



“People First”

Unity Fiji’s Submission on the Electoral Act Amendment Bills 2021 to the Standing Committee on Justice, Law and Human Rights

My name is Savenaca Narube and I am the Leader of Unity Fiji.

On behalf of Unity Fiji, I present our submission to the Committee on the following Bills:

- a) Bill Number 50 of 2020 - Bill to amend the Electoral Act 2014;
- b) Bill Number 51 of 2020 – Bill to amend the Electoral (Registration of Voters) Act 2012;
and
- c) Bill Number 52 of 2020 – Bill to amend the Political Parties Act 2013.

1. Opening remarks

Before I present Unity Fiji’s submission on the Bills 50, 51 and 52, I would like to make the following remarks:

- a) Elections are fundamental rights of the people of Fiji to choose our Leader now and into the future. We must therefore jealously safeguard these fundamental rights.
- b) Amendments to the Acts are needed to refine the laws. However, what the Committee and the people must be concerned about is raising the low level of confidence on the elections in Fiji. This is in our view the bigger picture of this consultations.

The confidence of the people in the last two elections was low. This was reflected in the votes that were not cast in the last election of 28% of the registered voters. If these 160,000 people had voted, they would have overturned the results of the 2018 elections.

- c) Fiji has one of the lowest levels of confidence in elections in the region. This is due to several reasons. One of these reasons is the dismissive attitude of the Supervisor of Elections of the views that we, the opposition parties, bring to the table. The Committee should not allow these consultations to suffer the same fate.
- d) The other major reason for the low confidence is the uneven application of these laws. This unfortunately stems from the lack of independence of the election institutions between themselves, and between them and the ruling Party. I urge the Committee to demand more independence of these election institutions.
- e) In our view, the fundamental flaw of many of the proposed amendments is the lack of principle and logic that underlie them. The explanatory notes to the Bills do not reveal these principles. We, therefore, have to look behind the amendments to ascertain their underlying motivation. It is of immense concern to Unity Fiji that several of these amendments give yet more power to the Commission and the SoE to arbitrate, to judge and to make decisions that cannot be challenged in a court of law. This, in our view, is extremely dangerous. We believe that they are aimed at muzzling the voice of political parties. These will not raise the confidence of the voters in the integrity of the election process.
- f) However, Unity Fiji is here today in good faith that our views will be heard and taken into consideration in the recommendations of this Committee to Parliament.

2. Bill Number 50 of 2020 - Bill to amend the Electoral Act 2014

2.1 Provisional results should not be released

Clause 25 of Bill 50 inserts a new Section 102A of the Electoral Act which states that the Supervisor must continuously publish provisional results for candidates and political parties on receipt of the first protocol of results from the presiding officers until 7 am on the day after polling day.

Provisional results are not official results of voting and therefore should never be counted nor released. These results are received through the phone or electronically and are prone to manipulations and errors. Very importantly, these results are not validated by political parties.

There is therefore a very high likelihood that the provisional results can distort the vote count, mislead the people, and may bring into serious doubt the integrity of the entire election process.

As in all elections before 2014, the nation should only rely on the official final count after the originals protocols of the vote count are received at the Count Center and validated by the political parties. Section 103 (3) of the Electoral Act states that, *“Immediately after preparing the Final National Results Tally, the Supervisor shall publicly announce the results as contained in the Final National Results Tally, and the announcement must include the announcement of the total number of votes received by each candidate, and the total number of votes received by each political party.”*

Therefore, the Electoral Act intended the SOE to only announce the final count.

We recommend that the Committee disallows Clause 25 of Bill 50 because the tallying of provisional results are unofficial, subject to manipulation and errors, and are not validated by political parties.

2.2 Publication of false statements

Clause 35 of Bill Number 50 inserts a new section 144A to address the publications of false statements. The intention is to avoid the diminution of public confidence in the elections.

