



STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Report on the Review of the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Bill 2020 (Bill No. 52 of 2020)



Parliament of the Republic of Fiji

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CHAIRPERSON'S FOREWORD



Globally, Political Parties are said to be the main gatekeepers for candidates to participate in elections. Parties therefore have immense influence over the degree of citizen's political participation at local, regional, and national levels. Studies have shown that in most countries, parties determine which candidates are nominated and which issues achieve national prominence. They decide who will be placed on their candidate lists and at which position.

That is why transparency and accountability within the party, plays an integral role to enshrine the good governance at national level, in an event, if that political party forms the government to lead the nation. Political parties and candidates should always place their priority on each and every citizen and national issues rather than having their personal agenda on priority list.

A very good legislative framework should be in place to ensure that political parties are governed and perform their duties as prescribed in law. All loopholes within the legislative framework should be constantly reviewed to ensure transparency and accountability within the political party is paramount in upholding the principles of democracy in any nation. This in turn will administer the conduct of political parties and its members.

With consideration given above, the Fijian Parliament had referred the *Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Bill 2020* to the Standing Committee on Justice, Law and Human Rights, for review.

This Committee Report will provide details of the Committee's review process, which includes initial deliberation, public consultation and identification of key findings, and outcome of the review.

In the initial stages of the review the Committee conducted preliminary deliberations and noted that the Bill aims to bring about changes to the *Political Parties (Registration, Conduct, Funding and Disclosures) Act* that are based on analysis of the Electoral Commission and the Supervisor of Elections on the 2018 General Election, with the main aim of bringing about a changes to the regulatory framework that is based on the lessons learnt from the 2018 General Election, namely changes to the registration of political parties for the General Elections and the rules governing the conduct and funding of, as well as the disclosures and reporting to be made by, political parties.

The Committee also conducted public consultation on the Bill and received support on the introduction of the Bill, from the public that had participated in the public consultation

There were also concerns and suggestions for improvements from numerous participants of the public consultation, namely the Political Parties. Some of the main areas of discussion highlighted from the public consultation were:

- That the Bill will prescribe reporting requirements regarding details of donors and funding providers along with timeframe for reporting.

- That the Bill will shift the onus of publishing of political party financials and disclosures in a daily newspaper.
- That the Bill will authorise the Electoral Commission to be the final decision maker for appeals against the Registrar of Political Parties.
- That the Bill will enable political parties to seek Mediation or Arbitration for resolving political party disputes and that the Electoral Commission is to be the final arbiter.

This Report will also cover the Committee's consideration given to the impact of the Bill on Fiji's efforts in meeting its targets of the national development plan, which in turn contributes to Fiji's obligations towards the sustainable development goals. It was noted that the Bill was introduced for the purpose of carrying on the great strides that have been achieved in ensuring that Fijians are free to participate in a free and fair election. Additionally, the objective of the Bill is as such that it applies equally to all persons, irrespective of gender.

At the final stage of the review, the Committee acknowledges that there were a few issues identified and in addressing these issues, the Committee sort legal clarifications on the same. This ensured that the primary objectives of the Bill are preserved. The Committee deliberated extensively on the issues and the legal clarifications provided and made efforts in coming to a conclusion that would preserve the main intention of the Bill while at the same time giving due consideration to the public's input.

Therefore, the Committee believes that as we start implementing the provisions proposed by this Bill, this would be an opportune moment to gauge the implications of the Bill on Fiji's electoral system in the next General Election, and gather the lessons learnt.

The Committee is also of the opinion that majority of the provisions of the Bill, as they are currently worded, would enable the preservation of the key objectives of the proposed law, which is to strengthen the legal framework that caters for the registration of political parties for General Elections and the rules governing the conduct and funding of, as well as the disclosures and reporting to be made by, political parties.

Despite the existence of adequate provisions in the Bill; the Committee also believes that a few minor changes can be made to the Bill, which are necessary and would contribute to the preservation of the objectives of the proposed law.

The review greatly benefited from the public participation, thus, on behalf of the Committee, appreciation goes to all the members of the public, the Political Parties, representatives of Fiji's electoral management body and entities that provided their views on the Bill and for taking an interest in the proceedings of the Committee and Parliament.

I would like to commend the work of Honourable Members, Hon. Rohit Sharma (Hon. Deputy Chairperson), Hon. Ratu Suliano Matanitobua, Hon. Dr. Salik Govind, and Hon. Mosese Bilitavu.



