



NAURU NATIONAL ELECTIONS 2016

REPORT OF THE PACIFIC ISLANDS FORUM ELECTION OBSERVER TEAM

EXECUTIVE SUMMARY

The Forum Team observed all aspects of the elections in Nauru including the pre-polling environment. On Election Day, 9 July 2016, the Forum Team visited 13 of the 14 polling stations in Nauru, at least once.¹ All polling officials observed were competent, confident, and polite, and engaged well with the public. Counting officials similarly exhibited high levels of professionalism and worked nonstop for almost eighteen hours on 9 July to deliver the results.

2. It is the view of the Forum Team that polling was safe, free and fair. There were no observed incidents of voter intimidation in the lead up to the election while the Forum Team was in Nauru; nor were attempts observed to disrupt polling on election day. The successful conduct of the legislative and technical aspects of the elections is a commendation to the dedication and commitment of the Electoral Commissioner and his staff. Notwithstanding the successful implementation of the technical aspects of the elections, the Forum Team acknowledges several issues raised by stakeholders regarding the enabling environment for the conduct of free and fair democratic elections. The main issues identified related to: candidates' access to the media; campaign methods; concerns with the high number of voter transfers; the low number of women candidates; and the resignation requirements for public officers.

3. These issues are covered in the report. Many of the issues raised could not be substantiated in the ten days the Team was on the ground. However, the Forum Team is obliged to bring these allegations to the attention of both the Electoral Commissioner and the Government of Nauru. The Forum Team believes that it is in the interest of the democratic process that the Government of Nauru is made aware of and addresses these issues accordingly.

SUMMARY OF RECOMMENDATIONS

4. The Forum Team recommends the following for the consideration of the Government of Nauru and the Nauru Electoral Commissioner, as appropriate:

Recommendation 1

5. That the Government of Nauru, in consultation with the Nauru Electoral Commissioner, reconsider the conditions for the mandatory period for public officers to

¹ Due to a court injunction, polling at one of the 14 stations, for Aiwo district, was not held on 9 July. The election and counting of votes for Aiwo was held on 11 July, which the Forum Team also observed.

resign prior to elections, and consider alternative options including the possibility of public officers taking extended leave without pay.

Recommendation 2

6. Recognising the implications of high levels of voter transfers, namely the artificial inflation of District Rolls and heightened security risks from increasing community dissatisfaction, that:

- a. the practice of voter transfers is abolished; or
- b. that greater legislative clarity is introduced to define what constitutes a ‘substantial connection to customary links and affiliation’ under the Act and tighten the eligibility criteria and circumstances to apply to transfer across constituencies.

Recommendation 3

7. That the Government of Nauru reconsider the restrictions on the use of television for political campaigning by individuals to ensure that no candidates are indirectly advantaged over others with respect to disseminating ‘accurate and fair’ information to the voting public.

Recommendation 4

8. That the Nauru Electoral Commission in consultation with the relevant authorities investigate the validity of allegations against some candidates and campaign managers of treating and other electoral offences, to ensure compliance with Part 10 “Corrupt Practices and other Electoral Offences” of the *Electoral Act*.

Recommendation 5

9. Taking into consideration the inherent cultural and attitudinal barriers to women’s participation in politics that are exacerbated by stringent legislative requirements that saw only three woman candidates in the 2016 general elections, that:

- a. the candidacy fee is reduced or removed for women; and
- b. the Government undertake more programmes to raise awareness amongst the general public of the importance of the representation of women in Parliament.

Recommendation 6

10. That the Nauru Electoral Commission introduces candidate posters to be displayed in each polling booth. The candidate posters, developed by the Nauru Electoral Commission, should include the photographs of each candidate beside their name, so the voter can identify the correct name on the ballot.

Recommendation 7

11. That the Government of Nauru in consultation with the relevant authorities:
 - a. consider investigating the validity of allegations regarding the use of the Housing Scheme in the lead up to the general elections; and
 - b. subject to the outcome under (a) consider strengthening the governance and accountability mechanisms for the financial management of the Housing scheme in line with the values of the Leadership Code.

Recommendation 8

12. That the Nauru Electoral Commission undertake regular, sustained and comprehensive civic awareness and voter education, including on television and print media, on:

- a. teaching voters to recognise and understand corrupt practices and electoral offences covered in Part 10 of the Electoral Act;
- b. voters' responsibility to demand greater accountability of politicians and Members of Parliament; and
- c. voters' responsibility to report incidences of corrupt practices and electoral offences.

Recommendation 9

13. That for future elections, temporary polling officials receive *at least* one full day of training (preferably more). Training should cover all aspects of the voting process and include clear explanations as to why specific procedures were followed.

Recommendation 10

14. That contingency measures are introduced to cater for situations where eligible voters are disenfranchised through no individual fault. The introduction of "challenge votes" will allow the voter to cast their vote, which would be quarantined pending the verification of the eligibility of the voter. The vote will then be discarded or added to the ballot box as required. This could also address the issue observed of eligible voters being turned away because their names were not on the roll.

INTRODUCTION

15. The Pacific Islands Forum Secretariat was invited by the Electoral Commission of Nauru, Mr Joseph Cain, and the Government of Nauru, to observe the 2016 national election. The election was held on 9 July 2016. A pre-Electoral Monitoring mission was undertaken by the Forum Secretariat from 17 to 19 June 2016 in tandem with a pre-Electoral Monitoring mission from the Commonwealth Secretariat. The pre-Electoral issues identified are reflected in this report. The Pacific Islands Forum Election Observer Team ("the Forum Team") deployed to Nauru from 3 to 13 July 2016. The Forum Team was led by Mr Elliot Udui, Vice Chair, Board of the Palau Electoral Commission, and comprised Mr Boki Raga, Director, Policy and Planning, Papua New Guinea Electoral Commission, and Ms Gail Owen, Education Specialist & Humanitarian Trainer from Australia. The Forum Team was supported by two Secretariat staff (see **Annex 1** for the list of Team members).

