Minister of Elections submitted the name of Mr. Mohammed Saneem. However, the Commissioners expressed some reservation in the manner the position of the Supervisor of Election had been allowed to protract for

such a long period since applications for the position had been advertised in 2013 with all applications for the position closing in October, 2013. At that meeting the Commission suggested to the Minister for the position to be re-advertised.

3.2 The EC's relationship with the Supervisor of Elections

Section 76 subsection 3, of the Constitution states: "The Supervisor of Elections must comply with any directions that the Electoral Commission gives him or her concerning the performance of his or her functions".

The EC and the SoE share similar appointment processes. They are appointed by the President on the advice of the Constitutional Offices Commission. While section 76 (2) of the Constitution enables the EC to direct the SoE on matters concerning the performance of his or her function, the governance structure in place however, appears to limit the EC from effectively fulfilling its role.

The EC would like to recommend that the Electoral Decree 2014 be amended to reflect clearly how the two institutions should be functioning to actualise their respective responsibilities under the Constitution.

4.0 GOVERNANCE

Section 3.2 highlights a lack in good governance structure between the EC and the SoE. This is a responsibility which the EC has begun to embark on in 2015 despite the fact that it was and continues to be under-resourced. It is hoped that with help from development partners, rules of engagement, electoral policies and other corporate operating guidelines and regulations will be completed by mid-2016.

4.1 The Electoral Decree 2014

A draft of the Electoral Decree was first given to the EC on Sunday, 16 February, 2014. Thereafter, a meeting was secured with the Solicitor-General's office and representations were made to the Solicitor-General on certain changes that the EC had sought. These changes included:

I. features of ballot papers;
II. short time frames to deal candidate's Objections and Appeals of the decision of the Supervisor of Elections;
III. the Court of Disputed Returns;
IV. identification of the candidate's number on the ballot paper.

V. advance voting (pre-poll) needed to be specifically provided for.

The Electoral Decree 2014 was promulgated on Friday, 28 March 2014.However, the EC continued to make representations on the changes to the Electoral Decree.

Following the promulgation of the Electoral Decree, the political parties strongly objected to the form of the ballot paper. Many wanted a ballot paper where the party candidate's name and party symbol (or party name) could be individually seen. They objected to the idea of a ballot paper containing just numbers, and claimed that the populace would be totally confused by it.

The EC said it would look into the matter and pointed out the Electoral Decree required the numbering system. However, the EC considered that supplementary information could be supplied to the voters in the form of a booklet which would contain the candidate's number, name, photo, and hopefully also the candidate's party name or symbol. A booklet was indeed prepared and supplied by the Fijian Elections Office, but it contained only the National Candidates List and made no reference whatsoever to the candidate's party (*see further details on this matter below*).

As part of its overall concern about certain aspects of the Electoral Decree, the EC met with the Solicitor-General on 29 April 2014 and made further representations on certain aspects of the Electoral Decree. It was submitted by the EC that the Decree should be amended to allow voters to enter the polling station with a card or a paper that was in the size of a business card but no more than the size of a $5 note with a candidate's number or numbers which the voter might wish to consider voting for in the polling booth. Section 52(2) made it unlawful for any voter to bring into the polling station "*any type of paper*" or "*...any card or instruction on how to vote*".

The EC received some concerns from civil society organisations about the application of Section 115 (1) and (2). However, following discussions the EC informed them that Subsection 1 was only meant to deter organizations and entities who receive funding from foreign governments to participate in the "conduct of any campaign".

With regard to subsection 2, relating organizations who wished to undertake voter education, the EC explained how it would apply the subsection to authorize voter education as long as organizations complied with the criteria set by the EC.

4.1.1 Ordinarily Resident

The Electoral Decree provided that a person can only be a candidate for the elections if he was 'Ordinarily Resident' in Fiji. However, there was no definition on what "ordinarily resident" meant. The EC felt there was need for clarification on this issue and wrote to the Attorney General dated 4 July 2014 to seek clarification.

Following this, a letter from the EC was sent to the Attorney- General on 20 August 2014. **(Appendix 4)**

However, by an amendment gazetted on 31 July 2014 the Government defined *"ordinarily resident"* to mean that the individual had to be:

> ".....ordinarily resident in Fiji for at least 2 years immediately before being nominated, if that person has been present and living in Fiji for an aggregate period of not less than 18 months out of the 2 years immediately before being nominated."

4.1.1.1 Civil Action No. 92/2014 Makareta Waqavonovono verses the Electoral Commission, Supervisor of Elections, and Attorney General

The EC resolved to remain independent and did not participate in the proceedings to maintain its independence. Letters dated 23 and 25 July 2014 was sent to the Solicitor-General explaining the independent position that the EC wished to maintain.

> <u>Civil Action between Makareta Waqavonovono and Chairperson of the Fijian Electoral Commission and others – HBM 92 of 2014</u>
>
> "We refer to our earlier letter of 23 July 2014 and our subsequent telephone discussions on the above matter and note your advice that the application to strike out filed by the 1st and 2nd respondent and the original motion has been adjourned to Monday 28 July 2014 for hearing.
>
> We would be grateful for you to appear on behalf of the Commission on the following limited instruction and make the following submissions on our behalf:-
>
> 1. To inform the court that the EC means no discourtesy by its non-appearance previously.

2. The EC should not have been joined as a party because we have yet to fulfill our role as the final review authority either from the objection by the registered voter under section 30 or the decision of the SOE under section 31 of the Electoral Decree.

3. If asked by the court, whether the EC has a view on ordinarily resident then respectfully inform the Court it wishes to decline from expressing a view because:-

   (a) The Electoral Commission's role is to review:-

      (i) The registered voter's objection after considering the objection and any response from the candidate;
      (ii) the Supervisor of Election's decision after considering the application for review to his decision and any response from the SOE to such application for review;

   (b) Any definition that the court may give will be incomplete without the benefit (i) and/or (ii) above;

   (c) Any views that the EC may have can only be made after it has fully considered all the facts and grounds set out in (i) and (ii) above; and

   (d) It is the EC that makes the final decision which is not subject to a review by a court of law.

Please confirm if you are able to appear and upon the above instructions".

4.2 Submissions on certain Decrees

As part of its overall responsibility to deliver a fair and credible election, the EC wrote to the Attorney General's office on June 4 2014 with regards to certain Decrees that were enforced. Soon after these submissions were made, the relevant part of the state proceeding amendment 2012 affording the Government Minister's immunity for any statement made, was repealed along with the part of the Public Order Act preventing a court review against a refusal to grant a permit for public gathering by the police. See Public Order (Amendment) Decree 2014, and State Proceedings (Amendment) Decree, 2014.

5.0 MEETINGS WITH KEY STAKEHOLDERS

5.1 Meetings with Political Parties

Soon after its appointment, the EC began receiving numerous correspondences from political parties and individuals. Due to the lack of resources which the EC was laboring under, it was difficult to respond to all the issues raised in the correspondence effectively. However, in order to address the issues, the EC initiated meetings with political party representatives and aspiring independent candidates. These meetings also fulfilled the requirement of Section 14 (e) of the Electoral Decree and took place between February and July 2014. **(Appendix 5)**

The meetings dealt with the following issues:

(i) voter registration and data availability;
(ii) voter education;
(iii) pre-polling and polling stations;
(iv) the process of voting including the size and contents of the ballot paper;
(v) campaign rules;
(vi) unbalanced news coverage;
(vii) use of civil servants for polling;
(viii) definition of "ordinarily resident" pursuant to the Electoral Decree and
(ix) the immunity granted to the Government Ministers under the State proceedings (Amendment) Decree 2012 and certain aspects of the Public Order Act.

As polling drew closer, the EC felt it would be helpful to provide some guidelines on certain election processes. This was done through a press statement on 12 September 2014.The press statement addressed the following matters:

(1) public transport on polling day;
(2) campaign restriction 48 hours before start of polling;
(3) restriction on campaign during 48 hours up to start of polling and thereafter up to close of polling;
(4) 300 meters restriction from polling venue;
(5) private transport to voters and

(6) clean campaigning.

5.2 Meeting with Non-Governmental Organizations (NGOs)

The EC noted that non-governmental organizations (NGOs) like the Fiji Women's Rights Movement (FWRM) were already engaged in civic education which complemented the voter education program. In the Commission's meetings with NGOs, opportunities were given to them to seek clarification on the application of the Electoral Decree. Perhaps the most valuable outcome of these meetings was the eventual approval by the EC and the SoE (under Section 115(2) of the Electoral Decree 2014) for NGOs to engage in or to undertake voter education. **(Appendix 6)**

5.3 Meetings with Media Industry Development Authority and Media

The EC met with the Media Industry Development Authority (MIDA) in March followed by a meeting with the representatives of the media. The meeting with MIDA allowed the EC to be briefed on the proposed media coverage and the training of media personnel on elections coverage MIDA was planning. Subsequent meetings with media representatives were held on 23 of May and 23 of July 2014.

These meeting also gave the EC an opportunity to inform the media of various complaints political parties had made concerning imbalance in reporting and where it could, it also briefed the media on the current state of the electoral process. **(Appendix 7)**

5.4 Meeting with Diplomatic Corp and International Groups

The EC met with the Diplomatic Corp twice in March and April, 2014 and presented the roadmap to the Elections covering issues such as voter education which appeared to be one of the main concerns at that time. Other meetings were also held with visiting delegations with the Pacific Islands Forum Ministerial Contact Group, which included Australia, New Zealand, Papua New Guinea, Samoa, Tuvalu, and Vanuatu. Other meetings were held with delegations from the governments of Indonesia, Australia, Japan and Papua New Guinea.

At the second meeting with the Diplomatic Corp the EC presented a progress report. This enabled the EC to gauge the specific support that various foreign governments were willing to provide or had contributed to the electoral process. **(Appendix 8)**

5.5 Multinational Observer Group

Meetings with representatives of the Multi-national Observer Group (MOG) was also held on 18 August and 15 September 2014. Following the formalization of the MOG the EC had another meeting with them. **(Appendix 9)**

The MOG requested to observe the EC's deliberation on appeals from the SoE and objections to nominations but this request was declined owing to the fact the EC felt it was inappropriate for an observer to be privy to the deliberations and it was not aware of any convention that would allow for this.

