

STANDING COMMITTEE ON
JUSTICE, LAW & H/RIGHTS

- Fiji First Party of FFP -

[Verbatim Report of Meeting]

HELD IN THE

COMMITTEE ROOM (EAST WING)

ON

THURSDAY, 14TH JULY, 2016

VERBATIM NOTES OF MEETING OF THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS HELD IN THE COMMITTEE ROOM (WEST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON THURSDAY, 14TH JULY, 2016 AT 2.35 P.M.

Committee : National Federation Party (NFP)

In Attendance

Hon. Professor Biman C. Prasad = Leader of NFP

MR. CHAIRMAN.- Good afternoon, Honourable Members. We have the quorum now and the Opposition Members are not here yet. I have been advised that Honourable Leawere is on his way. We can start with the submission. Honourable Biman Prasad is here from the Nation Federation Party and we are grateful for his appearance in responding to our invitation to present his views on the two reports.

On the outset, I would like to state that there is a correction. The reports that were presented in Parliament were the Fijian Electoral Annual Report 2014 and the Joint Report by the Electoral Commission and the Supervisor of Elections. The Multinational Observer Group (MOG) Report was not presented in Parliament but it can be referred to, it is part of the Supervisor of Elections Report. It is an annexure there. We had checked the *Hansard*, it was not actually presented in Parliament but reference can be made to it.

We also have Honourable Leawere here now and as per the invitation we now allow you your 30 minutes presentation, Professor Prasad.

HON. PROF. B.C. PRASAD.- Thank you for the invitation, Mr. Chairman and Honourable Members, to make a submission on this very important issue.

I seek clarification, Mr. Chairman, the understanding I had was that the Honourable Attorney-General quite explicitly stated in our Business Committee because we wanted to move a motion in Parliament on MOG and he said MOG is a report which will be considered by the Standing Committee, together with the Election Commission Report. That was the undertaking that he gave and that is why our motion was withdrawn, so I am assuming that reference to the MOG Report is in order.

MR. CHAIRMAN.- What I meant was that in the invitation we had written that the three Reports were submitted to Parliament and when we checked with the *Hansard*, two of them were referred, one of them is for reference purposes but yes, it can be referred to. It is part of the Supervisor of Elections annexure.

HON. PROF. B.C. PRASAD.- I understand that your report will deal with the MOG Report as well.

MR. CHAIRMAN.- Yes.

HON. PROF. B.C. PRASAD.- Thank you for that clarification.

I think this is a very important submission and consideration by the Committee on Justice, Law and Human Rights, and the report that this Committee will prepare and present to Parliament and the recommendations that would go with it will determine how far we will make the progress towards a genuine democracy and parliamentary democracy after the 2018 election, especially when we look at the report of the MOG which monitored the 2014 Elections, together with the Annual Report of the Electoral Commission, those two documents are very, very important. Obviously these two Reports are being

considered 14 months after the Honourable Madam Speaker referred to them, so I am pleased that this is now being considered.

Let me also quote a statement by the Supervisor of Elections. This is a report on *Fiji Live* where the report had stated the following:

“Fiji’s Supervisor of Elections Mohammed Saneem says the report by the International Observer’s on the 2014 Election will assist the Fijian Elections Office in its efforts to achieve international best practices and adopt innovation.

Welcoming the 53-page MOG report, Mr. Saneem says the Fiji Elections Office will carefully review the report and its recommendations as it prepares for the 2018 election.

“The MOG report which was co-led by Indonesia, India and Australia conducted itself in a professional and courteous manner and their insights have been a great benefit to the Fijian Elections Office,” Mr Saneem said.

(He further said) While the MOG’s general endorsement has been known for some time, this report offers useful analysis on special aspects of the election.”

Mr. Chairman, that shows that the recommendations of both, particularly the MOG Report, and the Elections Office Report are vital to the work of the Supervisor of Elections currently being undertaken to prepare for the 2018 General Election.

I know he mentioned that there is a Strategic Plan but the question is, does the Strategic Plan include the legislative changes that would be required to give effect to the recommendations of the MOG Report? That is not very clear and I guess once this Report gets into Parliament and gets debated, the recommendations will then obviously have to feed into the work of the Office of Supervisor of the Elections.

For record sake, let me first talk about the MOG Report itself and then I will talk about the Electoral Commission Report.

If you look at the MOG Report, it almost suggests that the next election can only be free and fair if Government brings before Parliament the Media Industry Development Decree, Political Parties Registration, Conduct, Funding and Disclosures Decree and the Electoral Decree to make the necessary changes as recommended by MOG to make the elections credible. That is the first point. These recommendations as I had said before are contained in the 53-page Report which is available to the Honourable Members of the Committee.

On the media, MOG rightly pointed out that harsh penalties in the Media Industry Development Decree prevented most media outlets from effectively reporting the election issues. The contents of the report on media environment, Media Industry Development Decree and Media Industry Development Authority (MIDA) also show the ineffectiveness of MIDA. The MOG rightly recommended the need for regulation as well as an independent institution to prevent and adjudicate on media bias thus, ensuring a level playing field amongst election participants, as well as the review of penalties in the Media Decree.

The fact that the MOG has recommended for an independent institution actually proves that MIDA’s lack of neutrality as a body comes out of the fact that it is appointed by the Government. A free, fair and credible and unfettered media industry in Fiji is rendered meaningless if MIDA continues to exist.

The MOG Report also highlights the need for amendment to the Political Parties Decree and it rightly points out that the broad definition of a public office holder excludes a large number of citizens from freely participating in the political process.

Further, the Report describes the prohibition on trade union officials from being members of political parties as a limitation on political freedom. The MOG also recommended for requirements to be reduced for political party registration, as well as allow public office holders and trade union officials to be political party members. This has been the case throughout our independent history and this is the first time that was not allowed under the Political Parties Decree.

The MOG also recommended changes to the Electoral Decree, and most importantly the MOG notes that the absence of political party identification from ballot papers and national candidates list is unusual - the lack of any names, symbols, photographs on the ballot paper.

The MOG also observed that voters were prohibited from bringing 'how to vote' cards or pamphlets into polling stations. I mean, these are normal things that happen in most credible electoral process and anyone caught breaching this provision faced a hefty fine of \$50,000 or imprisonment up to a term of 10 years or both, I mean this is ridiculous.

