

**SUBMISSION BY THE CITIZENS' CONSTITUTIONAL FORUM**

**PARLIAMENTARY STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS**

**Electoral (Amendment) Bill No. 50 of 2020**

**Saturday 13 February 2021**

The Chairman Honourable Alvick Maharaj and Honourable Members of the Parliamentary Standing Committee on Justice, Law and Human Rights.

The CCF is a non-governmental organisation based in Suva with more than 20 years' experience in community education and advocacy on Fiji's Constitution, democracy, human rights and multiculturalism.

The CCF acknowledges that the Electoral (Amendment) Bill No. 50 of 2020 has been introduced and drafted for the purpose of amending the principal Act to reflect the recommended changes received from the Multinational Observer Group's ("MOG") report on the 2018 General Elections in Fiji. In consideration of Fiji's commitments to the International Covenant on Civil and Political Rights ("ICCPR"), it is critical to note the relevance of Article 25 in upholding free, fair and credible elections:

"Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.”

The CCF makes the following recommendations regarding the said Bill.

### **National Candidates List**

CCF notes that section 36 of the current Electoral Act 2014 (“Act”) indicates that the “National Candidates List must not contain any party name or symbol.” The proposed change for the section within the bill herein is welcomed by CCF. However, we raise issue with the choice of the word “may” for the proposed amendment<sup>1</sup> in Section 36 (6) of the Act. The use of the said word suggests that it is optional and not mandatory to include party names or party symbols or any other information approved by the Supervisor of Elections.

According to the General Comment 25 [Annexure 01] regarding Article 25 of ICCPR, the guideline clearly states that positive measures must be taken to address specified issues like; “illiteracy, language barriers, poverty, or impediments to freedom of movement” that are a hindrance to a person exercising their right to vote. Paragraph 12 of the said General Comment goes on to say;

*“Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.”*

At this juncture, the CCF submits that General Comments of International Conventions and treaties alike to which Fiji has committed to, must be considered in policy making as they are guidelines for State parties on treaty provisions, issues and methods of work or approaches to implementing provisions.<sup>2</sup> Therefore, it is imperative to utilise such guidelines that provides support to Fiji’s commitments to human rights and in this context, a reform to electoral processes.

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<sup>1</sup> Section 36 (6), Electoral (Amendment) Bill No. 50 of 2020: “may contain either the party name or the party symbol or any other information as approved by the Supervisor”

<sup>2</sup> *What is the purpose of Human Rights Treaty Bodies general comments?*  
<https://ask.un.org/faq/135547#:~:text=General%20comment%20is%20a%20treaty.approache s%20to%20implementing%20treaty%20provisions> [Accessed: 13/02/21]

The CCF emphasizes that the Multinational Observer Group for the 2018 General Elections stated the following in their report<sup>3</sup> regarding voter education and information materials:

*“However, particularly during voter information sessions in remote and rural areas not reached by media or party campaigning, **the MOG encountered voters who said that they were uncertain about how to choose a candidate in the absence of information identifying candidates’ party affiliations in official publications. As noted previously, this absence appeared to create challenges for some voters.**” [Emphasis is mine]*

The CCF submits that the Bill reflects the recommendation made by the MOG in its true entirety without leaving more challenges for citizens with identifying candidates or being informed on identification of candidates and respective affiliations.

#### **Voter Lists**

The CCF recommends that the proposed 7 days for a list of residents to be forwarded to the Supervisor of Elections as per section 40 (4), be reviewed to include a longer period. Seven days from the dissolution of Parliament may not be sufficient for heads of institutions around Fiji (prisons, hospitals, health centers, detention centers, etc) to send lists of their residents, who are eligible to vote, to the Supervisor of Elections. Realistic timelines need to be incorporated to ensure that processes are effectively and efficiently followed to allow a free, fair and credible election.

#### **Campaign Rules**

The proposed amendments to Section 116 are understood for the purpose of protecting voters and election officials. However, the CCF submits that the proposed amendment be reviewed to ensure a respect for freedoms of unreasonable search and seizure as per Section 12 (1) of the 2013 Constitution of the Republic of Fiji.

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<sup>3</sup> Paragraph 4, page 26, 2018 Fijian General Election, Final Report of the Multinational Observer Group.

### **Replacement of the term “Any”**

The proposed amendments to Sections 140 (1), 141 and 144 (1) are not supported by the CCF considering that the conditions are limited to the campaign period. The CCF submits that the sections not be amended for the restricted period as this would not capture any related offences that would take place outside the campaign period. For instance, if the words “During the campaign period” substitutes the term “Any” in Section 140 (1), this would then be understood as a person would only be charged and found guilty for the related offence at the relevant time (during the campaign period). The provision would not include a person who commits the same offence but outside of campaign period. Would this not defeat the purpose of protecting against undue influence or bribery?

### **Other Recommendations**

The CCF reiterates the following recommendations made by the MOG for inclusion in the said Bill:

- A review of Section 115 of the Electoral Act 2014 with consultation of stakeholders such as (but not limited to) civil society organisations that are in the listed category of receiving funds from overseas donors. As stated by the MOG report, CSOs could be instrumental in assisting with voter information and education activities resulting in improved public confidence in Fiji’s electoral system.
- Incorporate local inclusiveness and participation in Fiji’s Electoral Act 2014 regarding domestic observers. The CCF submits that the legislation be amended to include a practical provision in allowing domestic observers to be accredited with clear and helpful criteria. Provisions must also include assistance by the Fiji Elections Office for the training and participation of domestic observers in the coming elections.
- While CCF commends the inclusion of proposed provisions helping persons with disabilities, it is submitted that the same efforts be made for citizens who are eligible to vote and are held or resident in institutions around Fiji (prisons, remand centers, medical centers, hospitals, etc).
- Provisions regarding media regulatory framework must be reviewed including; penalties and reporting against matters concerning the public and national interest.