The EC did however, extend an invitation to attend any other meetings.

6.0 Voter Education

The EC was aware that "one person, one vote, one value" was a new concept for Fiji. It realized that voter education was an essential part of informing the voters about the new system. Hence, it felt that it was necessary to engage more with the relevant stakeholders in the election process.

To complement the work of the FEO, members of the EC took the opportunity to talk to civil society groups, professional bodies, provincial councils and the public through radio and television talkback shows and public meetings. As the elections drew closer it became apparent that the method of allocation of seats to Parliament needed to be explained further and this was addressed by the EC quite extensively. In an unprecedented manner, advertisements were produced by the FEO on voter registration; how to vote and where to vote. Besides this, pamphlets were also widely distributed. These forms of voter education were in the English, iTaukei, Hindi and Chinese languages.

6.1 Guidance to Voters

The EC felt that the 'Guidance to Voters' on who the candidates were on polling day could be improved and hence a letter dated 27 June 2014 was written by the Electoral Commission to the Solicitor-General requesting that a List of Candidates different from the official National Candidates List be made available. This other list would provide

voters with the names of candidates in alphabetical order, their party names and symbol, and their individual candidate number. **(Appendix 10)**

A follow up letter dated 20 August 2014 was sent to the Attorney-General but no response was received to either letter.

7.0 Notice of Nomination

Pursuant to Section 22 of the Electoral Decree 2014 which states:

> "The Electoral Commission must, upon receipt of a writ for an election, publish in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television, a notice of the;
> (a) nomination period; and
> (b) place of nomination."

The nomination period and the place of nomination was published accordingly. The nomination period was from 4 August to 12:00pm 18 August, 2014 and the place of nomination was the Fijian Elections Office, 59-63 Upper High Street, Toorak, Suva.

Thereafter, objections to candidate nominations were received by the EC pursuant to Section 30. The following objections were received:

	Date	Time	Objector	Candidate Objected To
1.	19/08/14	1:50pm	Benjamin Padarath	Koleta Sivivatu
2.	19/08/14	2:05pm	Makareta Waqavonovono	Aiyaz Sayed-Khaiyum
3.	19/08/14	2:05pm	Dalip Kumar	Mereseini Vuniwaqa
4.	19/08/14	3:50pm	Aman Ravindra-Singh	Inia Batikoto Seruiratu
5.	19/08/14	3:50pm	Aman Ravindra-Singh	Joeli Ratulevu Cawaki
6.	19/08/14	3:50pm	Aman Ravindra-Singh	Laisenia Bale Tuitubou
7.	19/08/14	3:50pm	Aman Ravindra-Singh	Pio Tikoduadua
8.	19/08/14	3:50pm	Aman Ravindra-Singh	Brij Lal
9.	19/08/14	3:50pm	Aman Ravindra-Singh	Praveen Kumar
10.	19/08/14	4:00pm	Benjamin Padarath	Praveen Kumar
11.	19/08/14	4:00pm	Ilai Tusega	Kini Maraiwai

Pursuant to Section 31 appeals on nominations were received as follows:

Date	Time	Candidate Seeking Appeal

1. 19/08/14	12:30pm	Jagath Karunaratne
2. 19/08/14	1:16pm	Anare Jale
3. 19/08/14	1:50pm	Steven P Singh
4. 19/08/14	1:50pm	Mohammed Tahir
5. 19/08/14	1:50pm	Arvin Datt
6. 19/08/14	1:50pm	Mahendra Chaudhry
7. 19/08/14	3:50pm	Daniel Urai Manufolau
8. 19/08/14	3:50pm	Hiroshi Taniguchi
9. 19/08/14	3:50pm	Lekima Lawanitoakula
10. 19/08/14	3:50pm	Patrick Shamal Singh

Pursuant to Section 30 of the Electoral Decree the EC dealt with the objections as follows:

3. Koleta Sivivatu	-	Objection was dismissed.
4. Aiyaz Sayed-Khaiyum	-	Objection was dismissed.
5. Mereseini Vuniwaqa	-	Objection was dismissed.
6. Inia Seruiratu	-	Objection was dismissed.
7. Joeli Ratulevu Cawaki	-	Objection was dismissed.
8. Laisenia Bale Tuitubou	-	Objection was dismissed.
9. Pio Tikoduadua	-	Objection was dismissed.
10. Brij Lal	-	Objection was dismissed.
11. Praveen Kumar	-	Objection was upheld.
12. Praveen Kumar	-	Objection was dismissed.
13. Kini Maraiwai	-	Objection was dismissed.

Pursuant to Section 31 of the Electoral Decree the EC dealt with the appeals as follows:

1. Jagath Karunaratne	-	Appeal dismissed.
2 Anare Jale	-	Appeal was dismissed.
3. Steven P Singh	-	Appeal was allowed.
4. Mohammed Tahir	-	Appeal was dismissed.
5. Arvin Datt	-	Appeal was dismissed.
6. Mahendra Chaudhry	-	Appeal was dismissed.
7. Daniel Urai Manufolau	-	Appeal was dismissed.
8. Hiroshi Taniguchi	-	Appeal was dismissed.
9. Lekima Lawanitoakula	-	Appeal was dismissed.
10. Patrick Shamal Singh	-	Appeal was dismissed.

The EC's decisions to the objections and appeals on nominations were delivered by the EC at 7:30pm on Friday 22 August 2014.

Six (6) of the seven (7) members of the EC met to deliberate. With regard to the decisions to the objections and appeals, all of the decisions were unanimous except for the objection relating to Praveen Kumar which was by majority of 4 to 2, Aiyaz-Saiyad Khaiyum 5 to 1 and Mereseini Vuniwaqa 5 to 1.

7.1 Court Action

By a letter dated 22 August 2014 the SoE wrote to the EC as follows:

> "Non-receipt of Decision of the Electoral Commission under sections 30 and 31 of Electoral Decree
>
> The final date for the receipt of Appeals and Objections to the Nominations under the Electoral Decree [Decree] for the 2014 General Election was on 19 August 2014 at 4 p.m. Thereafter the Electoral Commission had 3 days within which it was required to make a decision and communicate the same to the Supervisor of Elections.
>
> The 3 day period concluded at 4 p.m on 22 August 2014 and as at 5:50p.m I have not received any decision.
>
> The Electoral Commission has therefore frustrated sections 30 and 31 of the Decree.
>
> In light of the above, the Supervisor of Elections will now proceed with the National Candidates List draw based on the Candidates approved as at 18 August 2014 and published in the papers on 19 August 2014."

On the same afternoon the EC responded to the Supervisor of Elections as follows:

> "I refer to your letter of 22 August and our telephone discussions this evening.
>
> From the outset we disagree with the conclusion in your letter and hold the view that it is wrong in law. We maintain that the three days to deliver a decision on the objection and review expires at midnight tonight and not at 4pm as you contend.

The Electoral Commission has taken legal advice from Dr. Gerard McCoy QC and from Chen Palmer Solicitors of New Zealand who both confirm the three days expire at midnight tonight, 22 August, 2014.

The Electoral Commission decision to the objections and reviews were delivered at approximately 7:30pm tonight and received by all the parties except for the ones received soon thereafter by Mr. Aiyaz Sayed-Khaiyum as General Secretary on behalf of the candidates of the FijiFirst Party. For your convenience we enclose the written opinion of Dr. Gerard McCoy that supports the Electoral Commission's views.

We are therefore directing you (pursuant to Section 76 (3) of the Constitution) to proceed with the National Candidates List draw based on the decisions of the Electoral Commission and this means that you are to include the name of Mr. Steven P Singh of Fiji Labour Party and we are ordering that Mr. Parveen Kumar of the FijiFirst Party be removed as a candidate from the party list.

Should you need any clarification please do not hesitate to contact the undersigned at any time."

At 7:30 pm on 22 August the EC delivered its decisions on the objections and appeals.

By a letter dated 23 August 2014 the SoE responded as follows:

"Draw of the National Candidate's List – 23 August 2014

1. The Supervisor of Elections is required to hold the draw for the National Candidates List within 7 days of the close of Nominations.
2. Vide notice in the newspapers on 22 August 2014, I had informed and accordingly organized the draw to be conducted today, 23 August 2014 at the Fijian Elections Office.
3. I refer to my letter of 22 August 2014 regarding the decisions on the Objections and Appeals and to the Legal Opinion that was received from the Solicitor General (forwarded to you via email this morning) and would like to inform the Commission that I will proceed to hold the draw of the National Candidates List as per the Notice published in the newspapers.

4. I have received legal advice that if I do not proceed with the draw as per the Electoral Decree ["Decree"], I will be in breach of the Decree. In my position as the Supervisor of Elections, I cannot disregard the provisions of the Decree.
5. As such the draw will proceed at 9:30 a.m this morning.

The SoE proceeded to draw the numbers for the National Candidates List on Saturday 23 August 2014 at 9:30am.

The EC had unanimously resolved to take out court proceedings to determine the validity of the SoE's decision to ignore the directions of the Electoral Commission vide its letter 22 August 2014. Proceedings were filed at the High Court on 23 August, 2014 in Civil Action No. HBC 240 of 2014. The orders sought in the action were as follows:

"1. A DECLARATION that the Supervisor of Elections has erred in law and in fact in concluding that the Electoral Commission was bound to deliver its decision on the objections and applications for review in terms of Section 30 & 31 of the Electoral Decree 2014 by 4pm Friday 22 August, 2014 and not any later time on that day.

2. A DECLARATION that the Supervisor of Elections was bound to follow the directive of the Electoral Commission by the Electoral Commission's letter dated 22 of August, 2014 in compliance with Section 76 (3) of the Constitution of the Republic of Fiji.

3. A DECLARATION that the purported assignment of numbers in order in which names of the candidates should appear (pursuant to Section 36 of the Electoral Decree 2014) by the Supervisor of Elections on Saturday 23 August, 2014 is void and of no effect

4. AN ORDER that the Supervisor of Elections assign numbers in the order in which names of the candidates should appear (pursuant to Section 36 of the Electoral Decree 2014) either on Sunday 24 August 2014 or such date permissible under the Electoral Decree 2014."

