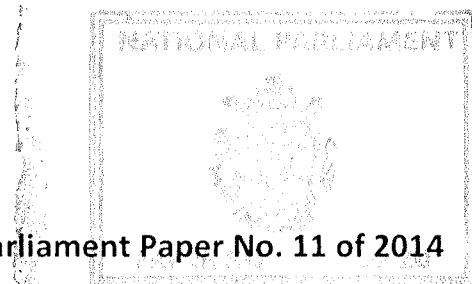


**NATIONAL PARLIAMENT OF SOLOMON ISLANDS  
BILLS AND LEGISLATION COMMITTEE**

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**Report on the Political Parties  
Integrity Bill 2014**

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**National Parliament Paper No. 11 of 2014**

Presented on 5 May 2014

National Parliament Office

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## EXECUTIVE SUMMARY

The Committee conducted its hearing into the **Political Parties Integrity Bill 2014** on the 29<sup>th</sup> and the 30<sup>th</sup> of April. The Committee acknowledges the Government through its officials at the Prime Ministers' Office for bringing the Bill to Parliament. The Committee at the outset expresses its support for a legislative framework that will enable a robust political party system, but at the same time ensures political stability in the country. The Committee in its review of the Bill ascertains the following.

The Bill now before the House is another version of the Political Parties Integrity Bill 2013 but without a Constitutional amendment. The 2014 Bill made changes from the previous version in the following manner; it establishes a Commission for the administration of political parties. It reduces the number required for registering a political party from 300 to 250. It streamlines the registration processes. It made changes to the amalgamation and de-registration of political parties. It outlines coalition agreements, and reduced penalties for noncompliance. Lastly it clearly outlines the governing structures of political parties.

However the Committee still maintain that, the current Bill still infringes on our national Constitution in sections **12 (1) and 13 (1)** in some of its Clauses. Further there are also some general infringement on the Constitution with regards to the processes for the nomination, appointment and elections. The Committee also raises general concerns on the contents of some of the clauses.

Generally the Committee is of the view that the current Bill focuses more on Party stability than the overall political stability and integrity of Parliament. The Bill was re- drafted to reconcile it with our national Constitution to avoid the need for a Constitutional amendment. However, the Committee still maintain that there are still some infringements.

**The Committee in its recommendations seeks; a clarification from the Prime Minister's Office on the Constitutional issues raised, a redraft of the Bill to align**

**with the Constitution, or a Constitutional amendment to allow the Bill to proceed in its current form.**

## 1 INTRODUCTION

The Bills and Legislation Committee (“the Committee”) had completed its review of the *Political Parties Integrity Bill 2014* (“the Bill”). It was introduced in the House by the Prime Minister’s Office. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*<sup>1</sup>. The Speaker examined the Bill<sup>2</sup> and certified it to be introduced in the current Parliament meeting. The Bill is another version of the Political Parties Integrity Bill 2013 but with amendments. The 2013 Bill did not pass through Parliament when a related Constitutional amendment was withdrawn. The voting on the second reading lack the required 3/4 members support.

The current Bill was advertised in the newspapers from the 31<sup>st</sup> March to 2<sup>nd</sup> April. The Public was invited to make written submissions to express their views, knowledge and experience on the contents of the Bill. Only one submission was received at the closing date from the Solomon Islands National Council of Women.

A number of deliberative meetings were held to decide on those who would be called to make presentations to the Committee on the Bill and to seek documentation from the Attorney General to confirm the constitutionality of the Bill.

The Committee in its deliberative meeting resolved to only hear presentation from the sponsors of the Bill, the Office of the Prime Minister and Cabinet Officials. The Committee is of the view that the 2014 Bill is similar to the 2013 Bill though there are changes. The Committee therefore resolved that the evidences gathered last year from witnesses in the 2013 Bill inquiry is still adequate as source material for this report.

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<sup>1</sup> *Standing Order* 44 (1).

<sup>2</sup> As required by *Standing Order* 45 (1).