Hon. Alvick Avhikrit Maharaj
Chairperson

COMMITTEE COMPOSITION



Hon. Alvick A. Maharaj (Chairperson)

- Assistant Minister of Employment, Productivity, Industry Relations, Youth and Sports
- Chairperson of Public Accounts Committee
- Government Whip
- Pharmacist



Hon. Rohit Ritesh Sharma (Deputy Chairperson)

- Former Civil Servant – Education Sector
- Deputy Chairperson of the Standing Committee on Justice, Law and Human Rights
- Deputy Government Whip



Hon. Ratu Suliano Matanitobua (Member)

- Shadow Minister for Youth and Sports
- Former State Minister of Fijian Affairs
- Territorial Military Officer – Republic of Fiji Military Forces



Hon. Dr. Salik Govind (Member)

- Public Health Specialist – United Nations (World Health Organisation)
- Deputy Chairperson of the Standing Committee on Foreign Affairs and Defence Committee



Hon. Mosese Bulitavu (Member)

- Shadow Minister for Defense, National Security, Immigration and Correction Services
- Former Opposition Whip
- Business Consultant/Farmer
- Territorial Military Officer – Republic of Fiji Military Forces
- Law Graduate and Researcher

Committee Secretariat Team

Supporting the Committee in its work is a group of dedicated Parliament Officers who make-up the Committee Secretariat, and are appointed and delegated by the Secretary-General to Parliament pursuant to Standing Order 15 (3)(i). The Secretariat team is made of the following Parliament officers:

- Mr. Ira Komaisavai – Senior Committee Clerk
- Mr. Jackson Cakacaka – Deputy Committee Clerk
- Ms. Darolin Vinisha – Committee Assistant

PART 1 - INTRODUCTION

1.1 Background

Following the 2018 General Election, the Electoral Commission and the Supervisor of Elections reviewed the work conducted by their respective offices during the 2018 Election period and published a Joint Report on the same. Through this report, the two offices made recommendations for changes to the laws on Election and certain procedural aspects of the election process. The recommendations put forth is also a result of the review of the Multi-national Observer Group Report on the 2018 General Election.

The Government of day has considered these recommendations and have introduced certain proposed election-related legislation, which aims to bring about the proposed changes to the election laws and one of which is *Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Bill 2020*.

As is required under the *Constitution*, the Government introduced the Bill into Parliament for its consideration, before it becomes law¹. The Parliament then referred the Bill to the Standing Committee on Justice, Law and Human Rights (“**Committee**”), for review on 11 December 2020. The Bill was referred to the Committee pursuant to Standing Order 51 of the Standing Orders of the Parliament of Fiji, whereby the Committee was tasked with scrutinising the Bill and to report back on the Bill in the March 2021 Parliament Sitting.

Despite the specified timeframe for reviewing and reporting prescribed by Parliament to the Committee; there were a lot of interest shown by the public on the Bill, thus, the Committee requested for an extension of the timeframe for the review and for reporting by the Committee.

1.2 Committee’s Review Procedure

The Committee’s review process was through the resolution of the Committee and the following provides brief summary of the agreed upon procedure and program.

The first step in the Committee’s review process was the formulation of its program with regards to its review process. The Committee’s agreed upon review program was as follows:

i) Initial Analysis of the Bill

The Committee began with an initial reading of the Bill and conducting its own deliberation of the Clauses in the Bill. An in-depth deliberation of the Bill was conducted by the Committee, whereby pertinent issues were identified.

Following the initial reading of the Bill, the Committee met twice with the Supervisor of Elections and once with the Electoral Commission to obtain in-depth view of the Bill, for better understanding by the Committee.

¹ Chapter 3, Part A, *Constitution of the Republic of Fiji (2013)*.

ii) Identification of mode of public consultation

The Committee then discussed, which mode of public consultation would be suitable for the review the Bill. The Committee resolved to rely on two main modes of public consultation, which is to call for written submission and conducting in-person public consultation.

iii) Awareness on the Committee's public consultation through advertisement

The Committee then conducted awareness on its proposed public consultations, through advertisements via newspaper advertisements and televised advertisements.

iv) Conducting of public consultation

The Committee was also committed to upholding public trust in Parliament, by ensuring that there is public participation and that all such participation is given due consideration. The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

The Committee called for written submissions from the public and other interested stakeholders by placing an advertisement through the Parliament website and Parliament social media pages on social media platforms; Facebook, Twitter and Instagram. The Committee received a written submission on the Bill from relevant stakeholders. A summary of these submissions is provided in a later part of this report, under the heading '*Committee's Deliberation and Analysis of the Bill*'.

