

# **Fijian Electoral Commission**

## **Annual Report**

### **2015**

**August 2016**

## EXECUTIVE SUMMARY

- (i) Pursuant to section 75(4) of the Constitution, this Report is submitted for the period 1 January to 31 December 2015 to His Excellency the President, Major-General (Rt'd). Jioji Konousi Konrote and the Secretary General to Parliament;
- (ii) The Electoral Commission met seven times in 2015. In the course of those meetings the Electoral Commission dealt with vacancies of the Member of Parliament due to one demise of a member of SODELPA (Social Democratic Liberal Party) and five resignations of members of the FijiFirst Party;
- (iii) Lack of resources for institutional support disabled the Electoral Commission from better fulfilling its role;
- (iv) While the Constitution and Electoral Decree serve as the Electoral Commission's points of reference, the Electoral Commission is in dire need of a policy and operational guideline to ensure its objectives are realised effectively;
- (v) A modest annual budget of \$17,600 for 2015 could not secure the service of an Independent Legal and/or Governance Advisor;
- (vi) After some consultations, a Memorandum of Understanding was finally signed in December 2015 with the New Zealand Electoral Commission to address independent legal advice and policy and operational guidelines;
- (vii) Commissioner Vijay Naidu resigned his membership effective 1 January 2015. The remaining commissioners' (Chen B Young, James G Sowane, Jenny M B Seeto, Larry J Thomas, David G Arms and Alisi W Daurewa) term expires on 9<sup>th</sup> January 2017;
- (viii) Correspondence include complaints against the Attorney General/Minister for Elections, the FijiFirst Party and the Supervisor of Elections;
- (ix) Civil Appeal No. ABU0069 of 2014 'Electoral Commission v. Supervisor of Elections' to the Court of Appeal is against the judgement of the High Court delivered on 24<sup>th</sup> August 2014 in the Suva High Court Action No. 240 of 2014. Notice of Motion and Grounds of Appeal was filed on 1 October 2014. No hearing date has been assigned for the Appeal;

- (x) An Election Petition was filed in the Court of Disputed Returns – Action No. HBM40 of 2015 – by the Attorney General against the Electoral Commission and Mikaele Rokosova Leawere with the supporting Affidavit of the Attorney General on 18<sup>th</sup> May 2015 seeking the following reliefs:

“(i) A declaration and/or determination that the First Respondent erred in awarding the vacant seat in Parliament to the Second Respondent;

(ii) A declaration and/or determination that the Second Respondent is ineligible to be awarded the vacant seat in Parliament because he held a public office at that time and

(iii) The Respondent to pay the Petitioner the Costs of this Petition.”

Judgement was delivered on 8<sup>th</sup> June 2015 dismissing the Petition and affirming the Electoral Commission’s declaration of Mr Leawere as Member of Parliament. The Judgement clarified the application of section 24 (2) of the Electoral Decree 2014.

- (xi) The Electoral Commission received reports on Trade Union elections. It did not find it necessary to issue any directives on this matter;
- (xii) The Electoral Commission has no further recommendations to make in 2015 but reiterates those already made in its 2014 Annual Report.



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## **1.0 INTRODUCTION**

1.1 Pursuant to section 75(4) of the Constitution, the Electoral Commission on 1<sup>st</sup> May 2015 delivered its 2014 Annual Report to His Excellency the President, Ratu Epeli Nailatikau and the Secretary General to Parliament. A copy was later given to the Minister for Elections. This Report is now submitted for the period 1 January to 31 December 2015 to His Excellency the President, Major-General (Rt'd). Jioji Konousi Konrote and the Secretary General to Parliament. A copy will also be given to the Minister for Elections.

## **2.0 ABOUT THE ELECTORAL COMMISSION**

### **2.1 Work of the Electoral Commission**

The Electoral Commission met seven times in 2015. In the course of those meetings the Electoral Commission had to deal with vacant seats in Parliament due to:

- (a) the demise of the late Ratu Viliame Manakiwai Tagivetaua of SODELPA;
- (b) the resignation of Dr Neil Prakash Sharma of the FijiFirst party;
- (c) the resignation of Mr Pio Tikoduadua of the FijiFirst party;
- (d) the resignation of Mr Viliame Naupoto of the FijiFirst party;
- (e) the resignation of Mr Jioji Konousi Konrote of the FijiFirst party;
- (f) the resignation of Mr Sanjit Patel of the FijiFirst party.