Unity Fiji believes that this is an attempt to muzzle criticisms of the SoE and the Electoral Commission. Unity Fiji and other parties are watchdogs of the election system on behalf of the people. The Parties must be allowed to disagree with the EC and the SoE which we had done on numerous occasions. These criticisms are useful in building a stronger, fair, and transparent election regime.

This amendment threatens the freedom of political parties to express their opinions on the elections.

Unity Fiji recommends the Committee deletes Clause 35 of Bill 50 as it will be used to muzzle the criticisms of the election process.

2.3 Destruction of physical records

Clause 36 of Bill 50 shortens the time that the SoE keeps records from one year to 6 months. There is no reason for the shortening of the period. There is no harm in keeping the record for a period of 1 year.

Unity Fiji recommends that the Committee deletes Clause 36 of Bill 50 as it serves no meaningful purpose and may hinder court challenges that require election information.

3. Bill Number 52 of 2020 – Bill to amend the Political Parties Act 2013.

3.1 Excessive restrictions on funding

Under Clause 8 of Bill number 52, amendments to Section 21 of the Act imposes more restrictions on funding.

Unity Fiji believes that there is already excessive restrictions on the funding of political parties. Fiji is one of the strictest countries in restricting funding to political parties. There is therefore no need to further restrict funding in the amendments to Section 21 of the Act.

The information now being required of the sources of funding for political party is frivolous. It now includes the name and addresses of those that participate in the Party's fundraising. This means that political parties will have to record the names and addresses of those that buy our parcels of roti and curry. It is ridiculous.

What is the rationale for these excessive requirements? Why is there a need to get into such details? Is it to penalize political parties that rely a lot on small fundraising rather than big donations?

We recommend to the Committee to strike out Clause 8 of Bill 52 because it discriminates and penalizes smaller parties.

3.2 Excessive reporting

The reporting requirements of the Act are already excessive. The following are the reports that either the candidate or the Party now has to make if these amendments are passed:

- 90 days after end of the year: Financial accounts for the previous calendar year.
- At nomination date: Candidates to submit assets and liabilities.
- 30 days after return of writ: Candidates to provide to the Registrar the following information in writing—
 - (a) the amount of any money received by him or her;
 - (b) the amount and source of any donation received by him or her; and
 - (c) the income and expenditure.
- Within 30 days of polling: Candidate has to provide assets and liabilities of the candidate, spouse, and children:

- (i) the total assets whether in Fiji or abroad as at polling day (including money and other property in the possession or under the control of each of them);
- (ii) the total income whether in Fiji or abroad as at the date of nomination of the candidate until polling day and the source of such income received by each of them during the period to which the statement relates;
- (iii) any directorships or other office in a corporation or other organisation whether in Fiji or abroad as at the date of nomination of the candidate until polling day held by each of them; and
- (iv) any assets acquired by each of them whether in Fiji or abroad as at the date of nomination of the candidate until polling day.

- 30 days after polling day--A political party must submit to the Registrar 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.
- 30 days after end of the year: Parties must provide to the FEO statement of sources of funds and the assets and liabilities of office holders.

As an example, if polling is conducted in the month of November, the following are the reports to be submitted:

- November: Candidates file assets and liabilities at nomination day
- December: Candidates and Party submit assets and liabilities
- End of January: Party office holders submit assets and liabilities
- End of March: Party submits statement of funding sources
- End of March: Party submits financial statement including statement of funding sources

As the Committee will see, the information required to be submitted is excessive.

Unity Fiji recommends that the Committee deletes Clauses 9, 10 and 11 as the information is excessive and serve no useful purpose.

3.3 Party to pay for publishing information

Clause 12 of Bill 52 inserts amendments to Section 23 which now requires political parties to publish information required by the FEO in a newspaper in Fiji on their own costs of the following:

- a) Funding sources; and
- b) Financial accounts.

