

Role of the Media Industry Development Authority (MIDA) in the 2014 Fijian Elections

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Submission to the Parliamentary Standing Committee on Justice, Law and Human Rights

29 July, 2016

The following submission pertains specifically to Section 4 (Media Environment) of the report of the Multinational Observer Group on the 2014 Fijian Elections.

The Bill of Rights Chapter of the Fijian Constitution provides for not only the freedom of speech, expression and publication but the freedom of press as well. While taking full cognizance of the right to freedom of expression as well as freedom of the press, Section 17(h) of the Bill of Rights expressly calls for regulation of the conduct of media. The Media Industry Development Authority (MIDA) derives its legitimacy from this specific provision in the Fijian Constitution.

The role of the Media Industry Development Authority (MIDA) as an enforcement agency is clearly stipulated under Part 4 "Electoral Campaign and Media" of the Electoral Decree and this pertains very specifically to Media Restrictions During Campaigns. Section 118 of the Electoral Decree provides that

- 1) During the 48 hr period prior to polling day and the day of the polling until the close of polling at all polling stations, it is prohibited for any media organisation to publish, print or broadcast any campaign advertisement, debate, opinion or interview on any election issue or any political party candidate
- 2) During the 48hr period prior to polling day and on the polling day until the close of polling at all polling stations, any publication or broadcast by any media organisation relating to the election must obtain the prior approval of the Media Industry Development Authority (MIDA) to ensure compliance with subsection (1).

- 3) The Media Industry Development Authority (MIDA) must ensure that all media organisations comply with the provisions of this section
- 4) If any media organisation contravenes this section, the editor, publisher or the owner of the media organization (as the case may be) commits an offense and shall be liable upon conviction to a term of imprisonment not exceeding 5 yrs.

MOG-421
MIDA worked closely with the Fijian Elections Office in registering and accrediting all local and international media intending to cover the election. The Chair of MIDA, following meetings with the Multinational Observer Group extended the deadline by more than a week to accommodate ongoing requests by international media. A total of 450 local, international and freelance media personnel were registered to cover the Elections. No applications were rejected.

In relation to the specific comments and recommendations made by the Multinational Observer Group, it is imperative to note the following:

(1) Barring the limitations set out in the Electoral Decree to observe the blackout period (access to political actors for campaign purposes), no restrictions were imposed on the media in reporting the elections (particularly on matters of electoral fraud or any other malpractice). MOG's recommendation that media accreditation processes should be simplified and that all media outlets including international media should have sufficient advance notice of deadlines and timelines and that MIDA should issue clear, timely and practical reporting guidance lacks proper factual basis. A series of measures were taken to ensure that the media was fully prepared to report the elections which also entailed the following:

- a) Notice for registration of both local and international media was well publicised with the provision of sufficient time to register. Registration was further extended by more than a week from the initial deadline of 29 August 2014.
- b) A four day workshop for the Fijian media was convened by MIDA and facilitated by an expert on media and elections included the formulation of a media's guide to elections as well as robust discussions on the role of the media under the Electoral Decree with both the Supervisor of Elections as well as the Solicitor General.
- c) A very clear guideline on media reporting under Section 118 was issued.

d) Joint statements issued by FEO and MIDA including regular press conference with both local and international media in the lead up to the elections as well as the provision of an information kit to all media personnel engaged in reporting the elections all constitute concerted efforts made by the FEO and MIDA in educating the media on the Electoral Decree.

(2) Attributing "media's [limited] ability to rigorously examine the claims of candidates and parties" exclusively to "the restrictive and vague media framework, including potentially harsh penalties" is totalizing as it attributes the lack of media robustness to restrictive state laws without examining the following: the pervasiveness of racial vilification and racist hate speech given that Fiji is emerging out of the detritus of institutionalised racism and the role that media can and has played in conflagrating communalism particularly during political party campaigns, the political economy of the media industry in Fiji including the ideological proclivities of the various media, the power differentials within the industry as well as their training and development capacity. The lack of investigative journalism is serious indictment of this problem and factual inaccuracies (such as "Indians" will be voting for the first time in 2014) particularly by the international media.

(3) The report fails to acknowledge the fact that mainstream media endeavored to capture a plurality of political perspectives in the lead up to elections which at times questioned the prevailing stereotypes about media bias (e.g- Fiji Sun published the views of FLP, NFP, SODELPA). This was evidenced in the various talk back shows, televised debates, contribution to opinion columns from varied political actors including independent candidates and letters to the editor by the general public.



(4) Ironically, MIDA's call to establish an independent Media Monitoring Unit (consistent with developments in Europe amongst other jurisdictions) to address biases in media coverage of the elections was heavily criticized not only by the mainstream media but select political actors as yet another act of media censorship. The same political actors, in light of the MOG report, are now decrying media bias during elections. MIDA has had to act within such complexities of constraints to ensure that the media was free to report the election.

(5) Given the heavy focus of the report on the state and its ideological apparatuses, the report makes no mention of the fact that quite contrary to the prevailing stereotypes about media freedom under repressive states, that

infact the journalists whose safety and security came under threat were those that were perceived to be pro-government.

