

STANDING COMMITTEE ON **JUSTICE, LAW & H/RIGHTS**

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

THURSDAY, 28TH JULY, 2016

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE,
LAW AND HUMAN RIGHTS HELD AT THE COMMITTEE ROOM (EAST WING) ON
THURSDAY, 28TH JULY, 2016 AT 2.40 P.M.**

Interviewee : Mr. Sharveen Chaudhary

MR. CHAIRMAN.- Good afternoon, Honourable Members. I welcome you again to the next session of the meeting of the Standing Committee on Justice, Law and Human Rights where we are currently looking at the Reports submitted to Parliament, that is, the Joint Report by the Supervisor of Elections and the Electoral Commission and the Electoral Commission Report itself. As we have the presenter marked for 2.30 p.m. is already here, we will straight away go to item number 4 in today's Agenda - submission on the 2014 General Elections' Reports by Mr. Sharveen Chaudhry.

(Mr. Chaudhary presenting his submission in his personal capacity)

I welcome you to this Committee. First, I will introduce you to the Members of the Standing Committee on Justice, Law and Human Rights.

(Introduction of Members by Mr. Chairman)

We will allow you to make your submission and at the end of it, we will have the question and answer session for about five to 10 minutes.

You must have responded to the advertisement in the dailies. There are two Reports before the Committee; one is the Electoral Commission Report and the second is the Joint Report by the Supervisor of Elections and the Electoral Commission. There is a third Report which is the Multinational Observer Group (MOG) Report that was not referred to us by Parliament but we have acquired that Report as a reference point to these two Reports.

Yesterday, the recommendations made in all the three Reports and we would be grateful if while you are going through your submissions with the general comments you could also point the Committee out to the respective amendments that should be made to make the next election process easier for everyone.

With that, thank you once again for your interest in the parliamentary proceedings in this country, and you can now commence with your submission.

MR. S. CHAUDHARY.- Good afternoon, Mr. Chairman and Honourable Members. My name is Sharveen Chaudhary and I will be presenting as a citizen and as a voter of this country. I also work for the National Federation Party (NFP) as a Research Officer.

My submission will be including some of the points referred to in the MOG Report which was highlighted for the 2014 Elections and also what incidents were encountered during the counting nights of the voting results, as well as some amendments needed in the Electoral Decree which is not fair from what I had seen.

The MOG and Electoral Commission released a report in regards to the 2014 General Elections. Although the MOG stated that the Election was credible, however, certain issues were raised towards the end of the Report which, if inherited in the upcoming Elections, then it will be proved to be a free and fair election.

Some of the recommendations were:

- Having party symbols.
- Candidate names in the voter guidelines and also in the ballot paper. We must consider those who are not familiar in memorising numbers, especially if there is a 14 by 20 grid ballot paper containing three digit numbers in one box.
- Writing materials to be taken into counting centre by counting agents so that the counting results can be noted for record keeping of the interested parties and also in later verification part.
- Counting results are to be certified by each party agent present in the polling station. For the very first time, I would also like to thank the Fiji Elections Office for introducing the electronic voting compilation setup, however, there was no presentation done to all political parties as to how the system will publish the data and after the data gets entered into the system. This pilot software testing is a very crucial part in confirming that the software is reliable, however political parties did not have any vivid idea as to how reliable the system was.

This was a concern because the Minister for Elections and also the General Secretary of the FijiFirst Party himself was involved in the election process all throughout and the only logical point is that, he alone was aware of how the system worked. Apart from that, no other Party knew how that electronic data compilation system functioned.

- A soft copy Voter Roll should have been given to all the Parties at least two weeks before the General Elections. That is a must and needs to be done in each polling area; how many voters are there so that all Parties are aware of the actual number of voters who would be coming to vote.

Moving on to some critical issues faced during the counting nights at the Vodafone Arena, some basic rules were violated and decisions were made without circulating any written amendments in relation to the counting. I will now be referring to the Electoral Decree of 2014 (the original one).

Section 54 of the Electoral Decree 24 states, and I quote:

“A voter shall vote for a single candidate by placing a circle around or a tick or a cross on the number of his/her preferred candidate on the ballot paper.”