The Actual hearing into the Bill was held on the 29<sup>th</sup> and 30<sup>th</sup> of April. The minutes of these meetings and other deliberative meetings were annexed as **Appendix 1**. The Committee met again on the 4<sup>th</sup> of May to review the draft report on the Bill. The Committee then commends this report for the information of Members and for Parliament consideration.

## **1.1 Terms of Reference**

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

## **1.2 Functions of the Committee**

The Bills and Legislation Committee is established under *Standing Order 71*, an Order made pursuant to the *Constitution*<sup>3</sup>, and under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and

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<sup>3</sup> Section 62, *Constitution of Solomon Islands* 1978.

- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

### **1.3 Membership**

The current members of the Bills and Legislation Committee (9<sup>th</sup> Parliament) are:

Hon. Manasseh D. Sogavare, MP (Chair)

Hon. Dr Derek Sikua, MP

Hon. Milner Tozaka, MP

Hon. Matthew Cooper Wale, MP

Hon. John Maneniaru, MP

Hon. James Tora, MP

Hon. Douglas Ete, MP

Hon. Sam Iduri

Late Hon. Johnley Hatimoana

## 2 BACKGROUND

Political integrity and stability have been identified by past and current Governments as key elements of good governance. They are necessary for providing an enabling environment for sustainable economic development. Governments have acknowledged the fact that political stability is crucial to the successful management of social and economic affairs of the country. Equally to that is the need for politicians and aspiring politicians to have integrity and a culture of respect for the offices they hold, and powers they exercise on behalf of the people. While the solution to achieving political stability might require different immediate actions, the achievement of political integrity is indispensable to the achievement and sustenance of political stability in the country.

Solomon Islands has indeed, over the period from independence to 2000/2001, experienced political instability resulting in 8 different Governments formed during the same period.<sup>4</sup>

Recognizing this problem and the threat it poses to peace development and sustainable economic development, the CNURA Government introduced two Bills to Parliament in 2010. They are the Constitution (Amendment) Bill 2009 and the Political Parties Bill 2009. The later was intended to impose compulsory registration of political parties, give greater recognition and responsibilities to political parties, and provide restriction in the frequency of motion of no-confidence moved in Parliament. Both Bills were put through first reading but the Constitutional amendment Bill was defeated during vote in the second reading. Consequently the Political Parties Bill 2009 is withdrawn before second reading.

Last year a similar Political Parties Integrity Bill 2013 was introduced into Parliament by the current Government. The Committee conducted its inquiry into the Bill and

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<sup>4</sup> Task Force Committee, 'Consolidated Report Nationwide Consultation on Political Integrity and Stability in Solomon Islands', 3<sup>rd</sup> August 2012, p2



tabled a report on the outcome of the inquiry. The Government also seeks a Constitution amendment under the Constitution (Amendment) Bill 2013 to empower the Electoral Commission to become the Political Parties Commission. Almost similar to what happened in 2010; the Constitutional amendment was withdrawn due to less support for it during the second reading. Consequently the Political Party Bill was not put through Parliament for second reading.

### **3 CHANGES IN THE 2014 BILL**

The current 2014 Bill once again seeks the determination of Parliament to enable passage through the House. The Bill had some significant changes made to its form from the previous 2013 version. These changes comprise of the following;

#### **3.1 Establishment of Political Parties Commission**

In the 2014 Bill under part 2 there is proposition for the establishment of an independent statutory body and this is to be known as the Political Parties Commission. Under the Bill this Commission will comprise of certain esteem persons, namely former Governor Generals, former Speakers of the Parliament, retired judges and Head of Religious Organizations. The idea is to have these people appointed into the Commission and they shall be responsible for the administration of the Act including the appointment of the Public officers to the office of the Registrar. Also under the Act, they have specific powers and duties and procedural functions. This is the first fundamental change between this Bill and the previous 2013 bill.