The Committee then visited various communities around Fiji to conduct in-person public consultation. A list of the areas visited by the Committee is appended to the Appendices of this Report. All the face-to-face submissions conducted during the public consultation were recorded and open to the public and the media.

v) Review of evidence collected and seeking legal clarification on pertinent issues

The Committee reviewed all the evidence received from the public consultation and to maintain due diligence, the Committee also relies on legal clarification on technical issues identified from the Bill, which is obtained from the Office of the Solicitor-General. These clarifications also assist the Committee in deliberating on these pertinent issues and in deciding whether there would be recommendations for any changes to the Bill.

vi) Drafting of Committee Report

The final step of the review process is the compilation of all issues identified from the evidence received from the public consultation. This is then deliberated on with the necessary legal clarifications and the Committee forms its own independent view on all issues identified.

PART 2 - COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL

2.1 Initial Deliberation

The Committee commenced its analysis of the Bill, reading through it, Clause by Clause. From this initial reading, it was noted that the Bill aims to make changes to *Political Parties (Registration, Conduct, Funding and Disclosures) Act*. These proposed changes to the electoral law was the result of extensive analysis of the 2018 General Election by the Electoral Commission (hereinafter referred to as the Commission) and the Supervisor of Elections, who is most commonly referred to as "Supervisor of Election". This analysis was assisted by a report by Multinational Observer Group (also commonly known as "MOG") on the 2018 General Election.

The Committee had extensive discussions on the provisions of the Bill and resolved that given the limited time provided to the Committee to review the Bill; that it be prudent to firstly hear the views of the public on this very important piece of proposed legislation. This public consultation would then allow the Committee to gauge the public's perspective on the Bill before deliberating further, whilst also bearing in mind the requirements as set down by Parliament in referring the Bill to the Committee.

Before commencing with the public consultation, the Committee also heard submissions from the Electoral Commission and the Supervisor of Elections. The Committee saw this as an important step for the Committee in understanding the election process and system and to gauge how the Bill contributes to the election system. The Committee was advised on the views of the electoral management bodies on the proposed amendments to the Bill. The Committee was advised that the proposed amendments are a result of the consideration given to the recommendations put forth by the Electoral Commission and the Supervisor of Elections provided in the *Joint Report*

1. Political Party Disputes

As noted from the recommendations in the *Joint Report*; it was recommended that a framework is established to allow the Electoral Commission to mediate and if necessary arbitrate on disputes between Political Parties. It is necessary that disputes between parties are dealt with expeditiously and the Electoral Commission is best placed to deal with electoral issues. Consideration can be given to enhancing the enforceability of the decision of the Electoral Commission through the enforcement rules for High Court Orders and necessary pecuniary penalties are prescribed for non-compliance.

2. Political Party Management

The current framework for Political Party Management carries key components that are regarded as good practice globally. It is recommended that the legal framework is reviewed to implement further administrative processes so as to ensure the Registrar of Political Parties has exhausted all administrative processes before referring any matter for prosecution.

It is recommended that some procedural amendments are considered, particularly in terms of the financial disclosure deadlines (to bring it in line with Fiji's Accounting

Sector Financial period) and also further clarifications made in regards to timelines for declarations by office holders of Political Parties.

There is also a need to formulate appropriate audit and financial standards for adherence by political parties to protect public interest. It is also necessary to make regulations in relation to donation management and income and expenditure management for Political Parties and individual Candidates. The legal framework would have to also cater for party officials, candidates, and agents of parties and candidates. The legal framework currently requires Political Parties and candidates to declare their income, assets and liabilities prior to the General Election. It is recommended that the legal framework requires the same persons and entities to prepare and submit another declaration within one (1) month of the General Election to allow the Electoral Commission to assess the election spending as well as compliance with other laws.

The current legal framework requires various declarations are made on specific dates. It is necessary to amend the legal framework to specify the exact cut-off dates for these declarations to remove ambiguity. There is also a need to enhance the administrative records for Political Parties. It is recommended that additional records are made in the Political Parties Register in terms of all office holders and their term, the names of the Party Auditors, Legal Advisors, Party bank details and the addresses of offices in the divisions and the managers of those offices. Procedurally, an annual update of particulars form should be sufficient to ensure that there is transparency in this area.