16. While in Nauru the Forum Team, in coordination with the Commonwealth Team, met with the caretaker government including His Excellency, President Baron Waqa; Members of Parliament (including non-aligned, opposition, and suspended Members); senior Government officials; the Nauru Electoral Commission; civil society (including youth, women and disability groups); academia; development partners; media representatives; members of the diplomatic corps; and newly elected Members of Parliament.

17. The Forum Team congratulates the Electoral Commissioner and his staff on the excellent logistics and preparations for the election, which enabled its successful conduct. This is particularly noteworthy considering the establishment of the Electoral Commission and the appointment of the Electoral Commissioner four months before the general election.

The Forum Team also wishes to thank the Government of Nauru and the Electoral Commission for the invitation extended to the Pacific Islands Forum Secretariat to observe its general elections. The Pacific Islands Forum views electoral monitoring as an integral part of advancing good governance in the region.

18. The Forum Team also commends the Nauru Police Force for its comprehensive operational plan for the election, which ran from 1-17 July. Police operations for the period were intelligence-led and carried out by 73 officers with support from 7 civilian staff. Operations included regular high visibility patrols across the island in the lead up to the Nauru national election and on election day.

CONTEXT

19. Nauru has a total land area of 21 square kilometres and is located in the Western Central Pacific. There is no official capital. Government offices are located in the district of Yaren. Nauru's nearest neighbour is Banaba Island in the Republic of Kiribati, 300 kilometres to the east. Its estimated population as at June 2016 is 10,297. 58% percent of the population is Nauruan, 26% other Pacific islanders, 8% Chinese, and 8% others. For the 2016 election there were 7,842 people registered to vote. There was a high level of public awareness and interest in the elections with 80% voter turnout.

20. On 31 January 1968 Nauru gained independence of a United Nations trusteeship administered by Australia, New Zealand, and the United Kingdom, and became a parliamentary republic. The Republic of Nauru has a unicameral parliament of nineteen members. Members of Parliament are elected through universal suffrage every three years. The President is elected by the Parliament from among its number. The President is both Head of State and Head of Government. Under the Constitution the President should appoint four or five Members of Parliament to be Ministers of the Cabinet.

21. Due to its size there are not many exploitable natural resources in Nauru, which has a narrow economic base. The main export earner is the mining of secondary phosphate deposits. Revenues are also earned from the sale of fishing licences, and to a smaller extent, the export of coconut products. Nauru also receives significant revenues from hosting Australian offshore processing centres for asylum seekers.²

PART 1: THE INSTITUTIONAL FRAMEWORK AND ENABLING ENVIRONMENT FOR CONDUCTING ELECTIONS IN NAURU

The legislative framework

22. The primary legislation under which elections are conducted in Nauru are the Constitution and the *Electoral Act 2016*. Relevant related legislation includes the *Public Service Act 2016* and the *Births, Deaths and Marriages Act 1965*.

² The Australian Government pays A\$1000 per asylum seeker per month and A\$2000 per refugee per month. There are approximately six hundred asylum seekers and refugees in Nauru. The Nauru economy also benefits from the presence of about five hundred expatriate workers at the processing centres as well as the employment of several hundred locals, mostly former civil servants that resigned their commissions to take up better paying jobs at the centres.

23. The Government of Nauru is commended for the establishment of the Nauru Electoral Commission under the *Electoral Act 2016*, certified on 10 March 2016. The Act established the Commission as a body corporate. Subject to any decision of a Court, the Commission is independent of the direction and control of any person or authority in the performance of its functions and exercise of its powers. The *Electoral Act* also established the office of the Electoral Commissioner, and provides for the independence of the Commissioner in the exercise of any function or duty under the Act. This is strengthened by prescribing the conditions for the appointment and removal of the Electoral Commissioner.

24. Other significant legislative changes include the automatic registration of voters on the electoral roll on reaching the age of 20; requirement by voters to present identification at polling stations; widening of eligibility criteria to apply to transfer across constituencies; legislating proxy voting (where previously the practice was carried out under regulations by Cabinet); definition of corrupt practices and electoral offences (including bribery, treating, intimidation and undue influence); increase of candidacy fees from \$100 to \$2000 (then revised to \$500 following a legal challenge); and the requirement for public officers to resign 3 months prior to elections. On its own initiative the Electoral Commission also introduced additional procedures to increase transparency and reduce double voting (such as the use of indelible ink and the introduction of specific opening procedures for the polls).

25. While many of the electoral changes were welcomed and lauded, three changes in particular were criticised: the considerable increase in candidate's fees, the requirement that public officers resign three months prior to the election, and the broadening of criteria to transfer across constituencies. It was not clear how thoroughly the electoral amendments had been consulted on before being legislated as conflicting views were shared with the Forum Team on the subject. The Forum Team also noted conflicting perceptions of the independence of the judiciary. Some stakeholders shared that they had low confidence that the instigation of legal challenges would receive unbiased consideration by the judiciary. It was noted that a few successful legal challenges had been mounted against some of the electoral reforms.

Legal challenges

Candidate fees for elections

26. The candidate fees for elections were raised from \$100 to \$2000 with the enactment of the *Electoral Act 2016*. The twenty-fold increase was criticised by many as unreasonable and prohibitive. A group of eighteen prospective candidates lodged a legal challenge against the fee increase in the Supreme Court. Before the case was completed, the government in consultation with the Electoral Commissioner amended the *Electoral Act* in Parliament to reduce the fee to \$500.

