EXPLANATORY NOTE

This is the Report of the Commonwealth Observer Group which was present for the General Election in Fiji Islands, held from 6 to 13 May 2006.

The Group's report is reproduced here in the form in which it was signed by the Observers prior to their departure from Suva on 21 May 2006. It was transmitted to the Commonwealth Secretary-General on Friday 2 June 2006. During the following week he sent it to the Prime Minister of Fiji Islands, the Chairman of the Electoral Commission, the Supervisor of Elections, the leaders of the main political parties and Commonwealth governments. It was placed on this web-site and released to the media on Monday 12 June 2006. Printed copies are available from:

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- Please note that the page numbers shown on the contents page relate to the printed version of the report.

  Only Annexes II and IV are shown. The others will be added at a later date.

Fiji Islands General Election

6-13 May 2006

REPORT OF THE COMMONWEALTH OBSERVER GROUP

CONTENTS

Annexes

Letter of Transmittal

21 May 2006

Dear Secretary-General,

I have pleasure in sending you the report of the Commonwealth Observer Group which was present in Fiji Islands for the General Election which was held from 6 to 13 May 2006.

We hope that this report will be of assistance to the people of Fiji Islands and that the Commonwealth will continue to assist in strengthening Fiji's democracy in the years to come.

Yours sincerely,

K D Knight QC MP
Chairperson

HE Rt Hon Donald C McKinnon
Commonwealth Secretary-General
Marlborough House
Pall Mall
London SW1Y 5HX
United Kingdom

Mr Paul B B Bengo CBE

Mr Rajabu R Kiravu

Ms Sheila Roseau

Rev Canon Grace Kaiso

Hon Beta Tewareka Tentoa MP

Chapter One

INTRODUCTION

INVITATION

The invitation to observe this General Election came from the Government of Fiji Islands. Prime Minister Laisenia Qarase wrote to Commonwealth Secretary-General HE Rt Hon Don McKinnon on 2 March 2006. Mr McKinnon subsequently confirmed his intention to constitute a Commonwealth Observer Group. An Assessment Mission of Commonwealth Secretariat staff then visited Fiji Islands from 13 to 20 April, to determine whether such a Group would have access to all stages of the process and all parts of the country and that there would be broad support for such a Group from the political parties and civil society. That Mission also briefed those it met on the way in which such a Group would work.

Having been given the necessary assurances on access and after establishing that there would be broad support for the presence of Commonwealth Observers the Assessment Mission proposed that the Secretary-General should establish an Observer Group. On 20 April the Secretary-General wrote to the Prime Minister once more, this time to inform him of his decision to constitute such a Group. The Supervisor of Elections was informed and a press release was issued in London on 26 April (see *Annex I*).

The Observer Group consisted of six Observers, supported by three Commonwealth Secretariat staff, and was led by Mr K D Knight QC MP, the former Foreign Minister of Jamaica. It began work in Fiji Islands on Sunday 30 April and on 1 May held a press conference at the Holiday Inn Hotel in Suva. The composition of the Group is shown in *Annex II*. The Arrival Statement issued by the Chairperson at the press conference is reproduced at *Annex III*.

TERMS OF REFERENCE

The Terms of Reference of the Group, as set out by the Secretary-General in his formal letter of invitation to the members of the Group and reproduced in the 26 April press release, were as follows:

"The Group is established by the Commonwealth Secretary-General at the request of the Government of Fiji Islands. It is to observe relevant aspects of the organisation and conduct of the General Election scheduled to take place from 6 to 13 May 2006, in accordance with the laws of Fiji Islands. It is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether the conditions exist for a free expression of will by the electors and if the results of the elections reflect the wishes of the people.

The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Fiji Islands, the Electoral Commission, the leadership of the political parties taking part in the elections and thereafter to all Commonwealth governments".

Members of the Observer Group were invited by the Secretary-General in their individual capacities and it was made clear in the press release that the views they expressed regarding the elections would be their own and not those of their respective governments or of the Commonwealth Secretariat.

ACTIVITIES OF THE GROUP

One member - Hon Beta Tewareka Tentoa MP - arrived earlier than the rest of the Group and from 26 April was an 'Advance Observer', assessing the preparations for the election and the overall electoral environment. In order to report to the main Group on its arrival she travelled on both the main islands – Vanua Levu and Viti Levu – and spoke to political parties and voters to obtain their views on the process.

On 30 April Mrs Tentoa reported to the main Group and the Group was briefed by the Supervisor of Elections and senior police officers. During the following three days further briefing meetings were held with four of the political parties[1], a range of civil society organisations (including the NGO umbrella organisation, human rights bodies and womens' groups), media organisations, the observers from the University of the South Pacific, Commonwealth High Commissioners and representatives of the other international observers from the European Union and the Pacific Islands Forum. Some members of the Group attended an Elections Office briefing on 3 May prior to deployment. The Group later met representatives of the Human Rights Commission. A Schedule of Engagements is at *Annex IV*.

The Observers and Secretariat team members deployed from Suva on 3 May. One two-person team was based in Vanua Levu, the second biggest of Fiji's islands. Two two-person teams were based in Nadi, in the north-west of the main island, Viti Levu, from where they would cover the Western Division. One of these visited the Yasawa Islands. Two further teams – the Chair's and a one-person team consisting of a staff member - were based in the capital, Suva. The two Suva-based teams would cover the Central Division. The press release publicising the Group's deployment is shown at *Annex V*.

[1] The Soqosoqo Duavata ni Lewenivanua Party (SDL), the Fiji Labour Party, the United People's Party and the National Alliance.

The Chairperson travelled widely, visiting the fourth largest island, Kadavu in the Eastern Division, and the other teams' base locations, as well as covering the 'Suva-Nausori' corridor in which many of the most hotly contested 'Open Seats' were situated.

At the beginning of the deployment period the teams visited the police and the most senior election officials in their area of deployment (Divisional Commissioners), observed the final stages of the campaign and familiarised themselves with their area of deployment. They also replicated at a local level the briefings they had attended in the capital – meeting local representatives of the political parties, non-governmental organisations and other observers – and saw the conditions in which the election day materials were kept. Most important of all, they met with electors - on the street, in shopping plazas and market places, wherever people gathered – and spoke to them randomly to see what they knew and thought of the process.

The Group also observed the 'postal ballot' voting and during the seven polling days – which were from Saturday 6 to Saturday 13 May, with a one day break on Sunday 7 May – saw the voting. By the end of the voting the Observers had visited 287 polling stations and been in 24 of the 25 'Open Seats'. During deployment the Observers were assisted by Observation Notes and Check Lists (see examples at *Annex VI*). On Sunday 14 May the Chairperson issued a statement on the voting phase of the process (see *Annex VII*).

The teams then observed the verification of the postal ballots (on Sunday 14 May, see Chapter Five) and from Monday 15 to Wednesday 17 May were present at the four Counting Centres. The Observer Group teams returned to Suva on Wednesday 17 May for a debriefing and to begin to prepare the Group's Report for transmission to the Commonwealth Secretary-General. On Friday 19 May the Chairperson issued a further statement on behalf of the Group, providing the Group's views on the counting and results phase and the electoral process as a whole (*Annex VIII*). On Sunday 21 May, having finalised their report, members of the Group began to leave Suva. The report was taken by hand to London for presentation to the Commonwealth Secretary-General, with a view to circulation by him in the normal way and subsequent publication.

Chapter Two

POLITICAL BACKGROUND

BRIEF HISTORICAL BACKGROUND

Most authorities agree that the first inhabitants of Fiji Islands came into the Pacific from South-East Asia via Indonesia. The first European contact with Fiji was in 1643 by the Dutch Explorer, Abel Tasman. Captain James Cook made further explorations in the 18th century. In 1874, Ratu Seru Cakobau ceded Fiji's sovereignty to the British crown. From 1879 – 1916 the British administration brought about 60,000 Indian workers to Fiji as indentured labourers to work on sugar plantations. When the indentured labourr system ended, a small group of Punjab farmers and Gujarati merchants started to arrive.

On 10 October 1970, Fiji Islands became a fully sovereign and independent nation within the Commonwealth. Since independence, Fiji Islands' system of government has been that of a constitutional democracy, based on the Westminster model. Fiji Islands has a bicameral parliament consisting of a nominated Senate, an elected House of Representatives, and a Cabinet presided over by a Prime Minister. Fiji Islands politics in the first two decades after independence was dominated by the late Prime Minister and President, Ratu Sir Kamisese Mara.

POLITICAL OVERVIEW

Indigenous Fijian concerns and issues are taken into account through the Bose Levu Vakaturaga (Great Council of Chiefs). This is the highest assembly of traditional chiefs of Fiji and meets at least once a year to discuss matters of concern to the Fijian people. The Council appoints the President and the Vice-President of Fiji Islands after consultation with the Prime Minister.

In 1987 the democratic rule of Fiji Islands was interrupted by a military coup led by then Lieutenant Colonel Sitiveni Rabuka. A four month period of interim rule by the Governor General ended with a second coup by Mr Rabuka on 25 September 1987. Mr Rabuka abrogated the 1970 Constitution and declared Fiji Islands a Republic on 10 October 1987. A short period of military government and two subsequent interim administrations followed.

On 6 December 1987 Mr Rabuka returned the reins of Government to civilian control. Former Governor-General Ratu Sir Penaia Ganilau became President, Ratu Sir Kamisese Mara became Prime Minister and a new cabinet composing civilians and four military officers, including Mr Rabuka, was formed. This Government promulgated a new Constitution on 25 July 1990, which was perceived by many as a racist constitution which promoted only the rights of the indigenous Fijians, and at odds with Commonwealth principles. A General Election was held in 1992 and

Major General Rabuka was elected as Prime Minister. In a snap election called in February 1994 his party won the majority of seats and he retained the position of Prime Minister.

In 1995 Prime Minister Rabuka's Government decided to establish a Constitutional Review Commission (CRC) to review the 1990 Constitution. On 15 March 1995 the President of Fiji Islands appointed The Right Reverend Sir Paul Reeves, former Governor-General of New Zealand, as Chairman of the CRC. The work of the CRC culminated in the creation of the 1997 Constitution.

THE DEVELOPMENT OF THE 1997 CONSTITUTION

The development of Fiji Island's Constitution has focused on ethnicity – in particular, how to accommodate the two main ethnic groups – known in Fiji Islands as indigenous Fijians and Indo-Fijians.

The 1970 independence Constitution provided for a 52 member lower House with 'communal' – racially reserved – representation. The breakdown was twelve Fijians, twelve Indo-Fijians and three for other racial groups. The remaining 25 seats were allocated on a 10:10:5 ratio, with voting on a racially mixed basis. Following the 1987 military coups and the rescinding of the 1970 Constitution, this arrangement was replaced in 1990 by a new Constitution whose dominating feature was a full-scale reversion to communal representation. The 70 seats would be divided on the basis of 37 Fijians, 27 Indo-Fijians, one Rotuman (representing the Fijian Island of that name) and five for other races. The (appointed) Senate would consist of 24 Fijians, one Rotuman and nine others. The Prime Minister had to be an indigenous Fijian member of the House of Representatives.