Up to now, the FEO has been publishing this information under its own account. It should remain the responsibility of the FEO. It is of public interest and FEO should use taxpayers' money. It is

unfair and unethical for the SoE to legally require parties to submit more and more information (see 2.2 above) supposedly in the interest of the people, and then turns around and orders the political parties to publish the information at the political parties' own costs.

The cost of these publications will be unfair for small parties.

Unity Fiji recommends that the Committee deletes Clause 12 of Bill 52 because it is unethical and discriminatory.

3.4 Excluding investment income

Under Clause 8 of Bill 52, Section 21 of the Political Parties Act is amended to exclude the proceeds of investment, projects, and buildings from the sources of funds of the Party. Many of the political parties do not own investment and buildings. We believe that this amendment is aimed at protecting the richer party like Fiji First. Under this amendment, the richer parties will not have to disclose the funds from investment. This is wrong. All funds must be disclosed irrespective of their sources.

Unity Fiji recommends to the Committee to delete Clause 8 because it is unfair, discriminatory, and inconsistent.

3.5 Removal of High Court in appeals

Section 30 of the Political Parties Act states that any appeal of decisions of the Registrar may be made to the High Court. Under Clause 13, the amendment to Section 30 strikes out the High Court and substitutes the Electoral Commission whose decision is final and binding.

This change is dangerous because the Electoral Commission is not independent. The golden rule of arbitration is that the arbiter must be independent. The lack of independence of the Election Commission is a serious fundamental flaw in our election's administration in Fiji. It is contributing to the low confidence of the people on the elections. The Opposition Parties have been calling for greater independence of the Commission since after the 2014 elections but without success. The Commission is accountable to the people not the Government for the conduct of a free and fair elections.

As an example of the lack of independence, the Commission must receive independent legal advice. But when the Commission asked for an independent legal adviser, the Minister for the Elections who is also the General Secretary of the Fiji First Party, directed the Commission to use the Solicitor General. We all know that the SG is the legal adviser to Government. It therefore cannot be an independent legal adviser to the Commission.

In addition, we believe that the requirement that the Commission's decision is final and cannot be challenged in a court of law is against the rights of political parties under the Constitution to seek redress in a court of law.

We recommend that the Committee deletes Clause 13 of Bill 52 to remove the High Court from the appeal of the FEO's decisions because of the lack of independence of the Commission.

We recommend that an independent Elections Tribunal be set up to hear the appeals of the decisions by the SoE and the Commission.

4. General remarks

Unity Fiji wishes to make the following general remarks:

- a) Both the 2018 and 2014 elections were not declared free and fair by the Multinational Observer Group (MOG). We therefore call on the Electoral Commission to deliver to the people a free and fair elections in 2022.

The SoE had informed the political parties that the MOG's assessment that the past two elections were "credible" is, in his view, a higher rating than "free and fair". However, the SoE has not produced any independent evidence that "credible" is higher than "free and fair". We ask the Committee to demand the SoE to reveal to the Committee and the Political Parties the source of his ranking of elections.

- b) Unity Fiji urges the Committee to do all in its powers to raise the confidence of the elections which have been adversely affected by the following:
 - The selective application of the law by the Commission and the SoE. Unity Fiji and other political parties had cited to the Commission several instances where the application of the law clearly favoured the Fiji First Party in the 2018 elections. We provided evidences. These included the breach of the campaign period and the improper conduct of the campaign. Up to now, no action has been taken.
 - The absence of numbering of the ballot papers.
 - The inclusion in the prepoll of polling venues which are easily accessible by road and telephone communications are excellent.
 - The lack of independent audit of all the elections IT software. Unity Fiji has been told that an audit was carried out by Price Waterhouse Coopers. But Unity Fiji has not seen a copy of the audit report of PwC. We recommend to the Committee to demand the SoE to produce this report to the Committee and to all political parties.

On behalf of Unity Fiji, I thank the Committee for the opportunity to make this submission.

Thank you.

Signed

Savenaca Narube

Leader of Unity Fiji

5th March 2021