Constitutionality of the requirement to resign 3 months prior to elections

27. The Forum Team was advised by the Electoral Commissioner on polling day that the Chief Justice placed an injunction on polling for the district of Aiwo following a legal appeal on the constitutionality of section 84 of the *Public Service Act 2016*.³ Section 84 of the *Public Service Act 2016* states that any employee wishing to contest elections must submit their

³ The application had been dismissed by the Registrar of the Supreme Court a few days earlier.

resignation at least three months prior to the election. Polling for Aiwo therefore did not open at 9am on 9 July with the rest of the country. The Office of the Secretary to Justice successfully appealed the injunction. The poll was subsequently opened at around noon on 9 July. However, the Forum Team was advised by the Electoral Commissioner that a candidate contesting the Aiwo district objected to the opening of the polls as his supporters had been advised that polling would not take place and many had gone out fishing et cetera.

28. The Electoral Commissioner closed the poll, and deferred the election to Monday 11 July. Approximately 20 voters had voted, all of whom were asked to return on Monday and recast their votes. Special leave was given to individuals who had voted and were scheduled to fly out of the country on Sunday, to apply for authorisation for proxy votes. The presiding officer at the Aiwo polling station on Monday kept a list of those who had already voted and had been asked to return to vote.

29. The requirement that public officers resign 3 months before the election⁴ was raised with the Forum Team by many stakeholders as a strong disincentive to contest as they could not afford the loss in income. The Forum Team notes that the practice is not unique to Nauru but such a requirement in a small country has the potential to limit the number of candidates standing for elections. Standing for elections should be considered a fundamental right of all individuals.

Recommendation 1

That the Government of Nauru, in consultation with the Nauru Electoral Commissioner, reconsider the conditions for the mandatory period for public officers to resign prior to elections, and consider other alternatives including the possibility of public officers taking extended leave without pay.

Suspended Opposition Members of Parliament

30. Three Opposition members contesting the election had legal cases pending against them from last year. The three had been charged with inciting political demonstrations that resulted in injuries to police officers and damage to government property. Their cases had been referred by the Magistrate to the Supreme Court for a declaration on specific constitutional questions before the matter could be heard by the Magistrate. The three Opposition members had also been suspended from Parliament.⁵

31. The case impacted the ability of the three Opposition members to campaign because of the court imposed curfew (of between 6pm to 6am). The three members were therefore unable to campaign or attend any electoral related meetings held in that time. The Forum Team was advised that if the three were elected they would be granted their seats in Parliament. (The three members were not returned in the election).

Registration

⁴ The exception is in the event of a by-election, supplementary election, or if parliament is dissolved earlier (section 59(3) of the *Electoral Act*).

⁵ Two other Opposition members had also been suspended from parliament for other reasons.

32. Under the *Electoral Act*, registration on the Electoral Roll is automatic once a person reaches the age of 20 and is a Nauruan citizen. Individuals are registered on the Roll in the district of their birth as recorded in the Register of Births. It is the duty of the Registrar for Births, Deaths and Marriages to provide the Electoral Commissioner with updated information as required. Naturalized citizens and Nauruans born abroad may apply to register in the district of their choice or domicile.

33. Section 42 of the *Electoral Act* also allows voters to apply for the transfer of registration from one constituency to another upon satisfaction of certain criteria. The criteria for transfers are broad and include domicile in that district for not less than one month, and the satisfaction of undefined “substantial connection to customary links and affiliation” with that district. The Forum Team was advised by many interlocutors that many people were unhappy with the high level of transfers to their constituencies. The Team also noted unsubstantiated claims that some candidates (or their campaign managers) were actively recruiting supporters to transfer to other constituencies, including by paying the \$150 voter transfer fees.

34. The transfers between constituencies was comparatively high for a country the size of Nauru. This has the potential to distort the proportionality of voting districts. The issue is further complicated by the fact that there are no formal electoral boundaries in Nauru. Past electoral observer missions to Nauru have raised the issue of transfers. The Forum Team did note concerns raised by some stakeholders of the high level of voter transfers. A briefing with the Police before the election revealed that the security level had been raised from low to medium in some districts in the South due to dissatisfaction over the issue.

Recommendation 2

Recognising the implications of high levels of voter transfers, namely the artificial inflation of District Rolls and heightened security risks from increasing community dissatisfaction, the Forum Team recommends:

- a. the practice of voter transfers is abolished; or
- b. that greater legislative clarity is introduced to define what constitutes a ‘substantial connection to customary links and affiliation’ under the Act and tighten the eligibility criteria and circumstances to apply to transfer across constituencies.

The Electoral Roll

35. A lot of work has been done to clean and update the electoral roll, including under a Memorandum of Understanding with the Office of the Registrar for Births, Deaths and Marriages. The Electoral Commissioner is responsible for the update and cleaning of the roll. Under sections 37, 39(3) and 52 of the Act, the Registrar of Births, Deaths and Marriages is required to regularly provide information to the Electoral Commissioner for the purpose of updating the Roll.

36. The Forum Team observed a number of issues regarding the roll during the election. These were documented by presiding officers for attention afterwards. In one polling station seven people did not appear on the roll despite having voted before or having registered recently. There were also cases of transfers since the last election that were not recorded, and names of deceased that had not been removed. The most common issue was with duplication of names. As Nauruans adopt different names in different stages of life, it is not unusual for

an individual to be registered under various aliases. To ensure voters only voted once, the Electoral Commission used indelible ink to mark voters.

37. The Forum Team was also advised by the Electoral Commission that in the cleaning of the Roll prior to the election, a very small number of names had been inadvertently deleted. These were names that bore close similarity to others, which the Commission staff thought were duplications. Presiding officers documented all errors and the Commission advised that revision of the roll will be a priority.