2.2 Bill Summary

By way of consensus, the Committee during the drafting of this Report believed that it be prudent to also capture, the necessary changes the proposed law is intending to bring about to the election regulatory framework. This would conveniently provide the reader of this Report with the aforementioned information about the Bill. The Bill summary is provided below².

Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

Clause 2 of the Bill amends section 2 of the Act to insert the definitions of “election” and “polling day”. For consistency in our electoral laws, the definitions of “election” and “polling day” in the Bill are aligned to the definitions in section 2 of the Electoral Act 2014.

Clause 3 of the Bill amends section 3(4) of the Act to enhance the administrative records of political parties in the Register of Political Parties (‘Register’) to ensure easy accessibility to, and transparency of, the records. Clause 3 of the Bill also amends section 3 of the Act by inserting a new subsection (5) to ensure that the Registrar updates the Register on an annual basis.

² Explanatory Note to the *Bill; Political Parties (Registration, Conduct, Funding & Disclosures) (Amendment) Bill 2020* (Bill No. 52 of 2020), pages 6-8.

Clause 4 of the Bill amends section 7 of the Act to clarify that no political party will be registered from the time the writ for a general election ('writ') is issued to the time when the writ is returned. This also aligns to the amendment made by the Electoral (Amendment) Bill 2020 to section 21 of the Electoral Act 2014.

Clause 5 of the Bill amends section 10 of the Act to ensure that political parties open bank accounts and provide the bank account details to the Registrar within 90 days of their registration. Clause 5 of the Bill also amends section 10 of the Act to provide that if a political party has an existing bank account, the political party must within 60 days of the commencement of the amending legislation provide the bank account details to the Registrar. A political party must also notify the Registrar as soon as practicable if there is a change in the bank account details.

Clause 6 of the Bill amends section 14 of the Act by amending the heading and subsection (1)(c) to include "in an election".

Clause 7 of the Bill amends section 16 of the Act to allow the Registrar to assess a political party's election spending and compliance with other laws.

Clause 8 of the Bill amends section 21 of the Act so that the proceeds of any investment, project or undertaking in which a political party or independent candidate has an interest, no longer forms part of the sources of funds for the political party and independent candidate.

Clause 9 of the Bill amends section 23 of the Act to allow a political party to provide information on its sources of funds to the Registrar within 90 days, instead of the current 30 days, after the end of its financial year.

Clause 10 of the Bill amends section 24 of the Act to allow the Electoral Commission to assess the election spending as well as compliance with other laws. Clause 10 of the Bill also monitors donations and income and expenditure for nominated candidates.

Clause 11 of the Bill amends section 25 of the Act to allow the Registrar to assess a political party's election spending and compliance with other laws.

Clause 12 of the Bill amends section 26 of the Act to ensure that political parties publish their audited accounts in any national daily newspaper within 90 days after the end of each financial year.

Clause 13 of the Bill amends section 30 of the Act so that appeals are made to the Electoral Commission instead of the High Court.

Clause 14 of the Bill inserts a new section 30A in the Act to allow political parties to request that the Electoral Commission mediate or arbitrate where there are disputes on any campaign issue between political parties.

2.3 Evidence received via public consultation

As part of the review, the Committee conducted public consultation on the Bill, in various key locations around Fiji and also called for written submissions from interested persons or entities. This consultation ensured that the public participated in the legislative process, which is fundamental to democracy. All the submissions received were considered and deliberated on extensively. Various individuals and entities including registered political parties participated in the public consultation. The main points and issues noted from the submissions are summarised below.

At the outset, Members of the public commended and supported the introduction of the Bill given that it aims to promote good governance by making necessary changes to the election laws, which has been a result of lessons learnt from the first two (2) general elections conducted Fiji's new electoral system.

Apart from this commendations from the members of the public, there were also submissions, which highlighted a few pertinent issues, which the Committee placed reasonable emphasis on.

To begin with, in regard to Clause 8 of the Bill, submitters argue that the information required relating to the sources of funding for a political party as provided in Clause 8(c) is frivolous. Information, now includes the name and addresses of those that participate in a Party's fundraising. This means that political parties will have to record the names and addresses of those that participate in fundraising such as buying of parcels of roti and curry. It was recommended that Clause 8 be deleted because it discriminates and penalizes smaller parties. The reporting requirements of the Act are already excessive.