The National Federation Party had made submission to the Electoral Commission on the need to change the ballot paper to include symbols of political parties and names of candidates. In fact, Section 23(2), Mr. Chairman, of the 2013 Constitution on the Bill of Rights actually talks about political rights and states as follows, and I quote:

“Every citizen has the right to free, fair and regular elections for any elective institution or office established under this Constitution.”

We firmly believe that a ballot paper with numbers denies this constitutional right because it erodes the principle of a free and fair elections. We maintain a voter is unable to exercise the meaningful choice in the absence of names and symbols.

Voters recognise political parties by their symbols. The Political Parties Decree 2013 requires political parties to set out the symbol of any proposed party. I mean, on the one hand you are required to have a proposed symbol but then you cannot have it on the ballot paper, and this is reconfirming the Decree's 2nd Schedule that outlines the contents of the Constitution or rules of a political party which, amongst other things, requires the logo and symbol of a party. So, it makes no sense to require the parties to have the symbol when they register and yet, you do not have any symbol on the ballot paper because symbols are the identity of most political parties and candidates that are sponsored under their banner. This identification was totally missing from the ballot paper, as was the link between the candidate and his or her nominating party and obviously this led to promotion of single numbers.

Furthermore, Mr. Chairman, in the last Elections Non-Governmental Organisations (NGOs) were denied the right to be election observers and the MOG has recommended for this to change to ensure credibility of the election process symbols and names of candidates to be included on the ballot paper and the national candidate's list, penalties for election related offences to be reviewed in accordance with international standards and practice, and that Government should review and finalise all existing electoral laws and regulations well in advance of the next election.

The impression that one gets when you look at these fines and jail terms is a fear factor. People are afraid, I mean, citizens should not be afraid of participating in an electoral process. Of course, you have rules and regulation and if they breach that but to have such extreme kinds of penalties is just unnecessary.

This is why we believe that the MOG Report is a very important report. You will note that the MOG said that the Election was credible, but if you look at all the recommendations, you read them carefully and what they want to be changed almost says that the Election was not free and fair. So, I think the acceptance of the Election is credible.

Must be linked to the recommendations which make some very, very unambiguous recommendations for change. That proves the point. This is further evidenced from the Electoral Commission Annual Report 2014. Actually this Report is quite damning. If you read it carefully it almost says that the Electoral Commission was not independent and that the Supervisor of Elections was not working under the direction of the Electoral Commission.

Mr. Chairman, for example, the Commission states in its Report that even after repeated requests for an independent legal adviser to the Commission. In most countries the Electoral Commission is the most powerful body. It is an independent commission and the conduct of the election must squarely rest in the hands of the Electoral Commission. The Commission states in its own Report that the repeated requests for independent legal advice or consultant to the Minister for Elections remain unanswered. That is quite serious. If you are the chairman of the Electoral Commission and your responsibility is to ensure the conduct of a free and fair election, you obviously need all the tools, the resources and a legal consultant was very important.

This, of course, confirms the NFP's concern as well as other political parties who raised several concerns that were not addressed carefully or not addressed at all by the Office of the Supervisor of Elections or the Attorney-General, the Minister in charge of the Elections. Some of the concerns after our submissions were rejected, that we raised in writing in meetings with the Commission electronically or verbally through phone were as follows and I want to list some of those, the:

1. Ballot paper size and visibility of the number, tick, and counting stations for counting agents verification.
2. Counting results certification by party agents at each polling station.
3. Voting guide booklet to include candidates list together by party, party symbol against each candidate's names and number.
4. Polling station venues to be also assigned by maximum walking distance of one kilometre for each voter.
5. Soft copy of polling station voter rolls to be expedited and given to parties.
6. Voter guide booklets to be given to parties as soon as possible or at least two weeks before polling.
7. Count agents to be able to take pens and pencils to record results during counting. These are not allowed under the Decree, ridiculous!
8. Non-presence of police outside the count centres. They were instead stationed about 15 metres away at polling station. We do not have any idea on what is going on there.
9. Procedure surrounding the announcement of protocol of results. You would remember that there was a stoppage of announcement of protocol of results.

10. Non verification by political parties and certification of the IT system in which results phone from count centres were entered.

These are important concerns and some of these were never addressed by the Electoral Commission or the Supervisor of Elections.

Additionally, Mr. Chairman, the Commission also noted that it was inhibited (this is the word they used) in fulfilling its role in directing the Supervisor of Elections on matters concerning his performance. This is what the Report is saying.

The Commission also pointed out that the position of the Supervisor of Elections be re-advertised but was informed by the Minister of Elections of the appointment of Mr. Mohammed Saneem.

So, these are some serious concerns that cannot be ignored. The observations of the Electoral Commission clearly point out that the independence of the Office of the Supervisor of Elections was compromised before the General Election. That is very, very clear from the Electoral Commission's Report, its own report.

Last year, Mr Chairman, as you would be aware one of the Commissioner's, Professor Vijay Naidu resigned and also told the media through an interview that the Supervisor was not acting upon the instructions of the Commission and basically, I think that is the case before the court where the Electoral Commission (it is in this report) is seeking to understand, for example, Section 76(2) of the Constitution which states, I quote: "The Supervisor of Elections, acting under the direction of the Electoral Commission..." and in Section 76(3) it says, and I quote: "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." So, it is being pointed out by the Electoral Commission that, that is their role.

The Commission also recommends and this is very interesting, Mr. Chairman, you have the Observers on one hand, then you have the Electoral Commission which also recommends changes and amendments to the Decrees governing the conduct of political parties and elections. It also, for example, recommends changes to the Constitution on reducing the 5 percent threshold. That is a long shot but the least we can do is to look at that recommendations which will lead to changes in the Decree. Changing the Constitution might be virtually impossible under the current provision, but they did make their recommendation.