Campaigning and media

Platforms

38. The usual means of campaigning in Nauru is through community ‘platforms’. Platforms are usually arranged by community elders, or the senior most candidate contesting the election in that district. At each platform all the candidates were allocated time slots to share their political messages with the community. Opportunity was then given to the public to ask questions of the candidates. The platforms were conducted in Nauruan and were well attended. The Forum Team observed three platforms. At the Ubenide platform, some members of the public complained that they still had questions to ask when the platform was concluded. The presence of police was observed at the platforms. The Forum Team was impressed by the level of interest and participation at the platform by the public. It provides an invaluable opportunity for the public to ask specific questions to candidates.

Mass media

39. There were many campaign billboards and signs displayed around the island, which the Forum Team was advised was a relatively new practice. There was little evidence of other overt advertising materials, such as fliers, posters, and banners.

40. The Forum Team received complaints from some candidates in respect of access to government owned television, radio and the Nauru Bulletin. The Forum Team was advised by several government officials that “Nauruans believe everything they see on television, so it is important to ensure that any information broadcast on television is accurate.” It was standard government policy therefore that political campaigning was specifically restricted from being broadcast on television. This was applied consistently to all candidates including individual Ministers. This point however was disputed by some former government Ministers who claimed that during their time in government, candidates were free to buy advertising slots on television.

41. It was noted by the Forum Team that the television station broadcasted an eleven-minute advertisement of the government’s achievements on an hourly basis. The Forum Team was advised that the achievements of the government were documented facts and that the segment itself was a government message, and not a message by individual candidates. While the Forum Team understands this distinction, it does note the potential of mass media to influence people’s views and understanding of issues. As noted by officials, people believe what they see on television. The regular screening of the achievements of the government, including images of cabinet ministers, therefore raised questions of equity. The Forum Team was advised that advertising on the radio was available to all candidates, although the Team did not hear any radio campaigns (which may have been in the local language).

42. The Forum Team was informed of and acknowledges the Government's ongoing concerns over the objectivity and accuracy of international media reporting based on accusations made by Opposition MPs and ongoing issues surrounding the Regional Processing Centres. The Team further notes the introduction of comparatively high visa application fees for foreign journalists. The foreign media plays an important role in disseminating the work of the government – particularly to Nauruans living overseas who play an influential role through the use of the proxy votes. Proxy votes made up 14% of the number of votes cast in the 2016 election. Having said that the Team does note that the restrictions on the foreign media was not a prevalent issue among many stakeholders that the Team talked to.

Recommendation 3

The Forum Team recommends that the restrictions on the use of television for political campaigning by individuals be lifted to ensure that no candidates have advantage over others with respect access to the voting public.

Door to door campaigning

43. The Forum Team acknowledges that restrictions on access to mass media need not prevent information from being widely disseminated. With regard to elections, the general feedback was that while media is important it does not play a central role in driving electoral campaigns in Nauru. Campaigning in Nauru is predominantly driven by house-to-house visits, and garnering the support of family elders/community leaders. Informal channels of communication are very vibrant in Nauru. Several candidates the Forum Team spoke with advised that they mostly campaigned through door to door visits because it was the most effective way to get the message to constituents, and also because advertising was expensive.

Social media

44. The Forum Team also notes that the government ban on the use of Facebook does not appear to have restricted its usage for campaign purposes. Feedback was received that Facebook was a very popular medium for disseminating campaign information (by campaign managers, not necessarily candidates). It also provided a means by which people could express and share their political views and ideas. In this respect, Facebook appears to have become a *de facto* space for disseminating news in Nauru.

Campaign managers

45. Many candidates in Nauru used campaign managers to run their campaigns. These managers are usually paid, although some may be unpaid family members. Campaign managers play a critical role in the lead up to elections and may be tasked or asked to do a number of different things. They play an active role in strategising and disseminating campaign messages, as well as undertake house to house visits for candidates. Campaign managers also used Facebook on behalf of candidates, which shielded candidates from violating the government ban.

46. The Forum Team was told by some stakeholders that some campaign managers actively encouraged voters to transfer their constituencies, including by paying the transfer fees. Some campaign managers were allegedly also distributing gifts to voters. These are

serious claims that should be investigated as a matter of priority. The Forum Team was unable to substantiate these claims and brings them to the attention of the Electoral Commissioner and the Government to address under Part 10 of the Act, on corrupt practices.

Recommendation 4

The Forum Team recommends that the Nauru Electoral Commission investigate allegations against some candidates campaign managers of treating and other electoral offences, to ensure compliance with Part 10 “Corrupt Practices and other Electoral Offences” of the *Electoral Act*.

Women in politics

47. There have only been two women elected into parliament in Nauru. Ruby Thoma (1986-1992 and 1995-1997) and Charmaine Scotty (2013-present). There are many possible reasons for the lack of women’s political participation in Nauru (as in the rest of the Pacific). However, it is noted that Nauru is a matrilineal society, that women occupy a representative portion of high level positions in the public service, including at the chief executive officer level. Four of Nauru’s overseas diplomatic posts are headed by women. Nauruan women have high educational and professional qualifications. Therefore, professional and educational qualification, or the lack thereof, is unlikely to be a factor in assessing the level of women’s participation and representation in national politics.

48. Based on discussions, the Forum Team does wonder whether existing legislative and policy directions may have acted as an unintentional barrier to the registration of women candidates. For the 2016 election, only 3 of the 67 candidates were women. It was shared with the Forum Team that women feel a greater sense of responsibility to provide for their families and that the 3-month resignation period prior to elections was too long for women to go without income. The hike in the candidate’s fees from \$100 to \$2000 was another deterrent. Even though this was later revised down to \$500, it is still a substantial sum in the context of Nauru. Also, by the time the fee was reduced, it was too late for women public servants to resign. Women were also expected to campaign against incumbents and candidates who were advantaged by their access to government resources such as the Housing scheme.