Submitters do not see the rationale behind the amendment suggested in Clause 8. The Section (Section 21) as it was originally worded was quite broad and covered all aspects regarding funding. It was noted that 'the scope of the Bill has been narrowed down to "income derived from any building owned by a political party"', which to some submitters makes no sense.

In regard to Clause 9, 10 and 11 of the Bill which amends Section 23, 24 and 25 respectively requires the publication of the financial statements and disclosures of a political party. Submitters commented that under the present law the Registrar of Political Parties is required to publish the information in one of the daily newspapers. The amendment shifts the onus for this publication on to political parties, requiring them to publish the information within 90 days of the end of their financial year. Certain submitters believe this proposed requirement is unfair by highlighting the following sentiments;

- If the State requires the financial position of a political party to be made public, it should do so at its own expense.
- Why should political parties be required to pay for the publication in daily newspapers, of such information?
- The parties provide the information and that is where their responsibility must end.

These submitters argued that the amendments proposed by Clauses 9, 10 and 11 is concerning, since the requirements proposed by the provisions are excessive and unfair on smaller political parties.

Certain submitters focused on Clause 10 of the Bill and commented that Clause 10 is proposing to add 2 new subsections, namely 2(A) and 2(B). 2(A) requires that a candidate standing for election to provide to the Registrar, **within 30 days of polling day** certain disclosures relating to spouse and children. 2(B) requires a candidate, **within 30 days of the Return of the Writ**, whether elected to Parliament or not, to provide to the Registrar an account of any money received by him or her, the amount and source of any donation and the income and expenditure. It is argued that this provision is a case of harassment of a candidate since the two sets of accounts required, are virtually for the same period.

Submitters commented on Clause 12 of the Bill, which amends Section 26 of the Act, and requires the parties to publish their audited accounts in the media, at their cost. Submitters believe that if the State wants such matters publicised it should do so at its own expense and put such an onerous burden on a political party.

There was also submission received, which commented on Clause 13 of the Bill. Submitters commented that Clause 13 will give the Electoral Commission the authority to have the final say in appeals against the Registrar of Political Parties and for any political parties' disputes. This amendment was not supported by the submitters given that the Court's role as being a means for judicial redress is vital for appeals/review of decisions by independent institutions and for any dispute. This provision also breaches Section 15 (2) of the *Constitution of the Republic Fiji (2013)*, whereby every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal. Thus it was recommended that Clause 13 of Bill 52 be deleted. It was further recommended that an independent Elections Tribunal be set up to hear the appeals of the decisions by the Supervisor of Election and the Electoral Commission.

In regard to Clause 14 of the Bill, submitters noted that this will allow a party to request, for mediation and, if necessary, arbitration, to the Electoral Commission and the decision by the EC is final and cannot be challenged in any tribunal or court. Submitters argued that it should be noted that as a general rule; for mediation or arbitration to take place, the dispute has to be referred by the consent of both parties. It should not be done at the request of just one of the disputing parties. In any event, the Electoral Commission must not be permitted to compromise its independence by involving itself in disputes between political parties which relate not to electoral but political campaign issues.

A copy of the written submission and transcripts of the submission received can be obtained from the online Appendices of this Report, which can be accessed via the parliament website: www.parliament.gov.fj.

2.4 Discussions with the Electoral Commission and the Fijian Elections Office

Summary of discussion with the Electoral Commission.

The Commission began by highlighting that it is regarded as best practice to make changes to electoral laws well in advance of an election. It also notes the efforts to reform some of the prescribed procedures in the laws to make them consistent practically with the international norms around such activities.

Following the 2018 General Election, the Electoral Commission and the Supervisor of Elections issued a Joint Report, whereby various recommendations were made on the legal and operational frameworks. It was advised that the rationale for the recommendations for changes was due to the fact that there were two (2) general elections under the framework and it was a suitable time to determine which of the projects, policies and procedures are practical and contextually relevant in Fiji's electoral system.

The Commission highlighted the recommendations which were put forth in the 2018 Joint Report, provided in page 25 and provided the Committee with their view on the proposed amendments to the voter registration law.

The Electoral Commission commented that it would be beneficial if the law allows it to mediate or if necessary, arbitrate disputes between political parties.

