

CP/1/20/2/2

1 May 2008

Mr Peter Forau  
Acting Secretary General  
Pacific Islands Forum Secretariat  
Suva  
**FIJI**

Dear Acting Secretary General,

We are writing in response to your request to us to conduct a Forum monitoring Mission to Nauru's 2008 general election. Our work in Nauru was a pleasure and a privilege, and has now been completed.

2. We are pleased to submit to you the attached report of the Mission. As per the Terms of Reference agreed between yourself and the Government of Nauru, we request that you transmit it to the Government and election authorities of Nauru, and subsequently share it with other Forum member countries and the public.

3. We would be most grateful if you would formally convey our thanks to the Government of Nauru for the hospitality and assistance provided to the Mission during its stay in Nauru. We wish Nauru every success in the future.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Makurita Baaro', written in a cursive style.

Mrs Makurita Baaro

A handwritten signature in black ink, appearing to read 'Shennia Spillane', written in a cursive style.

Ms Shennia Spillane

**REPORT OF THE PACIFIC ISLANDS FORUM  
ELECTION MONITORING MISSION TO NAURU  
APRIL-MAY 2008**

**Background**

In August 2007, at the invitation of the Government of Nauru, a Forum Election Observer Team observed the general elections. The Team produced a comprehensive report, commending the electoral process as a credible one in which voters were able freely to exercise their will, while recognising some areas of concern including the influence of “money politics” and outdated electoral procedures such as the transfer system. The Team offered 12 recommendations for electoral strengthening and reform.

2. Following the 2007 election, the new Government led by President Ludwig Scotty held a strong majority of 14 in the 18 seat Parliament. Following several weeks of internal debate within Government about alleged misconduct by a senior Minister, on 8 November three Ministers - Honourable Kieren Keke, Honourable Freddie Pitcher and Honourable Roland Kun - resigned from Cabinet and led 5 other Government MPs to the opposition. On 19 December, the Scotty Government lost a vote of no confidence. A new Government took power, led by President Marcus Stephen, and including Ministers Keke, Pitcher and Kun.

3. The new Stephen Government held a majority with 9 of the 17 seats (exclusive of the Speaker), until the resignation of one member from the Government in January 2008. In March 2008, the opposition tabled a vote of no confidence in the Government, forcing the Speaker to resign to rejoin the Government ranks. This ensured the vote of no confidence was not successful, but at the same time created a parliamentary deadlock at 9-9, with the Speaker’s chair vacant. Subsequently, the opposition nominated David Adeang as Speaker which the Government supported, temporarily breaking the deadlock by returning the majority to Government.

4. When Parliament convened on 20 March the Speaker suspended the session to an unspecified time (“when the bells ring”). Two days later, on Easter Saturday, the Speaker recalled Parliament. The session was only attended by the opposition members. The Government members advised the Mission that they had not been advised that the session was taking place on Easter Saturday. During this session, new legal provisions and Standing Orders were passed by those members present which prohibited Nauruans with dual citizenship from sitting in Parliament, effectively excluding three Government MPs from Parliament. In the weeks that followed, several attempts were made by the Speaker to have the MPs removed from Parliament. Those members refused to leave.

5. Meanwhile the President, with the approval of Cabinet, referred the legality of the 22 March sitting to the Supreme Court under section 55 of Nauru’s Constitution. On 7 April the Chief Justice ruled that the 22 March sitting of Parliament did not have a

quorum as required by section 45 of the Constitution, and therefore all business transacted during that session was null and void.

6. The Speaker indicated that he did not agree with the Court's judgment and questioned the binding nature of a ruling under section 55 of the Constitution. On 10 April Parliament convened again and during the session, the Speaker purported to suspend all members of Government from Parliament for disorderly conduct.

7. On 18 April, President Stephen declared a State of Emergency in Nauru under section 77 of the Constitution, citing the "total breakdown of Parliamentary Governance together with the absolute disregard by certain members of Parliament for the supremacy of the Constitution and their refusal to allow the House to function, which has prevented the passage of the Supplementary Appropriation and other Bills", and the consequent exhaustion of existing funding in a number of sectors, which constituted a "grave threat to the economy and security of the Republic of Nauru". The President immediately dissolved Parliament and issued a writ for a general election to be held on 26 April. He further revoked the right of any Nauruan citizen to refer Constitutional matters to the Supreme Court, and authorised Treasury to make payments in accordance with the Supplementary Appropriations Bill.

8. On the same day the Government of Nauru wrote to the Secretary General requesting that the Forum Secretariat send an observer mission to the 2008 election.

