

# **PARLIAMENT OF THE REPUBLIC OF FIJI**



## **PARLIAMENTARY DEBATES**

### **DAILY HANSARD**

**FRIDAY, 22ND NOVEMBER, 2019**

**[CORRECTED COPY]**

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## **FRIDAY, 22ND NOVEMBER, 2019**

The Parliament met at 9.36 a.m. pursuant to adjournment.

HONOURABLE SPEAKER took the Chair and read the Prayer.

### **PRESENT**

All Members were present except the Honourable Dr. I. Waqainabete, the Honourable Ratu N.T. Lalabalavu, the Honourable M.R. Leawere, the Honourable A.M. Radrodro, the Honourable L.D. Tabuya and the Honourable Lt. Col. P. Tikoduadua.

### **MINUTES**

HON. LEADER OF THE GOVERNMENT IN PARLIAMENT.- Honourable Speaker, I move:

That the Minutes of the sitting of Parliament held on Thursday, 21st November, 2019 as previously circulated, be taken as read and be confirmed.

HON. A.A. MAHARAJ.- Honourable Speaker, Sir, I beg to second the motion.

Question put.

Motion agreed to.

### **COMMUNICATIONS FROM THE CHAIR**

#### Welcome

I welcome all Honourable Members to the final Parliament sitting for this year. I also welcome members of the public joining us in the gallery and those watching the live broadcast of the proceedings on television and the internet. Thank you for taking an interest in your Parliament.

I particularly welcome the students, teachers and parents from Nakorotubu District School. You are most welcome to Parliament and I hope that your visit today will be fruitful, productive and a memorable one. You are most welcome.

(Acclamation)

#### Birthday Wishes

At this juncture, Honourable Members, we take a slight departure and wish the Honourable Semi Koroilavesau a very happy birthday.

(Acclamation)

He is disguising himself with the beard. Thank you, Honourable Members.

## PRESENTATION OF PAPERS AND CERTAIN DOCUMENTS

HON. SPEAKER.- Honourable Members, I now call upon the Honourable Attorney-General and Minister for Economy, Civil Service and Communications, the Honourable Aiyaz Sayed-Khaiyum, to table his Reports. You have the floor, Sir.

HON. A. SAYED-KHAIYUM.- Mr. Speaker, Sir, in accordance with Standing Order 38, I present the following Reports to Parliament:

1. Fiji Airports Annual Report 2017;
2. Fiji National Provident Fund Annual Report 2019; and
3. Auditor-General's Reports on the following –
  - a) Provincial Councils Volume 2;
  - b) 2018 Reports on Economic Services Sector; General Administration Sector; Social Services Sector; Infrastructure Sector; Government Commercial Companies, Commercial Statutory Authorities and Other Entities; and Statutory Authorities;
  - c) Audit Reports on Management of the Workers Compensation Trust Fund; Social Welfare Scheme; Government Subvention - Council of Rotuma; and Fiji Procurement Office and the Construction Implementation Unit; and
  - d) Performance Audit of Effectiveness of Institutional Framework for Preventing Corruption; and on Management of Rural Electrification and Progress of Implementation of Policies and Strategies in the Fiji Forest Policy Statement 2007.

HON. SPEAKER.- Please, hand the Reports to the Secretary-General.

(Reports handed to the Secretary-General)

HON. SPEAKER.- Under Standing Order 38(2), I refer the following Reports to the Standing Committee on Social Affairs:

1. 2017 Fiji Airports Annual Report; and
2. 2019 Fiji National Provident Fund Annual Report.

Under Standing Order 38(2), I refer the following Reports to the Standing Committee on Public Accounts:

1. Auditor-General's Reports on the following –
  - a) Provincial Councils Volume 2;
  - b) 2018 Reports on Economic Services Sector; General Administration Sector; Social Services Sector; Infrastructure Sector; Government Commercial

Companies, Commercial Statutory Authorities and Other Entities; and Statutory Authorities;

- c) Audit Reports on Management of the Workers Compensation Trust Fund; Social Welfare Scheme; Government Subvention – Council of Rotuma; and Fiji Procurement Office and the Construction Implementation Unit; and
- d) Performance Audit of Effectiveness of Institutional Framework for Preventing Corruption; and on Management of Rural Electrification and Progress of Implementation of Policies and Strategies in the Fiji Forest Policy Statement 2007.

I now call upon the Minister for Industry, Trade, Tourism, Local Government, Housing and Community Development, the Honourable Premila Kumar, to table her Report. You have the floor, Madam.

HON. P.D. KUMAR.- Mr. Speaker, in accordance with Standing Order 38, I present the 2016-2017 Investment Fiji Annual Report to Parliament.

HON. SPEAKER.- Please, hand the Report to the Secretary-General.

(Report handed to Secretary-General)

HON. SPEAKER.- Under Standing Order 38(2), I refer the 2016-2017 Investment Fiji Annual Report to the Standing Committee on Economic Affairs.

Honourable Members, we will continue with the response to His Excellency's Address, and I now call upon the Prime Minister and Minister for iTaukei Affairs and Sugar Industry, the Honourable Josia Bainimarama, to give the Right of Reply. You have the floor, Sir.

### **RESUMPTION OF DEBATE ON THE ADDRESS BY HIS EXCELLENCY THE PRESIDENT**

HON. J.V. BAINIMARAMA.- Mr. Speaker, let me again thank His Excellency the President for his Address, opening this session of Parliament. His Opening Address epitomised the exemplary leadership and patriotism he has displayed over the course of his lifetime of service to the Fijian people.

HON. A. SAYED-KHAIYUM.- Hear, hear!

HON. J.V. BAINIMARAMA.- You and I, Mr. Speaker, and some Honourable Members in this Chambers, had served with him and like many people out there in the public know, his honour is unquestionable. His optimism is inspiring, and his belief in our nation and our people's potential is unwavering.

Mr. Speaker, we are blessed to have a President, who so openly makes the causes of vulnerable people his own and who advocates at every opportunity for a better, healthier and more inclusive Fiji. It was out of recognition for his passion and patriotism that I was privileged to lead this Parliament in approving His Excellency's appointment as our Head of State, last year.

Mr. Speaker, it was a proud day for Fiji and for the Fijian people, as one of our nation's great leaders reassumed the highest office in the land but shamefully, not one Honourable Member of

SODELPA was there to witness that occasion, led by the same leader who leads them today. They abandoned their seats and ran to the media, hoping to steal the limelight for themselves and rob our people of a proud moment in Fijian history. So, Mr. Speaker, it is no surprise that the Honourable Leader of the Opposition began this week with another show of disrespect towards the Office of the President and the democracy His Excellency serves.

Listening to the tirade from the Honourable Leader of the Opposition, and I say “leader” with a lot of misgivings, I was not angry. In fact, Honourable Speaker, I was quite relieved to finally see him drop the charade of statesmanship and expose the ugly nature of his true character. He has proved he is still the man. History will always remember him to be a selfish, short-sighted and hateful ethnic supremacist.

(Chorus of interjections)

HON. SPEAKER.- Order!

HON. J.V. BAINIMARAMA.- That is a fact!

HON. SPEAKER.- Honourable Tuisawau.

HON. RO F. TUISAWAU.- I rise on a Point of Order. Under Standing Order 62(4)(a) - “Hateful” and “selfish” are words which should not be used against another Member.

(Chorus of interjections)

HON. RO F. TUISAWAU.- I ask that he withdraws that. Thank you.

HON. SPEAKER.- Honourable Member, the Prime Minister is on his Right of Reply on this. There should not be any disturbance. You have the floor, Sir.

HON. J.V. BAINIMARAMA.- As I was saying, Mr. Speaker, he has proved that he is still the man history will always remember him to be - a selfish, short-sighted and hateful ethnic supremacist. As a former Military man, he should understand who he is addressing. He is addressing His Excellency the President, politics aside, Mr. Speaker.

Honourable Lt. Col. Seruiratu, in his reply to His Excellency's Address, said that the Honourable Leader of the Opposition, in his reply, was arrogant and disrespectful. As I had said, for a former Military man, I can also add that his answer was very insulting, to say the least, and full of self-importance.

Herein, Mr. Speaker, lies the problem. He is leading the rest of the Honourable Members of the Opposition down a blind alley and they really do not know what the snake has in store for them. How do we know? Very simple, Honourable Speaker.

The Honourable Leader of the Opposition has the gall to ask for my resignation and the rats are following the merry piper, also calling for my resignation. But they are just a bunch of newbies wanting to be wannabes.

(Laughter)

HON. J.V. BAINIMARAMA.- They have no idea what I and the Military Government and now the FijiFirst Government, have done to bring Fiji where we are today.

HON. GOVERNMENT MEMBERS.- Hear, hear!

HON. SPEAKER.- Order!

HON. J.V. BAINIMARAMA.- For example, free education for our children and free education for their children. But, we all know, Mr. Speaker, Honourable Rabuka has no authority to lecture this Chamber on graciousness, not when the Honourable Members of his Party were turning their backs on the nation while in glaring contrast, His Excellency the President was answering a noble call of service.

That level of hypocrisy, Honourable Speaker, has rendered their indignation completely hollow. Their own sound and fury signify even less than nothing as both are undermined by the disrespect they have shown to His Excellency the President from the day he was reappointed.

While sitting through the tirade this week, I found myself asking, Honourable Speaker, what part of His Excellency's Opening Address struck such a nerve with the Opposition. Was it the Fijian children for holding pride in their Constitution and living the ideals of true democracy, could it be that? Was it His Excellency's denouncement of the backward politics of division and disunity? Maybe, Honourable Speaker, it was the strength of my Government's record of achievement?

HON. GOVERNMENT MEMBERS.- Hear, hear!

HON. J.V. BAINIMARAMA.- But the bigger question, Honourable Speaker, is, why do we not see any anger from the Opposition on real issues, issues that carry serious national significance? Where was their rage when Honourable Bulitavu demeaned Fijian women and defended their abusers? Where was their fury when Honourable Members of their own Party told lies on social media to the *iTaukei* landowners, and in this very Chamber?

HON. A. SAYED-KHAIYUM.- Very poor.

HON. J.V. BAINIMARAMA.- And where was their anger when our children were cursed by Honourable Qereqeretabua?

(Chorus of interjections)

HON. SPEAKER.- Order, order!

HON. J.V. BAINIMARAMA.- But the insulting bit there, Honourable Speaker, the next morning, there was a photo of her in the *Fiji Times* in Church, I do not know what she was doing in Church.

(Laughter)

In the case of the Honourable Leader of the Opposition, Honourable Speaker, where was his indignation in the face of corruption, moral bankruptcy and demise of our National Bank, all of which defined his past government? We needed his anger then. We have no use for it now.

Instead, Mr. Speaker, the Opposition saved their outrage for our children and Fijians of all ages, for taking part in the “Hashtag - Our Constitution Challenge”, their outrage for a President who holds a positive vision for our future, an outrage for our people who refused their notions of ethnic supremacy. But what upsets them most of all, Mr. Speaker, is the permanence of what my Government has achieved. They cannot stand to watch the Fijian people embrace the new era, embrace common identity, embrace true democracy and shed and throw away SODELPA and the SDL Governments' shameful legacy.

I endorse Honourable Lt. Col. Seruiratu's advice to you, Honourable Members of the Opposition, to get rid of your leader because he is going to be your killer.

(Laughter)

On that note, since you have done nothing but harp and cry and complain throughout, my advice is to follow him out.

(Honourable Members interject)

HON. A. SAYED-KHAIYUM.- Who will be the next Leader?

HON. J.V. BAINIMARAMA.- They can *sapui* and toss a coin.

Mr. Speaker, yesterday, I had the privilege of honouring the memory and legacy of Captain Stanley Brown, the first-ever Commander of the Fiji Navy and a man I was proud to call my mentor. When I was 10 years old, I served on board Captain Brown's yacht as one of his cadets. Later in life, I joined him on Fiji's first-ever Naval Deployment.