#### **3.2 Numbers required for registering a Political Party**

The second change is the number of members that are required to register a political party under clause **19 (2) (a)**. In the previous Bill the required number of registered voters in order for a party or an entity to register themselves as a political party was

300 people. In this Bill there has been an amendment and this has been reduced to 250. According to officials of the Prime Minister's Office<sup>5</sup> there has been much discussion about this. But at the end it had to balance between a number that would be sufficient as reasonable acceptable representative of an organization, as well as a number that would allow one to have confidence in the legitimacy of the organisation registering. So ultimately in the end the conclusion was to merely reduce the number of 300 to 250.

### **3.3 Changes in registration process**

There are also changes made in terms of the registration processes under **Part 4**. In the 2013 Bill there were approximately around 12 steps and this included the submission of application, the publication of notices, gazette, and receipt of objections, response to objections and so forth. In the current 2014 Bill, these processes were re-examined and reduced to 8 steps. In so doing very small amendments were made to the sequence of the processes that would be adopted by a political party in registering under this Bill. It has improved significantly in terms of a more streamlined process for the purposes of registration. Under the previous 2013 Bill everything that would be submitted by a political party would be forwarded to the commission for their initial review. Under the current Bill the registrar has some degree of discretion in terms of reviewing and analyzing the applications that are submitted to the office. If the application is proper and in accordance with the Bill, the registrar will forward it on to the Political Parties Commission for further consideration.

### **3.4 Amalgamation of political parties procedures**

Another significant amendment that is contained in the Bill also under **Part 4** is the procedures in relation to the amalgamation of political parties. In the previous Bill the wording of the provisions relating to amalgamation suggested that, at the point

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<sup>5</sup> Calvin Ziru, Oral evidence, 29<sup>th</sup> April 2014

of registration political parties may choose to amalgamate. However, it was realized that this particular Bill talks about political parties registered under the Act and only upon registration under the Act will they be able to engage in political activities around general elections. So, it was corrected to now reflect that amalgamation is a procedure available to political parties registered under the Act after the point of registration.

In regards to amalgamation, under the new Bill you have the capacity for parties to amalgamate – the effect of which would render the previous registration obsolete, which is not the case in the previous 2013 Bill.

### **3.5 De-registration**

The next change is in regards to de-registration under **Part 5** of the Bill. The registration that is under the current Bill has attempted to streamline the process of de-registration. It ties in the penalties and the potential breaches to the issuance of notices for suspension. This is actually an attempt to limit the confusion that one might have in terms of when you would investigate a political party for potential breaches or noncompliance with the Act. What is now provided is that, where there is notice of a breach under the Act the registrar will then issue to the political party a notice of intention to de-register and provide an opportunity for the political party to comply. If there is no compliance the party would then be cancelled or de-registered.

### **3.6 Coalition arrangement**

The other changes under **Part 8** are in terms of the coalition arrangement between political parties. The Clauses have now been amended to try and clarify the relationship between coalitions of political parties, and the wordings have been improved to clearly refer to political parties.

### **3.7 Penalties for noncompliance**

Also, there are changes to penalties for non-compliances under **Part 11**. In the previous Bill the Committee notes that there were references to imprisonment. In the current Bill it was agreed that, at this point in time imprisonment should be removed and only fines should be imposed for any noncompliance.

### **3.8 Clarification of political Parties Structures**

There has also been clarification in terms of political party structures in **Part 6 Division 3**. There were certain loop holes in the previous wordings of the previous draft which at least give room for confusing the definition of the Executive or Executive officer holders. This particular Bill now has attempted to distinguish between the Executive and other office holders of political parties.

## **4 POLICY CHOICES**

The Committee is of the view that, though there are changes made to the current Bill from the 2013 Bill as outline previously, the core underlying contentious issues are still not resolved. The Committee is concerned that the Government policy choices in these issues are not ensuring a stable political governance in the country.

### **4.1 Consultations**

The current Government embarked on a project to strengthen political integrity and stability in September 2011 and its completion will be the passage of this Bill through Parliament.<sup>6</sup> A nationwide consultation on this project commenced in November

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<sup>6</sup> Task Force Committee, 'Consolidated Report Nationwide Consultation on Political Integrity and Stability in Solomon Islands', 3<sup>rd</sup> August 2012

2011 where more than 480<sup>7</sup> national, provincial and community leaders representing the people of this country formally participated in the consultation process.