Section 94(1) mentions about the invalid votes and I quote parts (c) and (d) which does not clearly indicate the candidate for whom the voter wishes to vote or which candidate indicates a vote for more than one candidate. The sections of the Elections Decree stated above is clear as to whom and how the voters should vote and once the voting has completed, ballot papers which does not comply with those rules are to be invalidated.

Section 94(1)(c) and (d) clearly states that; “More than one tick and if it is not clear, it is to be invalidated.”

Furthermore, when you move to Section 94(2), it states, and I quote:

“Any ballot paper that is marked in such a manner that the intention of the voter is clear must not be invalidated and must be counted in accordance with the clear intention of the voter.”

Now that is ambiguous, it is not clear.

It also says that the presiding officer has the power to overrule that. How does the presiding officer know what the intention of the voter was? Remember that! We are all humans, we cannot read minds.

This part of the Decree is ambiguous as I have stated and questions as to what and how will the chief presiding officers and other senior officials will state the intention of the voter, if the vote had been from any place in Fiji. These are examples.

On Friday 16th September, 2014 on the counting night, the counting officials were issued with a verbal instruction to validate all those ballot papers which has more than one mark and the intention of the voter was to give the vote to number 279. In this case 279 and other numbers along with 279 was marked in the ballot papers. Upon various queries, still the decision remained the same.

Section 94(2) needs to be removed so that elections take place on a neutral ground. There is nothing such as validating a vote based on voter's intention. If the vote has to be cast wrongly, then it should be invalidated because simple rules apply and in such cases, the Elections Office is to be held responsible and questioned as to how effective was their voting awareness campaign.

In that campaign, even on TV or *Fiji Times* it stated that a tick, a cross or a circle on a number, apart from that, that vote is invalidated. It is simple English, but then Section 94(2) states the intention; what does that imply? The campaign goes on a simple ground but then the decree which is very finely written and which not all the people have the time to read is written in a confused way. How are you going to apply that with real terms? Are you going to get a true result out of it? I do not think so.

Another one was that the broadcasting of the provisional voting results had been stopped around 10.00 p.m. on Wednesday, 14th September, 2017. The broadcasting of the results should have continued for the public to have a review as to what numbers of votes were going to candidates and parties.

There were also issues with ballot boxes and ballot papers. I have referred to Annexures 1 and 2 in my presentation. After this I will submit my presentation and you can have a look at it. If such rules do remain for the upcoming elections, then I am afraid to say that any style of voting will be deemed as the voter's intention and could be validated to any number. This goes to all the rest of the 49 candidates. As I had stated an example, the number going to 279, this can happen to anyone of you. Imagine your number stuck along with that number, crossed along with that number and the preceding officer assumes that it goes to 279! That is all I want to say, Mr. Chairman.

MR. CHAIRMAN.- Can you elaborate a bit more on the question of the voting for 279? You are saying that there were ballot papers that had 279 marked along with other numbers and they were counted.

MR. S. CHAUDHARY.- Yes, there were more than one number, like 279 and marked with other numbers. Then the Chief Presiding Officer came to us and stated that the intention of the voter is to give the vote to 279.

MR. CHAIRMAN.- Were there two circles or was there one cross?

MR. S. CHAUDHARY.- Yes, I am saying marks, so marks could either be one of the three - circled, ticked or crossed, but more than one number.

MR. CHAIRMAN.- What was actually on the ballot paper? There was a cross, a tick and a mark on three places or

MR. S. CHAUDHARY.- I am very sure that on one paper, there was a cross. Then I was a counting agent, my colleagues called me and that paper I saw crossed, and then followed were some papers that had ticks and also circles but the question was three or two numbers marked but why validating that vote? In fact, it should have been invalidated. Simple rules do apply and this norm has been practised from the very first election happening. You cannot validate a vote which has more than one mark!

MR. CHAIRMAN.- You are saying that the Presiding Officer in his discretion, validated the vote by saying the intention was to tick onto

MR. S. CHAUDHARY.- That is what I said, it is a 14 by 20 grid and three digit number and it is a confusing task also for voters to memorise. I mean, there is a numerical phobia kind of thing with most people, even young people like us are sometimes confused, especially with this number kind of things. Imagine the old people who are going to vote! That is why the MOG Report states the candidate's name and party symbol is a must so that, at least, if they are not sure with the number they can refer to the name, symbol and then cast their vote. I mean, let us put it this way, you were voted on the number it is it not? So, can I ask you what was your voting number, Sir?