I took from him many great lessons of life. He taught me how to commit to the service of others and how to bring people together and help each other in common cause. Most importantly, Honourable Speaker, he taught me to see the equal value in every person and to treat everyone, no matter their background or beliefs, with dignity.

To this day, those same lessons of leadership passed to me by Captain Brown and mentors like him, guide every decision I make and every action taken by my Government. And therein lies the great difference between the FijiFirst Party and the Honourable Members of the Opposition. We see the purpose our people share while the Honourable Leader of the Opposition and the Opposition see nothing but differences.

We harness the power of national unity, while they sow ethnic, religious and provincial discord. We empower the potential of our youngest citizens, while they prey on fear and curse our children. We speak to the promise of our future, while they wallow in the past, and we celebrate the greatness of Team Fiji, while they degrade our national pride and discredit Fijian achievement.

Mr. Speaker, the contrast could not be any starker. From my side of the Chamber, the Fijian people have heard recognition of the real challenges they face, along with the actual solutions. They have heard an honest record of achievement. They have heard a strategic approach, supported by facts and proven policy-making expertise. They have heard a positive vision for their future and they have heard from a Government that actually believes in the talents, abilities and ambition of the coming generations.



Mr. Speaker, as it has been a subject of discussion this week, allow me to give this Chamber a lesson of true patriotism. I want to tell the Opposition side of the House - if you want to see true Fijian patriots, go to the frontline of our diplomatic efforts where our sleepless delegations fight relentlessly to elevate our voice on the world stage.

If you want to see true patriots, look to the young people putting in the sweat and effort to support my Government's projects in their communities. If you want to see true patriots, look to the children of Fiji who do not see the world through the lens of our differences, but who greet their fellow citizens with open hearts and minds, unclouded by prejudice. And if you want to see true patriots, look to the Police officers, like Siuta Niumataiwalu, who gave his life in the defence of his fellow Fijians.

To the Honourable Members of the Opposition, that is where you will find true patriotism. You will not find it by looking in the mirror. True patriotism, Mr. Speaker, means sacrificing selfish interests for the sake of something larger, more meaningful and more enduring. I will not have my patriotism questioned by a Party, who advocates ethnic supremacy, who endorses religious fundamentalism and who shuns their duties to serve in this Chamber.

Mr. Speaker, the women and men I lead always put Fiji and the Fijian people first. We are not an ethno-nationalist rabble, we are a government that fights for every Fijian - every child, every woman and every Fijian from remote and rural communities, every religion, every province and every background.

Honourable Speaker, I may no longer be that ten-year old boy tasked with shipman's duties on board Captain Brown's yacht and I may no longer serve as a Commander in our Navy. You cannot choose leaders based on where they come from, how they worship God or their ethnicity. You choose the right people for the right roles, or face the dire consequences of mission failure, and when you do find yourself privileged to lead, at times, you must make hard choices and you must make them decisively.

HON. GOVERNMENT MEMBERS.- Hear, hear!

HON. J.V. BAINIMARAMA.- Honourable Speaker, as a former Military Officer yourself, I am sure you know there are times when the breadth of the available resources does not match the scale of the challenges ahead. In the case of a small island nation, that is the case far more often than not, but it is those moments, Honourable Speaker, when strong leadership shines brightest; it is those moments when innovation matters most; it is in those moments we must be creative, we must find new solutions, and we must chart a bold course through the headwinds His Excellency the President has warned us, are on the horizon.

I remember every problem I have encountered and every solution I have forged as Prime Minister, from the mammoth task of modernising our economy to the day-to-day victories of bringing clean water, reliable power or new technology to Fijian communities, and I certainly remember all the doubters along the way, who questioned my leadership and attacked my decision-making.

But my record today, Honourable Speaker, speaks for itself. As our economy has grown with strength and consistency for 10 straight years, as per capita income has more than doubled, as unemployment has plummeted to the lowest rate in two decades ...

(Chorus of interjections)

HON. SPEAKER.- Order, order!

HON. J.V. BAINIMARAMA.- ... as we have taken foreign reserves to record heights, as we have revolutionised the education system, as we have built bigger and better national assets and secured greater private sector development, and as we have seen network of essential services rapidly expand, our people have damn good reason to say, "they are proud to be Fijian."

HON. GOVERNMENT MEMBERS.- Hear, hear!

HON. SPEAKER.- Order!

HON. J.V. BAINIMARAMA.- Mr. Speaker, I want to be clear with every Honourable Member of this Parliament; we take His Excellency the President's call to stand together and work together with total sincerity, that we live in the real world and we deal only with accurate information. We have not built a modern Fiji on an unstable foundation of conjecture and fabrication.

The unprecedented progress of our economy is not my opinion, Honourable Speaker. These are conclusions drawn from data verified by independent third-party agencies, like the International Monetary Fund (IMF), the World Bank, Asian Development Bank, Moody's and Standard and Poor's. I want to tell the Honourable Members of the Opposition - if you accept that reality, if your contributions meet the high bar we have set in the Committees as well as in this Chamber, I will assure you, you will treat them seriously. But if you continue to conduct yourselves at your current level of gutter politics, if you continue to manufacture despair and make a mockery of truth and decorum, I will make no apologies for calling out any of you.

Do not be fearful of facts, embrace them, embrace real debate, make real contributions, give the Fijian people a reason to tune into these discussions and learn something real, something new. Do not drag us back into the ugliness of the past. Do not wallow in the shadow of your Leader. Do not surrender the battle of real ideas before it even begins. If you do not agree to something, try actually offering an alternative for once, instead of stomping your feet and walking out in protest.

(Honourable Members interject)

HON. SPEAKER.- Order, order!

HON. J.V. BAINIMARAMA.- Mr. Speaker, Sir, I urge SODELPA to be more than a one-issue Party; end the tired fiction that we, the *iTaukei*, are somehow a marginalised people and that by treating our people equally, we are somehow leaving others behind. End your siege mentality. I am not asking for compromise with my Government, Honourable Speaker, I am asking them to compromise with reality. We, the *iTaukei* people hold a proud culture that goes prouder and stronger by the day.

I want to tell them to open their eyes and look at your nation's leadership. Do you think that I or any of the proud *iTaukei* leaders seated alongside me, feel marginalised in our own country? It is lunacy to suggest so, Mr. Speaker, Sir. The only *iTaukei* who feel marginalised are you, Members of the Opposition, who so desperately want to sit on this side of the Chamber, and they are willing to tell lies to our people to do so. You are willing to tell them that they are under threat, when in reality, it is only them - your power and your privilege which is under threat from my Government.

Our culture, the *iTaukei* culture,- is helping lead the world through great challenges by reshaping the minds of global leaders through initiatives like the *Talanoa Dialogue*, which is spurring global action on climate change. We hold total and irrevocable ownership over nearly all of the land in the country, while in other nations, other indigenous people are often contained in tiny reservations. Yet still, Honourable Members of the Opposition act as if ILO Convention 169 on the Rights of Indigenous and Tribal Peoples somehow applies to *iTaukei*, as if we suffer in the country we lead, with land we own and with a Constitution that forever protects our unique culture, customs, tradition, language and our land.

(Honourable Members interject)

HON. SPEAKER.- Order, order!

HON. J.V. BAINIMARAMA.- Mr. Speaker, Sir, Honourable Members of the Opposition need to come out from behind their fake pages on social media, leave their DVDs and CDs behind at home and spend time coming up with actual ideas to share with this Chamber. When doing so, I again urge them to listen to what the young people, including our young landowners, have to say. They do not want their progress to come at the expense of their Indo-Fijian brothers and sisters.

(Honourable Members interject)

HON. A. SAYED-KHAIYUM.- Listen, you'll learn.

HON. SPEAKER.- Order, order!

HON. J.V. BAINIMARAMA.- They do not feel attacked by the ideal of common identity. They want what every young Fijian wants: opportunity.

They want development, services they can count on, education that remains free and real opportunities to secure employment, develop their land, build and purchase homes and start business of their own. These are the issues my Government is steadily working to solve. These are the issues that actually demand this Chamber's attention. If they continue to demand the return to the old ways, if they continue to demand ethnic and religious tests to access opportunity in our society, they will never be able to count themselves as true leaders or true patriots needed by the Fiji of today.

Mr. Speaker, this week we celebrated the 30th Anniversary of the Rights of the Child, a landmark moment for international diplomacy where I proudly reaffirmed Fiji's commitment to protect, empower and inspire our children.

Young Fijians, no matter their background, religion and no matter where they call home, do not see the world through the lens of our differences. They are certainly not obsessed with ethnicity. They will not learn to see each other differently unless we teach them to do so. But if we teach them the power of unity, tolerance, acceptance and togetherness, we will take this country to unimaginable heights of greatness.

Mr. Speaker, I urge Honourable colleagues in this Parliament, to step into the future with me, leave the old debates, the old ways of doing things in the past where they belong. We are on the cusp of celebrating the half century of our Independence. Only by adhering to the principles of equality, respect and inclusiveness can we meet our Excellency the President's great challenge to make the next 50 years the best 50 years Fiji has ever known.

Thank you, Mr. Speaker, and I endorse His Excellency the President's Address.

(Acclamation)

HON. SPEAKER.- Honourable Members, I thank the Honourable Prime Minister for his Right of Reply. Parliament will now vote on the motion.

The question is:

That this Parliament thanks His Excellency the President for his most gracious Address.

Does any Member oppose the motion?

Chorus of 'Ayes' and 'Nays'

Votes Cast:

Ayes	:	26
Nays	:	17
Not voted	:	8

HON. SPEAKER.- The motion is, therefore, agreed to.

Motion agreed to.

HON. SPEAKER.- Honourable Members, pursuant to the resolution of Parliament passed on Wednesday, 20th November, 2019, the Corrections Service (Amendment) Bill 2019 will be debated and voted upon today. I remind all Honourable Members that the debate will be limited to one hour for the Bill.

I now call upon the Attorney-General and Minister for Economy to move his first motion. You have the floor, Sir.

**CORRECTIONS SERVICE (AMENDMENT) BILL 2019**

HON. A. SAYED-KHAIYUM.- Mr. Speaker, Sir, pursuant to the resolution of Parliament passed on Wednesday, 20th November, 2019, I move:

That the Corrections Service (Amendment) Bill 2019 be debated, voted upon and be passed.

HON. LT. COL. I.B. SERUIRATU.- Honourable Speaker, I beg to second the motion.

HON. SPEAKER.- I now call on the Honourable Attorney-General to speak on this motion. You have the floor, Sir.

HON. A. SAYED-KHAIYUM.- Thank you, Mr. Speaker Sir.

Mr. Speaker, Sir, as highlighted on Wednesday, 20th November, 2019, the Corrections Service (Amendment) Bill 2019 seeks to amend the Corrections Services Act 2006.

By way of background, Mr. Speaker, Sir, the Act provides for, amongst other things, the establishment of the Fiji Corrections Services, the administration of prisons in Fiji, and the treatment of prisoners, including the remission of their sentences, Early Release Schemes and their Discharge from Prison.

The Bill seeks to amend the Act to introduce provisions to clarify the prisoners for whom non-parole periods have been fixed by the courts, serve the entire term in the non-parole period.

Sections 27 and 28 of the Act provide for the calculation of remission of a sentence.

Section 27 of the Act, Mr. Speaker, Sir, provides that all convicted prisoners are classified in accordance with Orders made by the Commissioner of the Corrections Service which are called Commissioner's Orders. And for the purpose of the initial classification, the date of release of the prisoner is determined on the basis of a remission of one-third of the sentence for any term of imprisonment exceeding one month.

Section 28 of the Act further provides that the remission of a sentence is dependent on the good behaviour of the convicted prisoner, and the remission may be forfeited and restored in accordance with the Commissioner's Orders.

The current practice by the Corrections Services when calculating a remission of a sentence is based on the remaining portion of a sentence which a non-parole period does not cover. This practice, Mr. Speaker, Sir, was in accordance with previous Court of Appeal and Supreme Court Judgements. Now, I would like to cite these cases.