From evidence presented to the Committee in 2013 it was discovered that a lot of the inputs into this Bill was taken from the views expressed from the nationwide consultation. The Committee feels that the consultation number of 480 people does not adequately represent the country.

The women when appearing before the Committee for the 2013 Bill expresses their concern on the different views from Solomon Islanders on the Issue of temporary special measures (TSM) obtain from nationwide consultations. In the nationwide consultation on this Bill a lot of the people disapprove the idea of TSM whilst another consultation carried out by RAMSI indicated support by many Solomon Islanders for women TSM. It must be noted that during the first consultation, the taskforce consultation team consist of all men.

#### **4.2 Purpose of the Bill**

The purpose of the Bill is for the registration, administration, development of political parties and the promotion of integrity in party operations.<sup>8</sup> Representatives from the Prime Minister's Office and Cabinet when appearing before the Committee in 2013 stressed that the Bill is very much about how parties should be formed—it is only about political parties in terms of how they conduct themselves; it is about the integrity of a party rather than the stability of the Parliament. According to the Prime Minister in his speech on the second reading, this Bill attempts to address the '*the thing behind the thing*' by fostering a stronger code of relationship and connectivity between party and members.

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<sup>7</sup> Ibid

<sup>8</sup> Gabriel Suri, Submission, 4<sup>th</sup> Sept 2013, p1

Whilst the Committee agrees with steps taken to formalise political party organisations in our country, the current Bill does not resolve the political instability affecting the political governance of this country since independence.

### **4.3 Stability of the Parliament**

Many of the witnesses who appeared before the Committee during the 2013 inquiry expressed their hope and satisfaction that a lot of the political instability experience in our country will now be resolved through the enactment of the Political Party Bill. However, such hopes were dashed when after much scrutiny realised that the Bill deals only with party administration for the stability of the executive. The Bill placed more emphasis on the stability of the executive rather than the legislature.

The Committee feels that a core issue amongst others, to be resolved within our political system is the instability caused by MPs crossing the floor of Parliament. The Committee is of the view that one way of addressing this, is by ensuring the overall stability of Parliament. By ensuring the stability of Parliament will indirectly resolve the stability of the Government, an objective of this Bill.

The approach taken in this Bill undermines resolving this core issue as reflected by **clause 40 (2)**. This clause allows a person to formally resign from one political party and become a member of another.

### **4.4 Opposition Office**

Further to addressing political stability the Committee feels that the Bill should have gone further to legislate for the proper establishment of the Opposition office. The attempt to organise the opposition in the current Bill is provided under **Schedule 2 Part 2** with regards to minimum rules for coalition agreements for the opposition side. However, there is possibility that this infringes **section 66** of the Constitution.

The Bill should properly organise the office of the Leader of the Opposition, establish shadow ministers; formally establish the office of the Deputy Leader of the Opposition. Currently the only person paid to do any work in the opposition, is the Leader of Opposition. The proper establishment of such offices will see MPs in the opposition having something to do in the Opposition and will not be attracted to go across to the government side because they have something to do. Give them the same kind of benefits and remunerations and allow them to carry out the function of scrutinising the executive government. Real attempts to formalise and organise the office was made by the CNURA Government under the Political Parties Bill 2009.

Therefore a Constitutional amendment is required to make significant changes to these offices.

#### **4.5 Reserved Candidacy for Women**

An issue of much debate in our country today is the affirmative action of allocating temporary special measures (TSM) to women, with regards to our political governance. The women groups appearing before the Committee for the 2013 Bill clarified that it is not a gender issue they are seeking but the need for equal participation or gender balance in Parliament.

This Bill under **Division 2- Special conditions** tries to achieve this aim by indicating a reservation for women at least 10% of the total number of candidates a party selects and endorses to contest an election. Many views express during the inquiry in 2013 state that this clause will not achieve its objective because it very much depends on the desire of a political party to support or not to support women in politics.