MR. CHAIRMAN.- Mine was 139.

MR. S. CHAUDHARY.- So, do they call you in Parliament Honourable 139? No, they call you by your name. So, the voting should have happened along that line.

MR. CHAIRMAN.- I take your point. However, this is an ongoing process and we have spoken to the Supervisor of Elections and we will be speaking to him again, so he will be appearing before this Committee again. What we saw as a mock or as a draft paper, for example, assuming there were five parties, 50 candidates each in this case. There were seven parties, two independents, and if you put a picture in a smallest photograph and a smallest possible recognisable manner with the party symbol and name, the size of the ballot paper will about two thirds of this table which you saw. With the paper of that size the logistics itself, the printing cannot be done here and it has to be done in overseas. The actual book containing a number of ballot papers will need a forklift to transfer the paper to the centre. That is not the hard part.

The hard part is if an individual comes to vote and he sees a paper this size, in fact the Major General Sitiveni Rabuka yesterday pointed to us that Indonesia has the paper size of this table, and we were given a task to find our own numbers. It took us 10 minutes to get the number. I am not saying that is a bad example but that is a logistical approach of what would happen if we include the party symbol, number and the candidate's photograph on the paper itself as opposed to the current system of having a book which has everything in there. All you have to do is to open the book, find the photograph of your candidate, probably party symbol along the side and then match the number on the paper, is that workable?

MR. S. CHAUDHARY.- Which was the number and....

MR. CHAIRMAN.- Currently we have the book system, photograph and the number, there is no party symbol. If we include a party symbol in that booklet, will that solve part of the problem?

MR. S. CHAUDHARY.- Yes, but the thing is, whatever is included in the booklet, it is like a revision for some of the people, is it not? Let us say if the booklet contains the number and the participant in the photo, I know the photo is going to be technically tough but we can put the party symbol, number and, at least, the initials of the candidate which can give them a fair idea. If they are confused between the initials of, course, the party symbol stands out.

HON. A.D. O'CONNOR.- Just a initials of say, for example, "I" as I stood, my full name is Alexander David O'Connor. So, you just want to see A.D.O.

MR. S. CHAUDHARY.- Yes, you can run a trial on it and check with the community. I mean, you can do a survey, go out to the people and see what they prefer.

MR. CHAIRMAN.- You mentioned someone....

MR. S. CHAUDHARY.- But number is only one option. As I was saying numerical phobia is one thing and it is really tough at times to recognise numbers.

MR. CHAIRMAN.- Especially in the case of 279 and 297.

MR. S. CHAUDHARY.- Yes, it could be and there are others also.

MR. CHAIRMAN.- That particular person polled more votes than their Party leader and General Secretary just by a stroke of luck.

MR. S. CHAUDHARY.- But we cannot say that. I mean if he....

MR. CHAIRMAN.- And, of course, he might have been popular.

MR. S. CHAUDHARY.- Yes, he could have a been popular guy.

MR. CHAIRMAN.- Secondly you have mentioned that electronic data entry should be made public or how it is done; is this the provisional phone in results you are talking about?

MR. S. CHAUDHARY.- When I mentioned about that electronic data, this is the first pilot stage of implementation. Whenever you implement a system or software, the concerned parties need to be part of that implementation. What I am saying is, when the system was being developed the other concern political party should have been present there to see. Let us, say if you enter 10 votes to a particular number and we should have known how that vote was allocated to that number whether there was a system manipulated within or was it a clean system. As I have said, in this case only one political party had the advantage because the General Secretary is also the Minister of Elections, and the others did not get a neutral playground.

MR. CHAIRMAN.- The current system of provisional phone-in counting that I understand is say, at a centre in Nailaga, Ba the church hall has a polling station. So, everyone who cast their vote at that station, the ballot boxes are opened and counted. That number is phoned in to the National Switchboard

and whenever the ballot box arrives here may be a day or two days later, it is physically counted here, and then it is tallied to see whether it is correct. So, there is hardly any big difference. Is that what you observed at the Centre where you were a counting agent?