One such judgment, Mr. Speaker, Sir, is *Raogo vs The State* where the Court of Appeal held that, and I quote:

“A prisoner whose sentence is fixed by a court cannot be released until the fixed period is served. But if a prisoner whose sentence is fixed qualifies for remission, you will be eligible for release only after serving the fixed period. In such a situation, the remission has to be deducted from the period of imprisonment that was not fixed.”

The Raogo case also, Mr. Speaker, Sir, went further to the Supreme Court where the Supreme Court held, and I quote:

“In the present case it is clear from the express words used and from the legal framework existing at that time that the Legislature wished to provide the power in the sentencing court to ensure that in appropriate serious cases, a greater proportion of the primary sentence would actually be served in prison with the consequence that there will be less than one-third the remission granted.”

Mr. Speaker, Sir, again in August 2019 of this year, a Supreme Court decision was made in the case of *Timo vs The State* where the quorum consisting of three Supreme Court Judges held, and I quote:

“The remission earned cannot be entered upon until the period of non-parole ordered by the Court is over. Moreover, it was held that with the effect of the Court ruling or the Court directing a non-parole period on a convict is that the convict cannot be released prior to completion of the non-parole period.”

In other words, Mr. Speaker, Sir, this case held that a convict must not be released prior to the completion of the non-parole period.

However, Mr. Speaker, Sir, unfortunately two months later in October 2019, another Supreme Court decision was made in *Nadan vs The State*, in which a three-member bench held that the practice by the Commissioner of Corrections Services to not consider releasing a prisoner on remission was not right. In other words, Nadan went ahead to say that the way in which remission is currently calculated needs to be changed, recommending that a non-parole period must be taken into account when a remission of a sentence needs to be calculated.

So, put simply, what it is saying essentially, Mr. Speaker, Sir, if someone gets sentenced to say, a 10-year sentence and the judge says, nine years non-parole period, then your remission period which is one-third is calculated on the balance of the one year. That is how the law has been applied and that is what the Supreme Court has held until recently. What the Supreme Court ruling has said, the remission now applies on the entire 10 years, irrespective of whether the non-parole period is nine years. That is the anomaly, Mr. Speaker, Sir.

If we were to, Mr. Speaker, Sir, follow this approach recommended in this *Nadan* case, calculation of the remission of prisoners convicted of serious crimes, such as aggravated robbery, murder, manslaughter and other sexual offences which we see a rise of, would change significantly and these prisoners will be released at an earlier date.

The rationale for having the remission period calculated in this way, not taking into account the non-parole period, is to keep offenders of serious crimes, such as rape, aggravated robbery, murder, manslaughter and other sexual offences, in prison for a minimum term and during this period, they would not be able to commit further crimes. That is a quote from the *Timo vs The State* case.

Non-parole periods, Mr. Speaker, Sir, are also imposed on serious offenders for deterrence. It sends out a very strong message. If someone is going to do or get involved in a gang rape or have sexual assault, if we essentially say that the courts are going to give a ten-year sentence and by the way, even before you step into the gaol, one-third is already off, it sends a very wrong message. But if the Judge says a non-parole period of nine years, that sends a very strong deterrence message.

It also, Mr. Speaker, Sir, ensures (in what we want to do through this amendment) that the independent of the Judiciary to decide its own matters is actually maintained. The Bill, therefore, Mr. Speaker, Sir, seeks to amend the Act to clarify that convicted prisoners for whom non-parole periods have been fixed independently by the Judiciary, serve the entire term of the non-parole period and that remission of a sentence is determined on the sentence and not taking into account the non-parole period. This will enable the Corrections Service to continue the current practise of calculating remission as interpreted by the Courts over the many decades in Fiji and, indeed, since time immemorial as we would understand.

Mr. Speaker, Sir, the Bill also consequentially amends the Sentencing and Penalties Act 2009 to remove the discretionary power of the courts to decline to fix a non-parole period. That is to make it mandatory for the courts to fix a non-parole period for sentences over a term of two years or more, or for life sentences.

Mr. Speaker, Sir, as highlighted in the introduction of this Bill earlier on, that we have had numerous consultations with the Fiji Corrections Service, the Office of the Director of Public Prosecution (DPP) and the Office of the Solicitor-General. By way of introduction of the Bill itself,

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

Clause 2 of the Bill amends Section 27 of the Act which provides the method for calculating the remission of the sentence. For any term of imprisonment exceeding one month, the remission of the sentence is calculated on the basis of a remission of one-third of the sentence.

The amendment in Section 27 of the Act introduces new subsections 3, 4 and 5 to clarify that where the sentence of a prisoner includes a non-parole period which has been fixed by a court in accordance with Section 16 of the Sentencing and Penalties Act 2009, the prisoner must serve the full term of the non-parole period. Additionally, the calculation for the date of a release of a prisoner must not take into account the non-parole period.

Mr. Speaker, Sir, Clause 3 of the Bill consequentially amends Section 18 of the Sentencing and Penalties Act 2009, to remove the discretionary powers of the court to decline to fix a non-parole period. Given the proposed amendment, the courts are now required to fix a non-parole period for sentences for a term of two years or more, or for life sentences. Clause 3 of the Bill, Mr. Speaker, Sir, also consequentially deletes Section 20(3) of the Sentencing and Penalties Act 2009.

Accordingly, Mr. Speaker, Sir, I recommend that this Bill be approved by Parliament. Thank you, Mr. Speaker, Sir.

HON. SPEAKER.- I thank the Honourable Attorney-General. Honourable Members, the floor is open for debate on this motion. Leader of the Opposition, you have the floor.

HON. MAJOR-GENERAL (RET'D) S.L. RABUKA.- Thank you, Mr. Speaker, Sir. I have some misgivings to quote the Honourable Prime Minister on this Bill, particularly the way it has been brought into the House through our Standing Order 51.

Mr. Speaker, Sir, the history of the Bill and their successes, et cetera, point to a lot of consultations that were carried out before they were brought into the House to be debated and enacted.

The Corrections Service Act 2006 which was enacted in March 2000 was prepared by the Law Reform Commission which undertook the review of the Prisons Act. Extensive consultations, Mr. Speaker, were carried out around Fiji; the stakeholders, NGOs, civil society and experts, including academics.

In 2006, the 1966 Prisons Act was repealed by the new Prisons and Corrections Act. It went through a major paradigm shift from containment and punishment to correction and reformation of prisoners, through rehabilitation and reintegration of prisoners into society.

Mr. Speaker, the review that was undertaken was part of Fiji's 2003-2005 Strategic Development Plan which highlighted two issues - contradicting the international standards set for prisons and prisoner treatments. Firstly, the issue of staff and prisoner ratio of 1:10 in Fiji's prisons, compared to the international standard of 1:4. Secondly, Fiji prisons' need of providing efficient and cost-effective prison and rehabilitation services.

The Sentencing and Penalties Decree 2009 now an Act, also drafted by the Fiji Law Reform Commission and revised by Madam Shameem in consultations with the Attorney-General's Office in 2009 after the abrogation of the 1997 Constitution.

The amendment, if passed, will remove the discretion that the Judiciary currently exercises under the Sentencing and Penalties Decree 2009 whether to impose a non-parole period.

HON. A. SAYED-KHAIYUM.- An Act.

HON. MAJOR-GENERAL (RET'D) S.L. RABUKA.- Well, it is now an Act, I said that.

When sentencing, all courts must now impose a non-parole period on every convicted person. Arguably, this reduces the independence of the Judiciary and is an infringement on the separation of powers doctrine.

The Executive is instructing the Judiciary via the Legislature that it must impose a non-parole period. Section 12(2) of the Sentencing and Penalties Decree or Act gives the courts discretion not to impose a non-parole period if the nature of the offence, plus the history of the offender, makes a non-parole period inappropriate. The court may decline to fix a non-parole period.

The issue is that we, Mr. Speaker, have not been allowed time to go through the processes that we had gone through in the past, what past Governments had gone through to try and arrive at a proper administration of justice, the proper administration of our correctional establishments and the proper administration of the issuing of the grant or handing down of sentences. Those are the things that we need to spend time doing, Mr. Speaker, Sir. It may be a very good amendment, but we need time to really look at it and consult with those who voted us into this Chamber.

The Honourable Attorney-General quoted the *Timo vs The State* Judgment. Part of the Judgment said, Mr. Speaker, in paragraph 57, and I quote:

“We would like to add that Section 49 of the Corrections Service Act 2006 establishes a Parole board. We have been informed that despite the parole board having been established by law passed by Parliament, it has not been constituted and operationalised. We hope and trust that the rule of law will be adhered to in this regard and the Parole Board constituted and operationalised at the earliest, keeping in mind the right of personal liberty in the Bill of Rights.”

With those points, Mr. Speaker, Sir, I am afraid, again, I will not be able to support this Bill for enactment in this House. Thank you, Mr. Speaker.

HON. SPEAKER.- I thank the Honourable Leader of the Opposition. Honourable Niko Nawaikula.

HON. N. NAWAIKULA.- Thank you, Honourable Speaker. I wish to contribute. At the outset, let me say that the biggest abuser of the parole, sentencing and the corrections procedure and rules is the Government. Let me put an example here.

In the case of the murdered Rabuka, all the soldiers and policemen who were there, while they were in prison, their families were being harboured in a residence in Lautoka. I am informed they continued to be paid and when they came back, they went straight to work.



(Honourable Member interjects)

HON. N. NAWAIKULA.- You answer that!

I challenge the Honourable Minister for Defence under Section 81 to clarify that, whether that is actually happening.

Now, to the Bill, let me correct the Honourable Minister for Economy. If he continues to do this, very soon we will call him, “Minister for Standing Order 51”.

(Laughter)

HON. N. NAWAIKULA.- Because all the time....

(Honourable Members interject)

HON. N. NAWAIKULA.- It is quite cheap shot, it is serious.

His Excellency the President said here - the conduit for the participation of the people is the Standing Committee and this is stopping it.

(Honourable Member interjects)

HON. N. NAWAIKULA.- And listen to what he said here. He said and I quote, “A recent Supreme Court ruling seeks to change the Convention and the practice regarding non-parole prisoners.” He is wrong. That is not what the Supreme Court said.

I have a copy of the Supreme Court decision here. All that they highlighted were the conflict and the problem arising from the parole. You have a Judge who said, “two years parole”, and then you have the legislation, in particular, non-parole, the remission of sentences that say, “every prisoner who have served two years is to be considered for that.” And the Supreme Court was highlighting all these complexities, including the Court of Appeal decision that the Honourable Minister cited.

(Honourable Member interjects)

HON. N. NAWAIKULA.- And all that the Supreme Court did is this. It referred the matter down to the High Court to make its decision in relation to that and that decision was made on 21st August. So now, here we have the Government trying to stop that ...

HON. A. SAYED-KHAIYUM.- Which case are you reading? What are you reading?

HON. N. NAWAIKULA.- ... to impose its own will over the very rational and recent decision of the High Court, and that is what we are doing here.

HON. A. SAYED-KHAIYUM.- No, you got it wrong.

HON. N. NAWAIKULA.- Then he goes on to say, “And there has been long established interpretations of the law, Mr. Speaker, Sir, that went on. For example, a Judge gives a ruling and sentence’s someone who has violently raped someone and gets a 10-year sentence of which eight

years is of non-parole, and the remission then starts from after the non-parole period". That is totally wrong too.

HON. A. SAYED-KHAIYUM.- That is how it is done.

HON. N. NAWAIKULA.- That is not the problem we have. The problem we have is a conflict between what the judges said and what the law said and we are trying to resolve that, and this is not how to resolve that.

(Honourable Members interject)

HON. N. NAWAIKULA.- I hope I am clear that after expanding that, that side of the House especially, will know that there are stakeholders out there that we need to listen to and we are cutting this off by Standing Order 51.