They, in fact, made other recommendations and our Party, the NFP, lost two very good candidates - Ms. Makereta Waqavonovono and Mr. Jone Vakalalabure on residency qualifications with require candidates to be ordinarily residents in Fiji for two years. Citizens working or studying abroad cannot be candidates but those working for Government and serving in a peacekeeping missions are eligible to be candidates. This was not the case under the Electoral Act 1998. So, if you were, for example, away on study leave for six months or a year, you would not be eligible to be a candidate although you had a very legitimate reason to absent yourself from the country and under the Electoral Act 1998 that was covered. What we basically have are those who were working for Government and are serving in the peacekeeping missions and were exempted but if you went on a study leave because you have to be out of the country, you will not be illegible.

Mr. Chairman, we strongly believe that both the Electoral Commission Report and the Joint MOG Report provide a very useful set of recommendations. It should not be taken lightly and we strongly believe that this Committee on Justice Law and Human Rights actually incorporate all recommendations of the MOG and the Electoral Commission Report in its report so that when those recommendations reach

Parliament, can be debated, scrutinised and perhaps, an agreement within this Committee to suggest changes to the Decrees in preparation for the 2018 Elections.

Let me conclude by saying that we feel very, very apprehensive about the 2018 Elections if we do not make changes to the Decrees based on the recommendations of the MOG and the Electoral Commission. In fact, the NFP may be prompted to reconsider its participation in the next election under the current regressive and draconian Decrees and the constitutional provisions that remain relevant to the conduct of the elections. What I am trying to say, Mr. Chairman, is the seriousness of what is being recommended in this report will determine how credible the next elections is going to be and how much progress we can make thereafter towards moving to some semblance of genuine democracy in this country.

I leave it there, Mr. Chairman, and I am happy to take questions from the Honourable Members.

MR. CHAIRMAN.- Thank you, Honourable Professor Prasad, the leader of the NFP for your submission this afternoon. I do understand that you have referred to the MOG Report as well as the Fiji Electoral Commission Report, but the joint report of the Electoral Commission/Supervisor of Elections which do not have many recommendations, are you also referring to that? Have you also considered the Joint Report of the Supervisor of Elections and the ...

HON. PROF. B.C. PRASAD.- I am referring to that and some of the issues that they have highlighted as well so, yes.

MR. CHAIRMAN.- In that respect there are numerous recommendations in the MOG and numerous recommendations in the Electoral Commission Report. In fact, there is detailed recommendations from Page 39 onwards in the Fijian Electoral Commission Report. Are you saying that all of those recommendations should be taken on board by the Committee or only some of those?

HON. PROF. B.C. PRASAD.- In fact, what I was saying is that, all the recommendations make a lot of sense. Some, of course, do not require legislative changes, some could be just done by the Office of the Supervisor of Elections itself, some of the recommendations would require legislative changes and I think those are very, very important from the point of view of this Committee. It would also be useful for this Committee to make those recommendations for change in the relevant parts of the Decree based on the recommendation.

MR. CHAIRMAN.- There are two or three types of groups of recommendations, one is as you have mentioned legislative changes, to change the actual structure of how the elections are run and then there are some practical ones as well like, after the drawing of numbers of candidates, candidates are only allowed about 30 days to campaign and there is a recommendation to put it to 40 days, and then there is also a suggestion to have polling stations closer to the villages and settlements.

HON. PROF. B.C. PRASAD.- That is exactly what I am saying. I think some of the recommendations are pretty straightforward, they can be factored in by the Electoral Commission and the Supervisor of Elections but some suggest changes to the Political Parties Decree, the Media Decree and these are important ones. They obviously require legislative changes and that is why I am saying that the Committee might want to look at the relevant Decrees and make recommendations as suggested in the two Reports.

You could have two sets of recommendations going to Parliament from this Committee; one would require just normal changes and one that would require legislative changes. I would actually urge the Committee to make the recommendation to change and may be propose an amendment Bill to give effect.

I think that would be within the ambit of your work, Mr. Chairman, to make very specific recommendations on how to change the Decrees with an amendment Bill.

MR. CHAIRMAN.-(inaudible) Decrees is concerned you are not recommending any changes to that but total repeal of that?

HON. PROF. B.C. PRASAD.- Mr. Chairman, we have talked about the Media Decree before and obviously the Government made a minor change where journalists are no longer going to be fined but we still believe that the fines for the media organisations, editors and publishers are too draconian and that it still prohibits free and fair reporting not only of election issues but other issues as well. So, we maintain that the media Decree needs further amendment.

MR. CHAIRMAN.- Do any Members of the Committee have any questions for the Leader of NFP?

HON. M.R. LEAWERE.- Through you, Mr. Chairman, I would like to seek your views on the Public Order Amendment Decree which was enforced during the Elections, what are your views on the Public Order Amendment Decree?

HON. PROF. B.C. PRASAD.- Those are not part of the recommendations either of the two Reports but that is the separate issue. Obviously, we can take that up as a separate issue, not part of the electoral process.

MR. CHAIRMAN.- Well, if there are no further questions or comments on Honourable Professor Prasad submissions, I thank the Leader of NFP, the Honourable Professor Prasad for your appearance this afternoon before the Committee. We have noted down your submissions and your comments, and we will certainly address those in our report.

HON. PROF. B.C. PRASAD.- I have a written submission, Mr. Chairman, which I can forward it to you.

MR. CHAIRMAN.- Yes, please pass it to the Secretariat and we will consider that. Thank you very much.

HON. PROF. B.C. PRASAD.- Thank you, Mr. Chairman and Honourable Members, for your time.

The Interview adjourned at 3.05 p.m.

The Interview resumed at 3.05 p.m.

Submittee: FijiFirst Party

In Attendance

1. Hon. A. Sayed-Khaiyum - General Secretary, AG and Minister of Economy, Public Enterprises, Civil Service and Communications.
 2. Mr. Ben Qionibaravi - General Manager, FijiFirst Party Parliamentary Office
-

MR. CHAIRMAN.- Honourable Members, we now have the General Secretary of the FijiFirst Party and his team before this Committee to present their views on the 2014 General Elections Joint Report by the Electoral Commission and the Supervisor of Elections and the Fiji Electoral Commission Annual Report.

On behalf of the Committee, I welcome the team from the FijiFirst Party and thank them for their appearance this afternoon before the Committee to make their submissions.