The Committee is of the view that to address the overall issue of women in politics a legislation of its own should be brought to Parliament rather than a piece meal solution. An option suggested is the legislating of women to contest regional parliament seats. The other is for the reforming of our electoral process to a

preferential voting system where certain numbers of seats are allocated to women. The Committee acknowledges and supports the idea of bringing women into Parliament. However, this requires the political will and the motivation of all fellow male politicians in finding an amicable solution to the ongoing debate on this issue.

## 5 CONSTITUTIONAL ISSUES

Our national Constitution gives power to Parliament by **section 59(1)** to make laws for peace, order, and good governance of the country. These laws, however, must be aligned with the provisions of the Constitution. Any infringement on the Constitution will always allow the Constitution to prevail and render that law null and void.

The protection of fundamental rights and freedoms of an individual are contained in chapter II of our Constitution. The two mostly affected by some of the clauses in the Bill is the freedom of association and the freedom of expression contained in **section 12(1) and 13 (1)**. These are basic human rights which are protected under our Constitution. However there are two exceptions that may give rise to circumstances in which Parliament may prescribe that these rights could be hindered in such a way the Constitution is worded.

The Government since the 2013 Bill still maintains that they don't want to tamper with the Constitution. They resolved that the clauses in the Political Parties Bill are within the limitations of the Constitution. The Government maintain that the 'consent' to joining a registered political party is an exception to the basic rights express under Chapter II of the Constitution. Therefore being bounded by party constitutions or rules does not infringe a person's basic right of freedom of association or expression.

During the hearing in the current Bill the learned Attorney General was summoned to appear before the Committee to explain the constitutionality of the Bill. The Committee had written to him on 2<sup>nd</sup> of April specifically seeking his assurance on



the Constitutionality of the Bill. There is no response received. The Attorney General in reply to the Committees' query state:

*"..in respect of the request it would be most grateful if I could be directed to the position where I am required to issue a certificate of constitutionality with respect to the Bill itself. The Attorney General's Chambers do have its own views with respect to certain aspects of the Bill. However, I understand that the Government wants the Bill to proceed as it is."*<sup>9</sup>

The Attorney General further informed the Committee that a bill will have to be passed by Parliament before any court challenge on its provisions.<sup>10</sup> The Committee is very concerned that the Attorney General clearly sees there are Constitutional issues although he then made himself unavailable to clarify what those issues are. The Government should resolve whatever the issues are before introducing this Bill.

## 5.1 Freedom of Expression

The following clauses can be challenged as hindering one's freedom to enjoy his/her "freedom of expression ". This fundamental right is protected under **section 12 (1)** of the Constitution.

(1) Clause **20 (1) (c) (iv)** prohibits political parties from using the word, "independent". The intention of this clause is to discourage independent MPs. However this clause is ultra vires to section **12** of the Constitution even if the Government argument was granted under 'except with his own consent' exception, this clause cannot be constitutional. The argument of 'except with his own consent' cannot provide cover for this deviation. Therefore **sub clause (iv)** is a clear violation of **12 (1)** without a constitutional amendment.

(2) Clause **55 (2)** prohibits non-contesting party from campaigning and carrying out advocacy. The intention of this clause is to preserve election campaign for

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<sup>9</sup> Billy Titulu. Oral evidence, 29<sup>th</sup> April

<sup>10</sup> Ibid

registered political parties only; and is a mechanism for development of parties. It is however contrary to section 12 of the Constitution.

## 5.2 Freedom of Association

The Committee maintains that the following clauses in the Bill can be challenged as infringing upon one's constitutional freedom; the "*freedom of conscience of expression and of assembly and association..., assemble freely and associate with other persons to form or belong to political parties ...*" enshrined under **section 3 and 13(1)** of the Constitution.

(1) Clause **19 (2) (a)** only allows a group of 250 citizens to apply for registration of a political party. The intention of this clause is to discourage non-serious and seasonal groupings and to encourage mega parties. This clause is ultra vires section 13 of the Constitution. It interferes with an individual's right to choose the number of persons, groups or political parties he/she may associate with under section 13 of the Constitution.