We try to be smart by doing it to tell the public, we alone are the experts. We are not the experts. Let me give an example here, Mr. Speaker, in relation to the Registration of the Sex Offenders Act. We thought we knew everything, but when we come to the villagers, they came there and presented, "Look, in the village this is our situation. We are living with the offender, we go to church with the offender and we go to the *bose vakoro* with the offender". That is a totally different kind of dimension than what we know here and that only arises from going out, from being inclusive and that is what we are trying to stop here.

So here, we need to hear the words of professionals. We need to hear the criminologists, who are experts in the field of corrections and we know very well that we are shifting away from punitive to rehabilitation. So the question that we must ask, "By amending this, are we keeping up with international standards in relation to that?"

We cannot answer it, we do not know. We are not the experts, the experts are out there; criminologists and professors. Honourable Speaker, we need to hear the prisoners themselves.

(Honourable Member interjects)

HON. N. NAWAIKULA.- The Honourable Member is asking, what do we expect from the prisoners? That is the problem - the prisoners know what you do not know, from experience. You have never been to prison, you have never been subjected to that. You do not know, it is only the prisoners.

If they come here, we should be the voice of the prisoners because they are silent, and we can only hear them if we bring an issue to them. To tell you the fact, I have some texts last night from the prisoners.

HON. A. SAYED-KHAIYUM.- Who? Contraband.

HON. N. NAWAIKULA.- Contraband, but it exposes your weakness because you do not want to take the issue to them, they text it to me. They said, 'Niko, look at this section and this section, please, speak for us', and that is what I am doing now but it is not enough. We should be taking this issue and listening to that prisoner, that prisoner, that prisoner, and then we are denying them. They are giving us only one hour to talk about a very serious issue that affects the people who do not have a voice in our society and we should be out there.

HON. DR. M. REDDY.- For everyone.

HON. N. NAWAIKULA.- You know, you should resign, that is the correct thing. You have been judged, you have been found wanting, and you are no good. The nation has had enough, 13 years of rubbish coming from that side. That basically, Honourable Speaker, is the reason why, it is unfortunate.

Again, Standing Order 51, denying and going against His Excellency the President, who came here. The President was here and he told us that, so I do not support this Bill.

HON. SPEAKER.- Honourable Members, we will now adjourn for morning tea and after morning tea, I will take the Honourable Sudhakar and Honourable Bulitavu. So, both of you, be ready when we resume. We adjourn for morning tea.

The Parliament adjourned at 10.37 a.m.

The Parliament resumed at 11.11 a.m.

HON. SPEAKER.- Honourable Members, we will continue on the debate on this Agenda Item, and I now call on the Honourable Sudhakar, you have the floor.

HON. A. SUDHAKAR.- Thank you, Honourable Speaker, for allowing me to make my short contribution to the debate.

Honourable Speaker, I stand in support of the motion brought in by the Honourable Attorney-General, and after hearing the arguments from the Oppositions, particularly Honourable Nawaikula, I am actually appalled by their contributions.

When the Honourable Attorney-General brought his motion earlier this week, he clearly explained the reason for the urgency, why this motion is brought under Standing Order 51. If the urgent amendment is not made, then we have 140 or so convicted prisoners, who would be on our streets by the operation of the court judgment.

Honourable Speaker, some of these convicted prisoners are murderers, rapists, they were involved in violent crimes and aggravated robberies. Honourable Nawaikula speaks of taking care of prisoners, I agree to that, we need to take care of our prisoners. But what about the innocent citizens of this country, innocent Fijians who lock themselves up every night in their homes, lock themselves up behind padlocks and locks to save themselves from these kinds of people, and it is not an accused person we are talking about here who has got all the rights of the Constitution. This is a question of convicted criminals who have been judged by a competent Court and sometimes all the way to Supreme Court level, and then they had been meted the sentence.

Any legal practitioner, who has practised extensively in the Fijian courts (including the Honourable Attorney-General, myself, Honourable Mereseini Vuniwaqa and probably to a lesser extent, Honourable Nawaikula, because he has been suspended most of the time from practice), when you appear in court and when you hear a judge make his ruling and when you participate in the hearing, the judge is actually the only person who observes the demeanour of the witnesses, the demeanour of the accused person, he hears the witnesses first-hand and he sees and observes the gravity of the offences.

In some cases, there are some very violent crimes that have occurred in this country - murders, rapes, there being some very treacherous and very horrific murders and violent robberies that have happened, in fact, there was an incident earlier on in Victoria Parade. The judge is the primary person who has, after hearing all the evidences, after seeing the gravity of the offence, has come up with the sentence and the judge, he or her, sets a non-parole period based on the gravity of the offence.

It would actually be a travesty of justice if a Parole Board which did not have the opportunity of hearing the witnesses, seeing the victim with that Statement Report and assessing, even hearing the mitigating factors and all the aggravating factors, then sits and decides that, "Alright, the judge who sets a non-parole period, say for 10 or 15 years, can be overruled by the operation of the law."

As I said, any practitioner who has practised extensively in the courts would know that that non-parole period, whether you are appearing for the prosecution or for the defence, is for a very good purpose.

We have had numerous violent cases and we have heard the Women's rights groups, we have heard the Civil Society groups calling on us and telling us that we need to have stricter sentences, strict penalties. We need to send the message out there that if you do the crime, you have to do the time as well. It is the deterrent effect of the sentences that we are concerned about here.

Now, if a convicted criminal, after all the consideration the court has given, is allowed to walk free because of the operation of the law, then there must be something wrong somewhere, and that is the precise reason why the Honourable Attorney-General has brought this Amendment and it is good for everyone.

It is also good for the prisoners as well, and I will explain why, because the non-parole period is actually giving them the exact time when they will be in prison. They know that they have committed the crime, they will do the time and the family will also know. They will not be in a cloud of confusion that probably he should be going out under remission or he should not be going on a remission. Therefore, it gives a bit of certainty to the law and also it gives a peace of mind to the victim of the crime as well.

In fact, when I was the Chairperson of the Standing Committee on Justice, Law and Human Rights and we were dealing with the Sexual Offenders Bill at that time, also we had the Amendment to the Public Order Act. We dealt with these situations and we had civil society groups come to us and put pressure on us that we needed to consider the victim and convict him with the statement when considering early releases of prisoners.

It is, therefore, precisely the point that whilst we do care about our citizens who are serving time in prisons, there must be equal consideration given to law-abiding citizens of this country, from the protection of these people who have been dealt with by courts of competent jurisdiction. Thank you, Honourable Speaker.

HON. SPEAKER.- I thank the Honourable Member.

Honourable Mosese Bulitavu, you have the floor.

HON. M.D. BULITAVU.- Thank you, Mr. Speaker Sir. I rise to give my contribution to the Bill which is before the House.

Sir, the Bill seeks to amend Section 25 of the Corrections Act 2006 and that is for the remission to only apply after the non-parole period is served by a convict. There has been plenty interpretations as cited by the *Timo* case and I think the Honourable former Chief Justice had said that the calculation should consider the whole sentence.

He also mentioned in the *Timo* case that an order by the court on a non-parole, the executive administration, the Corrections Service cannot touch that. We all understand that it is an order of the court so the non-parole period cannot be touched, so the only period left is the head sentence, the period after when your parole is up.

But if you look at the *Timo* case and the case that was highlighted by the Honourable Attorney-General this morning, the Nadan case just October this year, the court seems to suggest that the fixing of the parole period of any sentence seems to be very closer to the head sentence and it discourages an inmate or a convict from proper rehabilitation.

The two important things in this Correction Act that are available for inmates are the remission which is one-tenth, and the other is the qualification for parole.

Section 49 states that there should be a parole board. It is non-existence now, it is not in operation, as the Honourable former Chief Justice said in the Ruling of the *Timo* case. Encouraging the Government to set up that, to enable inmates to apply for parole and also for other programmes which fall under the Fiji Corrections Services Annual Report on the various releases and of the Yellow Ribbon Programme that are there within their rehabilitation framework which are very well-outlined in their Annual Report on the stages inmates will have to go through before they qualify for early release, education release or employment release, and all other things that are available within the walls of the prison, that is to encourage any convict to rehabilitate which also includes up-skilling their knowledge in terms of repairing or mechanical engineering, musical classes and everything that they go through for them to qualify to be an applicant for parole.

Probably, I suggest that the Honourable Attorney-General look into Section 18 of the Sentencing and Penalties Act 2009 and see Subsection 4. That is where the problem lies. Section 18(4) states, and I quote: “Any non-parole period fixed under this section must be at least six months less than the term of the sentence.” For example, if a person is convicted for nine years and eligible for parole after eight years and six months, that particular convict will only have six months as his remission. He has to serve the eight years and six months, and from those six months, they will calculate that one-third remission, which is only two months and it is very close to the head sentence and it discourages rehabilitation.

And the ruling in *Timo* and also the ruling in *Nadan*, the Supreme Court have set aside non-parole periods. In *Nadan*, you can set aside the non-parole period and direct the matter to go back to the High Court for the court to use its wisdom on the setting or fixing of the non-parole period. It will be better if the Honourable Attorney-General looks into the South African Correction Laws. It says that the parole period should not be more than two-thirds of the sentence. Let me give you an example, Honourable Speaker, Sir.

If a convict is sentenced for six years, the fixing of the non-parole should be at the fourth year (for four years), that is two-thirds of that six years. That will come into harmony with our one-third remission that is available so it will allow the correction institution to carry out its rehabilitation programmes in that one year remainder of that one-third remission. It is not a right, it is not a privilege, but it is something that a convict has to earn through good behaviour. In prison, inmates go through stages - Stage 1, Stage 2 and before you come to special stages where they will get in a psychologist and other things for them to make assessments on whether you have rehabilitated.

One of the intentions of the legislators then when they enacted this was specifically for very serious offences and repeated offences. It was to cure a mischief of a problem that is currently faced by the Fiji Corrections Service and what we call “recidivism” – recidivist, convicts, reoffending. And that is where a non-parole period is, to put them in prison in a term that the court uses now, to warehouse them – warehousing. To put them for a longer period of time in prison for them not to reoffend or not to be a threat to the public, and that is why that introduced the fixing of non-parole periods.

But, again, the wisdom should be given to the court for them to decide on the nature of the offence and the past history of the offender. We cannot have blanket legislation as one of the consequences of this amendment and, that is, to remove the liberty that was given to the court in the existing Act which is there in the court, whilst allow to either fix or not to fix a non-parole period.

This amendment, if passed today, will say that the court must fix a non-parole period for any sentence which is more than two years. I will give you an example, Mr. Speaker, Sir.

Some convicts are not hard-core criminals. Some go in for fraud cases, some go in, in other cases but their sentences could be two years, four months or three years. If we remove the liberty for the court not to fix a non-parole period and it is a must for them to fix up a non-parole period, it will be unfair for some first offenders, those who offend for the first time.

Those repeated offenders who have been the problem in society or their likelihood of being released will endanger the society, those are the ones whom the court should consider in giving non-parole periods. But, again, some people who come into prison, they have regretted and there are other programmes that are available in prison like spiritual development, behavioural intervention, these are things that need to be made in the Amendment. It should be consistent with the programmes that are running in prison.

From my humble opinion, Sir, this problem is to fix the Commissioner of Corrections not adhering to the Supreme Court ruling since 2005. The Supreme Court in 2005, in the *Tora vs State* case and also in few other cases have already instructed or directed diplomatically the Commissioner Corrections to change this practice. But since then till now, he has not done that.

I do not agree with the Honourable Attorney-General and the Honourable Sudhakar that if we do not pass this amendment today, hundreds of convicts who are murderers and rapists will be released. No, they are still kept there, given that the current practice at the Corrections Service, they will not touch the non-parole period.

(Honourable Member interjects)

HON. M.D. BULITAVU.- They do not.

Prisoners have written and I can even show a letter that I even wrote when I was a convict. It went through our prison system to the Commissioner of Corrections Service asking for an interpretation of the one-third remission. This is a letter by me, Sir.

HON. OPPOSITION MEMBER.- There you go.

HON. M.D. BULITAVU.- Because my sentence was two years and five months and an 18 months non-parole period was also part of the sentence, I queried that because I am a convict and I should qualify for one-third remission. The Commissioner of Corrections Service did not even reply to my letter as a convict. And if that was me, how about the rest of the inmates who are there?