At the outset (for the record), I would like to highlight that the invitation that was sent out erroneously recorded that the 2014 Fijian Elections final report of the Multinational Observer Group (MOG) was also referred to this Committee by Parliament. We went through the *Hansard* records and found that it was not referred to this Committee. The Reports that was referred to the Committee were the Fiji Electoral Commission Annual Report 2014 and 2014 General Elections. The MOG Report was requested by the Committee for reference purposes for both the Reports.

With those introductory remarks, I will now request and allow the General Secretary of the FijiFirst Party to make his presentation.

HON. A. SAYED-KHAIYUM.- Mr. Chairman and the Honourable Committee Members, we thank you for this opportunity. Together with me is Mr. Ben Qionibaravi from the FijiFirst Office. He also manages our office upstairs and he is the General Manager. He was also involved in the lead up to the Elections.

Many of the topics that obviously emanate or are part of the MOG reports or the Electoral Commission and the Joint Report by the Electoral Commission and the Supervisor of Elections is subject to what he had experienced and what we obviously had experienced. I am also glad, Mr. Chairman, that you made that remark about the MOG Report not being referred to the Standing Committee because it never was but that does not stop this Committee from looking at the MOG Report itself.

It was a short notice, we only received the notification of this meeting yesterday via a letter dated to 12th July. We would like to make some detailed written submissions which we would not be able to hand over today, but we would like to make some comments.

I think the fact of the matter and I would like to preface our comments regarding the Reports is that the Elections that was held in 2014 was highly successful from a number of perspectives. One of them is that, we had a very high voter turnout. The percentage of invalid votes were below 1 per cent (about 0.7 per cent) and subsequently, with the setup of the Fijian Elections Office, it has since then been involved in a number of international events, for example:

- 1) Being invited in May 2015 to be the Head of the Mission of the Observer Group to Bougainville Elections;
- 2) being invited to the Vanuatu Snap Elections;
- 3) now a member of the Steering Committee Member of the Pacific Islands, Australia and New Zealand Administrators Network (PIANZEA)P; and
- 4) only recently being made a member of the Steering Committee of the Commonwealth Electoral Network.

This is Fiji's first participation in the Commonwealth Electoral Network since its formation in 2010.

Since then, they have been involved in a number of international organisations and indeed, have become members of the associations of all electoral bodies, PIANZEA, of course, Commonwealth Electoral Network and the Association of European Election Officials.

The two Reports, again, I think needs to be juxtaposed with the provisions in the Constitution that sets out the role of the Electoral Commission and sets out the roles, duties and powers of the Supervisor of Elections which are quite clearly set out in Section 75 of the Constitution.

The other issue is that, there were some general comments that we wanted to make regarding some of the recommendations of the various reports that are before you. If I can deal with the MOG Report first, in fact, we have done an analysis of it and looked at the recommendations and where they actually fall. Before we do that, the MOG had nearly a hundred Observers from about 19 different countries and they held recommended that the Elections were free, fair and credible. They made a number of recommendations, some of them actually falls within what we call operational aspects of the Elections Office, and the others are what we called the legislative prerogative of Parliament in respect of some of the recommendations that they have made. They are probably the two critical areas that they looked at.

Some of the issues they have highlighted have been superseded because of many of the practical issues that have come to the fore now and they no longer are relevant. So, I do not know how much in detail, Mr. Chairman, that you would like me to go into, but I think the suggestion about MIDA that was discussed and I caught the tail-end of that discussion regarding MIDA, some of those issues that were raised by MIDA were sort of redundant. For example, one of the recommendations was that MIDA continue with its role in future elections. There is a need for an independent institution to adjudicate complaints about his actions consistent with Fiji's legal and constitutional framework. That is already in place and I think it goes to show a lack of clarity regarding MIDA because MIDA is an independent body itself, it has an independent tribunal which is headed by a person qualified to be a judge and any decisions of such a tribunal under MIDA can also be appealed to the High Court of Fiji and the Court of Appeal, so that recourse is there that is available.

For example, they talk about the Electoral Decree be revised to encourage civil society engagement in the elections, we have said that the Fiji Elections Office and the Electoral Commission had already outlined an application criteria for civil society and 12 approvals were given, including local NGOs and that involved the Fiji Rights Movement. I think you need to look at some of the recommendations from a factual perspective. The organisation that probably would best give you the update on it would be the Office of the Supervisor of Elections or you can call the Supervisor of Elections who can probably give you all those details.

- Allowing pen & paper for
observers / Party Agent inside polling area
- Region that amendment
- This has been changed
in the Bill

- Assisting of voters
with disabilities & elderly
(not supported)

- Penalties with
Decree of the Electoral
(not supported)

There are some very practical issues that have been highlighted that do require some legal amendments and that is something I think we would probably encourage also. For example, at a very practical level the law at the moment does not allow anyone that comes into the polling area/voting area to bring in any papers, so papers were strictly prohibited. It poses a practical issue, so for example, if you are going to allow observers to come in and they have their own set of papers to tick the boxes to say; "People are being given their ballot paper on time", et cetera at the moment under the current law they are not even allowed to do that. So, we could perhaps look at that and at the moment, there is a set of recommendations that have been sent up to our office by the Fijian Elections Office in terms of amending some of the existing laws to give it lot more latitude for people to be able to bring in material like observers to bring a pen and paper so they can do their various assessments. That, I think, is something that the FijiFirst would encourage Parliament to look at, to allow for that.

The other issue was about voters with disability and elderly voters. ^{True} There is an existing provision in the Decree at the moment that gives the Supervisor of Elections the authority to allow the staff who are working at the polling stations to give assistance to people who are elderly and are disabled. For example, if there is an instance where a polling station is in a school building and there are some steps that you need to go up to the school building, the Supervisor of Elections has the ability to allow his staff to take the paper and the polling booth itself to the voter at the car because they cannot climb the stairs. Now, what the recommendations, for example, from MOG is, that the voters (persons with disabilities and the elderly voters) should be allowed to get assistance from friends and family.

At the moment as a law stands and as a policy, they can get the assistance of the staff. The reason by we would object to friends and family being there to assist them is they could put pressure on them, whereas the staff actually have a legal obligation to be completely independent. If they are found to be interfering with the wishes of voter, then they can get charged. That is a criminal offence. They uphold those standards.