### **Work of the Mission**

9. The agreed Terms of Reference for the Mission were as follows:

A Pacific Islands Forum election monitoring mission will visit Nauru to observe the "snap" General Election on 26 April 2008. The mission follows upon the Forum Election Observer Team's work in Nauru for the 2007 general elections, and will consist of two members of that Team. The mission will observe the election and the formation of government, in order to gain an overview of the environment in which the election takes place, the election itself and its parliamentary and political consequences, with a view to offering any revised or additional recommendations to those made in the Team's report of August 2007. The mission will provide a supplementary report in this regard to the Secretary General of the Pacific Islands Forum Secretariat, the Government of Nauru and to the election management authorities, following which it will be made public.

10. As indicated in the above, the Mission went about its work with the content and recommendations of the Forum Observer Team's 2007 report as its starting point. As such, this report should be read in conjunction with the 2007 report.

11. The Mission was comprised of Ms Makurita Baaro, Former Chief Secretary & Secretary to Cabinet of Kiribati, and Ms Shennia Spillane, Legal Adviser, Forum Secretariat. The Mission arrived in Nauru on 25 April and departed on 2 May.

12. Prior to the election, the Mission met with key stakeholders including representatives of the Government and opposition, the Returning Officer, NGOs, and the private sector. On 25 April we attended the campaign platforms for 4 constituencies.

13. On election day the Mission visited 10 of the 14 polling booths on Nauru, covering all 8 constituencies. Mission members were also present throughout the counting of votes. Finally, the Mission observed the swearing in of the new Members of Parliament and the Parliamentary election of the Speaker, Deputy Speaker and the President, on 29 April.

### **The Context**

14. The legal framework, electoral system and basic procedures for the election were unchanged from those used in 2007. The key distinction this time was the very short (eight day) period between the issuing of the writ and the holding of the election. This did have an impact on certain aspects of the process, which are discussed below.

15. The 18 seats were contested by 65 candidates, compared to the 79 who contested in 2007. This included 15 new candidates (that is, candidates who did not stand in 2007). Four candidates were women; half the number of women who contested in 2007. The number of candidates contesting each constituency ranged from 5 to 15.

### **Key Issues & Observations**

#### *Conduct of the Vote and Count*

16. Overall, the Mission witnessed a professionally managed electoral process. Both polling and counting were conducted without problems and the Mission highly commends the Returning Officer and her election staff for this achievement, especially given the extremely short preparation time for the election.

17. During the count, the Mission noticed and welcomed one measure taken to increase the transparency of the process, with the public display of preference breakdowns as well as the final results. This was a positive step towards the fuller disclosure of the count recommended by the Forum Observer Team in its 2007 report.

#### *The eight day election timetable*

18. While all political stakeholders and many Nauruans seemed satisfied with returning to elections as a means to end the parliamentary crisis, many including the opposition raised concerns with us about the short electoral timeframe and its impact in several areas. It is noted that the provisions of the Electoral Act envisage a four- to six-

week preparation and campaign period – under previous states of emergency in Nauru, elections have been called at as little as three weeks’ notice, but the eight days’ notice this time, we were told, was the briefest electoral period in the political history of Nauru.

19. One consequence raised with us was in relation to the nomination of candidates – nominations opened three days (one working day) after the declaration of the poll, and closed 24 hours later. Concern was expressed to the Mission that this timeframe may have prevented potential candidates from being ready to nominate, particularly if they were overseas at the time the election was announced. In addition, one civil society representative suggested that the short nomination period may have been a factor in the lower number of women candidates coming forward this election, as Nauruan women generally need to discuss such a decision at length with their family and community first.

20. Other key concerns about the short timeframe related to the franchise itself, and particularly transfers and proxy votes. The transfer system is discussed further below, but we were told that the closure of the rolls three days after the election was announced may have prevented people from transferring to the electorate of their choice. (It is noted, however, that 418 transfers were effected in that short time.)

21. In relation to proxy votes, we were advised by the Returning Officer that the short electoral period forced the limitation of arrangements for proxy voting to only those areas where there was resident Nauru Government representation. While this included Brisbane, Melbourne, Suva, New York, Taipei and Bangkok, concern was expressed to the Mission that significant communities of Nauruans in places such as the Republic of the Marshall Islands, Federated States of Micronesia, Kiribati and Tuvalu, did not have the opportunity to vote.

22. Several people who spoke to the Mission queried the necessity for such a short election timetable, given that on 18 April under the State of Emergency the President authorised withdrawal and expenditure of Treasury funds in accordance with the Supplementary Appropriation Bill approved by Cabinet, forestalling any immediate fiscal crisis. Some opposition-aligned stakeholders proposed to the Mission that the motivation for the historically brief election period was political, most probably intended to ensure that Government could plan ahead while others were caught by surprise with less time to marshal resources, arrange for transfers and plan their campaigns.