There is a very selective selection in considering who should be a part of that rehabilitation, part of those early releases. I think the Honourable Attorney-General is on record now. In the last session of Parliament, six years now, he has been saying or promising the people of Fiji and also inmates the setting up of the parole board. He has failed us! That is an empty promise. He said that he will be getting some psychiatrists from Australia, we are still awaiting that and inmates who are there, they are still waiting.

Not only that, if the Honourable Attorney-General could also look into the Mercy Commission applications and also the provision in the Constitution which talks about any convict can petition to the Mercy Commission. The current practice too by the Corrections Service, it has a laid out criteria that not any convict but all convicts should go through their rehabilitation

programme. I think some policies need to be done here to address the problem and for the Commissioner of Corrections Service to comply with the law.

In addition, Sir, I think the Commissioner of Corrections should be a person who should understand this, he was a former convict too. Given that he was sentenced for a time in prison too without any parole, and he knows whether the parole board took him out or other powers that were used through the Yellow Ribbon that enabled his coming out, if that is done, we talk about equality all the time. Let it be equal to everyone, not only to those who are related to the other side or who they have some interest with. That should be something that is across the board.

Again, Mr. Speaker, Sir, I call on the Government to also appoint a Commissioner of Corrections who will be able to independently run his organisation and also the leadership that is needed in that institution, whose subordinates (wardens) should not be subjected to fear and other threats by the Commissioner. Those are some of the things, Sir, that should help in this. Also, if we could follow the South African example of the Correction Act where not more than two-thirds of that remission period should be fixed in time for our laws and not closer to the head sentence because it will discourage any good rehabilitation or the vision of the Fiji Corrections Service, that is, to make people become better citizens and become law-abiding citizens. *Vinaka vakalevu*, Sir.

HON. SPEAKER.- I thank the Honourable Bulitavu. Minister for Women, you have the floor.

HON. M.R. VUNIWAQA.- Thank you, Honourable Speaker. I stand in support of the Bill before us. It is a simple amendment, Honourable Speaker. What it seeks to do is to, first of all, mandates the imposition of a non-parole period and then to ensure that that non-parole period is actually served.

We have heard from the Honourable Attorney-General about the list of offenders, who we are considering bringing on this Bill for and in that list are sexual offenders and rapists. So, I speak as Minister for Women in this regards.

We have heard from Non-Government Organisations and from both sides of the House about the big challenge that we are facing in this country in relation to sexual offences. I get to hear from the other side that they do not want these offenders to have a non-parole period. How can that be?

One of the key aims of any sentence is deterrence and yes, the Fiji Corrections Service does carry out programmes to rehabilitate prisoners. We do believe that relevant prisoners can actually go through rehabilitation and come out as changed individuals. So this non-parole period actually allows the Fiji Corrections Service to carry out these programmes in relation to such prisoners, Honourable Speaker.

Again, we have statistics in relation to sexual offenders against children, against women and this Bill will ensure that these prisoners who do commit these offences do get a non-parole period that they must serve before coming out into society again. So I support the Bill before us. Thank you, Honourable Speaker.

HON. SPEAKER.- Thank you. That is the last intervention on this Bill. Honourable Attorney-General, your Right of Reply.



HON. A. SAYED-KHAIYUM.- Thank you, Mr. Speaker, Sir. Mr. Speaker, Sir, just some very quick responses. The Honourable Leader of the Opposition talked about how this particular Act when it came into being there was a widespread public consultation; yes, there was.

Mr. Speaker, Sir, we are not obviously changing the substantive part of the law. We are not in fact doing a substantive change to it and obviously when the law is drafted, the law as it stood then as enforced through the courts, the jurisprudence was that you had to serve the non-parole period before remission applied; that was the law. That is why the actual Act when it was drafted did not take into account, it took that as an assumption that it would continue.

The only reason why we are bringing about this amendment is because the law has been turned on its head because of the Supreme Court ruling in *Nadan*. The Honourable Nawaikula I mean, you know sometimes lawyers, of course, will forget things and Honourable Nawaikula had called a *Timo* as in authority but, in fact, it is not *Timo*, it is actually the *Nadan* ruling.

Mr. Speaker, Sir, again, the issue is about whether we are complying with international standards et cetera. When we talk about international standards, when it comes to prisons, we are talking about the Mandela rules. Now, we have, of course, changed a number of things within the prison system.

I remember when I was with the Director of Public Prosecutions (DPP) Office, there was a particular court ruling where the actual Judiciary made a visit to Korovou Prison because the prisoners all used to have a bucket in the middle of the room and you know, complete lack of dignity. If you want to defecate or want to urinate, everyone used the same bucket in front of everyone. The court actually ruled that the hygiene conditions were pathetic because when prisoners went into some of the cells, they caught skin diseases.

None of that exists now. None of the prisons in Fiji actually have any bucket system anymore. We now have a second women's prison in Lautoka. We now have women who are pregnant or have babies, who are actually kept with them in the prison so they can actually have that nurturing environment within the prison system.

Of course, Mr. Speaker, Sir, we allow now the International Committee of the Red Cross (ICRC) visits. We have had two workshops held by the United Nations Office on Drugs and Crime (UNODC) in respect of ensuring that we comply 100 percent on Mandela rules and I am happy to say that we are currently complying 95 percent with the Mandela rules.

There is one particular issue regarding the separation of those prisoners or those who are kept in remand and the separation of remand prisoners from those who have been actually convicted. We are, obviously, working on that, Mr. Speaker, Sir.

Mr. Speaker, Sir, in respect of, saying that, about putting in place the non-parole period in sentences of over two years, of course, the Judiciary still has that discretion as the law allows. You can still have someone if they are sentenced to two years or two and a half years, they can still be in a period less than that in respect of the non-parole period. That is all it is simply saying.

Of course, we have to take cognisance of the fact in 1990, when the Honourable Leader of the Opposition was in Government, they imposed a mandatory sentence for those who were in possession of *marijuana*, even if you were first-time offender, if you were caught even with a joint, you went in for three months, that subsequently is removed and I remember as a prosecutor, that cause a lot of heartache, a lot of young, first-time offenders between the ages of 17 and 24 years have

their first taste of prison because of what is now considered a very minor offence. It was, of course, very, very unfortunate. So there are periods in which the State actually does set very minimum periods.

In the same way Honourable Bulitavu quoted South Africa saying that in South Africa, there is a particular provision. Of course, there is an intervention by the Legislature to direct the Court to put in place certain measures which the Legislature believes need to be enforced. Therefore, you cannot come here and then contradict yourself and argue that by us actually putting into place the requirement for non-parole period and sentence over two years, that we have been actually interfering with the Judiciary, of course, we are not, Mr. Speaker, Sir.

The other point that I think is a misunderstanding, Honourable Bulitavu, I think, in a way probably insidiously or perhaps unknowingly try to mislead Parliament by saying, 'If you have a non-parole period, therefore, you cannot have rehabilitation,' that is absolute nonsense. As Honourable Minister for Women said that, 'even if a person has been sent for a non-parole period for nine years, they can still be rehabilitated'. In other words, whilst they are serving their period of sentence, they can learn the various skills, they can be rehabilitated whether it is spiritually, technically and in terms of building their professional skillsets.

The other issue, Mr. Speaker, Sir, of course, that is linked to that is the fact that we have the Yellow Ribbon Programme. Rehabilitation and the rate of recidivism actually as they were always referred to has decreased substantially. The rate of recidivism in the Fijian prison in the 1900s used to be 50 percent, today safely from the latest statistics, was below the rate of 10 percent. In other words, only 10 percent of the people actually go back into prison, obviously something right is being carried out, Mr. Speaker, Sir. Again, I wanted to highlight that the *Timo* Case has been superseded by the *Nadan* Case.

The last point I would like to make, Mr. Speaker, Sir, is about the Parole Board and I brought the *Hansard* actually because Honourable Radrodro had, in fact, asked a question during the Appropriation Bill 2019, where she did ask about the Parole Board and I did say that we have not got it up and running fully completely. We have got some work to do in respect of that. We do not believe that there is any funding required for that and we need to complete some of the preliminary work and we are, in fact, working on that.

We will have a Parole Board up and running. In fact, we are currently looking for four members on the Parole Board, and that does not mean in any way negate the fact that the Parole Board will not be actually up and running.

Mr. Speaker, the last point I wanted to make is that, as has been highlighted, the law is and I again want to read the ruling in the *Nadan* Case, where the Court actually said that the current practice, Mr. Speaker, Sir, in their words, I quote, 'needs to be put right'. They are actually going against the current set of practice of the law, the application of the law and indeed the Convention that has been established. That is simply what we are trying to correct. If you were to go strictly by the ruling of the Supreme Court, there are about 143 prisoners who would actually have to be released because you have to adhere to the Supreme Court ruling.

What we are trying to do is say, "Look, that ruling is not in conjunction with or in alignment with the current policy that we have, and that is, we need to send out a very strong deterrence." In fact, I have seen the list of 140 odd prisoners and I have seen the list of offences that they have carried out, Mr. Speaker, Sir, and they are very serious offences. Predominantly, they are to deal with sexual offences, most of the ones are sexual offences or the next one is grievous bodily harm.

So obviously on one hand, if we are going to talk about the rate of sexual offences in Fiji has increased and if you are then going to release majority of the prisoners who have committed sexual offences, what type of message are we sending?

That is the point, Mr. Speaker, Sir. I would urge the Honourable Members to look at it holistically. Of course, the reality of the matter is that, when you apply the law, there are certain circumstances that actually come up and the Legislature has to react almost immediately, because if you are going to now go and do consultation for the next one year, you have all these people that will be released and subsequently the courts will also then be shackled by the fact that the Supreme Court ruling has come about. It will contradict what is the policy position as opposed to what is the law position, legal position.

Mr. Speaker, Sir, we have to react as a Parliament, as a Legislature to ensure, as highlighted by Honourable Sudhakar, that we actually put ultimately the safeguard of the general population, and that is what we are trying to do, Mr. Speaker, Sir, and I advise all Honourable Members to support this amendment. Thank you.

HON. SPEAKER.- I thank the Honourable Attorney-General for his Right of Reply. Honourable Members, Parliament will now vote.

Question put.

The Question is:

Pursuant to the Resolution of Parliament passed on Wednesday, 20th November, 2019, the Corrections Service (Amendment) Bill 2019, be debated, voted upon and be passed.

Does any Member oppose the motion?

(Chorus of 'Ayes' and 'Noes')

HON. SPEAKER.- Open the vote.

Votes Cast:

Ayes	:	26
Noes	:	14
Not Voted	:	10
Abstention	:	1

HON. SPEAKER.- Honourable Members, the motion is, therefore, agreed to.

Motion agreed to.

[A Bill for an Act to amend the Corrections Service Act 2016 (Bill No. 29/2019), enacted by the Parliament of the Republic of Fiji. (Act. No.      of 2019)]

(Acclamation)

**LAND TRANSPORT (AMENDMENT) BILL 2019**

HON. SPEAKER.- Honourable Members, pursuant to the Resolution of Parliament passed on Wednesday, 20th November, 2019, the Land Transport (Amendment) Bill 2019, will be debated and voted upon today.

Honourable Members, I remind that the debate will be limited to one hour for this Bill. I now call upon the Attorney-General, the Honourable Aiyaz Sayed-Khaiyum to move the second and final motion. You have the floor, Sir.

HON. A. SAYED-KHAIYUM.- Mr. Speaker, Sir, pursuant to the Resolution of Parliament passed on Wednesday, 20th November, 2019, I move:

That the Land Transport (Amendment) Bill 2019 be debated, voted upon and be passed.

HON. LT. COL. I.B. SERUIRATU.- Mr. Speaker, Sir, I beg to second the motion.

HON. SPEAKER.- Honourable Members, I now call on the Honourable Attorney-General to speak to his motion. You have the floor, Sir.