MR. S. CHAUDHARY.- There was also a confusion at the counting centre. The provisional votes that were called in from the Wednesday night of the voting day, as I had said, at 10.00 p.m. they stopped publishing, we received the notice that we can send in our people on Thursday. So, whatever happened on Wednesday night until Thursday morning we are not sure, some processes in between were not transparent. The Party that is part of the election and its agents are also part of the process until the last day the result has been announced. You cannot exclude them in that process. So, we were given late information that we can observe - the counting, data entry and protocol we could observe.

The papers coming in, we observed and then they enter the data but we cannot go back and see how much data was entered into the system because that area was barricaded. It is a confidential area but what I am saying is when the software was developed, a pilot run should have been done with all the political parties present during the Elections. That means you enter the data and all could observe how much data is entered and generated.

MR. CHAIRMAN.- Which means that the results that were phoned in from centre X,Y and Z, as soon as it was phoned in, it did not go straight on the board but when the ballot boxes actually arrived, how they counted and enter it into the computer that is not.....

MR. S. CHAUDHARY.- That is the case. They could have said that 279 is rejected there in that case but what I am saying was that, in here it was validated. So, there could be data going up and down. There is another thing, the option of phoning in and relaying the results should not also be part of it. They should have a system whereby you either email the data from that counting centre or you text the data, meaning that the record should be visible. Call is something which one takes as a proof unless it is recorded but where can you find the recorded version is another question to ask. Have you heard about the Chinese whisper? So, for phoning in and telling, another person can change the data so where is the proof that the data was correct.

MR. CHAIRMAN.- Did you come across any instance where your counting agent at a particular centre said that there were more votes for this particular candidate here at the centre itself but when you went to the main National Centre the numbers changed?

MR. S. CHAUDHARY.- Let me clarify, we did not have enough party agents to cover up all the centres. So wherever they were present, things happened smoothly there. However, my concern was that I was present at the Vodafone Arena and the problem and biggest issue there was the validating of the invalid votes. I mean, that clause should be removed for good because it is confusing in itself. One must ask the question; how can the Presiding Officer decide that the intention of the voter was that, and that is a classic example. I cannot go back and prove that because I was not allowed to take a camera in and take a photo of that. Of course, the Decree states that. Then one year after the Elections, the record was shredded. So, how can we go back and refer to the results?

MR. CHAIRMAN.- Are you saying that first, there should be more awareness and transparency and accountability?

MR. S. CHAUDHARY.- I mean, the practice of voting should start now because people are saying that we have a year left, no! We should start by now. The Elections Office instead of going and

supervising the municipal elections and other training on elections, that is a petty thing, they should be on the ground now educating the people on how to vote.

MR. CHAIRMAN.- There are some processes that were actually started by the Supervisor of Elections when he was here and you would see some advertisements in the papers as well. They are doing the registration process.

MR. S. CHAUDHARY.- Registration is one team, Sir. They can go on, there should be another team. I think they have enough people on board. Even the Supervisor himself can go and start educating on how the people should vote, it is simple, and also emphasise on certain parts of the Electoral Decree because the way he acted on that night, it is as if he knew everything. It was unethical on that point because the rule is the rule, so how can you violate that. Imagine giving an invalid vote to a candidate and the records stands out to be 300,000 plus votes going to him, how transparent is that?

MR. CHAIRMAN.- 300,000 or 202,000?

MR. S. CHAUDHARY.- 202,000, of course, it is in 200 plus thousand, is it not the widest? He received the majority votes. It could be any favours going to him in that way.

MR. CHAIRMAN.- What do you suggest should be the practice in case some voter by mistake marks another number and he wanted to vote for someone else, should the ballot paper be reassigned to him, a new paper be given or just correct it?

MR. S. CHAUDHARY.- No, that should not be allowed. The rule is one paper, one chance. You should be well assured of whom to vote for and how to vote. I think on the counting of the ballot papers, they have enough budget so they should get an electronic counter whereby you insert the paper, it picks up the number. Automatically, it will tell that the vote is invalid, that is it, so violate that rule and the vote gets invalid. Only a valid vote should be counted.

MR. CHAIRMAN.- There were examples of people actually circling outside the square. The number was in a square, right? Some people just circle around the number within the square, some people actually circle around the square.