The matter was heard before Justice Kamal Kumar on 23 August 2014 and the decision was delivered on Sunday 24 August 2014 when the proceeding was dismissed.

The nomination date i.e. the date for the close of nominations was 12:00pm Monday, 18 August 2014.

Section 36 (1) of the Electoral Decree states that:

Following the receipt by the Supervisor of the names of the independent candidates nominated for election to Parliament in an election, and of the names of party candidates nominated for election to Parliament in an election as contained in the party lists of the political parties, the Supervisor shall, within 7 days following the close of nominations for the election, prepare a National Candidates List containing the names of all candidates.

Therefore, the National Candidates List to be prepared by the Supervisor of Elections had to be done within seven days hence the last date for the preparation of the National Candidate List with the allocation of the number to each candidate had to be done no later than Monday, 25 August, 2014. Hence, there was still time for the SoE to defer the drawing of the National Candidates List, to Monday 25th of August.

Following the dismissal of the EC proceedings by High Court the EC resolved to appeal the decision of the High Court to the Fiji Court of Appeal, Civil Appeal No. ABN0069 of 2014. The Notice of Motion and Grounds of Appeal was filed by the EC in the Fiji Court of Appeal on 1 October, 2014 and the following orders have been sought:

> "FOR AN ORDER that part of the judgment of Honourable Mr. Justice Kamal Kumar delivered on 24 August 2014 be set aside wherein his Lordship refused to grant the following declarations:
>
> "1. A declaration that the Supervisor of Elections has erred in law and in fact in concluding that the Electoral Commission was bound to deliver its decision on the objections and applications for review in terms of Section 30 and 31 of the Electoral Decree 2014 by 4pm Friday 22 August, 2014 and at not any later time on that day.
>
> 2. A declaration that the Supervisor of Elections was bound to follow the directive of the Electoral Commission given by the Electoral Commission's letter dated 22 of August, 2014 in compliance with Section 76(3) of the Constitution of the Republic of Fiji".
>
> AND FOR AN ORDER that this Court does grant these declarations

AND FOR A FURTHER ORDER that each party pays their own costs of this appeal or as may seem just to this Honourable Court.
UPON THE GROUNDS:

1. The learned judge having correctly stated at paragraph 3.23 of his judgment: "*I agree with Mr. Adish Narayan that where legislation fails to define any provision then common law should be looked for guidance. Having said that, I am of the view Court should not readily accept common law definitions if doing so will defeat or frustrate the purpose of the particular legislation*" erred in law by then proceeding to reject the common law definition when that definition would not have resulted in defeating or frustrating the purpose of the Electoral Decree and when there was no other valid reason to reject the common law definition.

2. The learned Judge erred in law in not holding that the Respondent was bound to comply with the directions of the Appellant given pursuant to section 76(3) of the Constitution by letter dated 22 August 2014.

3. The learned Judge erred in law in holding the view that just because the Respondent had consulted the Solicitor General for an opinion, the Respondent was justified in refusing to comply with the directions of the Appellant given pursuant to section 76(3) of the Constitution by letter dated 22 August 2014."

It is expected that a hearing date will be assigned by the Court in the 2015 session.

It is to be noted that the EC is not challenging the results of the election but seeking the Court of Appeal to clarify the meaning and extent of the words in Section 76 subsection 2 of the Constitution which states: *"The Supervisor of Elections, acting under the direction of the Electoral Commission....."* and subsection 3 *"The Supervisor of Elections must comply with any direction that the Electoral Commission gives him or her concerning the performance of his or her functions."*.

Further clarification is also sought as to what it means in the Electoral Decree Section 30 subsection 5 and Section 31 subsection 4 of the words *"within three days"*. The Electoral Commission held the view that the measuring unit of time should be interpreted as whole days and not by hours or minutes.

7.2 Steven Pradeep Singh

Steven Pradeep Singh subsequently filed a separate High Court action.
The EC was joined in the proceedings and it was unanimously resolved it should adopt an independent position which it did by seeking the Court's permission to be excused from participating in the submissions filed by the Solicitor-General on behalf of the Solicitor-General to strike out the proceedings of Steven Pradeep Singh.

8.0 Notice of Poll

Pursuant to Section 35 of the Decree, the EC issued a notice of poll in the Gazette and all daily newspapers, broadcast on radio and free-to-air television, beginning in August and repeated several times thereafter.

8.1 Pre-polling

The FEO with the SoE was tasked with the responsibility by the EC to identify the pre-polling venues for the pre-polling voting period. This was a difficult task. There were 549 pre-polling stations identified. The SoE explained to the EC that this was necessary due to the geographic isolation of the communities. This was largely proven to be correct when the Commissioners undertook their pre-polling observation.

Pre-polling commenced on the 3rd of September. The EC visited pre-poll stations in all four Divisions, making a point of travelling to very remote pre-polling stations like Roma in the interior of Naitasiri on the border with Ra, highlands of Ba and Ra, and in Vanua Levu (Kubulau and Dogotuki), Lau group (Lakeba, Moce, Oneata, Cicia and Nayau). It found that voters, even in these remote areas, were enthusiastic about voting and on the whole had a good understanding of the new system.

However, the EC observed that some voters expressed surprise at pre-poll voting as they were under the assumption that they had to vote on September the 17th. In addition some potential voters did not vote because their names were not in the voter list even though they had apparently registered in that particular area. The Electoral Commission observed the presence of political party agents in various pre-poll stations.

8.2 Postal Voting

Under the Electoral Decree, the SoE is responsible for administering postal voting. In his report of October 2014, there is mention of problems that the Elections Office encountered with this. The EC feels that this aspect of the election was not entirely satisfactory. Considering the number of applications for postal ballots, this was not reflected when postal votes were received at the Elections Office, and this was due partly to defects in the delivery and pick-up system. The EC feels substantial remedial measures need to be taken to avoid a repetition of these difficulties at the next General Election. The EC had also requested the SoE to undertake a cost benefit analysis of the overseas registration.

8.3 Polling and Counting

On 15th September the EC visited Williams & Goslings warehouse at Wailekutu and observed the polling materials being dispatched by the Fijian Elections office staff to various polling stations.

On 16th of September the EC was informed by the SoE that some 300 polling day workers had withdrawn. He attributed their withdrawal as (personal) fear for their own safety. Fortunately the Fijian Elections Office was able to find replacements. However, the EC is of the view that the withdrawals could be attributed to complaints expressed to some members of the Commission relating to pay and remuneration.

On 17th September 2014, the members of the EC went individually to observe at various polling stations throughout Fiji, except for the Eastern Division, which had been largely covered by pre-poll and which was also observed by one Electoral Commissioner who travelled with the FEO team.

It was observed that many voters took the opportunity to vote early. There were sporadic complaints about the lack of information and confusion on the queuing at polling venues. Furthermore some voters arrived at polling stations with voter identification cards but discovered their names were not on the voter list in that particular station even though they were apparently assigned to that particular polling station. The observation by the EC involved the beginning of polling in the morning up until the completion of the count, which went on in some venues to as late as 11pm. Some of the Commissioners also observed the completion of counting and the posting of the Protocol of Results at the polling stations.

In an attempt to keep the public informed the provisional results were progressively made available on the electronic results screen. However, the posting of the provisional

results was terminated and the final national results tally began, based on the original protocols of results from each polling station.

9.0 Complaints

9.1 Before the Election

Listed below are complaints to the Electoral Commission and action taken in each case.

No.	Date Received	Details of Complainant	Nature of Complaint	Outcome
1.	24 February 2014	NFP	Regressive & Draconian Decrees	Addressed at meeting with political parties on the 26 March 2014
2.	2 April 2014	SODELPA	Media Freedom and certain aspects of the Electoral Decree	Addressed at meeting with political parties on 20 May 2014
3.	8 April 2014	NFP	Concerns about ballot paper for the election of members of Parliament	Addressed at meeting with political parties on 20 May 2014
4.	16 May 2014	SODELPA	Concerns about the Electoral Decree and its implementation	Addressed at meeting with political parties on 20 May 2014
5.	5 May received on 20 May 2014	SODELPA	Uncertainty of certain parts of the Electoral Decree	Addressed at the meeting of 20 May 2014
6.	20 May 2014	FLP	Concerns with certain provisions of Electoral Decree and voting procedures	By letter dated 18 June and addressed at the meeting of 25 June 2014

7.	3 July 2014	FLP	Pre-polling arrangements/ hire of private security firm for Electoral duties/ Security of ballot boxes/ ballot papers etc.	Responded by a letter dated 22 July and addressed at the meeting of 30 July 2014
8.	15 July 2014	FLP	National Register of Voters (NRV) Amendments made to the Electoral (Registration of Voters) Decree 2012 vide Decree 9 of 2014 gazetted on 28 March, 2014.	Addressed at the meeting with political parties of 30 July 2014
9.	23 July 2014	SODELPA	Concerns on issues relating to the September General Elections.	Addressed at the meeting with political parties of 30 July 2014
10.	23 July 2014	FLP	Concerns relating to September General Elections	Addressed at the meeting with political parties of 30 July 2014
11	6 August 2014	Legend FM News	Concern about statement made by Mr L. Qarase during campaign.	EC investigated and decided no action necessary by EC.
12.	8 August 2014	Proposed Activist People's Party	Appeal against SoE's decision over the Proposed Activist People's Party	Responded by a letter dated 11 of August and a follow-up email sent 11 August 2014
13.	26 August 2014	NFP	Clarification sought on Pre-polling process.	Noted and referred to FEO
14.	29 August 2014	NFP	Pre-polling media black-out and specimen ballot paper	Dealt by a reply on 1 September 2014
15.	5 September	NFP	Complaint against FijiFirst	Referred complaint to the FijiFirst and

	2014		for defamatory campaign	receiving their response and forwarded to NFP
16.	15 September 2014	NFP	Breach of Section 63 of the Electoral Decree by various political parties	Wrote to various parties and forwarded their replies to the NFP

9.2 After the Election

By letters dated 18 and 19 September 2014 various political parties lodged a complaint on certain aspects of the elections. Initially in the first letter of 18 September 2014 the five political parties alleged "corrupt and unlawful practices". The EC found no evidence to support the allegation of "corrupt and unlawful practices".