This was the background to the 1995 decision by the Rabuka Government to establish a Constitutional Review Commission to review the 1990 Constitution, and make recommendations to meet the present and future needs of all in Fiji Islands to encompass racial harmony, national unity and economic and social development. The Commission was to take cognisance of internationally recognised principles and standards of individual and group rights, including their full promotion and protection; the interests and concerns of indigenous Fijian and Rotuman peoples; and the rights, interests and concerns of all ethnic groups in Fiji Islands.

The Commission reported in 1996. Its central recommendation was that there should be multi-ethnic representation based on the Westminster system. "Power sharing" it said, "should be achieved through the voluntary cooperation of political parties or increased support for a more genuinely multi-ethnic party". It proposed that communal seats reserved on a racial basis should continue (twelve for Fijians, ten for Indo-Fijians, two for General Electors and one for Rotumans) as a transitional measure, but that "the people of Fiji should move gradually but decisively away from the communal system of representation". A further 45 members should be elected on a non-racial basis, through fifteen three-member

constituencies. It also said that the Prime Minister should be a Fijian of any race.

On the basis of consensus reached by representatives of a Joint Parliamentary Select Committee a Constitutional Amendment Bill, incorporating most of the Commission's recommendations was unanimously passed through both the House of Representatives and the Senate. A major issue which the Parliamentary Select Committee recommended, and was subsequently approved, was the formation of a multi-party Cabinet as prescribed in Section 99 of the Constitution. On July 25 1997 the President formally assented to the Bill.

The successful conclusion of the 1997 Constitution brought Fiji Islands back into line with the fundamental political values of the Commonwealth. The Constitution confirmed the status of Fiji as a sovereign democratic Republic, but with Constitutional arrangements that satisfied the criteria for Commonwealth membership. It was on this basis that Fiji Islands was re-admitted to the Commonwealth and attended the Commonwealth Heads of Government Meeting (CHOGM) held in Edinburgh in 1997, the first time it had attended CHOGM since its expulsion from the organisation because of the 1987 military coups.

1999 ELECTIONS

Following the General Elections of May 1999, held under the 1997 Constitution and its new electoral process (compulsory preferential voting) and new electoral boundaries, Labour Party leader Mr Mahendra Chaudhry became Fiji's first non-indigenous Prime Minister. The Labour Party and its People's Coalition partners, the Fijian Association Party (FAP) and the Party of National Unity (PANU) won close to 70 percent of the total seats in Parliament. Shortly after being sworn in as Prime Minister Mr Chaudhry announced an inner cabinet in which two-thirds of the members were indigenous Fijians.

2000 GEORGE SPEIGHT COUP

Fiji suffered another period of political, social and economic instability beginning on 19 May 2000, when a group of extremists led by George Speight and claiming to represent indigenous Fijian rights seized control of the Parliament. They took Prime Minister Mahendra Chaudhry and members of his government hostage, holding them for 56 days. The hostage-taking was followed by the purported abrogation of the 1997 Constitution; the resignation of the late President Ratu Sir Kamisese Mara, and the installation of three successive unelected interim administrations. Rulings by the Fiji High Court and Court of Appeal that the 1997 Constitution remained the supreme law of the land led to the General Election of 25 August -1 September 2001 and Fiji's subsequent return to parliamentary democracy under the leadership of Prime Minister Laisenia Qarase, who had led the caretaker and interim governments.

Under a plea-bargain arrangement, Mr Speight pleaded guilty to treason and ten of his co-accused pleaded guilty to a lesser charge. Mr Speight

was sentenced to death, the mandatory sentence for treason. This was subsequently commuted to life imprisonment by the President. In a High Court ruling on 5 August 2004, the Vice-President, Ratu Jope Seniloli, was found guilty of taking illegal oaths during the coup and was sentenced to four years imprisonment. Another high profile citizen convicted on coup related activities was the Deputy Speaker of Parliament, Ratu Rakuita Valalabure.

COMMONWEALTH ENGAGEMENT

Following the May 2000 coup Fiji Islands was again suspended from the councils of the Commonwealth. In December 2000, the Secretary-General appointed Justice Pius Langa, who is now the Chief Justice of South Africa, as his Special Envoy to Fiji. Justice Langa's mandate was to assist Fiji Islands in making a speedy return to democracy and the rule of law and to help forge national unity.

Fiji's suspension from the councils of the Commonwealth was subsequently lifted after the 2001 elections which were observed by a Commonwealth Observer Group (COG). The COG concluded that conditions did exist for the free expression of will by the people and that generally the results reflected the wishes of the electors.

2001 ELECTIONS AND SECTION 99 (5) OF THE CONSTITUTION

Fiji Islands has enjoyed a period of relative political stability since the 2001 elections. The election which brought Prime Minister Qarase's Soqosoqo Duavata ni Lewenivanua Party (SDL) to power was closely contested between the SDL and Mr Chaudhry's Fiji Labour Party (FLP).

Section 99 (5) of the Constitution provides for a multi-party representation in cabinet. This section stipulates that "in establishing the Cabinet, the Prime Minister must invite all parties whose membership in the House of Representatives comprises at least 10% of the total membership of the House to be represented in the Cabinet in proportion to their numbers in the House.

Section 99 of the 1997 Constitution was agreed by consensus by the then Government of former Prime Minister Sitiveni Rabuka, the Leader of the Opposition Mr Jai Jam Reddy, and Mr Mahendra Chaudhry of the Fiji Labour Party. This initiative was perceived to be an attempt to bridge the racially divided politics in Fiji.

Following the 2001 elections, Prime Minister Qarase believed that on the basis of the total membership of Parliament of 71, his SDL party having won 32 out of the 71 seat Parliament was entitled to 45% of the positions in Cabinet. The FLP having won 28 seats was entitled to 39% of the cabinet positions. Thus, in a 36 member Cabinet, this would mean 16 seats for SDL and 14 for FLP. Mr Qarase also argued that the Prime Minister had the right to appoint six more Cabinet members from other independent MPs and Senators from the Upper House.

Mr Chaudhry on the other hand believed that his FLP was entitled to a proportion of the total seats in the Parliament which would mean 19 Cabinet seats for SDL and 17 for FLP.

This became a contentious issue which dominated the politics of the country in the first four years of SDL rule. The legal interpretation of Section 99 of the Constitution culminated with Prime Minister Qarase requesting the President to refer to the Supreme Court, for its opinion, a number of questions about the correct interpretation of this section of the Constitution, and the numerical entitlements of the SDL and the FLP in a multi-party Cabinet.

On 9 July 2004, the Supreme Court of Fiji gave its final ruling on the multiparty cabinet case. The Court said that neither Mr Qarase nor Mr Chaudhry's interpretation was correct. The correct interpretation would be that the proportion of the parties having more than 10% of the seats of the House of Representatives should be in the same proportion in the Cabinet as there are members, whatever the total composition of Cabinet. In this case, the only parties with more than 10% of the total membership of the House was the SDL and FLP.

The Court ruled that while the Prime Minister may appoint independent members of the House of Representatives and members of the Senate who are not members of a political party, he will have to ensure that the proportion of the SDL to FLP will remain the same in Cabinet.

Following the Supreme Court ruling, Mr Qarase offered cabinet positions to members of the FLP and allocated them with various portfolios. Mr Chaudhry reacted by not accepting the offer on the basis that the portfolios given to FLP members were insignificant. Mr Qarase argued, however, that the choice of who should join Cabinet, and the portfolios they were given, were his prerogative as Prime Minister, in accordance with the Constitution.

Prime Minister Qarase has always maintained his position that he does not believe in the concept of a multi-party cabinet but would rather support a multi-ethnic cabinet.

In November 2004, Mr Chaudhry decided that his FLP would not enter into a multiparty cabinet with Mr Qarase's SDL coalition Government, and instead officially took up the role of Leader of Opposition.

TALANOA PROCESS

From 2001 to 2004, Mr Qarase and Mr Chaudhry maintained engagement through a Talanoa (dialogue) Process. This process was facilitated by the East-West Centre, based in Hawaii, to promote a Pacific Island style dialogue which would bring together people with opposing views without any predetermined expectations for agreement. Some of the key issues that were discussed during the Talanoa Process included land issues, non-controversial amendments to the constitution, the UN Report on the

Elimination of all Forms of Racial Discrimination and the reform of the sugar industry.

CMAG MEETING IN LONDON, MAY 2004

At its 23rd Meeting held in London on 22 May 2004, the Commonwealth Ministerial Action Group (CMAG) received an oral presentation from the Hon Kaliopate Tavola, Minister of Foreign Affairs of Fiji Islands, regarding developments in the country.

CMAG commended the considerable progress Fiji Islands had made in addressing the issue of democratic governance and national reconciliation in line with CMAG's earlier statements. The Group welcomed ongoing dialogue between the Government and the opposition through the Talanoa Process on a number of key issues. CMAG encouraged the two parties to come to agreement on outstanding issues and appreciated the commitment to abide by the rulings of the Fiji Supreme Court.

In recognition of the progress Fiji Islands made, CMAG concluded that Fiji Islands should not remain on its agenda. CMAG requested the Secretary-General to continue to monitor the situation in Fiji Islands in pursuance of his good offices role and to provide appropriate technical assistance, as required by the Government of Fiji Islands, to strengthen democratic processes and institutions.

TENSION BETWEEN THE GOVERNMENT AND THE MILITARY COMMANDER

Prime Minister Qarase and the Commander of the Fiji Military Defence Force, Commodore Frank Bainimarama have had an uneasy relationship since the 2001 elections. Commodore Bainimarama narrowly escaped assassination from a failed mutiny, orchestrated by some members of the Royal Fiji Military Force. Commodore Bainimarama has made public his view that he believed there were also some politicians in the SDL Government that were behind the failed mutiny.

The military personnel involved in the mutiny were quickly identified, charged and convicted through the military tribunal process. The suspected civilians, however, have not been through as speedy a process as as undertaken by the military. Some of the high profile citizens who were charged and convicted under coup related offences include former Vice President and the Deputy Speaker of Parliament.

The Commander has also been very vocal with his opposition to the Government's Reconciliation, Tolerance and Unity Bill. This Bill, if enacted according to Commodore Bainimarama would likely offer amnesty to coup related convicts like George Speight and some others who were involved in the 2000 coup. It would also possibly offer pardon and avoid future prosecution of those suspects who were involved in the events of 2000 and perhaps similar events in the future. The Government's argument had been the Bill's objective was to give due consideration to those who were involved in the coup (especially high ranking Chiefs) because of the

pull of traditional responsibilities and expectation from their communities rather than criminal intentions. Commodore Bainimarama lobbied against it and even deployed some soldiers out to villages to explain what he perceived was the real intention of the Bill – to pardon those who were already convicted for coup related offence. This Bill was also criticised by the Fiji Law Society on the grounds that it was unconstitutional, it could also undermine the authority of the courts, and it could perpetuate a coup culture in the country.