49. The Forum Team was informed that an additional barrier to women’s political participation is the prevailing cultural mind-set that parliamentary work is for men, and that the adversarial nature of the role is not appropriate for women. The perception that a ‘woman’s place is in the home’ is still common among men. Another interesting perspective shared was that women are less inclined to enter politics because of the increased public scrutiny commensurate with the role. While men are also subjected to public scrutiny, women are expected to maintain unreasonably high standards of conduct as compared to their male counterparts. Certain behaviours deemed acceptable for men would generate a high level of stigma for women. Women are therefore less inclined to put themselves in a position where their personal lives are ‘aired’ publicly.

50. Notwithstanding these conservative mind-sets, there is little support for temporary special measures among women. The Forum Team was advised that Nauru women are very proud, and want to stand for elections on their own merit. It was noted that reference was made to the usefulness of the women’s mock parliament initiative conducted by UNDP last year. There appears to be support for holding similar initiatives in the future. The Honourable

Charmaine Scotty (Minister for Home Affairs) was also held up as a good role model for changing the cultural mind-set about the role of women in politics.

Recommendation 5

Taking into consideration the inherent cultural and attitudinal barriers to women's participation in politics that are exacerbated by stringent legislative requirements that saw only three women candidates in the 2016 general election, the Forum Team recommends:

- a. that the candidacy fee is reduced or removed for women; and
- b. Government undertake more programmes to raise awareness amongst the general public of the importance of the representation of women in Parliament.

Participation of youth

51. There appears to be a strong tradition in Nauru of young people being told by the head of the family or family elders how to vote. Given the size of Nauru, and the strong family ties, youth generally feel that they are obligated to vote as they have been instructed. By and large, there is little sense of independence among the youth population. It was shared with the Forum Team that "everyone seems to know how you voted" and that the consequences of going against elders can in some cases be severe – leading to disparagement. However, it is understood that this practice is slowly dissipating over time and is not as heavily imposed as it was during the 1970's-1990's.

52. The Nauru youth population was described by some stakeholders as the 'lost generation'. During Nauru's financial crisis many youth (especially males) were expected to leave school and help provide food for the family. There is a relatively high level of illiteracy among young males compared to other Pacific countries, and there are not many training programmes to re-educate the 'lost generation.'

53. The state of the education system in Nauru is also a cause for concern. There are reportedly high levels of school truancy and/or dropouts, particularly at higher levels. It was noted that several hundred Nauruans are employed by the Regional Processing Centers, many of whom were former civil servants attracted to the better remuneration. However, this has resulted in the drain of qualified Nauruan teachers. It was noted that there are only two Nauruan teachers teaching in Nauru College (the rest are expatriates).

54. Views were shared with the Forum Team that voters with low literacy might have trouble identifying the names of their preferred candidates on the ballot papers. It was common for those who are unable to read to memorise the sequencing of numbers to put on the ballot paper. The Forum Team also observed a number of voters who requested assistance from the polling officials at the polling booth.

55. The Forum Team discussed the possibility of using candidate photos on ballot papers. However, noting the costs, the display of candidate posters that include candidate photographs inside tolling booths was considered to be a cheaper alternative. This has been done in other Pacific countries.

Recommendation 6

The Forum Team recommends the introduction of candidate posters to be displayed in each polling booth. The candidate posters, developed by the Nauru Electoral Commission,

should include the photographs of each candidate beside their name, so the voter can identify the correct name on the ballot.

The Government Housing Scheme

56. The Forum Team was informed by various stakeholders of a Nauru Community Housing Scheme for citizens that was being used by government caucus Members of Parliament to garner political support in the lead up to the election. The Forum Team noted conflicting information as to what the Scheme entails, how it could be accessed, and by whom.

57. According to the Nauru Bulletin Issue 19-2014/116 the assistance is in the form of an interest free loan, repayable over 15 years, and was introduced to address overcrowding. To be eligible, applicants are required to establish that they were living in an overcrowded household; demonstrate their ability to repay the loan over 15 years; and provide evidence of land ownership for the location of the house.⁶ Some candidates claimed that caucus MPs had access to large sums of money under the Scheme during the election period, which were being used to buy household goods and fixtures (fridges, washing machines, new roofs, et cetera) as a means of enticing support from their constituents.

58. There is concurrence of views that disbursement under the Scheme is administered by individual Members of Parliament, in response to requests for assistance from their constituents. The Forum Team was informed that one practice was for the MP to send a construction company to the site to make an assessment of the needs and prepare a quote for the materials required, which would then be disbursed to the homeowners. The Forum Team was advised that while theoretically everyone can access the Scheme, the authority for disbursements have so far only been available to government caucus MPs.

59. There were allegations that the disbursement of Housing assistance by government caucus MPs had intensified in the lead up to the elections. The Forum Team was not able to substantiate any of these claims regarding the Scheme. The Forum Team acknowledges the possibility that some of these issues arose from miscommunication and misunderstanding.

60. While the Housing Scheme appears to be highly appreciated by the public, some common concerns raised included the timing of disbursement and access to the fund; the need to have a transparent and fair process for the issuance of the entitlement to applicants and the reward of contracts to suppliers; that the money be administered by the Ministry of Finance rather than under the direct control of individual MPs; and that there should be a predetermined criteria of assessment. Concerns were also raised by some stakeholders that the use of the Scheme in the lead up to the elections raised questions on whether there was a 'level playing field'. The Forum Team notes the imminent appointment of an Ombudsman under the Leadership Code who may be in a position to investigate these issues further.