The Commission carried out its own investigation and responded to the parties on the 21 of September. In its response, the EC invited the complainants to let the Commissioners sight the original ballot paper which formed the basis of one of their complaints. No formal response was ever received by the EC, nor was the ballot paper produced for inspection.

The five political parties' letter dated 18 September 2014 together with the EC's response is copied below:

18th September 2014-09-18

Mr Chen Young
Chairman
Electoral Commission
Suva.

Re: Suspension of the Count

In the interest of transparency we the undersigned leaders of the Political Parties request that you suspend counting of the Election results pending the satisfactory reconciliation and resolution of all incidents that show corrupt and unlawful practises.

Some of these incidents have already been reported but remain unresolved. We have additional information and evidence and will present these to you by the close of business tomorrow.

We further request access to your electronic database to allow our representatives to make our verification and reconcile the method of electronic transmission and distribution of results by polling station.

We look forward to your prompt and appropriate action.

One Fiji Party
Filimone Vosarogo

National Federation Party
Tupou Draunidalo

Peoples Democratic Party
Lynda Tabuya

Fiji Labour Party
Mahendra Chaudhry

Social Democratic Liberal Party
Ro Temumu Kepa

The EC responded by letter dated 20th September 2014.

FIJIAN ELECTORAL COMMISSION

20 September, 2014

The National Federation Party, The Fiji Labour Party, The People's Democratic Party, The Social Democratic Liberal Party and The One Fiji Party
SUVA

We refer to your letter of 18th and 19th September together with a copy of the Media Release and two Photographs which were delivered to the Electoral Commission (received by Commissioner Daurewa after 10.00pm).

We will response to the matters you have raised in the same order set out in your media release.

Unsecured Ballot Paper

1) The black Kia Sorrento SUV Motor Vehicle FR 852 has been leased to the Fijian Elections Office for use in the elections. We believe it is owned by Tappoos Limited trading as Bula Rental and it is one of the fleet vehicles leased by FEO.

   We have viewed the photograph you have provided and made an internal enquiry as to what documents were put in the vehicle. We are informed by both FEO Divisional Coordinator and the Director Operations that the documents in the boot were Contracts for Polling Day Workers and the vehicle was being used to deliver them to the various Polling Stations.

   At no time on Polling Day was a FEO vehicle carrying Ballot Papers. All Polling Stations were provided with sufficient ballot papers beyond the number of registered voters for the Polling Stations.

   We note that you did not provide us with copies of the signed declaration and we would be happy to review this further should you think that the statutory declaration would help in any further investigation.

59 – 63 High Street, Toorak, Suva | Phone: 3316 225 | Fax: 3316 026 | P. O. Box 2528, Government Buildings, Suva.

2) With respect to the loose ballot paper we shall be pleased if you would forward us the original to inspect and verify as to whether it is an authentic ballot paper.

1) Two seals with identical numbers - It is possible that the manufacturer could have inadvertently printed the same number, however we do not see how this compromises the integrity of a ballot box.

2) Broken seals - We are aware that during transportation to polling stations some seals were broken. In respect of the tampered ballot box would you please provide particulars on where and which polling venue and how it was tampered.

3) No Presiding Officer record - At the National Counting Centre your agents would have observed that when the FEO could not find the tamper evident envelope containing the Presiding Officer's record and the Protocol of Results, the FEO or the SoE, having consulted the SG, opened a number of the ballot boxes to retrieve this envelope which contained the Presiding Officer record and the Protocol of Results.

4) Polling Station No. 532701 – The FEO has investigated and advises that this station was a pre-poll station and had 41 registered voters, who all voted. The pre-Poll station was issued with 150 ballot papers and the balance of 109 unused ballot papers has been verified.

5) Large brown envelopes - The DSOE demonstrated to party agents how easily this envelope could be placed into a ballot box through the top slot without disturbing the seals.

6) Additional Names added manually to voter register - Can you please identify the polling venue where this occurred, having regard to the fact the FEO staff and the attending police officer would have been added to the voter register as it is rare for a staff member or a police officer to have voted where they were registered to vote.

7) Name on Voter register crossed – Could you please identify where this occurred. We know from reports that it has occurred in one instance and the Presiding Officer made an effort to ask the voters to return and sign off.

8) Unmatched seal numbers - Could you please identify the polling station where this occurred so the record can be checked.

9) Voter register not included - With respect to this, it is difficult to understand if a voter register was not included then. How then can it be possible for the Presiding Officer to refuse the viewing of a voter register. Please clarify precisely the nature of complaint and which polling station you are referring to.

Another complaint was received that some ballot boxes contained other materials besides ballot papers. The SoE quarantined some hundred plus ballot boxes in the presence of party representatives and police. These ballot boxes were opened to reveal items like polling officer voting manuals, ballot paper books, record books and envelopes which were apparently mistakenly placed in it. These items were removed and the ballot boxes re-sealed with new seals.

During the days preceding the announcement of results, the EC was visited by a candidate who made a verbal complaint that two votes for her were not recorded in the protocol of results. However, this complaint was not pursued after it was pointed out to her that she had erroneously examined a protocol of results for a polling station that she had not voted in, and that when the protocol of result for the polling station she had voted in was identified, the two votes she had queried were indeed recorded in that protocol of results.

On Monday morning, 22 of September the EC received the Final National Results Tally. It proceeded to allocate the seats of Parliament in accordance with the Electoral Decree, and by 11am was able to announce the names of the 50 candidates elected to Parliament. At 12 noon it returned the writ to the President. The EC were invited to the President's residence again at 3pm that day for the swearing in of the Honorable Prime Minister.

10.0 Resignation of Dr. Jiko Luveni

On 23 September 2014 the EC received a letter post-election from Dr. Jiko Luveni confirming her resignation as the President and a member of the FijiFirst party. It also received a letter from FijiFirst confirming having received the resignation letter, asking the EC to exercise its powers under Section 64 (1) of the Constitution. Section 64 (1) of the Constitution states:

> "Subject to subsection (3), if the seat held by a member of Parliament who is a member of a political party becomes vacant, then the Electoral Commission must award that seat to the candidate of the same party who, in the most recent general election, is the highest ranked out of those candidates of that party who did not get elected to Parliament and who is still available to serve at the time of the vacancy (as may be determined by a written law governing elections), provided however that if no candidate in the most recent general election from that same political party is available, then a by-election must be held to fill the vacancy."

Pursuant to letters received from Dr. Jiko Luveni, Mr. Aiyaz Sayed-Khaiyum in his capacity as the General-Secretary and the Prime Minister regarding the vacating of Dr. Luveni's seat in Parliament, the EC then awarded her seat to LaiseniaTuitubou.

11 .0 Conclusion

The 2014 general elections achieved the result it did through a combination of efforts. The high voter turnout (84%) demonstrated the will of the people to be governed by a democratically elected government. The robust voter education exercise resulted in a very low (0.7%) percentage of invalid votes. The generous contributions from development partners enabled an effective election.

However, the short period of preparation within a six month period meant that certain areas such as policies and clarity on governance issues between the institutions of the Fijian Electoral Commission and the Office o the Supervisor of Elections were not given the attention they deserved.

Although the General Election of 2014 has been completed with a high degree of success, it is the EC's hope that the shortcomings mentioned in this report will be addressed before the next general elections.

12 .0 Recommendations

The Electoral Commission recommends the following amendments to the Constitution, Electoral Decree and the Political Parties Decree.

12.1 Other Recommendations

The Electoral Decree 2014 be amended to reflect clearly how the two institutions EC and Office of the SoE should be functioning to actualise their respective responsibilities under the Constitution.

12.1.2 Independence of the Electoral Commission

To help maintain its independence, the EC should be allocated a separate budget independent of the SoE. This budget should be sufficient to allow the EC to fulfill all aspects of its responsibilities and operations in a manner as and when it deems necessary. This would therefore mean that the EC will determine the number of staff it should employ (and the terms of their employment), the setting up of its office, securing legal advice and representation as and when it deems necessary.

CONSTITUTION, DECREE & OTHER SUGGESTED AMENDMENTS

CONSTITUTION

Although the current Constitution is still very new, the Electoral Commission believes that three elements of it regarding elections need changing. The Commission is aware, of course, that the provisions for changing the Constitution are very stringent, but it also believes that in these particular matters, if the Parliament can agree on their desirability, the people will endorse this view.

Section 53 (3). The first issue is the threshold of 5%, necessary for a political party or independent candidate to be elected to Parliament. The Commission is fully aware of the arguments made in favour of a threshold – especially that it is likely to rule out a multiplicity of small parties and independents being elected, an event that could make the forming of a government difficult. Nevertheless, the very arguments used to support the choice of a proportional representation electoral system in the first place still hold good, but are militated against by using a threshold. All its citizens, regardless of their political views should be represented. Whether they group together in just a few parties or spread themselves over many, they are entitled to representation according to the basic rules of fairness. The different political groupings that the voters may decide on should have fair representation and none should be excluded on a pre-determined formula no matter how well-intentioned.

The principle of proportional representation and the principle of "one person, one vote, one value" also support the abolition of a threshold. In a Parliament of 50 people, about 2% of the vote should be enough to elect any candidate. Putting in a threshold clearly violates the above principle, because while for most voters 2% is enough to have someone elected, for others 5% is necessary. This clearly means that their votes do not

have the same value as others, and that true proportional representation has been compromised. The Electoral Commission therefore proposes that:

Section 53 (3) of the Constitution be deleted.

As noted above, the Commission is also aware that to change the Constitution requires a very high level of support both in Parliament and among the people. If in discussions it becomes apparent that the above-recommended deletion would not have sufficient support, the Commission would not wish to see the matter simply discarded. An alternative that the Electoral Commission would suggest is:

In Section 53 (3) of the Constitution, the figure "5%" will be replaced by "3.5%".

Section 61. The Electoral Commission is convinced that the time between the issuing of the writ and polling day is too short. To mention just three areas where this was apparent at the last election: 1) The Electoral Commission was too pressured for time when it had to handle objections and appeals regarding nominations. 2) Many postal ballots were not returned on time from overseas, and some were very late even in reaching the voters. 3) There was not enough time for candidates to campaign using their numbers, as these were drawn so late in the process. The Electoral Commission therefore recommends that:

Section 61 will have the number 40 put in to replace the number 30, so will read: "Polling commences no later than 40 days after the last day for the receipt of nominations."