The ongoing tension between the Government and Commander Bainimarama resulted in the Vice President, Ratu Joni Madraiwiwi facilitating in early February 2006 a peaceful dialogue between Prime Minister Qarase and Commodore Bainimarama. The main objective of the talks was to discourage Bainimarama from publicly voicing his concerns against the Government and for both parties to agree on an official channel of communication to express concerns on any issues. This deal fell through a few weeks later when Bainimarama complained that the Government was failing to respond to army requests concerning security issues. The Prime Minister on the other hand complained that the Army was dictating to the Government what it should and should not do.

2006 GENERAL ELECTION

During our briefings and consultations before and during the poll and count, the people we met expressed great interest in our mission and were all looking forward to the 2006 General Elections. This General Election was seen by many as an important national event in which they would be able to exercise their constitutional right through the election of their Leaders to the House of Representative.

Fijians from all the different races and walks of life, from both urban and rural areas, expected their elected members of parliament to contribute in building political stability in Fiji Islands and promoting economic development both at a national level and within their respective constituencies.

People made reference to such issues as:

- the functioning of state institutions in upholding the rule of law and the Constitution;
- the freedom of the media;
- the observance of basic fundamental human rights;
- the strength and functioning of political parties;
- the role and influence of the Church in society, and;
- the role of the Great Council of Chiefs.

These are some of the key pillars in Fiji society that have enhanced the democratic processes and ensured the proper functioning of representative Government in Fiji.

Many concerns were also raised on issues such as the ethnic divide in the national politics of the country, the land tenure system, the role of the military, and the role of women in society. We were briefed on how these issues have impacted on the political, social and economic development of the country. Our Group will not attempt to offer possible solutions to these challenges. We trust, however, that the new Government will work with all key sections of society to formulate appropriate policies to address these challenges with the aim of promoting national unity and economic prosperity for the people of Fiji Islands.

Chapter Three

THE ELECTORAL FRAMEWORK AND PREPARATIONS FOR THE ELECTION

LEGAL FRAMEWORK

The 1997 Constitution and the Electoral Act 1998 (as amended) are the basic legal instruments which established the legal framework for the 2006 General Election. The Act is supplemented by a number of regulations.

Since the 2001 General Election there has been no fundamental change in the constitutional and legal framework. The Executive consists of the President, appointed by the Great Council of Chiefs, whilst the Senate consists of a majority of members appointed by the President and a minority of members appointed on the advice of the Prime Minister and the Leader of the Opposition.

The House of Representatives, on the other hand, consists of elected members, at present numbering 71. The President appoints a Prime Minister from amongst them, a person "who in the President's opinion can form a government that has the confidence of the House of Representatives". Invariably, the President chooses the leader of the political party which has won the majority of seats in the General Election. The Constitution stipulates that that Prime Minister must then invite political parties to join her/his Government if they have 10 per cent or more of the MPs elected at the General Election.

The Electoral Act 1998 covers the powers of the Supervisor, constituency boundaries, voter registration and the conduct of elections. It also defines electoral offences and the procedures for handling election petitions. Both registration and voting are compulsory and there are penalties for failure to do either.

Later in this report we make a number of recommendations some of which, if implemented, will require changes to the election laws of Fiji Islands. A number of recommendations with legal implications were also made by the Commonwealth Observer Group which was present for the General Election in 2001. We hope that in view of these and other proposals for change the Electoral Commission and the Office of the Supervisor will conduct a review of the electoral law with a view to making proposals to Parliament such that Fiji Islands has appropriate laws in place for the next General Election.

THE ELECTION MANAGEMENT BODY

There are two key elements to election management in the Fiji Islands: the Electoral Commission and the Supervisor of Elections. The Electoral Commission has general responsibility for the registration of voters and

the conduct of elections. It consists of five members, all of whom are part-time commissioners. At present there are four men on the Electoral Commission and one woman. The Chairperson is appointed by the President and other members of the Commission are appointed by the President, on the advice of the Prime Minister, following consultation by the Prime Minister with the Leader of the Opposition. By law, the Chairperson must be or be qualified to be a judge.

The Supervisor of Elections, currently Mr Semesa Karavaki, is responsible for the management of the elections. He has the right to attend meetings of the Electoral Commission and must carry out the directions of the Electoral Commission concerning the organisation of the elections. The Supervisor must also be a qualified lawyer.

The Office of the Supervisor of Elections is usually thinly staffed and is then supplemented by officials from government departments during the period of the election. The reliance of government officials in running elections has, at times, raised concerns over the independence of the Electoral Commission and the Office of the Supervisor of Elections, particularly on the part of some of the political parties.

The Opposition also expressed concern that there was an imbalance in the staff recruited immediately prior to the 2006 General Election, with more indigenous Fijians than Indo-Fijians employed in activities such as voter registration and on the polling days as polling station staff. On the charge of ethnic imbalance the Supervisor of Elections responded that his appointments were based on merit and that racial and ethnic balance was a secondary consideration. He also referred to the availability of staff and the role that was envisaged as material considerations.

We make a number of recommendations in the final chapter of this report concerning the independence, powers and capacity of the Electoral Commission and the Office of the Supervisor of Elections.

BOUNDARY DELIMITATION

There was no change in constituency boundaries for the 2006 General Election.

The Constituency Boundaries Commission, which is responsible for the delimitation of boundaries, decided early in 2006 that the number and make up of the constituencies should remain the same, based on a communal system of representation. The number of seats in Parliament for this General Election would therefore be 71. There would be 23 'communal' seats where only indigenous Fijians could vote, 19 'communal' seats where only Indo-Fijians could vote, one 'communal' seat for the Rotumans and three 'communal' seats for the 'General' Electors (for those not on any other register). There were 25 'Open Seats', in each of which any elector in that constituency could vote. Some of the political parties argued that the retention of the 'communal' seats heightened racial and ethnic polarisation. The 2001 Commonwealth Observer Group

agreed with this position and recommended that there should be more rapid progress away from such a form of representation.

THE ELECTORAL SYSTEM

Fiji Islands uses the preferential Alternative Vote system. Under this system, voters can vote directly for a political party, automatically endorsing the list of preferences provided by that party. Alternatively, the voters can rank candidates on the ballot paper in the order of their choice. This is the third time that a General Election in Fiji Islands has been conducted under this system. Before that it was conducted under the plurality majority system ('first past the post').

Voting under the preferential alternative system is quite complex and requires a significant amount of voter education. In the 2001 election more than 11% of the ballot papers were declared invalid, mainly due to the complexity of the voting system. Prior to the 2006 General Election the Supervisor of Elections said that adequate voter education had been provided. However, a number of political parties, non-governmental organisations, media commentators and others challenged this and argued that voter education was still insufficient.

Under the alternative vote system a candidate is declared elected if she/he obtains fifty per cent plus one of the valid votes on a count of first preferences. If no one has such a majority the candidate who received the lowest number of votes on a count of first preferences is excluded and her/his votes are passed onto the next candidate in the order of preference.

If no candidate secures the required more than fifty per cent plus one on the second count the process is repeated until a winner obtains more than fifty per cent plus one as required by law.

POSTAL BALLOT

Voters who cannot attend one of the polling stations during polling are entitled to cast their votes by postal ballot as long as they fall into one of the appropriate categories. The grounds on which an application for a postal ballot may be made are set out in Section 90 of the Electoral Act 1998 (see *Annex IX*). Application for postal ballots are sent to the Returning Officers and the names of voters whose applications for postal ballots have been accepted are communicated to the Assistant Returning Officers so that they are not allowed to vote twice.

We noted that the numbers of voters applying for postal ballots was much increased at this General Election and feared that this would lead to delay during the counting process.

VOTER REGISTRATION

According to the law, the voter register should be updated annually. However, this has never been done, largely due to inadequate resources on the Office of the Supervisor of Elections, and it was not done in the period after the 2001 General Election. A complete re-registration took place across the country from 12 to 30 September 2005 with a further period in January 2006. The register which was produced as a result was known as the Provisional Roll.

When the final Register of Voters – used as the register for the polling stations - was produced it contained 479,674 names[2]. This compared with 468,772 in 2001. Given that the Elections Office had a figure of approximately 519,000 as their guide to the number of those who were eligible the number of people registered was quite substantial, approximately 90%. Amongst the reasons for this high figure was the scale of the Elections Office registration drive, which included house-to-house registration, and that registration is compulsory.

Some of those we met complained that a number of people did not register because they were not aware of the need to do so, some believing that if they had registered for the 2001 election they were not required to do so again. Given the level of registration we did not regard this as a major criticism.

So that members of the public could find out whether their names were on the Provisional Roll this was displayed from 23 February to 13 March 2006. Claims and objections could then be made at any point up to polling day and the Roll amended accordingly.

However, it requires considerable voter education to ensure that people come forward to inspect the provisional register and satisfy themselves that they had been placed in the right constituency. Much of the effort to ensure verification was undertaken by the political parties, which had a vested interest in ensuring that their supporters were registered.

It is in our view important that the voters' register is printed early. For the future we suggest that copies of the register should be sent to the presiding officers before the General Election, so that they can be displayed at or near the polling stations at least for some days before the days of polling and provide another opportunity for people to check whether their names are present on the register.

Finally, we believe that consideration should be given to whether or not the use of Voter Identification Cards could assist the process.

[2] Of this total 240,308 were men and 239,366 were women. A breakdown by ethnicity shows 256,014 indigenous Fijians, 204,470 'Indo-Fijians', 13,817 'General' and 5,373 Rotumans.

VOTER EDUCATION

Voter education is the dissemination of election-related information during the election period. It is meant to ensure that voters participate more effectively in the election and that they become more knowledgeable of the electoral process and, for instance, are informed on why, how and when to vote. The expected result is increased awareness of the voting process, increased turnout, orderliness, speed of processing, tolerance and an increased likelihood that the election results will be accepted.

The ideal would be for voter education to be a continuous process. However, given financial constraints many countries organise a comprehensive voter education programme in the year before the election is due.

For this General Election the Elections Office organised a comprehensive voter education and awareness programme, which included the holding of public meetings throughout the country and the printing of material in several languages. Close to the polling period itself the Elections Office made extensive use of the print media and television to increase public awareness of the electoral process.

However, some political parties and civil society organisations complained that voter education was still inadequate, especially in view of the fact that the date of the election was held earlier than expected.

We believe that the political parties and civil society organisations should see voter education as one of their responsibilities too and noted that some parties and some NGOs did engage in voter education activities. While there is a need for the Elections Office to improve its activities in this area, in fulfilment of its statutory duties, we are of the firm view that it is the duty of the parties and civil society organisations to be fully involved in this process.

We noted that the Fiji Labour Party complained about one particular aspect of the voter education effort undertaken by the Elections Office. Labour Party Leader Mr Mahendra Chaudhry alleged that 'How to Vote' advertisements from the Elections Office in Hindi had said that voters could tick above or below the line and had therefore misled them. (There were only supposed to be numbers below the line, so ticks below the line would have led to the ballot paper being declared invalid). Mr Chaudhry alleged that despite protests by his party the advertisements had not been corrected or withdrawn and that they were part of a deliberate effort by the Elections Office to mislead Indo-Fijian voters.