Assuming if I am blind and I say that I want to vote for number 199 or whatever the number is, but my elder brother is the one who is going to cross 199 for me, says; "No, do not vote for 199, vote for 205", that obviously can happen whereas if the person who is there to cross it off for me is not my relative (a cousin or whatever it is), there is an independent person there and they have no right to do that. They are trained to simply follow the instructions of the voter. So, we would disagree with that recommendation of MOG that friends and family be allowed to help them to do that. We have trained officials who are, of course, will not put any undue pressure on them and they are trained to ensure that the independent opinion of the voter is allowed to follow through.

Again, for example, they talk about the penalties under the Electoral Decree as yourself, Mr. Chairman, would know as well as Honourable Karavaki as you are practising lawyers that just because you have a penalty set at \$10,000 or five years imprisonment, that is the maximum. It does not mean that that is what the courts will always give. In fact, the argument as always been the reverse, that the courts do not actually follow it. The two months that they give are very lenient.

As you can see there has been hardly any prosecutions under this particular Decree. Similarly, with MIDA no one has been prosecuted under the MIDA r laws. There has been no criminal offence. There is only one particular instance where there is an issue of non-declaration of the shareholding and they quickly recognise that. The DPP has prosecuted it where their directors had not given their full declaration, and that was it but no journalists and no editor has been prosecuted under MIDA. Similarly with this, no one has been given the maximum penalty.

Again the issue about the MOG being invited, of course, if you are going to have foreign observer groups it is the prerogative of the country to allow for that. In the same way, then you must have the

have to sanction and with the Commonwealth Group that came, the MOG people who came in, they had to accession of the government to be able to come and carry that out.

As I have said, there is a number of other issues pertaining to the MOG Report and we will give you a detailed submission on that but I think it needs to be look at from two practical perspectives or divisions and one of them is the operational aspect of the recommendations pertaining to the Fijian Elections Office and the one are the sort of legal aspects of it. You can ask me question later if that is alright with you. Can I move on to the other one?

MR. CHAIRMAN.- Yes.

HON. A. SAYED-KHAIYUM.- Regarding the Electoral Commission Report, we found a lot of fundamental flaws with the Electoral Commission and the observations that they have made. To be frank with you, we think that the Electoral Commission took a very unusual approach to the manner in which they carried out their functions. It appeared to be highly unusual, for example, again Honourable Karavaki would be able to share his experience with you, that the Electoral Commission does not get into the legal fray and we found a particular instance where the Electoral Commission got into the legal fray where they challenged the decision by the Supervisor of Elections. That matter is still before the courts where they appealed the decision of the High Court.

We had another issue and, of course, the Honourable Leawere was the subject matter and he is sitting in this Committee, regarding the qualification of a person if they are still holding a public office, and then they are put up as a Member of Parliament. Again, the issue there was where you had the Electoral Commission representing itself through the Electoral Commissioners which is highly unusual. There are a number of other observations that we can make regarding the manner in which the legal counsel was selected also for that particular matter.

However, Mr. Chairman, I think the number of issues that had been highlighted by the Electoral Commission, for example, they talked about deleting certain sections of the Constitution. That, of course, is outside the ambit of the Electoral Commission which is there to apply the law as it exists and this is specifically to do with the five percent qualification threshold of any political party. New Zealand uses a five percent threshold. Countries like India has a lot of threshold because of its large population base.

One of the issue that we should also highlight is this supposed appetite to delve into areas which is outside the mandate of the Electoral Commission without necessarily understanding that electoral systems are actually built in also for stability purposes. Today, the Governments of Solomon Islands, Vanuatu and various other countries have made approaches both to Government and also to the Fijian Elections Office because they believe that the system that has been put in place is actually good. We have seen governments change like through revolving doors in some of the other countries in the world, including some in the Pacific because of the lack of stability that the electoral reform fails to give them. So, the five percent threshold obviously in a way secures that level of stability. It stops the revolving door, and that is one of the functions of a good electoral system.

We find, for example, they made an observation saying that the Electoral Commission had too short a time to address any appeals or objections to the candidates. Again, the Honourable Karavaki will tell you that previously under the law they had only 24 hours to provide clarification. Under this existing law they have three days, as opposed to 24 hours. So, they are saying; "It should be a longer period of time." Again, we find that highly questionable, given some of the recommendations that they have made.

They talked about the D'Hont system to be replaced by the Sainte-Lague system but again, if you read the Report thoroughly and if you talk to them the D'Hont system for our purpose is very very suitable indeed, it is a fair system. To make this type of observation, the law is already there that sets that out.

Again, they made observations saying that provisional results should not be given out. As we know, Mr. Chairman, provisional results as in the last Elections for the first time, we actually had the votes being counted wherever the votes were cast. So, the persons who were running the Election Office, the persons who were running the polling stations were trained with unprecedented level of training and a very open and transparent basis of the selection of the staff who work there, so they would count the votes at the polling station and then telephone in the results. Then as you know, those people who were involved in the Elections the results would then come up on the screen. They are what you call the provisional results. Then once the actual physical ballot papers come to the Elections Office in Suva then what you get are the confirmed results.

The Electoral Commission was saying; "We should not have provisional results", I mean, what is the rationale behind that. As we have found, there were no changes to what the provisional results said and to what was the final outcome in respect of each of the numbers coming from each of the polling stations.

Of course, people want to know what the results are. It keeps the voters knowing whether the results are progressively, it goes to show to the voters that the system is working, that the votes that have cast has been countered as opposed to waiting for three or four days before everything comes back to Suva and this was the problem that we had previously.

Those are some of the preliminary observations we have in respect of both of these Reports. Obviously, the Joint Report has made some further observations. It not only about amending the laws but for the first time in Fiji's history, the Electoral Commissioners are paid \$500 a day sitting allowance, a lot more than what are you getting, Mr. Chairman, and all of you Honourable Members. You can also see in the Annual Report that the sitting allowance for 2014 was \$248,875 for one year, and meetings, meals, lunches, et cetera, are all set out on Page 5 of the Joint Report. Above that table, you will also see how much they get paid meal allowance per day, travelling allowance, et cetera.