Section 64 (1) & (2). The Electoral Commission is very concerned that both Section 64 (1) and Section 64 (2) stipulate that a by-election be held in certain circumstances. This requirement has very negative consequences. Firstly, it involves the absolutely massive expenditure of effort and money to have the whole nation go to the polls for the sake of just one seat.

Secondly, it violates the whole concept of a proportional representation system. The replacement candidate in a by-election as provided for in the Constitution can in no way be said to be a fair substitute for the candidate who has died or otherwise forfeited his seat. Nor can the result be said to be proportional in any way. The person elected in a by-election is presumably – and this is a problem – the person who gets most votes in the by-election. But this would in fact be to use the First-Past-The-Post system, whereas the Constitution says quite clearly in Section 53 (1) that members of

Parliament are to be elected "by a multi-member open list system of proportional representation".

The problem here is serious, but the Commission believes there is an easy solution that is absolutely fair and provides no stumbling blocks in terms of cost or administration. The Electoral Commission therefore proposes that:

In Section 64 (1) & (2), reference to a by-election will be deleted and alternative wording will be substituted as follows: "the Electoral Commission must award the seat to another party or independent candidate, that party or independent candidate being the next party or independent candidate in line for a seat in the original allocation".

The above rule is actually a continuation of the rule that is already applied during the original allocation of seats. When an independent candidate has been allocated a seat, or a party running less candidates than the seats it has won, has had seats allocated to all its candidates, the allocation continues, ignoring the independent candidate or party concerned.

The Commission feels that the above solution is definitely the best solution available, but if for some reason it was objected to, the Commission would simply suggest as an alternative that:

"The seat will normally remain vacant for the remainder of the term of Parliament." To this could be added: **"However, if three or more seats become vacant within three years and six months after the first meeting of Parliament, a by-election will be held for those seats."** This addition would provide a measure of proportionality and would take care of a freak situation where a number of parliamentarians went out of office within the period concerned. It is unnecessary, of course, in the preferred solution above.

ELECTORAL DECREE

Changes to the Electoral Decree may not be as difficult to bring about as these changes can be made by Parliament. The Electoral Commission wishes to suggest the following amendments to the Decree:

Section 23 (4)(g) refers to a person who has "been convicted of any offence under any law for which the maximum penalty is a term of imprisonment of 12 months or more." Such a person will be prevented from standing for election. While the Electoral Commission certainly wishes to maintain high standards for those aspiring to be members of Parliament, it feels that this restriction is too severe, resulting in the

exclusion of prospective candidates whose misdemeanours do not seem to warrant it. Emphasis should be directed on the sentence imposed by the court. The Electoral Commission therefore recommends that:

Section 23 (4)(g) will be amended by adding the following words to it: "provided that the actual penalty imposed was imprisonment for six months or more."

Section 36 (2)(c) determines the number (which was chosen randomly) for starting the National Candidates List, namely 135. In practice, starting with this number has caused some difficulties. When the counting teams do their first batch of counting, they divide up all the numbers into groups of 20; that is, they put the groups into the piles 135 to 154, 155 to 174, 175 to 194, 195 to 214, and so on. What actually happened in counting stations was that, not uncommonly, the counters put a vote or two onto the wrong pile. This, of course, could happen under any circumstances, but counters will more easily make such a mistake when the counting ranges they are using are somewhat 'unnatural', as above. This sort of mistake will definitely be reduced if the bundles of 20 begin and end more normally, for instance 140 to 159, 160 to 179, 180 to 199, 200 to 219, and so on. The Electoral Commission therefore recommends that:

The number "135" in Section 36 (2)(c) and (3) be changed to "140". The ballot paper schedule at the end of the Decree will be modified accordingly.

From the time the Electoral Decree was issued at the end of March 2014, the Electoral Commission has been very concerned to ensure that voters understand the system, and particularly that they are able to mark correctly their ballot paper with full knowledge of who they are voting for. The Commission has made prior submissions to Government on this issue, but remains adamant that the rules in place for voting still leave it too easy for voters to make mistakes.

The total number of invalid votes in the 2014 election was commendably low and a great source of encouragement for the Commission (as indeed for everyone). Nevertheless, the Commission still has concerns in the area of voters making mistakes. It is too easy for a voter to mark a number correctly, but in fact mark it for someone he or she doesn't want.

This appears to have taken place in the election of 2014. The PDP candidate, Ilaijia Vuniyayawa, received 4956 votes. This is well over twice as many votes as his party leader, Felix Anthony (1879 votes), or Lynda Tabuya of the same party (1375 votes). Such a result would be quite baffling until one was to consider Mr. Vuniyayawa's

National Candidates List number – 297. This is, of course, an inversion of the Prime Minister's number, 279. It appears very probable that many voters remembered the Prime Minister's number incorrectly and inadvertently voted for someone else. Because of the high popularity rate of the Prime Minister and the high number of 'excess' votes for Mr. Vuniyayawa, the mistake is in this case obvious. The number of voters making this mistake is clearly substantial, but nobody can know just how many. What nobody knows too, of course, is how many other such mistakes were made involving other candidates whose vote share was more modest.

The Electoral Commission believes it is imperative that steps be taken to substantially cut back the likelihood of this sort of mistake happening in the future. There are three Sections of the Decree that need to be looked at:

Section 52 (2) is too restrictive. It needs to be made easy for voters to vote correctly for the candidate of their choice. The Commission has been of this opinion all along, and experience of the 2014 election has only reinforced it. To help the voters, it should be permissible for them to take in to the polling station one small card or piece of paper (no larger than a $5 note) with information on it. So the Commission's recommendation is that:

Section 52 (2) should be re-worded to read: "A voter may take into the polling station or polling venue a small card or piece of paper (no larger than a $5 note) on which the number(s) and name(s) of one or more candidates are written, but otherwise it shall be unlawful for any voter ... etc."

The Commission believes that this simple change would greatly facilitate voters in correctly choosing their candidate and appropriately marking the correct number.

This addition to Section 52 (2) also solves another problem that the Commission believes is important. This subsection as it currently stands prohibits political agents and accredited observers, not just voters, from taking any card or paper into the polling station or polling venue. The Commission believes that this prohibition is excessive and that political agents and accredited observers should all be allowed to take material in, so that they can take appropriate notes for their records. Please note that, for this reason, in the proposed change above, the word "voter" has been substituted for the original "person".

Section 43 (1)(f & g) is the second Section of the Decree requiring attention in terms of making things easier for the voter. These two clauses, together with Section 53 (1A) and Section 36 (6) (which prohibits any party names of symbols being added to the National Candidates List) are actually amendments to the Decree. The amendments to

Section 43 and Section 53 prescribed that the National Candidates List be given (at great expense) to every voter. It was clear from observation at the polling stations that these amendments were draconian. Not a great number of voters actually used the booklet provided at the polling station.

With the experience gained, and with a view to finding a solution which is both less expensive and more useful than the present arrangement, the Electoral Commission herewith proposes:

1) **If the card or piece of paper is allowed as per the recommendation regarding Section 52 (2) above, there will be no need to give out anything at the polling station. The amendments of Section 43 (1), Section 53 (1A) and Section 36 (6) should be deleted.**
2) If the recommendation regarding Section 52 (2) is not accepted, the Electoral Commission would nevertheless contend that the current arrangement is far from optimal. It would first propose that: **Section 36 (6) be deleted.** This subsection actually works against the very nature of the Open List system. The Electoral Commission would go on to recommend that: **The amendment Section 53 (1A) will be reworded as follows: "Voters will be provided with access to an alphabetical listing of the names of candidates. This list will include the party names in full [or the acronyms, or the symbols, as may be decided] and the photos of the candidates. Such a list will be printed on a laminated or otherwise difficult-to-deface plastic card/booklet and will be placed in every voting screen. The presiding officer will check this list from time to time during the election. If any defacement of it has taken place, he will replace it."**
3) If the Parliament does not agree to substitute an alphabetical listing of candidates for the National Candidates List at polling stations, the Electoral Commission would nevertheless recommend that, in this case: **"An alphabetical list, including the party names in full [or the acronyms, or the symbols, as may be decided], will be added to the National Candidates List as an index or follow-on."**

The Electoral Commission would like to emphasize that any information given out to voters about candidates should always include information about which party the candidates belong to, if any. This is very important information, which was lacking in the Voter instruction Booklet of 2014. A person's vote may not result in the election of that person's preferred candidate, but it will always count towards the candidate's party. Voters need to be reminded, therefore, of their candidate's party.

It can be further noted in relation to the suggestions above, that allowing voters to take in a card or piece of paper would greatly reduce cost, since the long list of candidates need not be reproduced for each voter. Even the alternative suggestions provided above are more economic, since they presume on preparing one card or booklet for each voting screen only, not one for each voter.

Section 67 (7)(a). By Section 55 of the Constitution, every citizen over the age of 18 who has been duly registered has the right to vote. This includes people holding multiple citizenship as provided for in Section 5. However, Section 55 (6)(b) of the Constitution provides that people not resident in Fiji but holding a Fijian passport are "entitled to vote to the extent provided in any written law governing elections".

The Electoral Commission is troubled by the fact that at the moment there is no "written law governing elections" specifying under what conditions people with multiple citizenship are permitted to vote. This means that all of them are entitled to vote. The Commission feels that there should be some limitation on this. Fiji's recent history has brought about large-scale emigration from the country. Its status as a small island nation, even though it is the "hub of the Pacific", is bound to contribute to more emigration in the future, as people seek wider opportunities abroad. Very many of these people have, and will continue to have, much affection and interest in their homeland. Nevertheless, their involvement in its political life will often be minimal, and they will be little affected by political decisions made in Fiji. Some degree of current connection with Fiji would seem warranted if such people are to be allowed to vote. The Commission recommends that:

Section 67 (7)(a) will have the following words added after the words "polling day": "provided that if the applicant holds multiple citizenship, he or she may only register for a postal vote if they have been in Fiji for at least ...months within the four years prior to the scheduled date of the election."