MR. S. CHAUDHARY.- Yes, that I give a bit of flexibility. As I have said, visually impaired people also but you are correct, I saw some votes and that is acceptable. However, using that Section 94(2) where it says, "Voters intention", I think in that case it is acceptable. At least one number is circled or marked in that box. That is alright but not three numbers marked and you decide to give that vote to that number.

MR. CHAIRMAN.- There are different places on the ballot paper, three marks were allowed.

MR. S. CHAUDHARY.- Yes, in three separate numbers.

MR. CHAIRMAN.- So the intention was not clear at that time.

MR. S. CHAUDHARY.- Yes, and they used that section of that Decree to state that the intention was to "vote this candidate".

MR. CHAIRMAN.- Would you recall if there were any similarities in between the numbers like 279?

MR. S. CHAUDHARY.- No, it was 279 and there was one number marked something in threes and there was another number and they simply argued with us.

MR. CHAIRMAN.- You have raised the point that this

MR. S. CHAUDHARY.- We raised the point and that senior presiding officer who is no longer working in the Elections Office right now so I cannot state his name, it will not be incorrect, but he came and overruled us. He said, "You're wrong". In that process I used some words which are not swear words but they pushed me out. I later on came back in and started my work but the question was, when something is wrong it is wrong.

When I asked them for any amendments or any written submission by the Supervisor that; "Yes, you can follow this law", they said, "No, it is a verbal instructions."

MR. CHAIRMAN.- So, either that section is totally removed with the intention part taken out or if it is retained, there has to be some guidelines to that. For example, the example that I have just said, if someone circles, whether it is outside the box and also around the number, the intention is clear, that is that number.

MR. S. CHAUDHARY.- Yes, there is, visually, sometimes people go and they do not take their glasses so they do those things but that is clear. One number marked around the box is alright, but more than one number ticked, that should not be acceptable.

MR. CHAIRMAN.- It reminds us of examination days, does it not? Sometimes you marked (a) for an answer then crossed it off and then mark (d).

MR. S. CHAUDHARY.- No, this is not examination, this is something critical.

MR. CHAIRMAN.- So you are saying that giving probably another clear ballot paper should be totally disallowed?

MR. S. CHAUDHARY.- Yes, not allowed at all. I mean, how can you say that even the officers involved in that place and giving another ballot paper are neutral? They could indicate "mark this number" or "mark that number".

MR. CHAIRMAN.- Are there any questions to Mr. Chaudhary, Honourable Members??

HON. S.D. KARAVAKI.- Mr. Chaudhary, the MOG acknowledged in their Report that they really did not observe properly how the results were transmitted through the IT system. Given the fact that party agents were also not given the access to observe or see the numbers that are coming in and the numbers that are being input in there which compared to when the counting always happened in the past, party agents are always shown the ballot papers before it is allocated to which candidate it is going to. I mean, it is shown to all the agents, they are satisfied that that is valid and who it is to be allocated to. When that is done, everyone is satisfied. Alright, that is fine, it goes to the one that should receive that vote.

In this Election, most of the transmissions of results go through the telephones, input into the database by those that are inputting it and there is a lack of transparency here because party agents were not there to be shown, "Okay, these are the numbers coming in and we are inputting this." I mean, that is what you are talking about?

MR. S. CHAUDHARY.- Yes.

HON. S.D. KARAVAKI.- What would you say because there is a Member of Parliament who had shared with me that when he went to the polling station at Jai Narayan College with his family members and they voted for him, but when the results came out of that polling station, there was not even a single vote allocated to him. I was trying to figure out what probably would have happened in there. Maybe, all their votes were being cancelled or ruled out or invalidated. I cannot really understand why not a single vote from all his family members, all his friends who went in there and had guaranteed to him and said, "We voted for you", but not even a single vote he received from that polling station. Do you have any idea what happened there?

MR. S. CHAUDHARY.- That is why I had stated that the phoning in and relaying how much each candidate received should not have been allowed. If I call in and tell you, Sir, for example, that your employee is doing this, this and this, what will you say? You will say, "Give me the written proof", so it is the same thing as this.

Phoning in and telling how many candidates received which data and there were three shifts of work going on, eight hours per shift, we do not know which person is ethical and which one is not. Hearing and writing anything, he can say, "Okay, came from Nausori, Vunimono Hall, ten votes for Honourable Karavaki" and here she may enter five or two. That is why I said that it should be staged or done in a way that the data is documented.