Overall I would say; "Yes, there is some room" in terms of some of the practical issues, like I have mentioned about allowing observers to take in papers into the polling stations so that they can carry out their assessment. Those things can obviously be looked at and laws can be amended. Wearing the other hat, we would like to also say that we have been working in consultations with the Fijian Elections Office to look at how we can fine tune the laws to be able to make it a lot more conducive in the practical application of the conduct of the next Elections.

So perhaps, I will stop there and if you would like to ask any questions, we can do that. Thank you.

MR. CHAIRMAN.- Thank you, General Secretary of the FijiFirst Party for your submission and for your appearance before this Committee. The Committee has looked into the three Reports compressively and compared the recommendations that were made. You correctly pointed out that there are some recommendations that are practical in nature, that do not require major changes but there are some recommendations from the Electoral Commission particularly, and the MOG that requires substantial changes even to the Constitution, the respective Electoral Decree and the Political Parties Decree.

One of the more practical aspects is the case in point of 279 and 297 where one Mr. Cawilawalawa polled 4,600 votes because people obviously confuse that with the Prime Minister's number. There is recommendation that the ballot paper actually carry party symbols, names of political parties and perhaps,

photographs of the candidates that may make it easier for voters to identify the candidates. Do you have any comments in that regard?

HON. A. SAYED-KHAIYUM.- Yes, thank you. If you look at the electoral system we have, it is an open list system. The open list system gives the ability of the voter to choose directly their candidate, so it is a lot more hands on approach in terms of the selection of the individual that you want to represent you. Of course as you know that the electoral system that we have has a single constituency approach like, for example, they have in Israel and various other countries where the entire country is one constituency.

The general philosophy behind the electoral system is to give the voters more of an opportunity to choose who they want. As opposed to the open lists system you have what you call a close list system. The close list system is when you just simply vote for the party and the party then selects the people that they want. For example, if you look at the various percentages of votes that have been cast, FijiFirst for example, has approximately 60 percent of the seats in Parliament which are those 32 Members that would have gone in, in a close list system would have been determined by the party, they would have set the priority. Under the current system we have it is actually set by the voters, so whoever has the highest number of votes will go in, the next, the third next, fourth next. So the voters are actually having a choice in the individual members.

By having party symbols you are actually defeating that system, it is contrary to the philosophy behind that. As a party we want the voters to know the individual voters, the individual candidates who are all of you in this Committee are in this Parliament not just because of your party but because of who you are as an individual person, the level of integrity or credibility you have, what people think and how people view you as a representative of them within Parliament. By having party symbols does not, in any way, perhaps fundamentally change the voters' confusion. As you know that even in the old system above the line, below the line, we had above the line, below the line confusion, as Honourable Karavaki would also tell you and the others who run the Elections Office. There was all confusion and indeed a high percentage of votes were deemed to be invalid because the intention of the voter could not really be ascertained

I think the fact of the matter is that, we need more voter awareness, and I think that was first time that we had people voting purely along numbers line. You will find that may be there was some confusion, the overall assumption is that people were confused between the numbers and that is why that person got the higher number of votes but may well could not have been, we do not know that. May be 4,000 people generally wanted to vote for him but the reality is that, we need to simply educate. Once candidates get their numbers they need to go out and say; "This is my number", and that is where a lot of campaign tactics work. So, we would not necessarily say that because it does go against the overall philosophy of people having a choice of who they want to vote for.

MR. CHAIRMAN.- Thank you. The other pertinent point that has been raised in at least two Reports - the MOG Report and the Electoral Commission Report, is the threshold and percentage as you pointed out earlier, and to change will actually require a change to the Constitution.

Now the view that was expressed earlier by the previous Subcommittee and the Report is that, it does not favour the independents. For an independent or a single person to reach a 5 percent threshold of 600,000 of so votes is a very difficult proposition. The current system favours more for political party platform not as an independent. Do you have any views on that, Sir?

HON. A. SAYED-KHAIYUM.- Yes, I mean, if you look at many countries throughout the world one of the problems they do face is (as I had mentioned earlier on) you need stability in governance, and Australia is a classic point. In the last few governments in Australia, governments and Prime Minister's

collapsed because there was a heavy dependency on independents. Independents are masters of their own choice.

If you, for example, have a Government that may be simply dependent on winning seats because they have five independents, they can ask for much higher stakes because the main political party may want to stay in Government but they need these five independents to vote for them. They can ask for the top ministerial posts, marginalising the key political party. If, for example, in the next elections if we have seven or five independents and SODELPA has 23 seats, if they manage to convince these five to join them so they get 28 seats and, therefore, they form a Government. I mean, you can bet your bottom dollar all those five candidates will want quite a few things in exchange for their support for that party to stay in Government and that is what we have seen happened in many countries, so it does not lead to stability.

It can also lead to corruption. It has happened in many countries, I mean, Sri Lanka had many issues where government had to buy people off to get their support or you could have in some countries where, for example, in the Senate and this is in Australia, you have people who may be very much far to the left or far to the right placing demands on the mainstream political party and they have to compromise on their principles and values. So, that is a fundamental problem and the reason why the 5 per cent threshold was used and obviously is used in New Zealand as a guideline, it does lead to a particular form of stability and again, you want stability in government.

Yes, the system does encourage the formation of political parties. There were seven political parties that were formed in the last Elections, notwithstanding the fact that you have a 5 per cent threshold to win, notwithstanding the fact that you needed 5,000 people to actually sign for a political party to be formed within all the Divisions with different numbers coming from different Divisions and notwithstanding the fact that you had to pay that fee. So, several political parties were formed and I am sure it was one of the highest numbers that was formed if you compare with the other Elections. Higher number, if not the same.

Ultimately, we need to see in practice, how has it translated in practice. The requirement to have 5,000 signatures did not stop the formation of seven political parties. The requirement of the payment of the increased fee did not stop the formation of the political parties. The requirement of the 5 per cent threshold did not stop the formation of political parties, so we do not necessarily think that it is any impediment to the formation of political parties, and it does create stability.

MR. CHAIRMAN.- Lastly from my side, there is also an issue that has been raised quite prominently in both the Reports, what happens if it comes to by-elections. If a political party currently in the proportional system and if a candidate resigns or passes on, the next in line replaces him/her. If a party runs out of candidates and there is a by-election, then the whole country will be required to go for a by-election for that one particular candidate, and there might be a change in the result not only in terms of that particular person but the actual number of votes cast for that political party. So, for that one person a national by-election might actually alter the proportion of votes and the proportion of seats. Are there any views on that?