“Section 30A of the Political Parties (Registration, Conduct, Funding and Disclosures) Act has introduced dispute resolution processes in the law. The decision of the Electoral Commission on whether to mediate or arbitrate is final and is not subject to any further appeal or review by any Court, tribunal or any other adjudicating body.”

This critical amendment introduces expeditious dispute resolution mechanisms between political parties. In an election, timelines are essential and taking legal action may not fit within the expected timelines of the election. Proceedings in court may give an outcome but the event may have passed its necessity.

The changes in the annual disclosure requirements of Political parties now requires registered political parties to compile and publish their own disclosures and finances, including audited accounts on an annual basis. The law further enhances the self-compliance of political parties.

Overall, the Electoral Commission's advised that it is its view that the amendments to the voter registration law are well designed and these amendments will further strengthen the electoral system.

Summary of discussions with the Fijian Elections Office (FEO)

Firstly, on the registration of political parties, the amendment to section 3 of the Act is to enhance the administrative records of the political parties in the Register, and it ensures that the Register captures the political party names, the terms of office and contact details

of the office holders, bank account details of the party, name and contact details of the auditor and the legal advisor as well, as any other particulars as required under the Act. Further, it ensures that the register is updated on an annual basis.

The Fijian Elections Office commented on the proposed change to the law with respect to registration of political parties during Elections. The amendment to section 7 is to clarify that no proposed political party will be registered from the time the Writ is issued to the time the Writ is returned. This also allows amendment to the Electoral (Amendment) Bill 2020 which amends section 21 of the Electoral Act 2014.

Additionally, the FEO commented on the proposed change to the law with respect Bank Account of the Parties: The amendment to section 10 is to ensure that newly registered political parties open their bank accounts and provide the bank account details to the Registrar with 90 days of the registration. For those existing political parties that do not have a bank account, they are to open a bank account and provide its details to the Registrar within 60 days of commencement of this Bill.

The FEO also commented on the proposed change to the law with respect Restriction on Public Officers: The amendment to section 14(1)(c) is to clarify that a public official must not engage in political activity in any election that may compromise or be seen to compromise political neutrality of the person's office in an election.

In regard to sources of funds: the FEO advised that the law requires declaration of assets, liabilities and expenditure of political parties. The current role of the Registrar is to administer and regulate political parties. The Multinational Observer Group had recommended that parties report on their campaign expenditure, following an election. In order to properly assess this, there needs to be certain amendment made to the current legal framework. For instance, the amendment to section 16 of this Act would ensure newly registered political parties submit to the Registrar within 30 days of being registered their details of assets, liabilities incurred and income and expenditure, including all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made to the political party.

The amendment to section 21, which demarcates the sources of funds for a political party and an independent candidate; the source of funds for political parties would now include income derived from any building owned by a political party and the source of funds for an independent candidate must only be from voluntary contributions, donations, bequests and grants from a lawful source, not being from a foreign government, intergovernmental or non-governmental organisation. The proceeds of any investment, project or undertaking in which a political party or an independent candidate has an interest, no longer forms part of the source of funds for the political party and an independent candidate. Political parties will now be required to submit to the Registrar the source of funds within 90 days at the end of each financial year and political parties will be required to publish this information themselves in any national newspaper during this time of period as well.

The amendment to section 24 would allow the Registrar to assess spending and monitor the donations, income and expenditure of nominated candidates. This is because nominated candidates will now be required to provide to the Registrar within 30 days of

polling and within 30 days of the return of the Writ their sources of donation, assets, income and expenditures. In practice, this amendment allows a before election and after election comparison. Furthermore, amendment to section 25 would require political parties to submit to the Registrar within 30 days after polling day a written declaration giving details of all assets and liabilities as at polling day and income and expenditure, including all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made from the date the Writ is issued to polling day. This would allow the Registrar to assess the political parties' actual spending and compliance to the law as well. The amendment to section 26 would ensure that political parties publish their audited accounts in any national daily newspaper within three months after the end of each financial year.

The FEO commented that the Bill would also cater for Appeals to the Electoral Commission: The amendment to section 30 would allow appeals against the decision of the Registrar to be dealt with by the Electoral Commission, instead of the High Court. This would expedite the process. It also creates consistency in the determination of decisions by the Supervisor of Election across all electoral laws.

In regard to Party Dispute Resolution: The new section 30A allows political parties to request the Electoral Commission to mediate or arbitrate where there are disputes on any candidate issues between political parties.