Section 79 (4) omits the normal requirement at polling stations that, at the beginning of counting, the empty ballot box be shown to those present. The Electoral Commission therefore recommends that:

A clause will be added to Section 79 (4)(d), as follows: "... , having first shown to those present, at the beginning of the verification process, that the designated ballot box is empty."

Section 81 (3) & Section 88 (4) indicate that there is a "special" protocol of results for pre-poll voting "in a form approved by the Supervisor". Experience has again shown that such a special protocol of results is both unnecessary and undesirable. The form for the protocol of results should be the same for every pre-poll station, polling station and the place where postal votes are counted. The Electoral Commission recommends that:

Section 81 (3) will be re-worded as follows: "A protocol of results must be completed by the postal ballot counting officer for each box of postal votes."

Section 88 (4) will be re-worded as follows: "A protocol of results must be completed by the pre-poll ballot counting officer for each box of pre-poll votes."

In regard to Section 83 (1), Section 86 (1), there is no need for a special envelope for pre-poll votes. It is an unnecessary complication. Voting during pre-poll should be done just as on polling day. After pre-poll has taken place in each specified locality, the sealed pre-poll ballot boxes will be taken under security to a secure place to be held over until the night of the main poll. They will then be counted, starting at 6pm at the earliest, with the final protocol of results being handled just like the original of other polling stations, and a copy being pinned up in the results centre. The Electoral Commission therefore recommends that:

Section 83 (1) be changed to read: "A voter shall vote in the same way as voters on polling day." Reference to "secret envelopes" in the following subsections will be deleted and the text suitably modified.

In Section 86 (1) the words "secret envelopes" will be changed to "ballot boxes".

It should be noted that reference to "verification" in Section 87 will refer to verification of the seals on the ballot boxes when opening them for counting.

Section 88. There may be need of a further addition to this Section. As explained to the Electoral Commission originally, one of the reasons for pre-polling some places was that they had very few voters, and it would not be good to have the votes counted in the place itself, as it might be too easy to surmise who voted how. In practice however, all the pre-poll boxes were counted separately and recorded separately, such that it would definitely be possible to make the sort of surmise mentioned above. To preserve the secrecy of the ballot, something should be done about this. Presuming that the secret envelope for pre-poll voting (see above) is abolished, the Electoral Commission recommends that:

Section 88 (2) will be replaced by the following: 'If a pre-poll ballot box contains less than 50 ballot papers, it will be counted along with another pre-poll ballot box from a reasonably close-by area. The ballot papers from both boxes will be mixed before counting begins. The protocol of results must clearly indicate the names of both areas counted."

Sections 102 & 103. From the experience gained at the last election, the Electoral Commission is of the view that the compilation of a National Results Tally (which became known as "provisional results") was not a productive exercise and should be discontinued. The compilation of this tally put an immense extra strain on staff, confused the political parties and the public, and delayed the preparation of the definitive Final National Results Tally by about 12 hours.

On election night, some final protocols of results come in to the Results Tally Centre very quickly, so the work of entering the real results into the computers can begin almost immediately. The real progressive results can start appearing on the screen on election night itself. The first results will be those of the greater Suva area, but these will be quickly joined by results from other areas as well as by pre-poll and postal votes as they are counted.

It is still a good idea to have all the results phoned in, but there is no need to enter those results into the computers. The phoned-in results will have two purposes only: 1) They confirm to the Supervisor that each polling station has finished its work, and when. 2) They serve as a checking point for the final protocols of results when they come in. If there should be a major discrepancy, this would obviously need to be investigated. The Electoral Commission therefore recommends that:

The compilation of a National Results Tally (which became referred to as "Provisional Results") will be abolished. Sections 102 and 103 of the Decree will be reworded so that they require a Final National Results Tally only, but it will also be required that the phoned-in results of each polling station be compared manually with the final protocol of results of that station before these latter are authorized to be entered into the progressive tally.

Section 104 (5) sets out what is known as the d'Hondt rule. Another rule, the Sainte Laguë rule, is regarded in electoral circles as a fairer one. Though the difference in results will usually be very little, every seat is important and it is clearly preferable to have the fairest rule in operation. The Electoral Commission therefore recommends that

the Sainte Laguë rule be employed rather than the d'Hondt rule. In practice this means only a minor change to this subsection:

In Section 104 (5), the words "2, 3, 4, 5, 6, 7, 8, 9, 10 and thereafter by every whole number until the number that is equal to the total number of candidates nominated by the party" will be changed to read "3, 5, 7, 9, 11, 13, 15, 17, 19 and thereafter by every odd number until the number that is equal to twice the number, less one, of the candidates nominated by that party. However, the Electoral Commission may omit those divisions which will clearly be irrelevant."

It should be noted that the last words of the above recommended text provide a useful and practical limitation on the number of divisors that has to be used. This is an additional advantage of the new wording (though such changed wording could be put into the text for the d'Hondt method too). At present, if a party fields 50 candidates, the division has to be continued by law for the full 50 candidates even though it may be apparent that the party can only win two or three seats. The new wording takes away this clumsy and unnecessary requirement.

Section 104 (6) is a good provision, but a common fraction that occurs is .5 (a half). Should that be rounded up or down? It is preferable to round it up, but to avoid debate and disagreement during the election, it would be best to have that clearly stated. The Electoral Commission did, of course, make this rule for itself ahead of time, but it recommends that the stipulation be included in the Decree:

The following sentence will be added to Section 104 (6): "The fraction of a half (.5) will always be rounded upwards."

Section 104 (8), which stipulates how to break a tie between two or more quotients, is too inexact. True, the only time a tie needs to be resolved is when it involves the allotting of the last seat, but it is precisely at such a critical juncture that any injustice would clearly cause a major furore. The Electoral Commission gives two examples: 1) Party A started with 59,997 votes and Party B with 60,002. At divisor 6, they both have a quotient of 10,000. It is clearly not fair to draw lots (as the Decree would demand). Party B should win. 2) Party C started with 59,997 votes and Party D with 30,000. At divisor 5, Party C has a quotient of 10,000, just like Party D (at Divisor 3), but Party D should win. There should not be a need to draw lots. The Electoral Commission recommends that

In Section 104 (8) after the words "same value,", the following words will be added: 'the Electoral Commission must re-divide the total number of votes held by each of the tied parties by the relevant divisor in each case, taking the division to two decimal places, rounding off the second decimal place in the same way as in subsection 6 above. The tie will be resolved according to these new quotients. If such a re-division does not resolve the tie, ...

Section 119 gives all the power to the Minister in terms of allowing observers. Since the Minister is, however, a member of the governing party or coalition, it would seem more appropriate to allot this task to the Electoral Commission, which is an independent body. Nevertheless, in the case of foreign observers, who need to be given visas, the Minister may have good reason to add to the normal terms of reference. The Electoral Commission therefore recommends that:

Section 119 will be changed to read: "The Electoral Commission may appoint or invite any person, organization or entity to be observers for any election on such terms of reference as determined by the Electoral Commission. The Minister, however, may in the case of foreign observers and after consultation with the Electoral Commission, add further terms of reference or veto such appointment or invitation."

POLITICAL PARTIES DECREE

The Political Parties Decree was gazetted on the 15th of January 2013. At that stage, the understanding was that Fiji would be divided into four constituencies corresponding to the four administrative Divisions. In gaining signatures in support of a party, Section 6 (3)(i) of the Decree required, therefore, not just that there be 5,000 signatures, but that they be divided in a certain ratio between the four Divisions. In the meantime the electoral arrangements have changed so that there is now only one national constituency, the Electoral Commission believes that the collection of signatures according to Division is now inappropriately stringent and should be abolished.

It also happened before the 2014 elections that a party submitted 40,000 signatures, not just 5,000. Checking and publishing these was a costly ($280,000 approx cost of printing) and time-consuming process. The Electoral Commission feels the number of signatures submitted should be limited. To cover this and the issue above, the Electoral Commission recommends that:

In Section 6 (3)(i) of the Political Parties Decree, all words following on "proposed political party" in line 2 be deleted. A new sentence will take their place, reading: "However, no more than 7,500 names may be submitted to the Registrar."

Appendix 1:
Letter from Attorney General (AG) to Electoral Commission (EC) – 7 April 2014

Attorney-General and Minister for Justice, Anti-Corruption, Public Enterprises, Communications, Civil Aviation, Tourism, Industry and Trade

Attorney-General's Chambers, Level 7, Suvavou House, 400 Victoria Parade
P O Box 2213, Government Buildings, Suva
Telephone: (679) 330 9866 Fax: (679) 331 0807

By Email

7 April 2014

Mr. Chen Bunn Young
Chairperson, Electoral Commission
Fijian Elections Office
Suva

Dear Chairperson

Interpretation of the Electoral Decree 2014

1. We refer to your 4 April 2014 statement to the media that the Electoral Commission ('**Commission**') will now seek an independent legal opinion on the provisions of the Electoral Decree 2014 ('**Decree**'). This statement was made apparently after the Commission's meeting with the members of the NGO coalition ('**NGOs**').

2. Please note that, together with the Solicitor-General ('**SG**') and his drafting team, we had a lengthy meeting with the NGOs last week during which numerous provisions of the Decree were discussed and clarifications were provided to the NGOs. The effect of section 115 was also clearly explained to the NGOs.

3. Section 115(1) makes it an offence for any person, entity or organisation that receives foreign funding or assistance to engage or participate in or to conduct any campaign related to the election or any election issue or matter. The word 'campaign' and the phrase 'electoral matter' are also clearly defined in the Decree. No person, entity or organisation that receives foreign funding or assistance is allowed to do any act that will influence or affect voting at the election. This section is intentionally drafted in broad terms to prohibit foreign funding and assistance to be used by such persons, entities or organisations to directly or indirectly affect the Fijian elections.

4. In addition, section 115(2) prohibits any person, entity or organisation from engaging in or undertaking any act which is assigned by the Constitution or the Decree to the Commission or the Supervisor of Elections ('**SOE**'). This section is designed to ensure that the elections are free and fair and that the voters are not misguided by politically-motivated information that may be disseminated by any such person, entity or organisation including the NGOs.