The Elections Office told us that on being advised of the errors in the Hindi version of the 'How to Vote' television commercial steps were taken to immediately remove the advertisement. On 4 May the Elections Office telephoned Fiji TV requesting that the commercial be withdrawn and received assurances that it would be. However, the commercial was again run on 5 May. A letter was sent to Fiji TV demanding that the commercial

be withdrawn and this was followed up personally by the Chair of the Electoral Commission. The advertisement was withdrawn on 6 May.

COMPLAINTS

This was not the only complaint made to the Elections Office prior to the General Election. There were many, mostly from the Fiji Labour Party. Some were made during the period the Group was in Fiji Islands and were brought to our attention by the Labour Party. Some concerned particular constituencies. There were detailed complaints about the preparation of the register. But two others were of general significance.

In a letter to Electoral Commission Chairman Mr Graham Leung on 26 April Mr Chaudhry complained that 'racial parity' was not being assured in the recruitment of polling officials. Mr Leung replied that "we try to employ a balance where appropriate, but sometimes practicalities prevent this. For example, the Elections Office has no control over which public servants will be released for the election. Also it is impractical to employ an equal balance of races in all areas of Fiji".

On several occasions Mr Chaudhry claimed that, as he put it on 10 May, "ballot papers were being printed in far greater excess than required for many constituencies and that many of these ballot papers remained unaccounted for". After complaining to the Supervisor of Elections the Labour Party referred the matter to the police. After investigations involving the Government Printers and the Elections Office the police decided not to pursue the matter, because of lack of evidence. The Supervisor of Elections repeatedly told the media that it is usual for election management bodies to print more ballot papers than there are electors, because it is not known where voters will chose to vote when they have a selection of polling stations available, because it is critical that the polling stations should not run out.

RECRUITMENT OF STAFF AND TRAINING

In between elections the Office of the Supervisor of Elections has relatively few staff, which are then substantially increased as the General Election approaches. A number of political parties expressed their concern at the lack of capacity of the Office of the Supervisor of Elections and its impact on the professionalism with which it was able to bring to the many tasks it was required to undertake before the election. Our view is that the low level of staff in between elections makes it difficult for the Supervisor to plan early and effectively and we believe that this was reflected in the shortcomings during the preparations for the 2006 General Election.

The reliance on the four Divisional Commissioners – full-time civil servants - as Returning Officers was also an issue of concern to some political parties, since they believed that it could affect the independence of the Elections Office. We believe that for future elections it would be preferable for such senior positions to be held by full-time employees of the Elections Office. In this context we welcome the statement of intent

made by the Supervisor of Elections that for the next General Election each constituency will have its own Returning Officer.

The issue of balancing the racial and ethnic groups in recruitment was also an area of contention. Our view is that while merit must always be the key factor greater balance would have reassured the Indo-Fijian community in particular and that greater efforts in this regard should be made in future. The staffing of the electoral operation should reflect the ethnic diversity of the country. So far as gender balance and youth representation are concerned, we were impressed with the numbers of both young people and women employed for this General Election, especially at polling stations. However, we noted with regret that few of those in the most senior positions were women. We hope that greater progress can be made in this area by the time of the next General Election.

The training of the electoral staff was undertaken by 'cascade'. The Returning Officers were trained first and these then trained the Assistant Returning Officers, who subsequently trained the polling and other election related staff.

The Elections Office produced a comprehensive series of manuals and guides for the electoral staff, such as Instructions to Returning Officers and Assistant Returning Officers, Instructions to Polling Centre Coordinators and Presiding Officers, Instruction to Polling Centre Clerks, Instructions to Ballot Box Teams, Instructions for the Count, Instructions for the Polling and Counting Clerks, etc.

SUPPLY OF MATERIALS AND DISTRIBUTION

Most of the materials were procured and distributed in time. However, the printing of both the Registers of Voters and the ballot papers by the Government Printers was done late and delivery to the Returning Officers and, thereafter, the Presiding Officers, was therefore also late in many cases.

SECURITY

Responsibility for security was with the police force. In the run-up to the General Election the Commissioner of Police made a number of statements to re-assure the public that it would be well provided for. The police made clear that there would be no need for army assistance, although it was reported to be on standby to provide support if needed.

The army continues to have a high profile in public life in Fiji Islands and as this General Election approached there was some concern at the possible implications of its involvement in political matters.

We noted with concern the remarks made by the commander of the armed forces, Commodore Bainimarama, in an interview and at a press conference on 18 May, the day of the swearing-in of the Prime Minister and before the last seat had been declared. He publicly stated that in his view the independent MPs should support the Fiji Labour Party rather than

the SDL, said that he would fight the SDL party if it was returned to office and maintained its previous policies. He had earlier made a number of political remarks before the General Election. We believe that such involvement in political matters is wholly inappropriate and in contravention of the Constitution. Because of this, and the tension and anxiety it induces, we trust that it will not continue. If it does the loser will be the people of Fiji Islands.

ELECTION TIMETABLE

The timetable for the General Election was as follows:

Monday 27 March 2006	Dissolution of Parliament
Tuesday 28 March 2006	Issue of Writ
Friday 31 March 2006	Petitions of Demonstrated Support
Tuesday 4 April 2006	Close of Electoral Roll
Tuesday 11 April 2006	Nomination Day
Wednesday 12 April 2006	Withdrawal Day Objection Day
Wednesday 18 April 2006	List of Preferences
Saturday 6 May 2006	Polling Period starts
Saturday 13 May 2006	Polling Period ends
Monday 15 May 2006	Count starts
Thursday 18 May 2006	Estimated date for count to end and for results to be declared

Chapter Four

THE CAMPAIGN AND MEDIA

THE CAMPAIGN

Political parties were able to campaign freely in Fiji Islands during the campaign period for the 2006 General Election. The basic democratic freedoms of assembly, association and expression were respected. Campaigning was conducted in a peaceful atmosphere, without intimidation, and all candidates had access to the electorate.

We arrived a week before polling, so we were able to observe the very end of the campaign period. Close as this was to the election days, we did not feel any 'election fever'. The campaigns were generally low key and there was little excitement.

We observed a few rallies, which were small and restrained compared with those we have seen in other countries. We did not see any motorcades, demonstrations or other major public manifestations of party support. We had the impression that much of the campaign was conducted through door to door visits and community meetings.

Several candidates indicated that they had expected the elections to be held in August and confessed that their level of preparedness was greatly affected by what they considered to be the early announcement of the General Election. Independent candidates and smaller parties in particular, due to their lack of capacity, were not able to campaign as actively as they wished

At the same time, extensive use was made of the media, which was flooded by campaign messages. Posters were extensively used especially in urban centres. Religious and community leaders/chiefs continue to have a significant influence on the population so campaign managers made special efforts to secure their support.

The events of May 2000 seemed to loom large in the minds of voters, and indeed the whole population, and provided an undercurrent to the whole election. The uncertainty about the future stability of the country was further brought into focus by the unease in the relationship between the armed forces and the SDL ruling party before and during the campaign period. The political parties seem to us to have exploited this state of uncertainty in shaping their party slogans for the campaigns. This is illustrated by the fact that the common thread running through party campaign slogans was the call to voters to use their vote in securing a stable future for themselves.

ISSUES IN THE CAMPAIGN

While the parties made promises in many areas it was clear right at the outset that bread and butter issues were the main focus of the party manifestos and the main topics of discussion and debate throughout the campaign. The political parties shared a common commitment to tackling underlining problems such as unemployment, poverty and economic development. Nevertheless each party was distinct in its own approach and had its own campaigning style, whether this was through the media or door to door.

COMPLAINTS ABOUT THE USE OF GOVERNMENT RESOURCES

Controversy erupted early in March when the ruling SDL was criticized by the FLP for distributing public funds through the Duavata Initiative Trust to needy people, allegedly in an attempt to buy votes. The campaign coordinator of the SDL told FijiLive that the charity was not involved in bribery and that the party had been raising money for the poor since 2002. The Commissioner of Police confirmed to the Fiji Times that the FLP had lodged a complaint about the scheme.

This raised the issue of incumbency and that it can be difficult to determine when caretaker ministers are acting as candidates or in their capacity as ministers. The distinction between philanthropy and bribery will have to be considered. Caretaker Prime Minister Qarase said that all ministers knew the rules about state resources and campaigning and would follow them. Nevertheless, we believe that a Code of Conduct for candidates, spelling out in detail what candidates can and cannot do, would be helpful by providing clear guidelines.

PARTY RIVALRY AND RACE RELATIONS

Intense rivalry and bickering between the party leaders was quite evident, notably between the two major parties, SDL (the ruling party) and the FLP (the main opposition party). The party leaders took every opportunity to criticise and accuse each other and to make allegations against each other. The supporters of the SDL are mainly indigenous Fijians, whereas the supporters of the Fiji Labour Party are mainly Indo-Fijians, so there were fears that party rivalry might go too far. The Police Commissioner made clear that politicians should avoid using hate speech and that the police would prosecute anyone who appealed for votes on the basis of hate and fear.

The campaign period highlighted strong support within the population for peaceful co-existence between the races in Fiji Islands. The party manifestos reflected these sentiments in varying degrees. However, during the campaigns candidates tended to exploit the racial differences to consolidate their support.

Race still has a significant influence on the political process in Fiji Islands. For instance, the Prime Minister and Leader of the SDL admitted in a statement to the nation on the eve of the election that the indigenous

Fijians were not yet ready to accept that "anyone irrespective of race can be appointed a Prime Minister".

As highlighted earlier, the electoral system is not of very much help in promoting a multiethnic culture, because it is ethnically based. However, we noted several letters to the media and media editorials condemning the tendency by politicians to stir up racialist sentiments.

MILITARY INVOLVEMENT IN THE CAMPAIGN

Commodore Frank Bainimarama, the military commander, was visible and active before and during the campaign period, to the discomfort of many others. The army was initially opposed to the date set for the elections, citing the poor status of the electoral registers and the need for a national census prior to the General Election. According to reports, in early March 2006 the military commander announced a plan for the military to travel throughout the country to engage with the people. It was also reported that the army would be informing the population of the truth as they saw it about the events surrounding the coup of 2000 and giving its views on the policies of the ruling SDL. Despite his assurance that he would respect the outcome of the elections his intervention created an atmosphere of unease during the campaign. Its impact on the overall process is not clear, but it highlighted the need to examine the adequacy of the legal provisions that govern the army and its role.

LAND

Land is a sensitive issue in the politics of Fiji and it received considerable attention during the campaign. 86% of the country's land is controlled by the traditional Fijian chiefs. The ethnic Indo-Fijians, who are the main farmers, lease land from the Fijian land owners. However leases are currently expiring and many are not being renewed. It is projected that by 2009 ninety five percent of all the leases will have expired. As a result of the uncertainty and the threat to the income of the farmers many are leaving the rural areas, putting pressure on the already overstretched urban infrastructure. This situation is being compounded by the gradual collapse of the sugar and garment industries. The manifestoes of the main political parties addressed these issues, in an attempt to safeguard the interests of indigenous land owners and those of the farmers, while at the same time promoting economic development.

CAMPAIGN FINANCE

Elections are expensive, in Fiji Islands as elsewhere. Candidates we talked to, especially those who had participated in previous elections, indicated that they needed more campaign funds this time compared with previous elections. However, they were unwilling to reveal the sources of their funds, and there is no legislation compelling political parties to reveal their sources of funding. We believe that disclosure requirements should be introduced, covering both party income and expenditure, so that there is greater transparency, and that consideration be given to the introduction of expenditure limits.