2.5 Sustainable Development Goals/National Development Plan Impact Analysis

In reviewing the Bill, the Committee was mindful of the Bill's impact on Fiji's efforts in achieving the targets set out in the national development plan, which in turn contributes to Fiji's overall commitment and obligation towards the global agenda - the sustainable development goals.

As a starting point, the objectives of the Bill aims to make necessary changes to the election regulatory framework, which were envisioned to make the election process more transparent and convenient to voters. This objective relates to the development plans by the Government of Fiji in contributing to the strong and enabling environment that exists for further development of good governance, which is a key component of a democratic and accountable governance system³. In order to contribute to good governance, Fiji has invested a lot in revamping its electoral system, with the goal of ensuring free and fair elections.

The Committee was also mindful of the requirements of the Standing Orders of Parliament regarding gender, which is also a key goal in the sustainable development goals. The Committee ensured that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. The Committee through the review identified that the Clauses of the Bill were worded using gender-neutral language and was designed to impact all Fijians and the people living in Fiji, irrespective of gender.

³ Fijian Government 5-Year & 20-Year National Development Plan.

PART 3 - KEY ISSUES IDENTIFIED

At the penultimate stage of the review, after reviewing the evidence received from both the public and the electoral management bodies; the Committee identified a few key issues, which the Committee place reasonable emphasis on and which the Committee believed need legal clarification. The following are these key issues that were identified:

- That the Bill will prescribe excessive reporting requirements regarding details of donors and funding providers.
- That the Bill will shift the onus, of publishing of political party financials and disclosures in a daily newspaper, to Political Parties, which submitters believe carries excessive cost implications.
- That the Bill will prescribe disclosures in daily newspapers that relate to relatively the same period.
- That the Bill will authorise the Electoral Commission to be the final decision maker for appeals against the Registrar of Political Parties.
- That the Bill will enable political parties to seek Mediation or Arbitration for resolving political party disputes and that the Electoral Commission is to be the final arbiter.

PART 4 - OUTCOME OF REVIEW

After extensive deliberation, the following outlines some of the main outcomes of the Committee's deliberation and review.

The pertinent issues identified during the review were discussed at length by the Members of the Committee and consultation with Electoral Commission and the office of the Supervisor of Elections so as to gauge the practical implications of the issues raised on the electoral process regarding political parties. The Committee also sort legal assistance from the Office of the Solicitor-General so as to ensure that all these relevant issues were appropriately addressed and that the objectives of the Bill were preserved.

The Committee weighed all options concerning the few issues that had been identified and had extensive discussions on these and the following is the result of these discussions.

With respect to the concern raised regarding the excessive reporting requirements regarding details of donors and funding providers; it was advised that it is a basic tenet of good accounting that the entire income is properly recorded. SOE have already highlighted the significant irregularities in political party accounts and this is an amendment that is designed to adequately deal with it.

With regard to the concern raised regarding the shifting of the onus of publishing of political party financials and disclosures in a daily newspaper, to Political Parties. It was advised that these laws are designed to promote self-disclosure and transparency. Parties seem to assume that it is a State requirement when actually it is a norm expected from the parties themselves. The transition to full transparency in electoral functions is an essential component of modern democracies.

Additionally, in relation to the concern raised regarding the disclosures that relate to relatively the same period; the Committee was advised of the following:

1. The law will now allow for the amount of funds raised and spent by candidates in the general election to be identified. This is another international norm in elections.
2. Fairness in elections is also evaluated based on the amount of money spent by political parties. A before and after declaration is necessary for this very purpose.

Also, in terms of the concern regarding the publication of audited account; the Committee was advised that it is a basic tenet of good accounting that the entire income is properly recorded. SoE have already highlighted the significant irregularities in political party accounts and this is an amendment that is designed to adequately deal with it.

With regards to the concern raised regarding the authority given to the Electoral Commission to be the final decision maker for appeals against the Registrar of Political Parties; The Committee was advised of the following:

1. That Pursuant to section 75 of the Constitution of the Republic Fiji, 2013, the EC is already an independent body whose head or the Chair of the EC is someone who is either a judge or qualified to be a judge; and

2. That Pursuant section 138(9) of the Constitution of the Republic Fiji, 2013, to Proceedings of the EC are similar to those as the High Court. EC will have the powers of the High Court to summon witnesses, hear evidence and make decisions.