5. It is also worth noting that section 115 is an offence provision. Any allegation of the breach of this section by any person, entity or organisation will be investigated and prosecuted by appropriate authorities. In any such prosecution, the effect of this section will be determined by an independent court of law. As such, it is not for the

Commission to provide legal interpretation to the NGOs of this section. These NGOs are at liberty to seek their own legal advice and should their acts offend section 115, then appropriate enforcement action will no doubt be taken.

6. Please also note that the Commission, as an entity established under the Constitution, is a public office. Like all other public offices (including the President, the Judiciary and the Executive), the Commission and indeed the SOE should seek all legal advice from the SG.

7. You will note that section 116 of the Constitution expressly provides the SG with the responsibility to provide independent legal advice to Government and to the holders of all public offices. Given that the SG is responsible for the drafting of all laws, all legal advice on the interpretation of the Decree, must also be sought from the SG, as the SG and his staff have drafted the Decree. The SG is an independent legal adviser.

8. We draw the above to your attention to ensure that the Commission adheres to its constitutional role and the conventions of a public office. It is also to reassure the Commission that the SG and his office are available to provide legal advice.

9. To seek legal advice from any other entity could result in the Commission wandering into unchartered waters including acting contrary to its constitutionally prescribed duties and functions. It could also tantamount to the Commission usurping the role of the judiciary by interpreting the law, in particular when the offence provision, namely section 115, does not affect the Commission at all.

10. As seen in a number of jurisdictions, the independent Electoral Commission/Body applies the law as prescribed by the lawmakers unless of course the law limits the ability of the Commission itself to act or carry out own functions and responsibilities.

11. Please feel free to contact the SG for any legal advice.

Thank you.

Yours sincerely

Alyaz Sayed-Khaiyum
ATTORNEY-GENERAL AND MINISTER RESPONSIBLE FOR ELECTIONS

cc: *SOE*
Ms. Jenny Seeto
Professor Vijay Naidu
Mr. James Sowane
Mr. Larry Thomas
Father David Arms
Ms. Alisi Daurewa

Appendix 2: Letter from EC to AG – 14 May 2014

FIJIAN ELECTORAL COMMISSION

14 May 2014

The Attorney-General & Minister Responsible for Elections
Attorney-General's Chambers
Government Buildings
Suva

For: Hon. Mr. Aiyaz Sayed-Khaiyum

Interpretation of the Electoral Decree 2014

I refer to your letter of 7 April 2014. I could not respond to you earlier because I was out of Fiji from 5 to 27 April 2014.

I would agree with you that on all routine and non-contentious matters the Commission should seek the services of the Solicitor General, and the Commission has done just that so far.

However, I am firmly of the view that notwithstanding any convention it is unwise for the Commission to agree not to seek legal advice outside the SG's office if, in the Commission's view, circumstances warrant it.

The Commissioners are all intelligent and mature persons and I can assure you that they will not lightly decide to seek legal advice outside the SG's office.

The interpretation of s.115 has been raised by several political parties and has been the subject of discussion in the media. In these circumstances the Commission took the view that it would assert the Commission's independence if it were to take legal advice outside the SG's office. An advice has now been obtained and circulated to the Commissioners and, more recently, to the SOE.

I can also assure you that the Commission is not providing legal advice to NGOs. But you will agree with me that NGOs and others are entitled to ask the Commission questions on the Electoral Decree and the Commission is obliged to provide answers that are legally correct. It was in the context of one such question pertaining to s.115 that the need for independent legal advice arose.

I hope this has clarified the situation.

Yours sincerely

Chen B Young
Chairperson

(Email : ecyoung@connect.com.fj)

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Appendix 3: Letter from EC to AG – 1 August 2014

FIJIAN ELECTORAL COMMISSION

1 August 2014

The Attorney-General & Minister Responsible for Elections
Attorney-General's Chambers
Government Buildings
Suva

For: Hon. Mr. Aiyaz Sayed-Khaiyum

Re: Engagement of independent legal consultant

I refer to our recent telephone discussion on the Electoral Commission's desire to engage an independent legal consultant. The Electoral Commission has from time to time sought legal advice from the Solicitor General but as the election draws near and the Electoral Commission's role becomes more prominent, the Electoral Commission is of the view that it should retain an independent legal consultant to exclusively and promptly advise the Commission on matters arising, including:

(i) on objections by registered voters to candidates under section 30 (5),
(ii) on review of the Supervisor of Election's decision under section 31 (b);
(iii) on matters concerning the allocation of seats;
(iv) on issues concerning court of disputed returns;
(v) generally

The legal consultant would be expected to be in Fiji for several weeks preceding and post the election. The funding will come from the European Union.

The proposed terms of reference have been discussed with the European Union and these will include:

(i) the legal consultant's duty of loyalty to the Electoral Commission and his duty of confidentiality. All reports will be vetted and approved by the Electoral Commission in draft and these duties will survive the expiration or termination of the engagement.

(ii) The engagement may be terminated by either the Electoral Commission or the European Union on written notice

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Appendix 4: Letter from EC to AG – 20 August 2014

FIJIAN ELECTORAL COMMISSION

20th August, 2014

Mr. Aiyaz Saiyed Khaiyum
Attorney General and Minister for Elections
Level 7, Suvavou House
SUVA

Dear Mr. Khaiyum,

The Electoral Commission has on several occasions discussed the matter of how easy or difficult it will be for a voter to remember and 'circle, cross or tick' the number of her/his preferred candidate. This matter has been brought to the Solicitor General's attention.

As you know Fiji has a large proportion of invalid votes in recent General Elections (9% in 2006, 11.7% in 2001 and 9% in 1999). The alternative vote ballot papers of the three previous General Elections were new to Fiji voters just as the envisaged ballot papers for the 2014 General Election will be a novelty for our voters.

In both Israel and Netherlands the system of a single national multi – member constituency exists based on proportionate Electoral arrangement. However, neither of the countries uses candidates' numbers on the ballot paper. In Netherland, voters use a red pencil to color in the slot next to their preferred candidate's name. In Israel voters may either insert into the ballot envelope the party list of her/his choice, or write the name of the party in the blank paper provided, and insert this into the envelope provided. In these countries the percentage of invalid votes is very low in Netherlands below 1% and in Israel just above 1%.

The Electoral Commission feels remembering a number and not confusing this number with other similar numbers (e.g., 231, 132, and 321) will be a challenge for everyone and especially those who are illiterate and less educated. The Commission holds the view that voters should be allowed to carry a piece of paper no bigger than $5 note with the number of their preferred candidate. Upon marking the ballot paper and inserting it in the ballot box, the voter would then be required to dispose the piece of paper with the candidate's number in a rubbish bin provided for this purpose. This facilitation of the voting process is likely to make the voting easier and more accurate.

Yours Sincerely,

.....
Chen B. Young
Chairperson to the Electoral Commission

59 – 63 High Street, Toorak, Suva | Phone: 3316 225 | Fax: 3316 026 | P. O. Box 2528, Government Buildings, Suva.

Appendix 5: List of meetings with political parties

Meetings	Date	Party/ Independent Candidate
1st Meeting	14/02/2014	Fiji Labour Party, National Federation Party, People's Democratic Party, Social Democratic Liberal Party.
2nd Meeting	26/03/2014	Fiji Labour Party, National Federation Party, People's Democratic Party, Social Democratic Liberal Party
3rd Meeting	02/04/2014	Fiji Labour Party, National Federation Party, People's Democratic Party, Social Democratic Liberal Party.
4th Meeting	20/05/2014	Fiji Labour Party, National Federation Party, People's Democratic Party, Social Democratic Liberal Party, Aspiring Independent Nazia Khan, Aspiring Independent Iliesa Duvuloco, Aspiring Independent Roshika Deo, Aspiring Independent Joe Gucake.
5th Meeting	25/06/2014	Fiji Labour Party, FijiFirst Party, National Federation Party, People's Democratic Party, Social Democratic Liberal Party, Aspiring Independent Nazia Khan, Aspiring Independent Iliesa Duvuloco, Aspiring Independent Roshika Deo, Aspiring Independent Joe Gucake.
6th Meeting	30/07/2014	Fiji Labour Party, FijiFirst Party, Fiji United Freedom Party, National Federation Party, People's Democratic Party, Social Democratic Liberal Party, Aspiring Independent Nazia Khan, Aspiring Independent Roshika Deo.

Appendix 6: List of meetings with Non-governmental organizations

Meetings	Date	Organisations
1st Meeting	19/03/2014	Transparency International Fiji Ltd, Citizen Constitutional Forum, Fiji Women's Rights Movement, Pacific Centre for Peacebuilding, National Council of Women Fiji, Soqosoqo Vakamarama, FemLINKPACIFIC.
2nd Meeting	04/04/2014	Citizens Constitutional Forum, FemLINKPACIFIC, Fiji People's Disabled Association, Fiji Consultation on Women's Participation in National Democratic Process, Fiji Women's Rights Movement, Fiji Young Women's Forum, National Council of Women, Pacific Centre for Peacebuilding, Pacific Dialogue Ltd, Soqosoqo Vakamarama, Transparency International Fiji Ltd.
3rd Meeting	20/05/2014	Citizens Constitutional Forum, Dialogue Fiji, FemLINKPACIFIC, Fiji People's Disabled Association, Fiji Consultation on Women's Participation in National Democratic Process, Fiji Women's Rights Movement, Fiji Young Women's Forum, National Council of Women, Pacific Centre for Peacebuilding, Pacific Dialogue Ltd, Soqosoqo Vakamarama, Transparency International Fiji Ltd, Aspire Network, Pacific Islands Association of Non-Government Organisations, Fiji Media Watch, HART.
4th Meeting	25/06/2014	Aspire Network, Citizens Constitutional Forum, Dialogue Fiji, FemLINKPACIFIC, Fiji People's Disabled Association, Fiji Consultation on Women's Participation in National Democratic Process, Fiji Media Watch Fiji Women's Rights Movement, Fiji Young Women's Forum, National Council of Women, HART, Pacific Centre for Peacebuilding, Pacific Dialogue Ltd, Pacific Islands Association of Non-Government Association, Soqosoqo Vakamarama, Transparency International Fiji Ltd.