CODE OF CONDUCT

On 26 November 2005 Electoral Commission Chairperson Graham Leung proposed that there should be a Code of Conduct for the behaviour of the political parties and candidates. This would cover the use of inflammatory language; appeals to racial, religious, regional or gender divisions; false and defamatory allegations; the incitement of violence or hatred; and the disruption of meetings and political rallies. It was proposed that the Code should be backed by law, with clear penalties for breaches.

The proposal was welcomed by many political party and civil society leaders. However, the Code of Conduct was not in place before these elections. We believe that a Code of Conduct for candidates and parties in the campaign period, supported by legislation, would be helpful and hope this can be introduced prior to the next General Election.

WOMEN CANDIDATES

There were 30 women candidates at this election. Eight were successful, compared with five in 2001. We welcome this increase in the number of female MPs, but urge that the parties encourage the selection of many more women candidates in future.

THE MEDIA

We found that media coverage of this General Election was balanced and fair. We did not undertake a rigorous analysis by column inch and broadcast time. However, we did sample as much of the media coverage as we could. Our impression is that television, radio and the newspapers rarely showed any bias in their news coverage. Indeed, a number of the most influential media organisations went to great lengths to emphasise their impartiality and objectivity.

The media also helped to stimulate the 'national conversation' in the pre-election period. Fiji Television organised a national debate between several of the party leaders. A number of the radio stations staged discussion and 'talkback' programmes. The print media, although critical of its own record in analysis and investigative reporting, in our view did well as a forum for national debate.

Both the electronic and print media also played a positive role in the run-up to this General Election by providing factual information and voter education. In this way they helped to ensure that voters were as well informed as possible about the electoral process. In this context we wish to make special mention of the *Fiji Times* 'Election Special', which in our view was an excellent guide to the election process. We could tell from our discussions with voters that the media had been effective in informing the public, especially in the weeks immediately prior to the election.

At a press conference in Suva shortly before voting began the Chairman of the Electoral Commission issued a warning to the media and urged them to be responsible. This surprised us, since the Fiji Islands media appeared to us to be highly responsible and professional.

The Media Council, a professional body to which most media organisations belong, produced a comprehensive and detailed *Code of Ethics and Practice* in June 2005. One of the two main radio groups, Fiji Broadcasting, published *Political and Election Broadcasts* (a summary of its internal guidelines for political broadcasting). Both are valuable documents and their existence in itself indicates an awareness of the need for sensitivity in political broadcasting. However, there is no specific code of conduct for coverage at election time. We therefore propose that there should be such a code in future, to help to ensure balanced coverage from the beginning of the election campaign to the end of the results process.

For this General Election the Elections Office also produced its own *Guidelines for the Media*, based on the provisions of the Electoral Act (1998).

This was not the Elections Office's only contribution. We were struck by the positive commitment of the Office, and of the Supervisor personally, to openness and transparency. The Office organised a media centre in Suva for the domestic and international press and held daily press conferences during the election itself. Each Divisional Commissioner had dedicated staff to assist the media. We commend the Supervisor and his team for their commitment to informing the media, and through them the general public.

A number of NGOs made imaginative use of the media. We noticed in particular an advertisement by some women's groups, which urged women to vote for candidates who had their concerns at heart.

Despite the regulations that are available, not all advertisements complied with them. At one stage the Supervisor of Elections warned that party and other advertisements were breaching the ban on campaigning during the voting period, the so called 'campaign silence' period. His warning appeared to relate to advertisements by the Assembly of Christian Churches, the Fiji Labour Party and the Coalition of Independent National Parties in three national daily newspapers.

According to our observation - and our interviews with media practitioners - the Fiji Islands media operates freely, although there are concerns about Government's intentions. Freedom of expression is guaranteed under the Constitution of the Republic of Fiji Islands which states that the "freedom to seek, receive and impart information and ideas and the freedom of the press and other media . . . " are basic rights.

PRINT MEDIA
The main three daily newspapers, which are widely available in the urban areas, are the *Fiji Times*, the *Fiji Sun* and the *Daily Post*:

- The *Fiji Times*, an English-language daily newspaper with a circulation of 25,000 copies, is privately-owned and is part of the News International Group. The same group is also responsible for the Hindi language weekly newspaper *Shanti Dutt* and the Fijian language *Nai Lalakai* newspaper, both of which concentrate on sport and culture.

- The *Fiji Sun*, with the second highest circulation English-language daily newspaper (selling approximately 10,000 copies on weekdays and 12,000 at weekends) is privately owned, by local businessmen.

- The *Daily Post*, the third daily English-language newspaper, is owned by the government and Fijian Holdings. It has a daily circulation of 4,000.

We read each of these newspapers each day throughout our time in Fiji Islands. They were professionally produced, had interesting and stimulating content and were a reliable source of information. They each made a positive contribution to the General Elections process.

ELECTRONIC MEDIA
Radio is still the most important source of information for most people in Fiji Islands. The exit questionnaire provided to voters by the Elections Office at polling stations confirmed this.

Radio
There are a number of radio stations, managed by two main groups:

- *Fiji Broadcasting Corporation Limited* (FBCL) is state-owned: its shareholders include the Ministries of Finance and Public Enterprise. It is managed by the Ministry of Information. The Corporation operates a number of stations in English, Fijian and Hindi:
    - Fiji Gold and Today FM - English language
    - Fiji One and Bula 100FM
    - Fiji Two and Radio Mirchi – Hindi

  all of which have national coverage.

- *Communications Fiji Ltd* (CFL) is privately owned and operates three radio stations - FM 96, Legend (which both broadcast in English), Viti FM (broadcast in Fijian) and Navtaran and Sargam (Hindi). These radio stations are restricted to the main towns and cities, and feature music and hourly news.

In addition to these conventional radio stations a non-governmental organisation known as “femLINKpacific - media initiative for women”, which is supported by the UN women’s organization UNIFEM, has

established an innovative community radio station called fem'Talk 89.2FM. This station broadcasts programmes to promote women's political participation and attempts to bring women's issues to the fore. Prior to this General Election it focused on four particular communities. It does not operate from a normal headquarters building: it is a mobile station, operating what it describes as a 'suitcase' radio service in an attempt to get to marginalised groups.

Television

Fiji Islands has one television station - Fiji TV Ltd – which operates the Fiji One channel (a free-to-air station) and two pay-TV Channels (Sky Fiji and Sky Pacific). The main national news programmes are broadcast nightly in English, Fijian and Hindi.

The reach of television is more extensive than that of the print media, but more limited than that of radio. Nevertheless, we found that in the urban areas at least it was a powerful medium. So far as we could see, Fiji TV programmes treated all political parties equally. We were impressed by Fiji TV's discussion programmes, not least those which were aired during the vote-counting period (which featured a number of political analysts from Fiji's universities).

The political parties made especially full use of television. There were no free access spots ('party political broadcasts'), but many paid advertisements. These were professionally produced, to a high standard and must have been expensive. However, independent candidates and less well-funded parties were at a disadvantage. We believe that it would level the media playing-field a little for the next election should a regime of free-time broadcasts be introduced.

OTHER

Radio and television are not the only electronic media. The internet had a role at this General Election too. Both the Government and the Elections Office had useful websites – the latter described key elements in the process and listed all the results. In addition fijilive.com provided a useful internet-based news service and the *Fiji Times* produced an online edition. All these would have been helpful not only to people living in Fiji but also, perhaps especially, to Fijians abroad.

SMS messaging also made an appearance at this election. One of the major political parties made extensive use of this relatively new technology to send text messages encouraging support for its candidates. This may not be a wholly positive development: the messages were unsolicited but apparently could not be blocked by those who did not want to receive them. A member of our Staff Support Team received such a message.

Chapter Five

THE POLL, COUNT AND RESULTS PROCESS

THE POLL

Fiji Islands has a unique polling arrangement. Polling takes place over several days (at this election over an eight day period – 6 to 13 May 2006 – but with a one day break on Sunday 7 May, so voting took place on only seven of these days).

Polling stations were not open for the entire period. Some were open for as many as three days, some for just one day. The Elections Office produced a polling programme, which was re-printed in the newspapers, so that voters, candidates and parties could know when each polling station would be open on which day and what the hours would be.

In Fiji Islands the system is 'one person two votes'. Electors are each issued with <u>two</u> ballot papers –

- <u>one</u> ballot paper is to be cast for a party/candidate contesting the 'communal seat' covering the geographical area in which the voter's home address is located. The Registers of Voters for these seats are organised according to race. A voter will be on the register for the 'Indian communal' seat if she/he is a Fijian citizen of Indian descent. A voter will be on the register for the 'Fijian communal' seat if she/he is a Fijian citizen of 'indigenous Fijian' background. Alternatively the elector will have a vote for the 'General' or the 'Rotuman' seats in the House of Representatives, if the voter fits into these racially-based categories; and

- <u>one</u> ballot paper is to be cast for a party/candidate in the 'Open Seat' in which the voter's address falls. The register for the Open Seat is not based on race: it consists of all registered electors in the geographical area covered, irrespective of their racial background.

DESCRIPTION

Postal Ballot Voting

Before any ballot papers were cast in the polling stations voting by 'Postal Ballot' had already been underway for several days, although at all four centres this began late due to the late delivery of ballot papers.

The phrase 'postal ballot' is a misnomer. The arrangement essentially provides for advance voting, at an alternative time and place to that specified in the Elections Office polling programme for the polling stations. Fiji Islands is divided into four administrative Divisions. Voters who are unable to be present to vote at a 'normal' polling station may apply to

their Returning Officer for a 'postal vote'. Once this application is accepted the voter can vote in person in a room at the Returning Officer's office.

In our observation this room was organised along the lines of a 'normal' polling station. After voting in a well-screened compartment the voter deposited her/his completed ballot papers in 'postal ballot boxes' for the appropriate constituencies. This meant that the postal ballot 'station' could house as many as 28 ballot boxes, plus boxes for constituencies in other Divisions. These were kept at the 'station' overnight under the guard of police and election officials. Party agents were entitled to observe the postal balloting process. We were told that to avoid the possibility of double-voting Constituency Returning Officers would be notified by fax each night of those who had voted 'by post'. The finger of the voter would also be marked by indelible ink**.**

Applications for postal ballots were due to close at the end of the day before the geographically-based voting began, although in practice it seemed that applications remained open after the legal deadline. Those whose applications were accepted were allowed to vote at the Returning Officer's office at any time from the start of the process up to the end of all voting on 13 May. Postal voting began on different days in each of the four Divisions but was open for a considerable time in each – in Central Division, for instance, it began on 28 April. Large numbers of voters used this facility: in Central over 1,000 voters had cast their ballots between 28 April and 3 May. When our Teams visited the relevant rooms were packed.

Special 'postal ballot' arrangements were also made for certain categories of Fijian citizens who were in prison, in hospital or abroad – for instance, so that Fijian soldiers, civilian security guards and others in Iraq, Kuwait and Eqypt could vote.