Recommendation 7

The Forum Team recommends that the Government of Nauru in consultation with the relevant authorities:

⁶ Nauru Bulletin Issue 13-2015/131 carried a story of President Waqa handing over the keys to the 20th house built under the scheme, with 6 houses still to be completed.

- a. consider investigating the validity of allegations regarding the use of the Housing Scheme in the lead up to the general elections; and
- b. subject to the outcome under (a) consider strengthening the governance and accountability mechanisms for the financial management of the Housing Scheme in line with the values of the Leadership Code.

Civil society

61. The Forum Team was advised that in the view of civil society representatives, the government has done a good job in providing for the needs of people (such as making payments of royalties for phosphate and payments of leases and rentals to the landowners). People therefore have been less inclined to dwell on ‘the faults’ of the government.

62. Civil society organisations in Nauru are less visible and active compared to other Pacific countries, and the idea of a vibrant civil society responsible for advocating key issues is foreign to many people. From meetings, it was also clear that civil society has not been active in promoting the upcoming elections.

Voter education and civic awareness

63. The Forum Team was advised that the level of civic awareness and voter education in Nauru is still in the development phase. Politics in Nauru is not primarily driven by policy positions on key national and international issues. Rather, it is the interplay between kinship, association and support of clans and the extended family, and expectations of material gain. Candidates have shared that the most important part of campaigning is seeking the support of family/community elders.

64. These key individuals have the informal authority to mobilise support within their respective families and communities for a particular candidate. There is an understood agreement therefore within many Nauru families of who to vote for. The practice of voting along community or family lines is not uncommon in the Pacific. Indeed, there are benefits in following community decisions on the choice of political representatives – when the decisions are agreed as a community. However, the culture and practice of following the decisions of key individuals is not necessarily conducive to the participation of women and youth in politics, or the exercise of individual choice. This also does not contribute to developing an overall culture of greater accountability from representatives, and governments.

65. The situation is further complicated by the people’s expectations of government. The Forum Team was informed that in Nauru the government is expected to and provides everything for the people. This expectation dates back to when the country was prosperous and the government *did* provide everything. These expectations also seem to apply to individual short term material gains. However, it is understood that this mindset is slowly changing, particularly in the last decade. Expectations are shifting now to the efficient and timely delivery of Government services and providing for the social welfare needs of the people.

66. The Forum Team was pleased to note that section 19 of the *Electoral Act*, which lists the functions of the Electoral Commission, includes undertaking education programmes for voters. The wider use of voter education programmes on television, radio and print media

about the importance of the vote, as well as the freedom of all individuals to vote for whoever they want is a basic human right, irrespective of age or residence.

Corrupt Practices and Electoral offences

67. The Forum Team was informed by several stakeholders that some campaign managers had provided gifts and donations to voters. The timing of the disbursement of assistance under the Housing Scheme by caucus members and the payment of transfer fees by some candidates were also highlighted as questionable practices.

68. The level of understanding of what constitutes ‘corrupt’ electoral practices is likely low.

One stakeholder the Forum Team met with shared that she encouraged voters to ‘take the gifts but vote as they please.’ This situation is not helped by the fact that in Nauru, like other countries in the Pacific, there are cultural practices of gifting and making community contributions. This can blur the lines between treating and customary obligations. The Forum Team was pleased to note that the *Electoral Act* has a comprehensive section on ‘Corrupt Practices and Electoral Offences,’ which includes bribery, undue influence and electoral treating. The penalties for violating the provisions are appropriately steep (usually a \$5,000 fine or 1-year imprisonment). At the completion of this report, no petitions were submitted to the courts.

Recommendation 8

The Forum Team recommends that the Electoral Commission undertake regular, sustained and comprehensive civic awareness and voter education, including on television and print media, on:

- a. teaching voters to recognise and understand corrupt practices and electoral offences covered in Part 10 of the Electoral Act;
- b. voters’ responsibility to demand greater accountability of politicians and Members of Parliament; and
- c. voters’ responsibility to report incidences of corrupt practices and electoral offences.

Other issues regarding the enabling environment

69. In the course of its consultations a recurring subject raised with the Forum Team was the ‘Blacklist’. The list was apparently compiled last year after the political demonstrations that resulted in damage to government property, including Parliament, and injuries to police officers. It was claimed by some that video images of the demonstrations were used to identify all persons who participated in the demonstration. It is alleged that government workers on the list have since lost their employment. The Forum Team was also told by the same stakeholders that pressure was applied to the private sector to terminate or refrain from recruiting people on the list.

70. At present the Forum Team has no way to substantiate these allegations. If true, these practices are clearly inconsistent with the values of good governance and the Pacific Islands Forum. The Forum Team has a responsibility to bring these allegations to the attention of the Government since it brings to question issues relating to the basic right to vote without fear of intimidation or retaliation.

PART 2: THE 2016 ELECTION

The poll

71. The Nauru national election was conducted from 9am to 6pm on 9 July. Voting is compulsory, with failure to vote liable to a fine not exceeding \$100. The Forum Team observed polling in all thirteen stations that were open on election day. This included observing preparations for the transport of polling materials from the Electoral Commission to the polling stations (from 6am), the opening of polls in two stations, and the closing of polls in another two stations.

72. The preparations and logistics for the election were excellent. Polling officials arrived on time at the Electoral Commission prior to the transport of polling materials to venues. All polling officials were easily identifiable in matching shirts. There was good cooperation between the police and the Electoral Commission. Materials for each polling station were organised and transported under police escort to polling venues well in advance of the commencement of polling. At every station there were three polling officials (including one presiding officer) and at least one police officer. Two thirds of polling officials were women. All presiding officers were issued a Polling Station Record Book on which they were required to record the number of ballots issued to them, and record their reconciliation of ballots at the end of the election.