HON. A. SAYED-KHAIYUM.- Yes, again, the system encourages the formation of political parties. The system also avoids costly by-elections. The system also says to political parties that apart from your individual candidates who stand for your party, they also vote for you because of your party's philosophy. If we use the FijiFirst Party as an example, we have had people who have resigned. His Excellency the President was a former Member of Parliament, voted on the FijiFirst ticket. When he resigned the next person on the list came up. Many political fielded and I understand the SODELPA fielded 50 candidates. So, even if, for example, there are people who may resign or for whatever changes may take place, the next person up the list comes. So, it would be a very long time before you actually run out of candidates, similarly with NFP. It will be highly improbable that during the term of a party's life in

Parliament that they will run out of candidates. In the instance of them running out of candidates, you need to have a by-election for those three seats, et cetera, for example in NFP's case.

The reason why you actually have to go out to the public is because it is one single constituency and that is part and parcel of having a single constituency. However, on the flip side, the number of changes that we have had, for example, in FijiFirst where people have resigned or they have left the Party for whatever reason, in the case of SODELPA where one of their Members of Parliament had passed on, unfortunately, every single time by now we would probably have about five or six by-elections, and that also would have been a very costly affair.

You have to look at it in an overall perspective and the philosophy again behind that is that, the political party is there, a person who stood under the ticket of a political party, therefore because you have an open list system and because a list system *per se*, therefore the name of the next person on the list qualifies. I think there is a lot of merit in the system that we currently have.

MR. CHAIRMAN.- Are there any question or comments from the Honourable Members of the Committee?

HON. M.R. LEAWERE.- Mr. Chairman, through you, regarding the independence of the Electoral Commission, one of the recommendation was the budgetary constraints. What are your views about that in terms of getting staff, office accommodation, et cetera?

HON. A. SAYED-KHAIYUM.- If I can refer you to the Constitution itself, if you read Section 75(2) of the Constitution, it says and I quote:

“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; (obviously the Electoral Commission *per se* does not do that, it is done by the Fijian Elections Office);
- (b) voter education (that is also done by the Supervisor of Elections);
- (c) the registration of candidates for election (again, this is done by the Supervisor of Elections);
- (d) the settlement of electoral disputes, including disputes relating to or arising from nominations, but excluding elected petitions and disputes subsequent to the declaration of election results; and

(They do have a role in that, they have the role of an appeal body. If, for example, in the last Elections when the names were selected the Supervisor of Elections had rejected some names or accepted some names that people felt aggrieved about. They went and reported the matter to the Electoral Commission and they have that appeal role that they do play. When you are an appellant body, you need to be above the fray of what is happening down at operational level. It is in the same way if you look at it in most organisations. You have the Board and then you have the CEO, so the CEO runs the day-to-day affairs. The Board essentially provides the guidance, the vision and the overall strategy for that organisation.

- (e) monitoring and enforcing compliance with any written law governing elections and political parties. (Again, this is where I think they have failed because it says; "Monitoring and enforcing compliance with any written law governing elections and political parties.")

So, they are there to ensure that there is compliance and they need to enforce the compliance of any political party or anyone participating in the election process with the laws that exist.

The Electoral Commission has been given funding. As I have said, if you see in that Joint Report, they held their meetings whenever they liked. In fact, I have just been informed that one of the Electoral Commissioners only a few weeks ago came in for five or six days, one or two hours a day. The Supervisor of Elections cannot question that. Even if they come for one or two hours they get \$500 a day. Now, there is obviously an obligation on them to make sure that they do the right thing, but as far as the funding is concerned Honourable Leawere, there has been no restrictions *per se*, of course, in stopping them from doing their work as provided for under the Constitution.

There is a particular issue and as I have said that they have, for example, gone against the normal grain of things, again as Honourable Karavaki would tell you, the Solicitor-General is the legal advisor to statutory bodies and independent institutions, he/she always provides the opinion. In two of the instances that are before the courts, the Electoral Commission chose to go outside that and chose to go against the opinion of the Solicitor-General. It, in fact, went out and selected a lawyer from outside. From what I understand the matter is before the budget people in the Ministry of Economy because they were no tenders called for nor were there expression of interests called for, we do not know but that is the level of independence they have had so we do not believe that the current provisions, in any way, stopped that. I think the fees that they want to pay is about \$25,000. Normally the fees payable or any amount that is above \$50,000 you need to call for tenders but, of course, this is less than \$50,000. So what processes were followed, I think they are currently being verified by the Ministry of Economy. We do not believe that they have been restricted from carrying out the work in any way.

HON. M.M.A. DEAN .- Mr. Chairman, I thank the Hon. Minister for Economy, Assistant Prime Minister and the General Secretary of *FijiFirst* Party. This is not a question but this was coming as question but I am sure you did clarify the issue. I only had issue with the requirement of 5,000 signatures. It says in the MOG Report that 28 days was a very limited time but I was glad that you answered the question by saying that the number of parties that were registered was seven, so obviously they made that commitment and the conditions were sufficient enough for them to register their parties.

HON. A. SAYED-KHAIYUM.- I apologise, the 28 days that you were referring to, what calculation is it?

HON. M.M.A. DEAN.- That is number 3 – Political Parties which is on Page 11 of the 2014 Fijian Elections...

HON. A. SAYED-KHAIYUM.- That is to do with the existing political parties. So what it did, it said to political parties that were at that point in time when the law was brought into place, that if you are an existing political party you need to comply with the law within 28 days. The 28 days does not apply to new parties that were formed like the PDP, One Fiji Party and the others. Indeed, for all intended purposes SODELPA was, of course, a new party so if SDL wanted to continue it had to comply with the 28 days. FijiFirst was not an existing party, so that 28 days does not apply to them. They are talking about existing political parties.

as the Minister responsible for Elections you have direct discussions with these people. If they need any change at all they would just bring it up to the Government and the Government would go through it in Cabinet.