Polling Stations

There were 1,159 polling stations – a significant increase on the 818 used at the 2001 General Election. We commend the Elections Office on that increase, which helped to ensure that polling stations were closer to the people.

Each polling station consisted of:

- a roped-off area, to be at least 50 metres away from the building in which voting would take place: the only people allowed within this area were the voters, polling station staff, accredited party agents and observers;

- an 'enquiry point' at which voters could check that their names were on the register: here there was usually one register for each of the communal and open seats;

- a building with one or more rooms for voting: at the bigger stations there were several, at smaller stations just one. Each room would

have ballot boxes for each of the elections taking place at that station simultaneously – there could be as few as five of these (one 'Open', one 'Fijian communal', one 'Indian communal', one 'General' and one 'Rotuman'): but there was sometimes voting for two Open Seats and occasionally voting for more than two communal seats. At one Suva polling station on the last day of voting there were no fewer than 22 ballot boxes.

There were a number of election officials in each voting room, at least one police officer and provision for party agents.

Outside the 50-metre boundary each party or candidate was allowed to establish a 'party shed'. An elector could check at these whether she/he was on the register and obtain the precise details polling station staff would need before issuing a ballot paper: the page of the register bearing the voter's name, the line and so on. These 'sheds' were often quite large and well-staffed. Some had computers with copies of the register. Party vehicles bearing party colours, posters and the candidates' photographs – used to transport voters to the poll – were often present at or near the sheds. Altogether the party presence outside the polling station was quite visible.

At some of the sheds party supporters would drink kava, a drink made from the root of the yaqona plant, which induces calm in many people. Kava is of some cultural significance, especially for indigenous Fijian men, as a recreational and also as a ceremonial drink.

Polling stations were located in community halls, schools, colleges and other public buildings. Urban stations were relatively close to the people. In rural areas voters had longer to travel. In some, but not all cases, basic voter education information and details of the party preferences were to be found outside the station.

Voters had a choice of several polling stations within the 'footprints' of their open and communal constituencies. This made it difficult for the Elections Office to estimate exactly how many voters might be present at each: experience at previous elections did not always turn out to be reliable.

Opening

Our Teams attended the opening of several polling stations. In line with the stipulated procedure, at each the Presiding Officer first demonstrated to the party agents and police that the wooden ballot boxes were empty. Next, the boxes would be closed and sealed with numbered plastic seals and padlocks. Voting could then begin.

On the first voting day – Saturday 6 May – voting began late at many stations, especially in Western and Central Divisions. The officials and most materials were present. But the ballot papers for at least some of the elections were not. It appeared that there had been printing errors, the printing had been late and that proof-reading had further delayed the process. In most stations affected in this way the Presiding Officers took

the view that they should not begin voting until they had the ballot papers for all constituencies. In the end, after already substantial delays, some allowed voting to begin so long as they had the ballot papers for the 'Open' and the main 'communal seats'. The Elections Office apologised and said that priority in the distribution of the ballot had been given to polling stations in the outlying areas. As a result stations in Suva and the places nearest to the capital in the populous 'Suva-Nausori Corridor' and in Nadi and Lautoka were without ballot papers for several hours, sometimes as late as noon.

Voting

On entering the polling station the voter was asked for her/his name. Usually the voter had not only this but also her/his registration number, page in the register and line number, obtained either from the party shed outside or the official polling station enquiry point. There is no legal requirement on the officials to check for proof of the voter's identity at this or any other stage, and such a check was not carried out.

The officials entrusted with the registers then read out the voter's details so that these could be audible to the party agents, who also had copies of the same register. Both officials and agents marked the voter off on their respective copies of the list. The voter's registration details were then entered on the ballot paper counterfoils, the official stamp (placed on the back of the ballot paper) was signed by the issuing officials and the voter was issued with the two ballot papers to which she/he was entitled, with the official stamp facing upwards. If the voter had brought a voter registration slip or any material from the party sheds it was retained at this point by the polling station officials.

The ballot papers were marked by the voters in well-screened voting compartments, on the inside of which there were sometimes official 'How to Vote' guides and details of the contestants' preferences. Voters who were illiterate or had a disability could be and were assisted by officials: we noticed that the officials chosen to help were often of the same racial background.

After marking the ballot papers – which were colour coded according to the election - the voter deposited them in the appropriate ballot box. The boxes were attended by 'ballot box guards' whose job was to ensure that the papers were placed in the right box. The voter could then leave the station. At some stage in the process (usually immediately prior to the issuing of the ballot papers but sometimes afterwards) the voter's left index finger was marked with indelible ink, in such a way that the ink was deposited on both the nail and the skin of the finger.

The whole process usually took around three minutes. By informal arrangement amongst the voters in the queue the ill, pregnant women and the elderly were allowed to go to the front of the queue.

Queues were sometimes very long, so that at 10.30 in the morning on the first day it was not uncommon in some Divisions to come across voters who had been present for four hours. Since the weekday voting days

were not holidays this presented a problem for those who had been allowed only a short time away from work.

Everywhere voters present at the scheduled time for the end of voting were supposed to be allowed to vote. On the first day, when voting started late in many places, there was an assumption that stations would stay open longer, to compensate for the delay in the morning. However, stations did not always make a corresponding adjustment – for example, where they were without adequate lighting.

Closure

The closure process was elaborate and lengthy. First the Presiding Officer completed the paperwork, including the reconciliation of used and unused ballot papers. This could take as long as two hours. Then the sealing of the boxes began. This could again take some time. It consisted of the application of adhesive 'closed labels' across the aperture and the corners of each box in turn, then the application of sealing wax, sellotape and string. 'Form 17', showing the number of ballot papers which should be in the box, was sealed to the outside. The agents, police and voters were asked to sign statements listing the various label and seal numbers and to sign the seals. The boxes were then taken to the District Officer's office, prior to despatch to the Divisional Counting Centre.

EVALUATION

Postal Ballot Arrangements

We must comment on the arrangements for overnight storage of the ballot boxes used for postal balloting. Seals and padlocks were applied to the lids during the voting and remained in place overnight. We were told that police and election officials were also present with them overnight. But the apertures on the ballot boxes were not sealed overnight: they were simply covered by sellotape. We have no evidence that the postal ballot boxes were tampered with and are not aware of any complaints. Nevertheless, in our view this is very poor practice, even though police and election officials were on guard. It is even more serious in view of the number of nights the boxes were stored in this way and the numbers of ballot papers concerned - 4% of the total number of ballot papers cast.

Furthermore, according to our spot checks at all four postal ballot centres the political parties, although present at the start, failed to provide party agents during the voting. They had the right to be present, not just at the beginning but all the time. In view of the number of voters who passed through these centres we believe they should have exercised this right and maintained a continual watch.

Opening

When openings took place the correct procedure was invariably followed. However, while the situation on the remaining voting days was more or less normal at most stations, the very late opening at many stations in the Western and Central Divisions on the first day, caused by the late delivery of the ballot papers, was an undoubted inadequacy. Voters generally

waited patiently and were more understanding than might have been expected. Nevertheless, it was an unfortunate start. Inevitably some went away and may not have returned. There was no need for the first morning to have been like this – as was demonstrated by the Election Office's timely deliveries on subsequent days. We should add that the problem of late delivery was compounded by the failure to provide information at many of the late-opening stations. We also noted that even where ballot papers were available the opening times of stations sometimes changed without the voters and political parties being informed.

The Register of Voters

The physical register at the polling stations was in a good state: it was computerised and printed and contained the required information. The political parties were provided with copies and had these in their sheds[3]; further copies were available at the Enquiry Point at each polling station; and there was a Master Roll at most stations. At some stations there was also an Elections Office official with a lap-top who had access to the online version.

It soon became clear, however, that there were problems with the register. The names of voters were sometimes misspelled; we were told that some names appeared on the register for the 'communal' seat but not on that for the open seat; some voters had been allocated to the wrong constituency and were therefore not on the register at the first polling station they came to.

Some of these problems fell into the category of inconveniences that could be and were overcome relatively easily. With persistence misspelled names could often be found. Presiding Officers often (although not always) allowed those who were on one register to vote in both elections, since a mistake had clearly been made.

But there was a more serious problem: the names of some people were completely missing from any register, even though those involved had undoubtedly registered and had their registration slips to prove it. We have no way of knowing exactly how many people were affected in this way. Presiding Officers generally said that few were missing from the register altogether. However, many voters may have gone away before they ever got to the doors of the polling station – for instance, when they consulted the register at their party shed and were told that they were not there, or when they consulted the register at the Enquiry Point at each polling station.

Irrespective of the scale, and even given a certain degree of exaggeration on the part of certain of the political parties, there was clearly a problem. It had either to do with the Election Office's handling of the information gathered by enumerators during the registration period, or the effectiveness of the original registration. Many highlighted the latter as

[3] However, we understand that sometimes these were earlier versions than those in use at the polling station itself. This led to some confusion.

the more likely source of the problem, suggesting that the enumerators tended to be young and inexperienced, that their ethnic background was largely 'indigenous Fijian' (making mistakes with 'Indo-Fijian' names more likely) and that they were generally less professional than was required.

Whatever the cause it is clear from experience on the day that arrangements for voter registration need to be reviewed. The problem may not have been on such a scale as to have undermined the integrity of the whole process. However, as the Group said in its Statement on the Voting on 14 May the omission of those who had registered "represented a breach of the individual's rights". We greatly regret that and hope that serious efforts will be made to ensure that such problems do not occur next time. To that end we recommend that Fiji Islands should not only adopt, but also provide adequate resources for, an efficient system of continuous registration.

Our other concern was with the arrangements for assisting voters when they found that they appeared not to be on the register at the polling station to which they first went. Sometimes voters were told about the Elections Office 'toll-free' advice number, from which they could have obtained information about their registration. But sometimes they were not. In Central Division voters were sometimes referred to the national Elections Office, sometimes referred to the Divisional Commissioner, and sometimes referred to the nearest official with a computerised copy of the register. When it was clear that the person's name was missing 'Attempt to Vote Forms' were sometimes issued, but sometimes they were not.

In general, the procedures for a voter to obtain information as to whether they were or were not on the register, and if so where, were not well publicised. For instance, there were no advertisements at polling stations for the toll free number or other directions as to where to obtain information.

Polling Stations

Generally procedures were properly followed and the stations were well-managed. The secrecy of the ballot was assured. Although we saw one case of attempted impersonation and others were reported, there were relatively few serious irregularities. There were relatively few complaints to police, as was made clear by the Commissioner of Police during the voting period. In our view, so far as the voting was concerned the Elections Office did well in the time available and given the difficulties with which they were confronted.

There were defects, however. The signage at the stations was not always good. It was not always easy to know who the officials were, as they were not well identified. The Enquiry Desk, at which voters could check whether they were on the register, was sometimes right by the door to the polling station, so that voters had to stand in the voters' queue before finding out whether they were on the register, rather than finding our beforehand (as they could have done if the desk had been located at the other end of the queue). There was sometimes lack of clarity as to

whether and how the media should be admitted. Sometimes there were inconsistencies in the application of the prescribed procedure – for instance, the stage at which the indelible ink was applied varied from station to station.