HON. A. SAYED-KHAIYUM.- Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, the Land Transport (Amendment) Bill, as you have highlighted, was tabled on 20th November, 2019, which was a couple of days ago. The Bill seeks to amend the Land Transport Act to:

1. Provide that the procedures in relation to temporary road permits are to be set out in regulations under the Act which, of course, will be put forward by the Honourable Minister for Transport; and
2. Empower the Fijian Competition and Consumer Commission to fix and declare the fares and charges for the use of Public Service Vehicles (PSVs).

Mr. Speaker, Sir, just by way of background, the Act was promulgated in 1998, amongst other things, to establish the Land Transport Authority (LTA), to regulate the registration and use of vehicles and the licensing of vehicle drivers and provide for the enforcement of traffic laws.

Part 6 of the Act, Mr. Speaker, Sir, consisting of Sections 61 to Section 66(b), regulates public service transport by setting out the basic types of public service permits and licences.

Section 66 of the Act provides special conditions in relation to public service permits, including temporary road permits. Temporary road permits, Mr. Speaker, Sir, under a necessary mechanism is intended to allow the Authority to respond to the needs of the public or infrastructure developments in relation to public transport.

Where a new road is built or new residential areas or settlements actually emerge, these areas require public transport services and some of them, immediately. In these circumstances, the Authority has had to issue temporary road permits in order to provide access to public transport for the residents of these areas and to service new routes where new roads have been built.

Furthermore, land transport services in Fiji are provided by businesses from the private sector. Although, these services are regulated by the Authority in accordance with the Act, the success or failure of these businesses is dependent on the businesses themselves. When businesses fail, particularly for a road permit where omnibuses provide a necessary public service, the route that such businesses are responsible for, fall under significant risk of becoming unserviceable.

As such, Fijians including, employees and students, who rely on public transport in order to travel to work or school or access Government services, health centres or the markets, are at a serious disadvantage. In these instances, the Authority has also resorted to issuing temporary road permits to cater for this need.

However, Section 66 of the Act as it was drafted, only allows for the issuance of temporary permits for up to three months, without the possibility of renewal for, at least, one year after the permit expires. If you give someone a permit for three months, you cannot actually give it to them until after one year. This places a significant burden on the Authority to find a business in the private sector to service a route within three months. It is not always possible to do so.

Recent examples of this occurred in March in *Nikhil Buses* in Sigatoka, in April in *Dominion Buses* in Nadi, where the two bus companies were unable to service their routes due to limited resources and the collapse of their businesses respectively. The Authority sought other service providers to step in under Section 66 temporarily under the permit procedure, but was unsuccessful. This was because the 90-day limit on temporary permits and the unavailability of a renewal option makes it extremely difficult for bus companies to allocate the resources to such a limited venture, and indeed as many people would know, some of these routes have very limited passenger travel.

Taking a new route requires significant investment of capital and resources, and these service providers require a more reliable framework in order to make such an investment. The Authority had to resort to external measures such as hastily arranging for mini buses and carriers to service these routes during peak school and work hours. However, these measures have proven inadequate in truly catering to the high demand for public transport.

In other situations, the Authority even resorted to issuing temporary road permits consecutively in actual contravention of Section 66 itself and the intention of the Legislature. This was done for *Sunset Buses* for three trips between Suva and Lautoka for around 18 months, ending in May of this year. The Authority was of the view that no alternative option was available and the interest of the public required them to do so, but in contravention of the law.

Mr. Speaker, Sir, what this example shows is that, clearly, the Section 66 Temporary Permit Framework is not necessarily working. It is completely impractical and serves more to jeopardise the interest of the public by preventing access to transport services.

The Bill, therefore, Mr. Speaker, Sir, seeks to amend the Act to provide that the procedures in relation to temporary road permits are to be set out in regulations, by the Honourable Minister under the Act. This should ensure that the temporary permit system is embedded with the flexible framework that is capable of responding expeditiously to the needs of the public. It also significantly reduces the current high risk of bus service disruption and safeguard essential transport services, particularly for school goers and, of course, the working commuters.

Mr. Speaker, Sir, as I gave the example, that in certain areas in Fiji, temporary road permits may need to take a different characteristic. For example, if a bus company is servicing Monasavu or

somewhere in the inland of Viti Levu, if you are going to issue them temporary permits and if you say to them, “You are going for only three months”, they are not going to take it up.

But if you can give them for longer periods, so that the Honourable Minister after consultation with the bus operators and members of the public, comes up with the regulations, he can then say, “Alright, for rural areas where there are very little people going, we still need buses, we will give a longer period of permit.” But you may, for example, have a Section 66 taking place in the Suva-Nausori corridor. There will be a lot of takers for that. So for that temporary permit, it may actually be a shorter period because they know there are a lot of takers for that and there are other bus services that could provide services on that major trunk route.

Mr. Speaker Sir, the second amendment that the Bill seeks to do is to amend the Act to empower Fijian Competition Consumer Commission (FCCC) to fix and declare the fares and charges for the use of public service vehicles. Section 113 of the Act currently allows the Minister to prescribe fares or charges for the use of public service vehicles by the public. In the year 2000, the then Minister designated the Authority, through the Land Transport (Public Service Vehicles) Regulations 2000, as the responsible entity for fixing and declaring fees and charges for road permits and minibus permits despite the fact that the Act had specifically empowered the Minister and not the Authority with this responsibility.

Establishing a fare structure for public service vehicles is a complex exercise. It takes into account various factors, including the ever-fluctuating price of fuel and inflation. To conduct a fair comprehensive and regular fare review process requires expertise of a variety of fields, including economics and market regulations, financial systems, auditing of accounts. However, the Authority does not have the capacity or the expertise to comprehensively undertake this exercise and rightfully so. The LTA is more focussed on land transport regulation.

The FCCC, in accordance with the Fijian Competition Consumer Commission Act 2010, conducts regular reviews and price assessment exercises in relation to regulating markets where competition is limited or where there is significant public interest in ensuring that the market is fairly regulated. These reviews include *inter alia* amongst other things, the fixing of fuel prices.

The expertise that FCCC has built up in order to be able to conduct these regular interviews is what is required to conduct a fair, comprehensive and regular review process for the fares and charges for public service vehicles. As such, the Bill seeks to amend the Act to empower FCCC to fix the fares of public transport in accordance with the framework provided in the Fijian Competition Consumer Commission Act 2010.

The FCCC, Mr. Speaker Sir, is also a distinct and independent entity, as also shown in the budget this year will now sit under the independent commissions separate from Fiji’s regulatory Transport Authority. This separation of responsibility is also in line with best practice models practised in other jurisdictions, for example, Singapore and various other countries.

By signing the responsibility for fixing and declaring fares to the FCCC specifically, the Bill guarantees that the exercise is undertaken by an organisation that possesses the necessary expertise to do so and ensures that there is no political interference nor is any political manipulation, nor is there any approaches made by bus companies to Ministers and Permanent Secretaries, to LTA that actually regulates them for whether that is in compliance with international road standards or not.

Mr. Speaker Sir, as we also know and as we have discussed in Parliament, in fact, the Honourable Minister had asked FCCC to look at the fare increase submissions that had been made

by bus companies themselves. The issue, Mr. Speaker Sir, is that, once you have an independent body doing so and they can also set as to how regularly bus fares can be reviewed because we found that when the bus fare increase or when the bus companies, I remember in round about 2008-2009 when the price of fuel shot up to US\$140 a barrel, we had then in order to ensure that bus fares actually did not increase, we asked the bus companies to keep the VAT component of the fare but do not increase the bus fares. That was again US\$140 a barrel - the price of fuel.

It subsequently came down as low as about US\$35 a barrel but there was no fare decrease. Now, it has gone up again so they are asking for a fare increase. What we are saying, Mr. Speaker Sir, because FCCC does do regular reviews, we need to also look at perhaps a yearly or two-yearly review of bus fares based on fuel prices increases, based on other factors that may be openly and transparently determined by FCCC where the bus companies have to give their audited accounts and based on that, then the FCCC can independently make a decision which of course gives everyone certainty.

Clause 1 of the Bill, Mr. Speaker, Sir, 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 65 of the Act to facilitate the amendments, proposed by Clause 4 of the Bill.

Clause 3 of the Bill amends Section 66 of the Act by providing for the issuance of temporary road permits as prescribed by the regulations.

Clause 4 of the Bill amends the Act to provide that the Fijian Competition Consumer Commission is to be responsible for the fixing and declaring of fares or charges for the use of PSVs.

Clause 5 of the Bill amends Section 113 of the Act to facilitate the amendments proposed under Clause 3 of the Bill.

Mr. Speaker, Sir, I commend this Bill to Parliament. Thank you.

HON. SPEAKER.- I thank the Honourable Attorney-General.

Honourable Members, the floor is now open for debate on this motion. But before I take the first speaker, I would like to welcome to Parliament this morning the students and teachers from Rakiraki District School.

(Acclamation)

I wish you a very pleasant visit and I hope that it will be rewarding for you. You are most welcome. Thank you for taking an interest in the workings of your Parliament.

Honourable Viliame Gavoka, you have the floor.

HON. V.R. GAVOKA.- Thank you, Honourable Speaker.

Honourable Speaker, let me just start with a letter today in *The Fiji Times* which reads, and I quote: "The Parliament sittings for next year is now reduced to six sittings or five days per sitting."

My question to our elected representatives is, will it be worth the debates or every Bill and law made will be fast-tracked?

I believe our Parliament is fast losing people's confidence in our days. It is becoming more like a place of using numbers rather than healthy and constructive debates before passing Bills. We, the people, will be accountable to whatever laws made by you or representatives and I believe no one wants to be trapped in a fast-tracked law later.

This came from the highlands of Nadarivatu. People all over Fiji are watching the proceedings in this Parliament.

(Chorus on interjections)

HON. SPEAKER.- Order, order!

HON. V.R. GAVOKA.- So, I would urge the Honourable Member from that part of Fiji to try and convince people that it is quite alright to fast-track Bills the way FijiFirst does it.

Honourable Speaker, if I can just touch on the message by the Honourable Prime Minister today where he says in essence that people are not buying into his vision, into his policies for Fiji. How can they buy into your vision, Honourable Prime Minister, when you abuse process in this manner?

(Chorus on interjections)

HON. V.R. GAVOKA.- You cannot. You have seen the results of 2018 where the difference between the FijiFirst and your position was a mere 147 votes.

(Chorus of interjections)

HON. V.R. GAVOKA.- That should be telling you something.

(Chorus on interjections)

HON. SPEAKER.- Order, order!

HON. V.R. GAVOKA.- Honourable Speaker, this morning they talked about IMF, World Bank and all that but remember Ben Ali of Tunisia was a darling of IMF, World Bank and all those bodies. He did not know what was happening in that country. There was a rot in there and when it erupted, Ben Ali had to run for his life to Saudi Arabia.

I have highlighted in here the observation of the *Fiji Sun* in August. One of the feature writers there was saying that he was concerned about the feeling of animosity and anger within our community. So, Honourable Speaker, people know what is happening in this country and they want due process to be followed.

Honourable Speaker, on this Bill, removing the oversights from Parliament will give the Honourable Minister too much discretion. If this may not be in the interest of the bus operators, taxi operators or any investor in the public transport sector's favour and is bad for investments in this country.



I ask the question, Honourable Speaker, why was this Bill not tabled in September? If you remember, Honourable Speaker, the whole week of September when he gave the Consideration of Bills, the announcement was made that there was no Bill to be considered. It could have been given at that time and time limits set on it to enable people to have dialogue on this.

Honourable Speaker, transportation is a minefield. The interests of the taxis, the interest of the buses, the carrier operators, the rental cars, the vans, we hear it every day. It is a minefield, it deserves time for people to have dialogue on this and for the Members of Parliament to have a debate on this knowing what is involved here, the implications because we can read from Committee reports.

Here today, Honourable Speaker, it was tabled on Wednesday and to be passed on Friday in one hour, in one hour!

HON. OPPOSITION MEMBER.- In one hour.