If the EC is charged with hearing of appeals of the decision of the SOE. It is simply carrying out its own role under the Constitution. Under section 17 of the Electoral Act, 2014 the EC already does this. In fact, this section is far more constricted in timelines, 2 days for appeals and within 3 days' decision. How about that? At least in this one there are 14 days. Furthermore, the last time the SOE's decision was challenged under this law, the decision came out 2 years later.

Furthermore, in terms of the concern raised regarding the option provided to political parties to seek Mediation or Arbitration for resolving political party disputes and the issue regarding the concerns about the Electoral Commission ("EC") being the final arbiter; it was advised that the EC is overall in-charge of the process. It is best suited to deal with these instances. The laws should empower the institution directly responsible for elections instead of surrounding it with other institutions that siphon power from it and weaken the institution.

The Committee had extensive discussions on clarifications provided. Considering all the issues identified and clarification provided to address the issues, the Committee therefore is of the opinion that majority of the issues noted have been adequately addressed, however, there are certain issues, which the Committee believes merit changes. Thus, the Committee recommends the following changes:

Disclosures and information should only be provided to the Registrar of Political Parties and be made available at the office of the Registrar in Suva for inspection by members of the public upon payment of an approved fee.

Additionally, the Committee the believes that it would also be beneficial to the electoral process in Fiji, that the period of 30 days provided in the proposed amendment that will be brought about by Clause 10 and Clause 11 of the Bill, be extended to at least 60 days, which hopefully will provide the Political Parties ample time to submit their financials as stated in Clause 10 and the Party's audited accounts as prescribed in Clause 11. To add to this, Mr. Speaker, the Committee is also of the opinion that the publication of the audited accounts should be sufficient, if it is published through the Fijian Elections Office official website. Thus, the Committee had recommended for changes to relevant provisions in the Bill.

PART 5 - APPRECIATION

The Committee acknowledges all those that had provided great support to the Committee during the review of the Bill.

Firstly, the Committee acknowledges the Parliament of the Republic of Fiji for realising the vital aspect of public participation in the legislative making process, thus supporting and encouraging the Committee to conduct extensive public consultation. Moreover, great appreciation goes to the UNDP Fiji Parliament Support Project, for its financial support, which assisted the Committee in its awareness of the public consultation and enabled the Committee to conduct awareness and visit various communities around Fiji and effectively conduct public consultation on the Bill.

Furthermore, the Committee would also like to acknowledge the Parliament IT Team for its support, which enabled more public participation on the Committee work, through live coverage of the public consultation. The Committee visited a total of 29 communities (inclusive of urban and rural communities) and had a coverage of an average of 10,000 people that was reached through its live coverage for each public consultation venue.

PART 6 - CONCLUSION

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation and review noted that there was great support for the Bill.

The review highlighted a few issues on the Bill, which were considered extensively by the Committee through consultations with the Electoral Commission, the Supervisor of Elections. The Committee also sought legal clarification from legal team from the Solicitor-General's Office so as to address all the issues raised and to ensure the objectives of the Bill are not affected. The Committee supports all the provisions of the Bill, given that the Bill aims to bring about the necessary changes that will contribute to a transparent and accountable governance system.

The Committee is of the opinion that majority of the provisions of the Bill are adequate in ensuring the achievement of its ultimate objective, which is to ensure that the legal framework governing political parties contributes to a transparent and accountable electoral system. To contribute to the achievement of the aforementioned objective, the Committee is also of the opinion that certain key issues highlighted from the review needs to be addressed by making necessary changes to the provisions of the Bill. Therefore, the Committee recommended that amendments to be done in relevant provisions of the Bill. These amendments are captured in magenta coloured texts in the Bill provided with this Report.

The Committee through this bipartisan Report commends the *Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Bill 2020*, and the amendment proposed in to the Parliament.

MEMBERS SIGNATURES



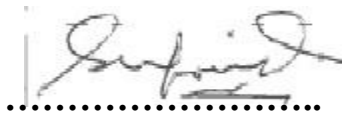
**HON. ALVICK MAHARAJ
(CHAIRPERSON)**



**HON. ROHIT SHARMA
(DEPUTY CHAIRPERSON)**



**HON. RATU SULIANO
MATANITOBUA
(MEMBER)**



**HON. DR. SALIK GOVIND
(MEMBER)**



**HON. MOSESE BULITAVU
(MEMBER)**

DATE: 05 June 2021