Most stations were in schools or public/community buildings. Conditions at some were very poor, and at some very good: at most the facilities were adequate. With the exception of the ballot papers on the first day, materials were generally all present. The ink applied as a guard against multiple-voting was indelible and we came across no cases in which it was not applied. The 50-metre boundary was respected. We noted with approval the distribution by the Elections Office at some polling stations of a 'voter satisfaction survey', which seemed to us to be a most worthwhile initiative.

A word should be added about the arrangements to assist voters with physical disabilities. In some places officials went to the homes of those with physical disabilities to enable them to vote. In others, however, they refused to do this. This inconsistency meant that in some places those with physical disabilities were able to exercise their franchise, while in others they were not. We believe that it is important to be consistent when the rights of the voter are concerned and that there should be clarity at the next General Election, preferably in favour of assisting those with disabilities even if it means doing so outside the station.

Key Participants

The Voters

We were impressed by the voters: they were peaceful and patient, but determined to exercise their constitutional right and duty and thereby to play their part in upholding this country's democracy. Even when confronted by very long queues as closing time approached they were relatively relaxed. We regard the turnout figure – given by the Supervisor of Elections on 19 May as 87.7% - as an eloquent testament to the voters' commitment to their democratic freedoms and institutions.

We paid particular attention to whether any obstacles were placed in the way of the participation of women. So far as we could see there was none. Many – sometimes most - of the voters were women and they appeared to us to be at least as confident and well-informed as the male voters.

In general the voters appeared to understand the voting system: at least, this is what they told us when we interviewed them after voting. For the most part they expressed satisfaction at arrangements. The exception was when queues were long and there were delays, especially on the first day when ballot papers were late in arriving at many of the stations.

Staff

The polling station staff were efficient and helpful to voters and appear to us to have been well-trained. We especially admire their dedication, discipline, and good humour despite very long hours in often difficult

circumstances. We noted that many of the junior polling station staff were women. However, the higher the level the fewer women were apparent.

Security

The police were present at all the stations we visited and appear to us to have been successful - not only by upholding the law and providing the necessary security for the voting but by doing so with a combination of competence and lightness of touch. We saw no soldiers at or near polling stations.

Contestants

The conduct of the contestants – the candidates and the political parties – was generally responsible, although some of us felt that the presence of party posters and banners at the sheds and the ferrying of voters to the polls in vehicles bearing party symbols was a subtle form of campaigning on polling days. The candidates were allowed to appoint agents and at most stations these were present and properly equipped with copies of the relevant voters' registers; usually the FLP, SDL, UPP, National Alliance and National Federation and independents were all represented. The party sheds were peaceful, and only intrusive in one place.

However, we believe that the party agent system needs to be reviewed prior to the next election. The agents invariably told us that there were few problems – even when, for instance, voting was very late because ballot papers had not arrived. Agents would say that they had no complaints while the same party's officials at their sheds would insist that there were many. Some of the agents in the polling stations seemed to us to be less concerned with the integrity and efficiency of the process than with the collection of data for those responsible for getting party supporters to the polls. We even suspected that some were just there for any fee they may have been paid. Others were very shy and reserved. Some appeared to us to be too inexperienced to be able to do the job properly. We have already referred to the parties' failure to have party agents present at the 'polling stations' used for postal balloting. We also noted that very often the agents left the polling stations before the closure procedure was completed and that they did not always accompany the ballot boxes to the District Office and only rarely from there to the Count Centre.

Closing

For the most part the closing procedures were properly done. The transport of the ballot boxes, ballot papers, paperwork and other key items from the polling stations to the district offices was secure. But the process took a great deal of time – around three hours for the closure plus the time taken to transfer the boxes to the District Office. Some of this was caused by the amount of paperwork. There was too much, and we are convinced that a robust study could cut down drastically on the number of forms that need to be filled in. We also regard the ballot box sealing procedures ('closed labels' forms, signatures, string, sealing wax, etc) as unnecessarily elaborate. These again could be reduced. The purchase of modern plastic ballot boxes would enable the same effect to

be achieved with the application of just one additional seal across the aperture.

GENERAL

As we have noted, there were shortcomings in the voting and related processes. But we do not believe that these resulted from a systematic effort to 'fix' the process; and, based on our observations, the shortcoming were not on a sufficient scale or of a nature to undermine the overall credibility of the voting phase of this election. According to our observations the vast majority of electors were able to enjoy that key democratic freedom – the freedom of the individual to vote as he or she wishes – in a process which, while not perfect, was reasonably well managed. Indeed, given the short time available the voting process went much better than might reasonably have been expected: we were struck not so much by what went wrong during the voting but by how much went right.

We have two recommendations. We are concerned that such an extensive polling period places considerable demands on the staff involved and that their efficiency is therefore bound to deteriorate as time goes on. We therefore believe that consideration should be given both to reducing the polling to one or two days and to increasing the number of polling stations and polling teams.

So far as the register is concerned, one way of addressing the problems experienced at this General Election would be to assign every voter to a particular polling station. At present, the register is printed for every constituency and each register contains names for all registered voters in that particular constituency. The present arrangement has the advantage of giving the freedom to the voter to cast his or her vote in any polling station within the constituency. However, if the voter was assigned to a particular polling station and made aware of when and where to vote, at least some of the problems experienced this time might be eased.

We should conclude by noting that the whole voting period was entirely peaceful. There was one small demonstration in the Western Division, in which Labour Party supporters protested against the way in which they had been dealt with in the registration process. Although peaceful it was declared unlawful by the police and arrests were made and charges subsequently laid. However, even that protest – which was front page news - was not violent. We also neither witnessed nor came across any reports of intimidation, either during the voting or subsequently at the count.

THE COUNT AND RESULTS PROCESS

DESCRIPTION

District Office

After the closing at the polling station the ballot papers, sealed in the ballot boxes, were sent with the paperwork and other key items to the District Office. There the sealing was inspected and if necessary done again. Once a sufficient number of boxes were gathered together with others from the district they were sent to the Count Centre.

Count Centre

There were four Count Centres – two in Suva (one for the Eastern Division and one for Central), one in Lautoka (Western Division) and one in Labasa (Northern Division). Each was divided into separate rooms for each constituency count. Boxes from the postal ballots in each Division were also sent here. Candidates and agents could be present at the centres.

Members of the Group were present at each centre from the verification of the postal ballots onwards. In the case of the largest count centre (Central) a 24-hour watch was maintained until the observers' return from deployment on the afternoon of Wednesday 17 May. The observers had full access to the centres and were briefed there by the Returning Officers and their staff.

Verification of Postal Ballots

The first stage of the counting process was the verification of the postal ballots, which took place on Sunday 14 May at the Count Centres. The boxes containing the postal ballots were emptied onto tables and each ballot paper checked against the accompanying paperwork. Once it was confirmed that the paper was valid the counterfoil was removed and the paper could go forward to the counting room at the centre for the appropriate constituency. Although some count centres were faster than others the process was completed by the morning of Monday 15 May. No counting was done at this stage. Party agents and candidates were present and took a close interest in proceedings.

Counting

Counting began on Monday 15 May. Each constituency count started with the verification of the ballot papers which had been cast in that constituency. The number of each ballot box and its polling station was read out first, then the 'closed label' and seal numbers and finally the figures on the form stating how many ballot papers should have been in that box. After this the ballot box was opened, the contents emptied and the papers shown to the agents so that that they could see the official stamp and signature. Then the papers were put into tens and the total number calculated. Where there was a discrepancy with the 'expected number' this was recorded. All the papers were then put into the 'Common Bin'. At the end of the verification the postal ballots, which had already been verified, were added.

It was a slow process: it took a whole morning to deal with 30 ballot boxes in this way, and some constituencies had twice this number. There was a careful procedure for handling 'foreign papers' (i.e. papers which had been put in the wrong box at the polling station – quite possible since so many ballot boxes for so many different elections were at each polling station) and ensuring that they were sent to the correct count. All this and the subsequent counting was done by large teams of staff, working in eight hour shifts. Some of these wore special uniforms for the day, often made from the same colourful fabrics.

After all the boxes had been processed the counting began. The individual ballot papers were unfolded one by one and shown to the agents, with the count officials calling out the party for which the ballot paper had been cast and whether or not it was marked 'above the line' or 'below the line'. The ballot paper was then put in the relevant box for the appropriate candidate. Papers which *might* have been invalid were placed in a box labelled 'doubtfuls'. At the end of the counting an Assistant Returning Officer determined whether these papers were actually valid or invalid.

The votes cast for each candidate were then counted. If there was a clear result at this stage – i.e. one candidate had secured 50% plus one of the votes on first preference - the winner was declared elected. If not the candidate with the fewest first preference votes was excluded and her/his ballot papers were distributed in line with the order of the voter's preferences (or her/his party's if the voter had voted above the line). This process continued until one candidate had obtained more than 50% of the votes.

Announcement of Results

At each counting centre there was a media centre. Results were announced by the Returning Officer (the Divisional Commissioner) as they were available, and broadcast live on Fiji One television. They were then posted on the Elections Office web-site.

EVALUATION

Pre-Count Processes

The transportation of the ballot boxes to the District Office and from there to the Count Centre seemed to us to be secure and well-organised. The verification at the counting centres, first of the postal ballots and then of the votes cast in the polling stations, was relatively rapid compared with previous years and very carefully done. There were variations in practice, but these did not jeopardise the process. We were pleased to find that the postal ballot verification was completed by the morning of Monday 15 May and that fears that it would hold up the counting were not realised.

Counting

As our Chairperson made clear in his statement on behalf of the Group after the counting, "overall, our assessment is positive". That statement

adequately summarises our view of the process and is attached at *Annex VIII*. We should perhaps add, however, that whereas we were very critical of the agents during the voting at the count they were vigilant, diligent and professional and altogether often quite impressive.

There was one major problem, however. At one count some fifteen ballot boxes arrived much later than the original set of boxes. Four political parties objected. The matter was investigated, both by the Returning Officer and by the Office of the Supervisor of Elections. At the time of writing the outcome of these investigations was not clear. The affected constituency was one of three where the main opposition party, the Fiji Labour Party, announced that it would be lodging a legal challenge.

As for the counting system, we share the concern expressed by the Commonwealth Observer Group in 2001 that in deciding on the validity of ballot papers officials may not take the voters' intention into account, as was the situation prior to 1998 and as it is in many other countries. We believe that the law should be reviewed in this respect to allow for greater flexibility: where the intention is clear this should be reflected in the decision of the election official deciding on the validity of the ballot paper.

However, our principle concern was that the counting process was complicated and very slow. We are sure that the system can be refined, streamlined and simplified for the future, without any loss of transparency and damage to the integrity of the process. We hope that after the General Election it will be reviewed to that end.

We are not ourselves convinced that it would necessarily be better to count at the polling stations. That might be faster and easier from an organisational point of view. On the other hand, post-election intimidation and threats to voters are likelier when polling takes place at the polling station, since it can be more easily known if nearly all voters voted in a particular manner. However, we do believe that the option of counting at the polling station – adopted by many other countries – should at least be considered.