73. The Forum Team observed that the layout in polling stations differed. This was likely due to the venues they were located (school classrooms and hallways, community and church halls, a warehouse garage, and tents by the beach). However, all the stations were set up to try and ensure voters' privacy. The Team noted that in some stations the voting booths were very close together. There were however a large number of booths, so there were generally empty booths between voters. Not all the venues were accessible by wheelchair, but all were accessible by vehicle. There were a few observed cases where polling officials (sometimes accompanied by a police officer) took ballots to people who were not well enough to get out of their vehicles.

74. The Forum Team also noted that the Electoral Commission had organised three mobile polling units to take the ballots to prisons, hospitals and any individuals who could not leave their homes. Voters were informed through text messages of arrangements for mobile voting (and proxy voting), including how to apply for mobile voting.

Opening

75. The Forum Team noted that under the new *Electoral Act* the voting period changed from 11am-6pm to 9am-6pm. Opening commenced on time in the two stations observed. Apart from the district of Aiwo (where polling was delayed by legal challenges), there were no reports of polls opening late in other stations.

76. The only specific opening procedure prescribed in the *Electoral Act* is section 70(3), under which "the presiding officer must lock the ballot box before polling commences...." Notwithstanding this, the Forum Team witnessed detailed procedures for the opening in the two stations observed. These were in line with the Polling Station Manual developed by the Electoral Commission, and on which polling officials had been trained. The additional processes in the Manual (including with regard the issue of ballots) were clearly intended to increase overall transparency and protect the integrity of the process.

77. In one station, the presiding officer loudly announced that the polling station was open, showed the empty ballot box to all observers and voters present, and locked the ballot box with a small padlock. The presiding officer then affixed two plastic seals to the locked padlock. In the other station where the opening was observed, the polling officials had invited a woman from a nearby house to witness that the ballot box was empty before it was padlocked by the police officer present. No plastic seals were affixed to the locked padlock.

Voting process (issuing of ballot papers)

78. Under the legislation, before a ballot is issued, a voter must present a form of identification and satisfy polling officials that they are the person registered to vote at the station. Once the voter's eligibility has been verified, the presiding officer must then cross the name off the roll, and hand the voter a ballot on which the presiding officer has initialed the back. The voter must then sign his or her name on the roll to confirm receipt of the ballot. If a voter did not have identification, the presiding officer was required to ask the voter: a) if they were the person whose name was on the roll for that constituency; b) if they were qualified to vote for members of that constituency; and c) if they had already voted at that election.

79. The Polling Station Manual detailed additional steps for the issue of ballots, aimed primarily at reducing chances of double voting. According to the Manual, officials must first inspect the left forefinger of voters for any indelible ink mark. The voter should then be asked for identification and his or her name found on the roll. If the voter did not have identification, and the voter's name was found on the roll, then the three questions should be asked of the individual. On locating the voter on the roll, a line should be ruled through the name. Indelible ink should then be applied to the left forefinger and the voter asked to sign beside their name. The presiding officer must then initial the back of the ballot before giving to the voter with directions to retire to the booth and number the squares on the ballot according to their preference.

80. There were inconsistencies noted in the procedures for issuing ballot papers. These include the application of indelible ink to fingers other than the left forefinger; the application of ink prior to the verification of the voter's eligibility; and the bulk initialing of ballot papers in at least one station. In some cases, polling officials also sent voters back home to get identification, in which situations the Forum Team observed that the voters did return with identification. Another minor inconsistency was with asking electoral observers to sign the Polling Station Record Book.

81. It was noted that the application of indelible ink prior to the verification of identity could present problems if the voter was registered somewhere else. As polling officials at the other polling station would check their finger for indelible ink, they would likely not be allowed to vote. The Forum Team also noted that the ballot papers did not have serial numbers. Under the Act, the ballots were authenticated by the initials of the presiding officers on the back. While the Team does not think the chances are high of pre-initialed ballots being misappropriated, the practice of initialing ballots in bulk does present an unnecessary security risk.

82. The Forum Team is of the view that the inconsistencies observed were not malicious or with intent to defraud the electoral process and did not impact the results of the election. The inconsistencies are more likely due to the fact that only two of the temporary polling staff had any experience with polling. Temporary polling staff did receive some training by the Electoral Commission, which the Forum Team observed. The training included role

playing the process for the issue of ballots and was very interactive and useful. However, the Forum Team is of the view that the training was insufficient having lasted only a few hours. It is acknowledged however that the Electoral Commission was severely pressed for time with only ten weeks to prepare for the election, including in which to prepare temporary polling staff.

83. Notwithstanding the short preparation time, the Forum Team was pleased to note that all polling officials observed were professional and polite. Officials in each station worked well as a team and were frequently observed to refer to their Manuals when unsure of anything. Some polling officials also called the Electoral Commissioner for clarification. It was clear that polling officials took their responsibilities seriously and did not make hasty decisions when faced with unforeseen circumstances. In the middle of the day, some polling stations became busier resulting in long queues of voters. The team was pleased to note that voters remained patient and polling teams coped well with the increased volume of voters.

Recommendation 9

The Forum Team recommends for future elections that temporary polling officials receive *at least* one full day of training (preferably more). Training should cover all aspects of the voting process and include clear explanations as to why specific procedures were followed.

Proxy voting

84. Section 78 of the *Electoral Act* allows for a person who is unable to be in Nauru on polling day to apply for proxy voting authorisation. Applications for proxy voting authorisation may be made after the closing of the Roll (21 days before the election). The Electoral (Proxy Voting) Regulations 2016 provides a list of approved “appointed witnesses” to co-sign the application. Applications must be received by the Electoral Commissioner at least 24 hours before the commencement of polls.