#### **2.1.1 Subsequent to the above the following persons were declared Members of Parliament:**

- (i) Mr Mikaele Rokosova Leawere in place of the late Ratu Viliame M Tagivetaua;
- (ii) Ms Jilila Nalibu Kumar in place of Dr Neil P Sharma;
- (iii) Mr Alex O'Connor in place of Mr Pio Tikoduadua;
- (iv) Due to the resignation of Mr Jioji K Konrote and the non-availability of Mr Viliame Naupoto to fill the vacant seat, Mr Mohammed Mursalinul Abe Dean was declared in that place;
- (v) Mr Mataiasi Akauola Niumataiwalu in place of Mr Sanjit Patel.

2.1.2 In addition to the seven regular meetings which dealt with vacancies in Parliament, the Electoral Commission was engaged in writing its 2014 Annual Report. Other work included explorative meetings with the New Zealand Electoral Commission on funding potential for institutional support, responding to the draft Multi-National Observer Group (MOG) and other electoral matters.



## **2.2 Budget**

Though the Electoral Commission was not called upon to make a representation on the matter, the Electoral Commission was allocated a modest but separate budget of \$17,600 for 2015. This allowed for only two meetings @ \$500 per meeting per Commissioner in 2015. The Electoral Commission was clearly under-resourced because this allocation failed to consider the reality of its responsibilities. A total of \$38,826 was spent as follows; Local Travel (\$3,530) and Hotel Accommodation (\$3,810) for 2 members from the Western Division, Meal Allowances (\$1,127), Members Allowances (\$30,360 - this included allowances accrued from December 2014).

## **2.3 Governance Issues**

Limited funding disabled the Electoral Commission from securing the service of an Independent Legal/Governance Advisor and in realising a key objective to ensure policy and operational guidelines were in place. For example, while the Electoral Commission is responsible for directing the Supervisor of Elections, as stipulated under the 2013 Constitution's 75. (3), there is no guideline in place to clarify what this should mean. At present, the Fijian Elections Office under the Supervisor of Elections develops and approves its own policies. As the ultimate authority responsible for elections, the Electoral Commission finds this situation unsatisfactory.

## **2.4 Conference Participation**

The Electoral Commission was invited by UNDP to participate in two regional conferences but could only attend one. Commissioners David Arms and Alisi Daurewa represented the Electoral Commission to the Women's Leadership and Political Participation in Honiara, Solomon Islands 2 to 4 June 2015. The UNDP paid for all travel costs. Regrettably, UNDP's invitation to the Pacific Regional Conference on Strengthening Women's Participation in Parliament – Port Moresby, Papua New Guinea 23 to 24 November 2015 was declined for non-availability.

## **2.5 Fijian Electoral Commission Partnership with the New Zealand Electoral Commission**

The Fijian Electoral Commission explored its funding support options and by the end of 2015, had signed a Memorandum of Understanding with the New Zealand Electoral Commission to address independent legal advice and policy and operational guidelines.

## **2.6 Tenure of Member of the Electoral Commission**

Commissioner Vijay Naidu resigned his membership effective 1 January 2015. The remaining commissioners' (Chen B Young, James G Sowane, Jenny M B Seeto, Larry J Thomas, David G Arms and Alisi W Daurewa) term expires on 9<sup>th</sup> January 2017.

### 3.0 CORRESPONDENCE

**3.1** By letter dated 29<sup>th</sup> October 2015 the Electoral Commission received a letter from the Office of the Opposition Leader regarding a complaint against the Honourable Aiyaz Sayed-Khaiyum for false declaration of assets and liabilities.

**3.2** The Electoral Commission also received emails in October 2015 from Kamlesh Sharma (then Director of Corporate Services) regarding the termination of his employment.

**3.3** Pursuant to section 116(2) of the Constitution, a legal opinion has been sought from the Solicitor General's Office with regards to the issues raised in the correspondence, and the Electoral Commission is currently awaiting a response.

**3.4** The following table illustrates the status of the complaints as at the end of 2015:

Date Received	From	Issue	Action Taken
29/10/15	Leader of Opposition	False declaration by Hon. Aiyaz Sayed-Khaiyum of assets and liabilities	FEC responded 13/11/15. LoO's letter of 17/11/15 made further allegations. <u>FEC to respond</u>
4/11/15	Ben Padarath of the Fiji Labour Party	Facilitate request for disclosure of financial records of the FijiFirst Party	Sought legal advice from Solicitor General on 5/11/15. No response by 31 December 2015.
16/11/15	Kamlesh Sharma, Director of Corporate Services, FEO	Wrongful suspension/dismissal	Sought legal advice from Solicitor General on 7/12/15. No response by 31 December 2015.