23. The Mission noted the seriousness of these concerns, which were raised by nearly all that we met, and recommends that future Governments give due and careful consideration to the optimal election preparation period should a “snap” election be required, balancing carefully the important democratic interests in an open and fair poll and the full franchise against the need for speedy resolution of the political situation.

*The Forum Election Observer Team’s 2007 recommendations*

24. Beyond the election timing, other issues which came to the Mission’s attention reinforced the recommendations offered by the Forum Observer Team in 2007, and

underlined the importance of following up and acting on them, with the support of partners and donors including the Forum, as appropriate.

25. Of these, the transfer system remains perhaps the most significant. In the three days between the announcement of the election and the close of the rolls, 418 transfers were lodged. While this is less than the 782 transfers made in 2007, it is a remarkably high number in such a short period. Many people expressed to the Mission similar concerns to those raised in 2007: that the liberal provisions of the transfer system are abused by both voters and candidates to facilitate the large-scale buying and selling of votes. The Returning Officer advised the Mission that some tightening of the transfer system had been put in place this time, with voters being required to lodge their transfers in person, in response to allegations in 2007 that voters were transferred *en masse* by candidates and sometimes without voters' knowledge and consent. The stricter procedure was therefore commendable and should be retained in future. At the same time, the larger issue of the outdated nature and reported systematic abuse of the transfer provisions in the Electoral Act remains to be addressed through consideration of reform of the Act.

26. Voter education and building a strong culture of democracy and respect for the vote remains an issue in Nauru as well. While overall the informal (invalid) vote was similar to the 2007 elections, at around 2.3% of votes cast, the informal vote was higher in places, such as around 4% in the large electorate of Ubenide. The reports of widespread vote buying also highlight the need for building a stronger understanding of democracy and the electoral process, and a culture of respect for the (non-monetary) value of the vote.

27. The Mission recognises – as did the electoral administration – that there was no time for voter education for this election, but we emphasise the recommendation made by the Forum Observer Team in its 2007 report that civic and voter education programmes should be developed and implemented in Nauru on a more ongoing basis, prior to future elections. This could be undertaken in partnership with civil society groups, which have indicated to the Mission some interest in pursuing such activities if their capacity to do so was enhanced.

28. The broader issue of “money politics” remains extant in Nauru. The Mission once again heard reports of voters, particularly young voters, asking candidates to pay them for their votes, and a culture of elections being an opportunity to make money by selling one's vote. The Mission was also informed that “election vultures” were “dishing out money to buy voters”. The Mission was pleased to note that concerns about the use and abuse of the so-called “grassroots funds” appeared to have reduced in 2008. We were advised by Government that it had regularised these funds, ensuring greater transparency and consistency in their allocation to all Members of Parliament – while still lacking the full accountability of passage through the Treasury, greater equity in the distribution of such funding is welcomed. Nevertheless from what the Mission was uniformly told, money remains a big factor in electioneering on Nauru and the sources of such funds often remain murky. The Mission reiterates the 2007 recommendations of the

Team regarding the strong case for reform of the Electoral Act to create offences such as electoral bribery, and to introduce funding and disclosure provisions requiring transparency in campaign funding and expenditure.

29. While we have canvassed here those issues that were particularly notable in the 2008 election, the Mission has reviewed the 12 recommendations made in the 2007 report of the Team. The Mission's view is that all remain valid following the 2008 election, and we encourage the Government of Nauru and the electoral authorities to review them and consider their implementation as a matter of priority. The Mission notes in this regard that review of the Electoral Act on a number of grounds was also recommended by the Constitutional Review Commission in its 2007 report, and would be a timely accompaniment to the Constitutional reform process.

#### *Political Stability and the Constitutional reform process*

30. Given the particular circumstances of this poll, the Mission's Terms of Reference included monitoring the "parliamentary and political consequences" of the election, and offering any additional recommendations which may be appropriate. The Mission was pleased to observe the election of the Speaker, the Deputy Speaker and the President, and the formation of a new Government with a clear majority of 11-6, at the inaugural sitting of the 18<sup>th</sup> Parliament on 29 April 2008; we hope that the people of Nauru may look forward to a full parliamentary term this time. The Mission also noted the ruling made by the new Speaker at the commencement of Parliament recognising the Supreme Court's decision of 7 April 2008 and disallowing any further parliamentary measures to reopen that matter, to prevent the resurfacing of the events which led to the political crisis prior to the election.