85. A proxy must cast his or her vote as a proxy at the same time they cast their own vote. A voter may be granted up to 5 proxy voting authorisations. The Regulations further specify that a person nominated to be a proxy must be eligible to vote and registered on the same Roll as the voter. The Electoral Commission should then prepare a list of the names of all proxies and related voters for each polling station to be given to the respective presiding officers. Presiding officers could only issue ballots to proxy voters on presentation of the relevant proxy voting authorisation, and if the proxy voter was listed in the list of proxies prepared by the Electoral Commission.

86. Approximately 900 authorisations for proxy voting were granted by the Electoral Commission. Proxy votes comprise 14% of the total 6,469 votes cast on election day. The Electoral Commission advised that proxy votes from Kiribati were rejected as it was later revealed that the appointed witness was also a campaign manager for one of the candidates. The Commission will look to tighten aspects of the regulation accordingly.

87. The Forum Team also observed issues with the proxy votes. There were instances where the names of non-resident voters were not on the roll, but because the proxy voter presented the requisite authorisations they were allowed to cast the proxy votes. There was also an incident where the identification number for the proxy voter was the number of a resident voter (who was his sibling). Consequently, the resident voter was not allowed to vote as the records showed he had already voted.

Recommendation 10

The Forum Team recommends the introduction of contingency measures to cater for situations where eligible voters are disenfranchised through no individual fault. The introduction of “challenge votes” will allow the voter to cast their vote, which would be quarantined pending the verification of the eligibility of the voter. The vote will then be discarded or added to the ballot box as required. This could also address the issue observed of eligible voters being turned away because their names were not on the roll.

Closing

88. The Forum Team observed the closing of polls in three polling stations; two stations on 9 July, and the close of the Aiwo station on 11 July. In all three cases polling officials strictly observed the 6pm closing. Polling officials also followed all closing procedures in the Manual and completed the Polling Record Book. Ballot boxes were transported to the counting centre (Parliament House) under police escort.

The count

89. There were 35 counting officials who were sworn in by the Electoral Commissioner at 6.55pm. The count commenced at approximately 7pm and was undertaken in the parliamentary chamber. Observers, the media and the general public watched the count from behind plexiglass windows in the gallery. Access to the counting room was tightly controlled. The Commission did allow two observers at a time to enter the counting room and observe proceedings up close.

90. Counting officials were divided into teams. While counting teams took breaks at intervals, none of the counting officials left the counting centre until the conclusion of the count, on the following day. Entry to and exit from the counting centre was strictly controlled by the police (stationed outside the counting room). Counting officials were inspected prior to leaving the room for breaks. The Commission advised that coloured ballot papers had been introduced to reduce the chances of counterfeit votes being included in the count. Previously the ballot papers were white. It was noted that the ballot papers were the same colour as the counting officials’ tee-shirts. The Forum Team believes this a coincidence and was not intended to undermine the security of the ballots.

91. The counting teams had received some training the night before and also received some instructions just prior to the count. They were supervised and directed by the Electoral Commissioner, two Deputy Commissioners and the electoral adviser. The Commission had introduced new counting procedures to streamline the process which significantly sped up the count. The Forum Team was advised that the results were delivered in record time. This is most likely due to the new streamlined procedures which were methodical and systematic and reduced the need for recounting if mistakes were made. The count progressed well without any major issues and concluded at midday the following day.

92. The first ballot boxes to be opened were the three mobile polling boxes – at 7pm. This was followed by the ballot box for Yaren district. When the ballot boxes were opened, the contents were tipped onto a table and the inside of the box displayed to all observers to show it was empty. The first team of counting officials unfolded the ballots and compiled them into packages. The second team would then go through the packages and sort according to first preferences. The results were recorded in a computer. The second preferences were then recorded (and so on). Informal votes were put aside. A total of 6,469 votes were cast. The Forum Team was pleased to note that there were only 163 invalid votes, or 2.5% of total votes cast.

93. Progress of the count was broadcast live by the Nauru media. Thirteen of the fourteen districts were completed by the following day, with the last district completed on the evening of Monday 11 July. The general environment was busy yet organised.

Post-election

94. After the election, the Forum Team was advised that several supporters of a new Member of Parliament had experienced post-election violence at the hands of rival candidate supporters. The incidents had been reported to the Police. The new Member of Parliament advised that he had also helped to transport supporters to the polling venue because of intimidation and threats by rival candidate supporters. The Forum Team was not made aware of other incidents of violence and/or intimidation. It is unknown if the incidents relayed to the Team were isolated to that particular candidate's supporters.

CONCLUSION

95. Overall, the Forum Team is of the view that:

- the Nauru Electoral Commission should be highly commended and congratulated on the successful conduct of the 2016 election;
- polling and counting officials conducted themselves in a highly professional and impartial manner;
- polling was safe, free and fair. There were no observed incidents of voter intimidation in the lead up to the election, nor were attempts observed to disrupt polling on election day; although
- there are a number of issues relating to the enabling environment for the conduct of elections, that the Forum Team recommends the Government, Electoral Commissioner and the relevant authorities address.

ACKNOWLEDGEMENTS

96. The Pacific Islands Forum Election Observer Team acknowledges with gratitude:

- the Nauru Electoral Commissioner and the Government of Nauru for the invitation to observe the elections;
- the Electoral Commissioner and staff of the Electoral Commission for their support of the mission including facilitating access by the Team to polling booths and the counting room;

- the polling and security officials at all booths visited by Team members for taking time to speak with Team members;
- all the interlocutors the Team met with including Government representatives, civil society, development partners, and members of the diplomatic corps; and
- the people of Nauru for their warm welcome and hospitality.

Pacific Islands Forum Election Observer Team

19 August 2016

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