### 4.0 CIVIL APPEAL NO. ABU0069 of 2014 (ELECTORAL COMMISSION v SUPERVISOR of ELECTIONS)

This appeal to the Court of Appeal is against the Judgement of the High Court delivered on 24<sup>th</sup> August 2014 in the Suva High Court Action No. 240 of 2014. Notice of Motion and Grounds of Appeal was filed on 1<sup>st</sup> October 2014. No hearing date has been assigned for the Appeal but informal sources indicate September 2016.



## **5.0 ELECTION PETITION FILED IN THE COURT of DISPUTED RETURNS – ACTION NO. HBM40 of 2015**

**5.1** This Petition was filed by the Attorney-General against the Electoral Commission and Mikaele Rokosova Leawere with the supporting Affidavit of the Attorney-General on 18<sup>th</sup> May 2015 seeking the following reliefs:

- “(i) A declaration and/or determination that the First Respondent erred in awarding the vacant seat in Parliament to the Second Respondent;
- (ii) A declaration and/or determination that the Second Respondent is ineligible to be awarded the vacant seat in Parliament because he held a public office at that time and
- (iii) The Respondent to pay the Petitioner the Costs of this Petition.”

**5.2** The Electoral Commission was joined as the First Respondent to the proceedings.

**5.3** On the first call before Justice Alfred the Electoral Commission informed the Court that its preference was to abide by the decision of the Court and not participate in the hearing of the matter. However, the Court ordered that the Electoral Commission ought to be represented and make submissions on the same.

**5.4** Pursuant to section 66(8) of the Constitution of the Republic of Fiji the *“Court of Disputed Returns must make a determination on any petition or proceeding within 21 days of the date when the petition or proceeding is brought before it”*. Due to time constraints, the Electoral Commission initially sought to engage local counsel but he was not available. Later the Electoral Commission resolved to engage Mr BC Patel, Barrister of Auckland, New Zealand to appear. This resolution came about because Mr Patel had rendered a written opinion which disagreed with an earlier written opinion of the Solicitor-General given to the Electoral Commission on the issue of Mr Leawere’s eligibility to be declared a member of the Parliament.

**5.5** Counsel for Mr Leawere, the Second Respondent sought to file an application to strike out the Petition on the grounds that the Petition discloses no reasonable cause of action; or is scandalous, frivolous or vexatious; or is otherwise an abuse of process of the Court.

**5.6** However, the Electoral Commission chose not to support the application to strike-out because it felt that it was more important to have the matter resolved through a final determination by the Court of Disputed Returns of the Petition filed by the Attorney-General. The Second Respondent’s application to strike-out was dismissed and the matter proceeded to hearing on 31<sup>st</sup> May, 1<sup>st</sup> and 2<sup>nd</sup> June 2015.



5.7 Judgment was delivered on 8<sup>th</sup> June 2015 dismissing the Petition and affirming the Electoral Commission's declaration of Mr Leawere as a member of the Parliament. The Court asked the Electoral Commission if it sought cost against the Attorney-General as the Petitioner but the Electoral Commission felt that since it was an issue of public importance, it was inappropriate to ask the Court for cost against the Attorney-General. On that basis the Court did not award any cost against the Attorney-General.

5.8 The judgment clarified the application of section 24(2)<sup>1</sup> of the Electoral Decree 2014.

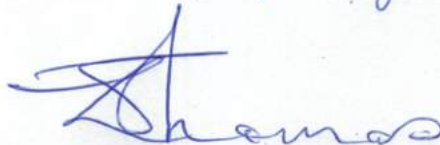
## 6.0 TRADE UNION ELECTIONS

In accordance with the Constitution Sections 75 (2) (e) and 76 (2) (b and c) and (3), the Electoral Commission has a role to perform in other elections beside the General Election. It did not find it necessary to issue any directives on this matter. In accordance with the Electoral Decree 2014 Section 154, the Fijian Elections Office conducted elections for 21 registered trade unions in 2015 at a cost of F\$98,896.67.

## 7.0 RECOMMENDATION

The Electoral Commission reiterates the recommendations of its 2014 Annual Report. It has no further recommendation to make at this time.

Dated this 26<sup>th</sup> day of August 2016



Larry Thomas

for Chen B Young

Chairperson

<sup>1</sup> If any person to whom section 57(1) of the Constitution or to whom subsection (1) applies continues to hold, or is appointed to, any public office after the time at which his or her signed nomination as a candidate for election to Parliament is delivered to the Supervisor, then the nomination of that person shall be deemed to be invalid and that person shall be regarded as not been nominated for the election to which the nomination relates