HON. V.R. GAVOKA.- Honourable Speaker, we hope that FijiFirst would read the will of the people, understand it and follow the process like our previous Parliaments. They are now short changing rules and as a result, a lot of amendments come to this Parliament. They pass one law and it is quickly amended a year or two later. It is because of the process in all respects.

HON. A. SAYED-KHAIYUM.- Nonsense!

HON. V.R. GAVOKA.- Honourable Speaker, one of the dangers of this Bill is that, there may be cases in court that are pending, that may have to be pushed aside because of this Bill. People are expecting some judgements on those court cases and what is it? It means that they are trying to hide something, perhaps inefficiency in those court cases, it may rule against them.

Honourable Speaker, it is very unfair on the plaintiffs, who would agree with, the current practice by LTA. Honourable Speaker, we feel that FCCC, we know it is an independent body, we personally know the young man who runs it. He is very professional but perhaps, they should focus on the outlying areas, in the mountainous sides, in the maritime areas for reasons Honourable Speaker, in Taveuni and Kadavu, the taxi drivers and RSL operators set fares according to the way they see it. If the road is sealed, it is a fare; if the road is gravel, there is another fare and if it is a farm road and potholes, that is another fare. And knowing the potholes in this country, you can imagine the suffering the consumers are facing through this neglect on the part of FijiFirst. So maybe that is where FCCC should focus and leave fees as they are or have proper dialogue on this matter.

Honourable Speaker, it looks like a done-deal, but can we just please with the Government to ensure the review process must be prescribed to ensure that consultation, its independence is guaranteed and not subject to political manipulation. Honourable Speaker, I oppose this Bill and I think everyone here should do likewise. Thank you, Honourable Speaker.

HON. SPEAKER.- Thank you. Honourable Niko Nawaikula, you have the floor.

HON. N. NAWAIKULA.- First of all, I am sad that the stakeholders are being denied and I use the last example. If the opportunity was given to the Standing Committee, it will discover for us, for our own knowledge, the other areas where the public is lacking and where regulation is required. One example is, in relation to the need to regulate, not only this, but the outboard motors in Kadavu, they levy huge sums. That would have been the advantage, if you give the responsibility ...

(Honourable Member interjects)

HON. N. NAWAIKULA.- I know!

...because the community come to the Committees with everything and it empowers us to understand that the problem is limited to this, so that we could also address that. That is one disadvantage that this brings. It is sad that the public is being denied to give their views.

The Honourable Minister mentioned Nikhil Buses and Sunset Buses, those people have their views that should have been brought into here - the bus companies and everyone, so that is being denied, that is my first point.

The other point is that, if you take a look at the amendment, it begs a lot of questions which we cannot answer even here. Now, the first one, it appears that there are three basic amendments that this Bill is trying to address.

The first one, if you look at Section 2, it says "Section 65(3) of the principal Act is amended by deleting the word, "The Authority" and substitute with "FCCC", basically meaning wherever that one appears, you take it out and you replace it with "FCCC".

Now you look at Section 65(3) in its current form. In its current form, Section 65(3) sets out that "A person may apply to the Authority for public service types on different kinds of permits - taxi, rental, hire permit, road permit and mini bus permit", so all the issuance of the licence for those would be given by the Authority, meaning the Land Transport Authority.

With this amendment, it will remove the remainder, so from (3), it says "A person may apply to the Authority for this kind of licences - a road licence, an express service, a road contract licence and a carrier licence." It looks like these are the ones that would be limited to the countryside. The implication here is that, while the Land Transport Authority will be the licensor for permits within towns and cities, this is where you talk about in the rural areas, it will now be the responsibility of FCCC.

HON. MEMBER.- No, completely wrong.

HON. N. NAWAIKULA.- Here, I just read it, that is how I am reading this.

HON. SPEAKER.- Order!

(Honourable Member interjects)

HON. N. NAWAIKULA.- Here, Section 65(3) is amended by deleting "The Authority" and substitute with "FCCC". If you go to Section 65(3), it says "A person may apply to the Authority", delete that and put "FCCC".

The first question it begs, why is it that the Authority is going to look after the cities and towns, and then you are putting this to FCCC, that is the first question and we cannot answer it here. We need to listen to the public.

Now, the next amendment says, "Section 66 of the principal Act is amended by - the whole of (1) and (2) is deleted which is "who fixes" and inserted in there is the "FCCC".

Now, another question that is being begged here is that, FCCC that is usually the regulator, becomes the licensee.

(Honourable Member interjects)

HON. N. NAWAIKULA.- Yes, becomes the licensee, if the buses want to complain about the issuing of licence and fares, who do they go to now? Here we have a regulator, who then now becomes a licensee and fixing the fares? It is totally wrong but my point is, we are not experts here to answer these questions. These amendments are begging a lot of questions and we do not even have the mind.

HON. MEMBER.- We do.

HON. N. NAWAIKULA.- You do not have the mind.

HON. MEMBER.- I have the mind.

(Laughter)

HON. N. NAWAIKULA.- That side of the House should listen to Grace Road's Pastor who said "Fijians have very weak minds" and he is referring to the Government. It is the Government who issued the contract to fix the President's house, to fix the Prime Minister's house, so whose mind?

(Honourable Members interject)

HON. SPEAKER.- Order!

HON. N. NAWAIKULA.- So when the Pastor of Grace Road was saying, 'Fijians have a weak mind', he is referring to the Government, they cannot think.

HON. SPEAKER.- Honourable Member, we are talking about the transport.

(Laughter)

HON. SPEAKER.- Hold it, hold it.

HON. N. NAWAIKULA.- Because they said that they have the old system. According to the Pastor of Grace Roads, you do not have the mind ....

(Honourable Members interject)

HON. SPEAKER.- Hold it, we are talking about the Transport Bill. Although you mentioned "Grace Road", "Road" does not come into this.

(Laughter)

HON. N. NAWAIKULA.- Even so, I do know that the Government does not mind to make decisions, very weak.

HON. SPEAKER.- I thank the Honourable Niko Nawaikula. I now give the floor to Honourable Lenora Qereqeretabua. You have the floor, Madam.

HON. L.S. QEREQERETABUA.- Thank you, Honourable Speaker. Mr. Speaker, we are being asked to approve a fast-track Bill under Standing Order 51. That is going to re-define the manner in which bus fares are to be determined as well as how temporary road operating licences or temporary permits will be issued.

After more than 19 years since the LTA came into being, following the enactment of the LTA Act in 1998, this Bill attempts to remove the Authority's Board's sole powers or authority to determine the assurance or the issuance or otherwise of temporary permits or licences in consultation with the bus operators who service almost every corner of the country as long as there is an accessible road that can accommodate buses and other transportation, and this includes the feeder roads.

This requires investment in tough and safe buses, skilled PSV drivers possessing expert driving skills and patience and tolerance in large amounts because a wrong turn or even a slip of a wheel can force a bus to go up road or even plunge down a cliff. There are highly profitable or urban express routes that are serviced extremely frequently as determined by the LTA.

Mr. Speaker, two scenarios that I have pointed out illustrate the two extremities of bus operations in this country, indeed this is an extremely old industry started by the first generation descendants of the Giritiya, therefore this is an iconic industry. This Bill therefore has the real potential to destroy this iconic industry through the granting of temporary permits or licences through regulatory means determined by a single person who happens to be a politician, instead of through a consultative process and determined by Board.

One wonders why ministerial regulations need to be incorporated into the principal item for the LTA to be bound by his directives. Why collective and consultative responsibility is being reduced to the wishes of a single politician or by regulations.

Is this is the type of yet another example of common and equal citizenry and merit-based award of something that is being practiced by the FijiFirst Government or by extension, is it another example of a controlled-freak Government?

Mr. Speaker, what this Bill seeks to amend in the principal Act is LTA's autonomy or total absence of any influence by Government or the Minister responsible from having a say in the issuance of temporary permits or licences.

Twenty years ago, Mr. Speaker, in 1998 when this Act was passed in Parliament, the then SVT Government and the NFP-led Opposition wisely decided to take away the role of a line Minister from this decision-making, making process even by regulations to quell any perceptions of nepotism or cronyism. The sole survivor of that Parliament was the then Prime Minister and the current Honourable Leader of the Opposition.

Provisions in law following the enactment of the 1997 Constitution and its subsequent enforcement from July 1998 were at times drafted in confirmative will to the Constitution's objective of keeping politics and politicians out of decision-making processes that may be construed as influencing outcomes of authorities tasked with making such decisions.

But, Mr. Speaker, as we know, the 2013 Constitution has reverted decision-making to politicians, for example, even the Constitution Office's Commission is chaired by the Prime Minister with Government dominating its position by four Members:

- Prime Minister;
- Attorney-General;
- One each nomination of the two; and
- Two from the Opposition.

Therefore, we know this Government's *modus operandi* - change the rules of the game if it does not suit FijiFirst. One need not look any further than the Public Accounts Committee Chairmanship that until May 2016 was held by the Opposition Member.

HON. SPEAKER.- Honourable Lenora Qereqeretabua, you should speak to the Bill, forget about the ...

(Honourable Government Members interject)

HON. SPEAKER.- Order, order!

...forget the Public Accounts Committee, talk on the Bill.

HON. L.S. QEREQERETABUA.- Thank you, Mr. Speaker. Similarly, in the name of flexibility, a heavily-regulated bus industry will be at the whim of the Minister, who is a political appointee expected to toe the line at all times. This is yet another blow, a direct one to the confidence of the bus operators who have invested substantially in their fleet unexpected by Government to modernise their fleet perhaps at an average cost of \$200,000 per bus through commercial borrowing.

Mr. Speaker, no bus operator will upgrade or even expand if he or she knows that their investment will go to waste should a politician by regulations decide to shred its income by undercutting the business through the entry of another operator whether it will be temporary or otherwise.

(Honourable Government Members interject)

HON. SPEAKER.- Order!

HON. L.S. QEREQERETABUA.- Mr. Speaker, allow me to quote from the Principle Act of 1998 says in respect of Section 66(1) and (2) - That this Bill is now seeking to delete and replace with the provisions that to us, go against transparency. Section 66(1) and (2) and I quote:

- (1) The Authority may issue a temporary road permit for a period of no more than three months. And such permit authorises the carriage of persons on such route or within such areas as maybe specified in the permit and subject to such conditions as may be specified.
- (2) A temporary permit shall not be issued if within the period of 12 months receiving the application. A similar temporary permit was issued in respect of the same route the subject of the new application."

So, Mr. Speaker, the Amendment before us seeks to delete Section 66(1) and replace it with the issuance of a temporary road permit as prescribed by the regulation. This means that a temporary permit can be of any duration, not a maximum of three months as stipulated by the principal Act.

“Temporary” means temporary, nothing else, if there is no limitation then it is not temporary. It can be of any duration and how will a bus operator serving a route react if a temporary permit holder becomes a daily operator for an unlimited period of time. In this case, cut the business and profitability of our service provider and a legitimate holder of a licence for as long as you wish because of the protection provided through the regulation of a politician.

Mr. Speaker, the Bill seeks to delete Section 66(2). Currently, if one had a temporary permit for our route, he or she cannot have a temporary permit, reissued for 12 months in respect of the same route. This is because of the three month maximum timeline for a temporary permit. But this Bill seeks to delete this provision and in conformity to Section 66(1) makes meaningless the definition of ‘temporary’. These amendments are a smack of political nepotism and cronyism.

(Honourable Government Members interject)

HON. L.S. QEREQERETABUA.- We cannot support this Amendment, Mr. Speaker. As for the Amendment, shifting powers to determine fares to FCCC, we know that this may be a retrospective change to consider the application to increase bus fares because it was the FCCC’s boss which head a team to look into an application for bus fare increase when the role is legally bestowed from the LTA.

FCCC may be the ideal determinant of what is fair and just but once again, consultative and legislative framework requires the expert input of those proficient with the transport and bus industry in its entirety, not only monetary aspects. Whether or not the fare hike application is granted is another matter, but either way, it will leave a bad taste for everyone as the outcome in our view would be pre-determined by giving consideration to factors not even remotely linked to the welfare of the most important stakeholders in both bus operator and its passengers.