31. At the same time, a long debate over the events of March and April 2008 at the inaugural parliamentary session demonstrated that those issues remain unresolved in the minds of some. Whether this issue or others divide Parliament in future, the fact is that under existing structures and laws, Parliament remains vulnerable to future instability. Many Nauruans made it clear to the Mission that they did not welcome premature elections, and wished to see strengthened Parliamentary stability, while not compromising the accountability of the Government and Parliament to the people. The events leading up to the 2008 election also demonstrated that there may be scope for greater clarity in the Constitution and associated laws regarding such matters as the powers of the Speaker, the determination of quorum in Parliament and the authority of the Supreme Court vis a vis Parliament.

32. In this regard the Mission takes note of the present Constitutional reform process. The Mission is aware that the Constitutional Review Commission recommended in 2007 a number of changes in the Constitutional procedures applying to the Cabinet and Parliament, including the institutions of President and Speaker, the conditions on parliamentary motions of no confidence, and enactment of a Leadership Code for independent resolution of any alleged misconduct by public leaders including the Speaker, Ministers and Members of Parliament. There were views expressed to the

Mission that had the Constitutional Review recommendations been progressed and adopted, the political impasse facing the nation prior to the 2008 elections could have been avoided.

33. While the Mission takes no position as to the precise Constitutional reforms which should be adopted – this being a matter for the people and Parliament of Nauru to decide – the Mission recommends that the Constitutional reform process be moved forward as a matter of urgency so that appropriate measures which may contribute to greater political stability (while ensuring necessary accountability), as well as enhanced clarity of the laws and procedures which govern Parliament, may be considered and adopted sooner rather than later. On this point, the Mission notes that the 2007 Constitutional Convention and the consequent Bills now awaiting parliamentary consideration adopted some of the Commission’s recommendations while leaving other areas unchanged. The Mission respectfully suggests that the political crisis which preceded the 2008 election may warrant re-examination of the Commission’s recommendations by Parliament or even a re-constituted Constitutional Convention, to ensure that the people’s desire for greater political stability is adequately addressed by the reforms adopted.

### **Conclusions and Recommendations**

34. In conclusion, the Mission believes that the 2008 electoral process was a credible one, whose result accurately reflects the will of the people of Nauru.

35. Having said that, the Mission recognises that the 2008 election took place in less than ideal circumstances, particularly the very short timeframe for the preparations and campaign, and acknowledges that this opened the process to some inevitable limitations on both the candidates and the franchise. While conscious of the political crisis which led to this state of affairs, the Mission recommends that this short time frame be avoided in future.

36. Further, the Mission assessed that all of the concerns and issues raised in the Forum Team’s 2007 report remained extant in the 2008 election. As noted above, the transfer system, campaign funding and the need for civic education were particularly prevalent matters once again. With the benefit of restored stability, the Mission hopes that the 2007 recommendations, particularly review of the Electoral Act, will be taken up for consideration by the new Government without undue delay.

37. Finally, the Mission notes that consideration of reforms to strengthen political stability, enhance the accountability of leaders and ensure the effective operation of both Government and Parliament have been on the agenda for some time in Nauru - these issues have been underlined once again and have taken on a renewed urgency in light of the events that led to the 2008 election. In this regard the Mission commends the Constitutional reform process presently underway, and urges that it move ahead, giving due consideration to the lessons of recent events, as a matter of priority.

38. In summary, the Mission offers the following recommendations:
- a) That future Governments consider carefully the necessary period for election preparation and campaigning, even in circumstances of political crisis, to ensure that the need for a speedy election is balanced against the rights of voters and potential candidates to full participation in the process. An election timetable of less than three weeks should be avoided unless absolutely necessary.
  - b) That the Government considers implementation of the recommendations of the 2007 Forum Election Observer Team's report as soon as practicable, including review of the Electoral Act and Regulations. The Forum Secretariat is requested to assist the Government of Nauru facilitate necessary regional or international assistance to that end, should this be requested by Nauru.
  - c) That the Parliament and Government move ahead with the Constitutional reform process without delay, giving careful consideration to the measures proposed therein to strengthen political stability, enhance the accountability of leaders, and enhance the clarity of the provisions governing Nauru's political institutions.

### **Acknowledgements**

39. The Mission would like to thank all those who assisted us in various ways, all at short notice. While there were many, we thank in particular the staff of the Department of Foreign Affairs and Trade who arranged our programme of meetings, our liaison officer Vida Dick who again provided us with excellent support, and the staff of the Aid Management Unit for sharing their office space and computer facilities with us. The Mission once again acknowledges the many stakeholders who shared their knowledge and views with us, and the voters and people who welcomed us back as "old friends" and made our visit a pleasure. We wish the Government, Parliament and people of Nauru every success in their ongoing efforts to achieve stability, rehabilitation and prosperity.

Nauru  
1 May 2008