The counting process revealed a continuing problem with the 'Alternative Vote' electoral system. Once again there was a high proportion of invalid votes[4], mainly because a significant number of voters ticked below the line rather than using numbers to indicate their preferences. Some voters also voted both above and below the line or in other ways that made their papers invalid. (See *Annex X* for an extract from the Electoral Act 1998 listing all the ways in which a ballot paper may be made invalid). We agree with the Commonwealth Observer Group which was present for the 2001 General Election, which suggested that in view of the number of invalid ballots at that election there needed to be a "thorough review of the relevant arrangements". In view of the recurrence of the same

[4] Supervisor of Elections Mr Semesa Karavaki stated on 18 May that the number of voters in the 65 seats which had declared to that point was 479,674. The number of invalid votes for the same constituencies was 66,767, which was 8.95%. This was 2.95% lower than for the 2001 General Election.

problem this time we wish to underline the urgency of that proposal. We hope that the necessary overhaul can take place well before the next General Election.

Chapter Six

CONCLUSIONS AND RECOMMENDATIONS

We believe that at this General Election the conditions did exist for a free expression of will by the electors and that the results reflected the wishes of the people: this was a credible election.

In coming to that judgement we have taken into account not only our direct observations of the campaign, the state of the register, polling, counting and the results process but also the electoral environment as a whole.

There were shortcomings. However, we do not believe that these resulted from a systematic effort to 'fix' the process. Nor were they on a sufficient scale or of a nature as to threaten the reliability, integrity and credibility of the operation as a whole.

There are procedures for challenges to particular results and political parties and others should use them if they have serious grounds for complaint. However, given our findings we urge every institution and individual in Fiji Islands to accept the overall outcome and then to work together to create a culture of consensus and co-operation in the interests of all the people of the country.

That applies to the armed forces of Fiji Islands just as much as it does to everyone else. There is a wider point about the loyalty of the armed forces. Their job is to protect the security of the country, at the direction of the Government. It is not the armed forces' role to be involved in or make statements about politics. The armed forces must recognise that they are subject to the Constitution, the rule of law and the control of the Government. Any behaviour to the contrary will breed an atmosphere of fear in the society, convey a sense of instability and insecurity to potential investors and so inhibit the enormous potential for development which Fiji undoubtedly has.

We hope that attention will now be given to the overall democratic architecture of this country, in particular the communal system of representation.

As the 1997 Constitution makes clear, Fiji Islands needs to move away from representation based on ethnicity. How it will do so is the major political challenge before the people of this country. We venture the view that it will need focused, constructive and flexible dialogue amongst all stakeholders if a solution acceptable to the people is to be found.

We trust that the State, political parties and the people will not ignore that challenge but will face up to it before Fiji Islands goes to the polls again. It would be a good start to substantially increase the proportion of seats

in the House of Representatives which are 'open' as opposed to communal.

So far as election arrangements are concerned, we commend the Supervisor of Elections and his team for the effort made at this General Election. We also have a number of proposals. In putting these forward we are conscious of those made by our colleagues who were members of the 2001 Commonwealth Observer Group. So far as we are aware, only one – the proposal that the number of polling stations should be increased – has been adopted so far.

We hope that the 2001 proposals can be revisited by the relevant authorities in Fiji Islands. A number of them recur in the following list of recommendations:

- ***Election Management*:** the independence of the Electoral Commission and the Office of the Supervisor of Elections should be strengthened by making the Commission permanent and the position of the Supervisor of Elections permanent and full-time. The resources available to both need to be substantially increased so that they have the necessary capacity. In the case of the Office of the Supervisor the core and regional elections staff should be greatly enhanced, so that there can be a properly functioning Office for the whole time between elections, with its own senior staff in the Divisions. We strongly endorse the proposal put forward by the present Supervisor of Elections that in future each constituency should have its own Returning Officer.

- ***Codes of Conduct*:** we believe Codes of Conduct for candidates and parties in the campaign period and for the media in reporting the election would be helpful and hope that these can be introduced prior to the next General Election. The former should be supported by legislation.

- ***Candidates:*** we welcome the increase in the number of female MPs, but urge that the parties encourage the selection of many more women candidates in future. There were only 30 female candidates at this election out of a total of 347.

- ***Campaign Finance Rules:*** so far as the campaign period is concerned, we believe that disclosure requirements should be introduced covering both party income and expenditure, so that there is greater transparency, and that consideration be given to the introduction of expenditure limits;

- ***Media:*** for the next General Election a system of free time broadcasts for the political parties be introduced;

- ***Electoral System:*** the present Alternative Vote electoral system should be replaced by a simpler system: it is clear from the large number of invalid ballots in 2001 and again this year that a large minority of voters in Fiji Islands do not understand the system;

- ***Voter Registration:*** voter registration be put on a properly continuous basis, with adequate resourcing to ensure that this can be done, and more publicity on how voters can establish whether they are on the register; as election time approaches we believe that consideration should be given to the idea of using voter registration centres as well as teams of house to house enumerators;

- ***Election Staff:*** we believe that the staffing of the electoral operation should reflect the ethnic diversity of the country. While merit must always be the key factor, greater balance at this election would have reassured the Indo-Fijian community in particular. Greater efforts in this regard should be made in future.

- ***Voter Education:*** voter education efforts should be increased, especially regarding the way in which the electoral system works;

- ***Voter Identification:*** consideration be given to whether or not the use of Voter Identification Cards could assist the process;

- ***Party Agents:*** the political parties review the party agent system so that it works better at the next General Election, especially during postal balloting and at the polling stations;

- ***Postal Ballot:*** the postal ballot arrangements be reviewed to ensure full overnight security;

- ***Polling:*** consideration be given to reducing the polling to one or two days, to increasing the number of polling stations still further and to reviewing the polling station closure procedure so that it can be simplified;

- ***Counting*****:** the counting process be looked at again so that it is refined, streamlined and simplified for the future. This review should consider whether it would be preferable to count at the polling station. Furthermore, Parliament should restore the legal provision which enables counting officers to use their discretion to admit a vote when the intention of the voter is clear.

When we met the Commonwealth and other international observers on 3 May Electoral Commission Chairman Graham Leung advised observers not to rush to judgement.

As he put it “the political and social environment in this country is complex and even bewildering at times . . it is not an easy task to make assessments of a foreign country”.

We took those words to heart and have tried to show the sophistication and circumspection for which Mr Leung called. Others will have to judge whether we have been successful.

We believe, however, that our observation has been effective, that our conclusions and proposals are worthy of consideration and that the problems highlighted at this election and in 2001 need to be addressed.

We hope that our recommendations can be given serious and urgent consideration by the relevant authorities.

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Acknowledgements

We wish to thank the Commonwealth Secretary-General for asking us to observe this General Election and the many people who have assisted us while we have been here.

In particular we wish to acknowledge the assistance of the Office of the Supervisor of Elections and the Fiji Police and to express our appreciation to them for their help.

We are also grateful to the Commonwealth High Commissioners for their advice, the political parties and civil society organisations whose representatives we met and to the other observers – from the University of the South Pacific, European Union and Pacific Islands Forum – for their co-operation. We wish to convey a special message of thanks to our drivers, without whom it would have been impossible for us to travel as extensively and to observe as well as we did.

We could not end without paying a special word of thanks to the staff of the Commonwealth Secretariat – Mr Christopher Child, Mr Albert Mariner and Ms Zippy Ojago – and the Chaiperson's assistant, Ms Charmaine Russell, who together saw to our every comfort, efficiently arranged our schedule and kept us focused on our mission.

Above all we want to express our appreciation to the people of Fiji Islands for their kindness and hospitality. We hope this report will help them in their efforts to strengthen their democracy.

ANNEXES

Annex II

COMPOSITION OF THE OBSERVER GROUP

Mr K D Knight QC MP – Chairperson, Jamaica
Mr K D Knight is a member of Jamaica's House of Representatives and was Minister of Foreign Affairs and Foreign Trade from November 2001 until March 2006. He was previously Minister of National Security and Justice from 1989 to 2001. Mr Knight was elected to Parliament in 1989.

Mr Knight was admitted to the Inner Bar as Queen's Counsel in 1995. He was a member of the Commonwealth Observer Group which was present for the elections in 1980 which led to Zimbabwe's independence.

Mr Paul Bengo CBE – Papua New Guinea
Mr Bengo is currently the Registrar of political parties in Papua New Guinea, a position he has held since 2000. Before becoming the Registrar he held senior positions in public service in Papua New Guinea, including Head of the Prime Minister's Department. He has previously observed elections in Fiji Islands, Sri Lanka and the Solomon Islands.

Rev Canon Grace Kaiso - Uganda
Rev Canon Grace Kaiso is an Anglican priest and is currently Executive Secretary of the Uganda Joint Christian Council and Chairman of the Democracy Monitoring Group, a consortium of civil society organisations monitoring the democratisation process in Uganda. He is also Chairman of the Fellowship of Christian Councils and Churches in the Great Lakes region. The Fellowship brings together nine countries in the Great Lakes region and is focused on peace building and sustainable development.

Mr Rajabu Kiravu – United Republic of Tanzania
Mr Kiravu is the Director of Elections for the United Republic of Tanzania and Secretary to the National Electoral Commission. He joined the National Electoral Commission in 2000 and was previously a Returning Officer and Assistant Returning Officer. Mr Kiravu has also served in a number of senior civil service and local government positions including as District Council Executive Director, District Commissioner, Regional Development Director and Regional Administrative Secretary. Mr Kiravu has observed elections in Lesotho, Seychelles and Uganda.

Ms Sheila Roseau – Antigua and Barbuda

Ms Roseau is the Executive Director of Gender Affairs in the Government of Antigua and Barbuda. She is involved in regional and international activities to promote women's political participation and serves on a number of national, regional and international committees to promote gender equality and women's human rights.

Hon Beta Tewareka Tentoa MP – Kiribati

Mrs Tentoa has been a Member of Parliament since 2001. She was previously a teacher for over ten years and was an associate lecturer and then Director of the Kiribati Centre of the University of the South Pacific until 2000. Mrs Tentoa is actively engaged in regional activities to promote gender equality and with a number of NGOs, including the Girl Guides Association, womens' organisations and family health bodies.

Annex IV

SCHEDULE OF ENGAGEMENTS

Sunday 30 April

Briefings by Supervisor of Elections, Mr Semesa Karavaki, and senior police officers; briefing by Mr Carlo Accame (European Union Election Observer Mission) and Ms Shennia Spillane (Pacific Islands Forum Observer Group).

Monday 1 May

Arrival Press Conference

Briefings by representatives of the Soqosoqo Duavata Ni Lewenivanua Party (SDL), Fiji Labour Party, United People's Party and National Alliance Party.

Discussion with representatives of Commonwealth High Commissions

Chairperson's Reception

Tuesday 2 May

Briefings by representatives of the Citizens' Constitutional Forum; University of the South Pacific Observer Group; Fiji Council of Social Services; Pacific Islands Association of NGOs; Fiji Women's Rights Movement and other womens' groups; and the Media Council, the Fiji Times and Fiji Sun.

Wednesday 3 May

'Orientation Programme' organised by Office of the Supervisor of Elections

Wednesday 18 May

Briefing by representatives of Human Rights Commission