Let us say, Vunimono Hall, Mr. Karavaki received 10 votes, so either it should be emailed on one platform or texted, that is written. We could go back and see, "Alright, it was true and 10 entered." It is easy to be verified but not phoned in and then relay the results. This kind of Chinese whisper, by the time it reaches the other end, it goes wasted; we do not know what the result may be.

MR. CHAIRMAN.- So, you are saying a better option would be to have some sort of documentation either by email, text message, *viber*, et cetera?

MR. S. CHAUDHARY.- Yes, not *viber*, but at least a national platform. It could be monitored and verified.

MR. CHAIRMAN.- Of course, there is some sort of record, if someone needs to go back to it.

MR. S. CHAUDHARY.- And that records whatever, even the ballot papers as the rule says, discarded in one year, it should remain till the next Government is voted in. The records should be there in the storage. Any MP or any member of the public can say, "Okay, I want to view the voting system and how it all occurred", let us say in Nausori so they are able to say "Okay, Nausori, these many voters were there", verified and then recheck. Just like the audits in a company, the accounting records are kept for seven to ten years for verification purpose so that is what should be done until the next Government comes in.

MR. CHAIRMAN.- But if someone raises a reasonable objection and the court of disputed returns recalls those ballot papers that they can be checked, they can be recounted.

MR. S. CHAUDHARY.- Yes, that is what I was saying but the thing is, this had been discarded as it is said the Electoral Decree; 'within one year'. Therefore, how will we go back and get the discarded ballot papers

MR. CHAIRMAN.- But is one year enough to...

MR. S. CHAUDHARY.- No!

MR. CHAIRMAN.- Is it not enough?

MR. S. CHAUDHARY.- Now, the case takes around three to four years to get resolved so imagine the election case, the length of time it will take.

MR. CHAIRMAN.- You will understand that Honourable Karavaki knows about that. There is usually time limitation for all sorts of ...

MR. S. CHAUDHARY.- No, I know there is a time limitation but there is a four year term of any government to run, is not it? Then elections come, so it is a very short timeframe. That is what I am saying, the records to be kept for a longer period for references purpose because as you have said, the case cannot be rushed through so keep the record, the data as a proof.

MR. CHAIRMAN.- If there has to be a recount, of course, there will be recounts of 2,600 centres. So all those papers should be kept?

MR. S. CHAUDHARY.- Yes.

HON. A.D. O'CONNOR.- Mr. Chairman, possibly what he is driving at is along commercial entity lines where all records and all official documents are kept for seven years before they are discarded.

MR. CHAIRMAN.- That is something that we can consider. Are there any further questions, Honourable Members?

(Pause)

Since there are none, do you have any final comments, Mr. Chaudhary? In that regard, is that your submission by the way or are you continuing?

MR. S. CHAUDHARY.- That is my final submission.

All I would like to say is, I would like to see all those changes happening, especially Section 94(2). Whatever I have recommended in terms of the communication of the data from the polling centres to the main counting centre and, of course, that issue of record keeping can also become handy if kept for four to five years. Who knows! A case could be referred back and it is going to be transparent and ethical for everyone, even for the people involved in it.

If you want to become a Member of Parliament in this country, then you need to come up with a true identity, not with a hidden agenda and something else. Thank you.

MR. CHAIRMAN.- Thank you very much, Honourable Members. With that, I would like once again to thank Mr. Sharveen Chaudhary, the Research Officer for the National Federation Party for his appearance this afternoon before the Committee. It is good to see that people actually take interest in the electoral procedure and the work of the Parliament and Committee. So far we have heard from

organisations like political parties and electoral commission, et cetera, but as I have said it is also good to see that citizens of this country also take interest.

Mr. Chaudhary, we have taken note of your concerns, it is also part of the recording. We will review the verbatim notes and in our final reports, we will obviously consider your suggestions. Many people have suggested many things but it all has to be thrashed out and rethought because that was something raised by the Supervisor of Elections that to change the systems all the time confuses people more so with more elections, happening people will get a grasp of how to vote. But yes, the little hiccups that you have highlighted and some others have highlighted, we will definitely take consideration of those.

Once again, thank you very much.

The Committee adjourned at 3.13 p.m.