(6) MOG's call for public complaints on biased media coverage to be adjudicated by "an independent institution regulated by law" fails to recognise that that is precisely the function of MIDA. Furthermore, their recommendation that "should the Media Industry Development Authority continue its role in future elections, there is a need for an independent institution to adjudicate complaints about its actions, consistent with Fiji's legal and constitutional framework fails to appreciate the role of an independent Media Tribunal presided by a High Court Judge under the Media Industry Development Decree 2010.

MIDA

MEDIA INDUSTRY DEVELOPMENT AUTHORITY

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MIDA PRESS RELEASE

The Media Industry Development Authority (MIDA) appeals to all Fijians to refrain from using the media including social media to incite violence through the use of inflammatory language with the intention to intimidate voters that if one were to vote for a particular political party, it will result in erosion of stability, safety and security. Equally alarming are recent reports of death threats made against journalists. The Fijian media must be able to report without fear and intimidation. Given the constraints with regards to monitoring social media, MIDA appeals to public sense of reason and civic responsibility to create an enabling environment for all Fijians to exercise their Constitutional right to vote.

The media must also remain independent, give equal access to all political actors, must not be seen as aiding and abetting the political agenda of one political party over others, to declare their ideological disposition if any and substantiate their reports with facts.



Ashwin Raj

Chairman, MIDA.

10th September 2014

MEDIA REPORTING UNDER SECTION 118 OF THE ELECTORAL DECREE

11 September 2014

Following a meeting of the Supervisor of Elections and Chairperson of MIDA the following reporting guidelines have been approved under section 118 of the Decree.

Media Briefing by Fijian Elections Office

1. Pre Blackout Period: Sunday 14/09/14 at 12 noon regarding the 48 hour blackout period plus the day of the elections.
2. Blackout Period:
 - a. Monday 15/09/14 at 3:30pm
 - b. Tuesday 16/09/14 at 3:330pm
3. Election Day: Wednesday 17/09/14 at 9am, 12pm, 4pm, 6pm and 9pm

Blackout Period

4. During the blackout period effective from **7.30 am Monday 15/09/14 to 6pm Wednesday 17/09/14** (close of Polling), media must not allow any political activity including advertisements, interview any political actors, and conduct debates or commentaries that would be deemed as advocacy or has the potential to influence voters. E.g. no candidate can be interviewed on a radio talkback show at 7.30 am on Monday September 15. Publication of all material pertaining to political activity in the mainstream media including magazines must cease at 7.30 am on Monday 15/09/14. Anything published in magazines prior to the blackout period may remain as is.
5. During the blackout period, the media is still expected to report on electoral activity such as messages from the Supervisor of Elections, Electoral Commission, and International Observer Group. The blackout period does not apply to media coverage of the administrative aspects of the general election.
6. During the blackout period until the close of polling at all polling stations, any publication or broadcast by any media organisation relating to the election must obtain the prior approval

of the Media Industry Development Authority ('MIDA') to ensure compliance with section 118 of the Electoral Decree 2014 ('Decree').

7. Media Organisations may repeat broadcasts during the blackout period for which prior approval of MIDA has been obtained. Approval must be obtained for any new publications and broadcasts during the blackout period.
8. Media Organisations do not need MIDA approval for publishing or broadcasting material that has been authorized by the Supervisor of Elections is being disseminated from the FEO.

Opinion Polls

9. Pursuant to section 110 of the Electoral Decree 2014 -

(1) It shall be unlawful for any person to publish the results of any election-related opinion on the polls on any day during the 7 days prior to the polling day and on the polling day until the close of polling at all polling stations

(2) Any person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years, or to both

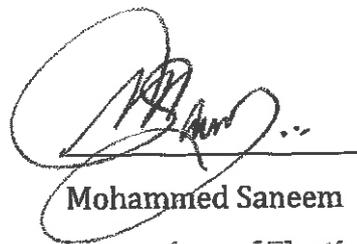
Election Day

10. Photographing of candidates as they cast their vote is permissible upon **prior arrangement and approval** first with the Supervisor of Elections including the Candidate and or party. Advance notice of at least 2hrs will have to be issued to allow the information to be conveyed to the Presiding Officer at the relevant polling station. Media may photograph the Candidate entering the Polling station and then at the point when the Candidate is placing the folded ballot paper into the ballot box. No interviews will be permitted with the Candidate inside the Polling station. Media is also not to photograph or interview other voters inside any Polling Station.

11. Footage of the setup of Polling Stations-The FEO will organize a Polling station to be confirmed where media can film the setup of the polling station. This will be at a prescribed time. However, media will not be permitted to photograph or film a voter at the Voting screen in this Polling Station. Similar arrangement will be made for the count.
12. Media Centre- Media can be present at the Media centre and film the provisional results as it is made available. Internet will be organized at the venue. Further details of the internet will be released in due course.
13. Media will also be permitted to observe the count of pre-poll and postal vote. They can also observe the recording of votes by operators at the call centre.
14. Media Organisations while reporting on the elections must comply with the Electoral Decree, Media Code of Ethics as stipulated under the Media Industry Development Decree 2010 and the FEO Code of Conduct for Media Representatives and Organisations. Failure to comply with the above will result in the loss of accreditation by individuals and associated media entities and they will not be permitted to report on the election.
15. A briefing pack including a media tag will be supplied by the FEO.



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Fijian Elections Office