Appendix 7: List of meetings with Media Industry Development Authority(MIDA) and Media

Meetings	Date	Organisations
1st Meeting	21/03/2014	Communication Fiji Ltd, Island Business International Ltd, Fiji Broadcasting Corporation Ltd, Fiji Live, Fiji Sun, Fiji Times Ltd, Ministry of Information, Pacific Islands News Association (PINA), Republika Media Ltd
2nd Meeting	23/05/2014	Communication Fiji Ltd, Fiji Broadcasting Corporation Ltd, Fiji Live, Fiji Sun, Fiji Times Ltd, Mai Life Magazine, Republika Media Ltd.
3rd Meeting	23/07/2014	Communication Fiji Ltd, Island Business International Ltd, Fiji Broadcasting Corporation Ltd, Fiji Live, Fiji TV, Mai Life Magazine.

Appendix 8: List of meetings with Diplomatic Corp

Meetings	Date	Representatives
1st Meeting	12/03/2014	Australia, People's Republic of China, Delegation of the European Commission, France, India, Indonesia, Japan, Kiribati, Korea, Malaysia, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Solomon Island, South Africa, Tuvalu, United Kingdom, United States of America, United Nations Development Programme, Vanuatu
2nd Meeting	03/04/2014	Australia, People's Republic of China, Delegation of the European Commission, France, India, Japan, Korea, Malaysia, Marshall Islands, New Zealand, Solomon Island, United Nation Development Programme, Vanuatu

Appendix 9: List of meetings with Multi-national Observer Group (MOG)

Meetings	Date	Representatives
1st Meeting	18/08/2014	Coordinator – Andrew Goledzinowski, Observer -Christina Alves
2nd Meeting	08/09/2014	Coordinator – Andrew Goledzinowski, Observer -Christina Alves
3rd Meeting	15/09/2014	Coordinator – Andrew Goledzinowski, Australian former Defence & Workplace Relation Minister – Peter Reith Observer -Christina Alves Observer – Konrad Olszewski

Appendix 10: Letter to the Solicitor General on Guidance to Voters Dated 27th June, 2014.

FIJIAN ELECTORAL COMMISSION

27 June 2014

The Solicitor General
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Suva

Guidance to Voters

Thank you for meeting me on Tuesday 24th June 2014 and giving me the opportunity to discuss further the position of the Electoral Commission vis-à-vis its letter of 18th June 2014.

In our discussions, you had made reference to the fact that party symbols was not something that was mentioned at all in the Electoral Decree and by this you extrapolate that it could not form part of any "guidance" to the voter under Section 43(1)F.

You also reasoned that to discern the intention of what a statutory provision should mean, consideration should be given to the policy makers of the Decree.

Be that as it may, the Electoral Commission is urging you to reconsider your views and we would offer the following further thoughts for your consideration.

1. If the intent had been to restrict the written directions to the information contained in the National Candidates List, the drafters (who are charged with reflecting the intention of the policy makers) should have specified that the voters be provided with a copy of the National Candidates List at the polling stations. They did not, which would lead the Electoral Commission to contend that the Supervisor of Elections or ultimately the Electoral Commission should be able to include additional information for the guidance of voters. Indeed, the "written directions for the guidance of voters" formulation is not specific or prohibitive in what it should contain and the only qualification is that it should be for the guidance of the voters. No doubt, this could reasonably refer to the step-by-step process in the polling station and/or to finding the desired candidate through reference to name (in alphabetical order), photo, or symbol and then marking the corresponding number on the ballot, or a number of other things.

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2. Under Section 3(1) of the Electoral Decree, the Electoral Commission has a general "responsibility and authority to formulate policy" such a general grant of authority is normal and essential, since it is unlikely that any electoral legislation will foresee every eventuality that might occur. While the Commission is constrained in not being able to violate an explicit provision of the underlying legislation, it can otherwise formulate policy to achieve its objectives. Under Article 76(2) of the Constitution, the Electoral Commission has the sole responsibility to conduct free and fair elections in accordance with the written law governing elections.

3. One of the fundamental components of free and fair elections is informed decision-making by the voters. To arbitrarily deny voters a critical element in reaching their decision on whom to vote for would violate this basic principle. They need to be aware that in voting for a particular candidate they are also voting for a particular party (unless that candidate is an independent candidate).

4. That said, the "Notice of Poll" pursuant to Section 35(1) to be given within seven days after the close of nominations is to contain "particulars of the candidate as described in his or her nomination paper...including....". In the case of the Notice of Poll, we take "including" not to exclude the option of including other information regarding the candidate, particularly their photo, but potentially also the corresponding party symbol. Section 35(2) states:

> "The notice given under subsection (1) must contain, in relation to each candidate in alphabetical order, particulars of the candidate as described in his or her nomination paper, with the last name (if any) of the candidate appearing before the first name, including the following–
>
> (a) residential address, occupation and voter number of each candidate;
>
> (b) the place or places at which polling stations and venues will be established for the purpose of taking votes during polling; and
>
> (c) the date and hours between which the Supervisor or presiding officer will attend at the various polling stations to take votes." [emphasis added]

5. Hence, if we were to review the 3 documents referred to above in order of the restrictive language used, we have:

(i) The National Candidate List which expressly states what it should contain (with the obvious notion that it should not contain any other particulars) save those particulars stated in the section;
(ii) Notice of Poll which sets out certain non exhaustive particulars of candidates (because it uses the word "including" with their last names to be in alphabetical order); and
(iii) "directions" which is only qualified with the general words "guidance to voters".

6. In registering a political party Section 6(3) of the Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 ("the 2013 Decree") states that "an application for registration shall

(a) set out the name of the proposed political party in the English language
(b) set out the symbol of the proposed political party;
(c) if the proposed political party wishes to use an abbreviation or acronym of its name, set out that abbreviation or acronym.
....." (emphasis added)

Then Section 10(1) (a) states that, where the Registrar determines that a proposed political party should be registered, he or she shall

"(a) register the political party by entering in the Register
(i) the name of the political party;
(ii) the symbol of the political party
(iii) if an abbreviation or acronym of the name of the political party was set out in the application, that abbreviation or acronym; and
(iv) the name and address of the person who has been nominated as the registered officer of the political party for the purposes of the Decree....." (emphasis added)

The 2013 Decree then goes on to provide that if there are changes to the Register by changing of names of the political parties or changing of symbol of the political parties, an application may be made to the Registrar.

Finally, the Second Schedule then states that the contents of the Constitution of rules of a political party must have,

"(1) The name of the political party and any abbreviation.
(2) The logo and symbol of the political party and party colours
....." (emphasis added)

From the above it is clear that a party symbol is an important feature for the registration of a political party along with its abbreviation and acronym if it had one.

7. The Electoral Decree recognizes that both candidates of political parties registered under the 2013 Decree and the independent candidates form an important part of the elections. If it was the intention (of the policy makers) to have the elections operate on purely and exclusively individual based candidate then it could have easily repealed the 2013 Decree but the 2013 Decree remains very much part of the whole election process.

8. Whilst it is a generally accepted tool to resort to policy makers to find out what the legislature intended, this tool of interpretation has only been used on the basis that Hansard Reports of parliamentary debates in Parliament are referred to help ascertain that intention. Obviously this novelty of reference to Hansard reports of parliamentary debates on a proposed legislation is not available to any of us.

Therefore, the Electoral Commission submits that very little reliance (or none) should be made on this tool of interpretation because it was never intended to be used to discern intention under the current circumstances.

9. The Electoral Decree 2014 was promulgated some 3 months ago. The Electoral Commission has come a long way since their appointment and have a better appreciation of what the voters require in the form of assistance or guidance. Since the Electoral Commission is charged with the overall responsibility of delivering a fair and credible elections its views on what guidance to voters means should be generally accepted unless there is clear evidence to the contrary that its perceptions on what is "guidance to voters" are misconceived. In making this point the Electoral Commission does not see that this view it has adopted is contrary to the express provisions of the Electoral Decree but rather complements it and certainly is consistent with it.

10. Independent of the requirement to have the names of the candidates appear in alphabetical order in the Notice of Poll, is the further consideration of the fact that the listing of names in alphabetical order in the directions as guidance to the voters finds support in the very real scenario that there will be many individuals who may have 2 or 3 candidates who a voter is still undecided on as he or she takes that 300 meter walk to the polling station before voting. For example the voter is undecided on candidate A (Candidate No. 215), T (Candidate No. 349) or Z (Candidate No. 150). It would be almost impossible for the voter to try and remember without assistance, the 3 candidate's numbers. If the National Candidate List is used as the guidance the voter would need to traverse through the first number to the end to find out the name of the candidate. This exercise will prolong the whole election process. It certainly cannot be done in the average 2 or 3 minutes time frame envisaged for each voter. If the names of the candidates were to be in alphabetical order then the voter can just go straight to the name and identify the candidate number much quicker than having to scroll through all the numbers or a good portion of them. It cannot be disputed that a voter is more likely to remember the name of the candidate he or she prefers to vote for than the number. Hence, the alphabetical listing of names is "guidance" to the voter.

11. The Electoral Commission had mentioned the 2013 Decree which provided for the party symbol or abbreviation of acronym for a political party. The Electoral Commission is open to the idea that the indication of a party in the alphabetical listing could be party symbol, party abbreviated name or party acronym (at the party's choice, provided that these things had been duly registered with the Supervisor), or in the case of an independent candidate by his or her symbol or the word "Independent".

12. Of course, the above request we are making for the guidance to voters can easily be otherwise achieved if voters were entitled to taking with them a sheet of paper no larger than the palm of ones hand with the number and name of the candidate he or she wishes to vote for. We have been informed that Brazil, a country which has used a similar ballot paper as that of Fiji had this provision at the relevant time of one of its elections:

Voters are advised to take with them, on elections day, a piece of paper on which they note the numbers corresponding to their candidates.

13. Finally, this is an election unlike any other that this country has ever experienced. Every legitimate opportunity should be given to the voter by way of guidance, to exercise his or her rights on an informed basis. To use the phrase, it is better to be over-informed then to be under-informed is in order.

14. We hope that you will give our submissions due consideration and we shall be pleased to receive a favourable response that would assist us in fulfilling our duties as the Electoral Commission.

Yours faithfully

Chen B. Young
Chairperson - Fijian Electoral Commission

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