So, Mr. Speaker, we reiterate our opposition and urge the FijiFirst Government to adopt the consultative approach with all relevant stakeholders, instead of riding roughshod over everyone else in the name of the mantra of mandate because it will come back to haunt you. Thank you, Mr. Speaker.

HON. SPEAKER.- I thank the Honourable Lenora Qereqeretabua. Honourable Minister for Transport, you have the floor.

HON. J. USAMATE.- Thank you, Mr. Speaker, Sir. I am not surprised about the letter that the Honourable Gavoka referred to, about people being switched off about the level of debate that we have here.

As you pointed out, Mr. Speaker, Sir, you are supposed to talk on this particular Bill. We have had people talk about anything else under the sun, other than this Bill. So I am not surprised that people are writing those kinds of letters. We need to make sure that we value-add the time that we spend in this Chamber. Let us talk about the topics at hand.

The other point that has been constantly made by the Honourable Gavoka, expecting us, them to take over Government, I heard that from the years 2014 to 2018. We are still on this side.

All of us do not know what is going to happen in the future, things that are going to happen in the future are going to happen.

(Honourable Members interject)

HON. SPEAKER.- Order, order!

HON. J. USAMATE.- You are beginning to sound like a very, very broken, not a broken record, a shattered record, absolutely shattered record.

On the issue of consultations, the Fiji Bus Operators Association AGM in the year 2011 asked for this section to be amended. That came from the bus operators themselves because they realised that there is a need for Section 66. If there is a need to be able to provide the transport then we can provide you.

(Honourable Members interject)

HON. SPEAKER.- Order, order!

HON. J. USAMATE.- Consultations, I am constantly getting requests from members of the public. On the issue of Dominion Buses, Nikhil Buses, buses are not being operated in trying to get people in, when you had the issue of the Dominion Buses, LTA had to scramble taxis, minibuses and carriers to try to get people moving.

And as the Honourable Attorney-General has pointed out, companies do not want to go in because they only have that 90-day period. It is not enough for them to pull resources out of one part of Fiji, pull a bus out here, people and the entire infrastructure, just to run a service for one week, two weeks or one month. It does not make economic sense. That is why when we are proposing this because we have the people at heart, we are thinking about them.

There are two things that we want to do with transportation; we want to make sure that the transport providers make an adequate profit that they are sustainable, at the same time, we want to make sure that people who require public transportation get that public transportation. That is what Government is trying to do.

Also, remember that under the current setup that we have at LTA, the Minister does not go around awarding permits and deciding who gets a bus licence. All of those powers are with the Land Transport Authority. I do not have that power and I do not want that power. My power as Government is to establish the laws and make sure the authorities work the law. So all of this talk about political interference, where is this coming from? Read the law! The only thing that they have here in this particular regulation, we will have....

(Honourable Members interject)

HON. SPEAKER.- Order, order!

HON. J. USAMATE.- I think time is running out.

The other point that I will point out, even in the discussion that we are having now for bus fares, we have been talking about bus fares, LTA has a technical expertise but in order to bring in all of the economics, cost of transportation, cost of fuel et cetera, we have had to rely on the expertise on

organisations like the FCCC. They have been part of this process of looking at bus fares. So it makes perfect sense ...

(Honourable Members interject)

HON. SPEAKER.- Order, order!

HON. J. USAMATE.- ... to make sure that we can use them in looking at the economic sense and what the fare should be.

The other important thing, Mr. Speaker, Sir, is the point that was made by the Honourable Nawaikula was totally false. The only thing, the only power being given to FCCC here is to decide what the fare should be.

The licencing, who gets the licence and who gets the permit, that authority still resides in the LTA. So to stand up in the House and just say that all of these rights about rural road and this and that, is being taken out by LTA and put into FCCC is totally false. As I said before and I am going to say it again, every time you stand up to say something in this House, please, it is an honourable House, let us have some integrity and make sure what you say is the truth. Thank you, Mr. Speaker, Sir.

HON. SPEAKER.- Thank you. That is the last speaker.

HON. N. NAWAIKULA.- Point of Order.

HON. SPEAKER.- Point of Order. You have got your Point of Order, make it.

HON. N. NAWAIKULA.- He is wrong.

HON. A. SAYED-KHAIYUM.- Was that your Point of Order?

HON. N. NAWAIKULA.- Section 3 states and I quote, "A person may apply to FCCC for a road permit."

HON. A. SAYED-KHAIYUM.- No, it does not say that.

HON. N. NAWAIKULA.- It says that.

HON. A. SAYED-KHAIYUM.- It does not say that.

HON. N. NAWAIKULA.- Thank you.

HON. SPEAKER.- Honourable Attorney-General, your Right of Reply.

HON. A. SAYED-KHAIYUM.- Thank you, Mr. Speaker Sir.

In fact, I, in a very kind of honourable manner, overlooked the Honourable Nawaikula's previous intervention about citing the wrong case and I did not make a big deal out of it. Now, he is making another mistake and I want to make a big deal out of it. Here is from a person who has now got the law wrong and is now inputting words into the actual draft when it is incorrect.



Mr. Speaker Sir, but I want to say one thing about Honourable Nawaikula in respect of his submission and Honourable Qereqeretabua's submission. Honourable Nawaikula writes his own submission and he may get it wrong sometimes. Honourable Qereqeretabua obviously someone writes it for her which she completely regurgitated what I said and in fact because of that, Mr. Speaker Sir, she quoted Section 66(1) and she quoted Section 66(2) without realising what she was actually saying. I will tell you why. The reason and as some of the other Members said, "we need to know the decision between buses that travel on tarseal roads and those that do not travel on tarseal roads, the fares on tarseal should be different to the fares on the un-tarseal roads et cetera".

She did not realise that the certainty that the bus companies are looking for is actually getting rid of Section 66(2) because it says, as the Honourable Minister for Transport highlighted, when for example, Nikhil Buses or Dominion Buses goes under for whatever their own business reason, you need the buses to go in. As the Honourable Minister says, you say to them, "look, under the law, I can only allow you to go in for three months"; no one wants to go in for three months, in particular in a rural road where they do not have a workshop, where there are very few passengers getting on at certain times of the day. They said, "No, we want certainty. Give us a permit for one year or maybe two years. Only then we can, or until such time as you advertise the route". That is precisely the point, she actually stepped on her own foot by citing Section 66(2). That is the practicality of it.

The reality, Mr. Speaker, Sir, she makes it out as though we have got nothing to do with bus companies. I come from a bus owning family from Sigatoka. We used to run bus services to Sigatoka Valley on one side (Western side of the bank). We know how difficult it is.

Mr. Speaker, Sir, this is the only Government that actually has a lot of leeway for bus companies. I will tell you.

The duty rate used to be 32 percent. On top of that, you had other additional levies to protect one single bus manufacturing company. Today, the tariff rate for importing new buses is zero percent and 5 percent, Mr. Speaker, Sir, for other buses that come in.

Road service licences are given up to 13 years to 15 years. They can actually mortgage their licences so they can use it as a security to go and get more money. Today, you see more new buses coming on to our roads than ever before.

You have buses with *Wi-Fi*, some buses are with toilets and you see the buses with windows. Yes, there are some buses with tarpaulins, we want to get rid of that and we are providing various incentives.

Mr. Speaker Sir, that is the reality of it and what it is going to do. When the Honourable Minister is going to draft the regulations, we have constantly been in discussions with the Fiji Bus Operators Association (FBOA) and, indeed, other bus operators; they do not know that.

They are just reading a statement that someone has written for them, probably sitting in a comfortable air-conditioned office without knowing what is actually happening with the bus operators. They do not know the distinction, they do not even know that under the Fiji Bus Operators Association that the level of vote depends on the number of buses you have. This is why till today the FBOA, you have only about four or five companies that hold the presidency.

The more buses you have, the more votes you have. So, if I am a small time operator like Nikhil Buses or whatever running up in Nadarivatu, Sigatoka Valley, if I have four buses, I will have

only four votes. But someone who may be running a large bus company, say, Vatuwaqa or Raiwaqa buses with their 30 buses, they have 30 votes.

HON. R.S. AKBAR.- They do not know.

HON. A. SAYED-KHAIYUM.- Do you know that? You do not know that, absolutely no idea.

So, Mr. Speaker Sir, we know the distinction between the intricacies in the bus industry. As the Minister for Transport highlighted, the bus companies themselves do not want Section 66 in the current form and the limitations that are placed on it. As has been highlighted also that the Minister for Transport, of course, will do the consultation with them in a manner and again we can make that distinction. Currently, Section 66 does not make any distinction between bus services that may be run in Taveuni and the challenges they face, to bus services being run in Nadarivatu, to bus services being run between Suva and Nausori or Navua does not make any distinction.

Section 66 regulation will be able to give the Honourable Minister the level of flexibility and the ability to respond to those particular demographics in particular locations. Is that not providing services to members of the public?

HON. GOVERNMENT MEMBER.- Yes.

HON. A. SAYED-KHAIYUM.- Is that not that looking after the interest of the bus companies?

HON. GOVERNMENT MEMBER.- Yes.

HON. A. SAYED-KHAIYUM.- Of course, it is. And they come here pontificate and read something that they have no idea about, absolutely no sense about it.

Mr. Speaker, Sir, the reality of the matter is that the bus fares as has been highlighted in all jurisdictions, most all good transparent jurisdictions, they talk about transparency, is actually regulated by an independent body.

FCCC has the ability when they actually determine bus fares to be able to bring in experts themselves. They have resident economists and people who are financial analysts. In these past couple of years, all bus operators have made submissions to FCCC. They have all been consulted. FCCC asked for their audited accounts, half of them could not provide their audited accounts. I think we have got we have a little over half now. This idea should create transparency. So, no bus company can come along and say, "I want a 50 percent bus fare rise because the price of fuel has gone up".

What if the other determinants affecting the bus fare input has actually gone down? This creates a lot more transparency, provides a better service capacity for the Honourable Minister of Transport to respond to members of the public, to respond to bus companies who want to do more investment. And again, of course, it creates the level of independence. Thank you, Mr. Speaker, Sir, I recommend this Bill to Parliament.

HON. SPEAKER.- I thank the Honourable Attorney-General for his Right of Reply.

HON. SPEAKER.- The Parliament will now vote.

Question put.

The Question is:

Pursuant to the resolution of Parliament passed on Wednesday, 20th November, 2019, the Land Transport (Amendment) Bill 2019 be debated, voted upon and be passed.

Does any Member oppose the motion?

(Chorus of 'Ayes' and 'Nays')

Votes cast:

Ayes : 26

Nays : 16

Not Voted : 9

MR. SPEAKER.- There motion is, therefore, agreed to.

Motion agreed to.

[A Bill for an Act to amend the Land Transport Act 1998 (Bill No. 30/ 2019), enacted by the Parliament of the Republic of Fiji. (Act No. of 2019)]

### ADJOURNMENT

HON. LEADER OF THE GOVERNMENT IN PARLIAMENT.- Mr. Speaker, Sir, I move:

That Parliament adjourns until Monday, 17th February, 2020 at 9.30 a.m.

HON. A.A. MAHARAJ.- Mr. Speaker, I beg to second the motion.

HON. SPEAKER.- Parliament will now vote on the motion.

Question put.

Motion agreed to.

HON. SPEAKER.- Honourable Members, I sincerely thank you all for your participation and contributions during the parliamentary proceedings in the course of this sitting period. At this juncture, Honourable Members, on behalf of the Secretary-General and the Parliamentary staff, I wish you and your families a Merry Christmas and a Prosperous 2020.

I do not have any doubt that we will be running into each other before the year is out or early in the New Year. So, if you happen to meet me in the Golden Dragon, do not try to ignore me.

Honourable Members, I now declare Parliament adjourned until Monday, 17th February, 2020, at 9.30 a.m.

The Parliament adjourned at 12.36 p.m.