We now sit in this Committee and the Reports are here and to generate the report to take to Parliament, bearing in mind if there have been suggestions in here for a change in the legislation, I thought to myself, Sir, that the pathway for changing the law is clear, where it goes to the Minister responsible and see that the changes should be done and then it goes to Cabinet.

Now, there is another pathway that we are being forced to look at here. I think most of these issues as you have explained, you have attended to most of these issues and rightly so, I think that is the way it should be handled. A report that comes here to Parliament just explains what has happened and what they have done. The expectation as you have said, they are there to enforce the law and to see that things are done according to the law. If there are things that they have done with some difficulties because of the law is like that, they have to take it up through the proper channel. I see some confusion here, Sir, may be you can explain on that.

HON. A. SAYED-KHAIYUM.- Yes, I think you hit the nail on the head and perhaps, articulated lot better than what I was trying to say earlier on. As I read the provision in the Constitution I must reiterate that again and that is, under Section 75(2)(e) it says that the role of Commission is to monitor and enforce compliance with any written law governing elections and political parties. Flawed as they may think of it in their own personal opinion or political opinion, they are simply to enforce it, and you are absolutely right. If they had basically stuck to that constitutional provision they would have given you a report on the operational aspects of it, but you see the bulk of their report is more to do with other matters other than the compliance and enforcement of the laws. You are also absolutely right, that it could have been brought through the channel through our office.

Honourable Karavaki, notwithstanding the comments some people have made in the public domain, when the Electoral Commission was appointed and when they went off in a different direction we did not call a meeting with them and say; "You must go in this direction." We basically left them to do it.

I had a couple of meetings with the Chairman of the Electoral Commission. I did point out to him (as you would also know Honourable Karavaki) that, for example, the legal opinion by such body is sought from the Solicitor-General's Office and that is precisely what the Supervisor of Elections did in matters when there are any legal issues. We expected the Electoral Commission to do that, they did not do that.

We had a very unusual situation, Honourable Karavaki, where the Chairman as you also know that the qualification to be a Chairman is someone who is qualified to be a Judge, and that is for a very good reason that they bring their legal acumen to the Commission because legal matters do arise. However, that obviously they thought was not good enough or they wanted more, they wanted more legal advices and what was highly unusual was that, you had the Chairman of the Electoral Commission at the bar table in the matter before the High Court fighting a case against the Supervisor of Elections in one instance.

In the second instance again, in Honourable Leawere's case and this has nothing to do with Honourable Leawere, I am only talking about the legal issues, it again had the Chairman of the Electoral Commission appearing at the bar table and as you would know this is highly, highly irregular. In fact, I do not think in the history of Fiji that that that has actually ever happened.

Again, in a subsequent meeting with the Electoral Commission he wanted to talk to me about other matters, I pointed this out to him. I also pointed out the matter to him that the lawyer that the Electoral Commission had hired (BC Patel) is a close associate of Young and Associates. Many people know that

BC Patel does a lot of work together with Chang Young in commercial matters. I said to him that the perception would not be good. I pointed this out to him, that he is someone who you do commercial transactions with and you work together in commercial law, and here is this person to whom has been hired the Electoral Commission in which you are a Chairman. I did point that out also.

I completely agree with you, Honourable Karavaki, that there are a number of issues that should have been brought to the Ministry responsible, we could have battled that out. I completely agree with you that the report should have been more on the operational aspects of it. You will see that there is a Fijian Electoral Commission Annual Report 2014 and then you have a Joint Report for the Electoral Commission and the Supervisor of Elections.

Honourable Karavaki, I have to check whether the Political Parties Decree requires the Supervisor of Elections to produce a separate Annual Report or not, I do not have the benefit of looking at that law now but most certainly I recognise the fact in terms of what you have said, that there is a specific requirement of the Electoral Commission to produce an Annual Report to give to his Excellency the President and also a copy of it to be given to Parliament. The rationale behind that was always in the same way, for example, if you look at a corporation, it is always the board that presents the annual report whether it is Airports Fiji Ltd (AFL) or whoever it is that we are dealing with. So, this was the rationale behind that and that here is your CEO (Chief Executive Officer) for all intended purposes, who carries out your function at the operational level will say; "What happened?" and how to improve the day to day functions of the Elections Office. That is my input into that.

MR. CHAIRMAN.- Thank you, Honourable Members if there is no further question or comments from the Members of the Committee, I will invite the Acting Prime Minister to make any final comments before we close the session.

HON. A. SAYED-KHAIYUM.- I would only like to very quickly reiterate again the Elections as we know was for the first time held in one day. Technically speaking, it was not held in one day. We had what we call 'pre-polling'. Some of the more remote islands and people who are outside of Fiji voted through either the postal ballot or voted beforehand but, by and large majority Fijians voted on one day. It worked well. Of course, the percentage of invalid votes was 0.7 percent, a very high voter turnout, so it was very highly successful.

I think with some of the recommendations that have been made, again, Honourable Karavaki the Supervisor of Elections has also written a note to our office. As I have said, we are looking at changing, bringing about some amendments to improve the operational aspects of the conduct of the Elections. We are quite happy to do that, and I think it is something that we all should be proud of, that it was held quite well and now again, Fiji has been given various recognitions by the international community in terms of the way that the Elections was conducted. That is something that we all should be proud of, including the candidates and everyone who complied with that. The numbers, of course, was a new thing and it did work out well ultimately.

As I had highlighted in the beginning, I would also like to say that we would like to make a written submission, and I just want to ask by when should we do it, when is the cut-off date?

MR. CHAIRMAN.- We have another two weeks for written submissions. We are still in the process of calling further oral and written submissions from members of the public. There is no cut-off date as such but we anticipate that we will round up submissions in within two weeks. So, you have the opportunity to email your submission or hand it over to our Secretariat.

HON. A. SAYED-KHAIYUM.- Sure, we will definitely do it within two weeks' time. Thank you for the opportunity.

MR. CHAIRMAN.- With that, I thank the team from the FijiFirst, the Acting Prime Minister and the General Secretary of the FijiFirst Party and Mr. Peni Qionibaravi for your attendance this afternoon. On behalf of the Committee, once again, thank you very much and all the best.

HON. A. SAYED-KHAIYUM.- Vinaka.

The Interview concluded at 4.03 p.m.