(2) Clause **23(2)** outlines the grounds for refusal by the Commission of an application for registration. However any single one or all of those grounds will be ultra vires the Constitution and will be infringing on section 12 and 13 rights of individuals or political parties.

The Attorney General argues that the exception, "except with his own consent" is sufficient for somebody joining a political party to be bounded by the party constitution. And the party constitution would then bring them within the bounds of this Bill.

The Committee asks, what happens when an application under clause **19** was refused under clause **23(2)**? The Commission will refuse the application, giving its reasons for the refusal in writing, where it is of the opinion that – **(a)** the application is not complete. The person or persons in that political party that applied have an

arguable case to say that Clause **2(a)** would be ultra vires their rights under section **13(1)** of the Constitution. Section **13(1)** of the Constitution like the argument of 'except with his own consent' only extends to participation in that particular group, but surely cannot be grounds for a mere incomplete application to be refused or suppressing this right under section **13(1)** of the Constitution.

In a sense what this Bill is saying is, you have consented, but you cannot have those rights under **13 (1)** if your application is incomplete. The Commission will refuse that application. Even with the argument under this phrase 'except with his own consent' there is infringement of the Constitution because that phrase only extends to when a person is already in the group and agreed to be bound by the constitution of the group. Therefore, Clause **23(2)** would be ultra vires to section **13 (1)** under the Constitution.

(3) Clauses **30 & 31**, outlines the grounds for de-registration of political parties. The Committee is of the view that the right to freely associate cannot just be arbitrarily cancelled. Any aggrieved political party can raise the infringement of rights under sections **13 (1)**.

(4) Clause **34**, allows the automatic deregistration of an inactive political party. Similar to above, the basic rights under sections **13 (1)** can be raised as an argument by an aggrieved party on the de-registration.

(5) Clause **37 (3)**, provides for the formulation of contractual agreements between members and their political party, and coalition agreements between political parties. Members of the Committee express the view that this is restrictive and may hinder a person to freely associate with other persons.

(6) Clause **39**, provides for a person to declare and consent in writing in the prescribe form to become a member of a political party. Similar to above this clause infringe section **13 (1)** of the Constitution. An amendment to the Constitution will resolve it.

(7) Clause 45 prohibits groups from nominating a candidate unless the group is registered under the proposed law. The intention of this clause is to compel political groups to register. The mechanism used, however, affects directly freedom of individuals to associate and to form or belong to a political party. It is, therefore, contrary to section 13 of the Constitution.

(8) Clause 47 (4) prohibits names of candidates from appearing on more than one list of candidates selected by a party to contest a general election. The intention of this clause is to discourage moving from one party to another and to give certainty to voters. It sets out to instil sense of loyalty in party politics. The prohibition thus, is contrary to section 13 of the Constitution.

(9) Clause 53 (3) prohibits a political party from entering into a coalition agreement with group of independent candidates. The intention of this clause is to discourage independent groupings. It, thus, takes away collective freedom of individuals to associate freely contrary to section 13 (1) of the Constitution.

(10) Clauses 53, 54 refer to **Schedule 2** of the Bill which sets the minimum rules for Coalition Agreements. One of the significant intentions of the minimum rules is to reform the process for election of Prime Minister by ensuring that the leader of the party which has highest number of seats would automatically be nominated as the Prime Minister. Unless Schedule 2 to the Constitution is amended, the minimum rules cannot apply. There are two constitutional rights under Schedule 2 of the Constitution that would be infringed by the minimum rules stipulated in Schedule 2 of the Bill, namely:

- (a) The right of all Members of Parliament to stand as candidatures.
- (b) The right of Members of Parliament to nominate a candidate of their choice.

The Committee after reviewing the contents of the 2014 Bill still maintained that the current Bill is still unconstitutional in some of its clauses. Under **section 13 (1)** of the

Constitution the Committee maintains that the infringement on a person's right "to freely associate with "other persons" to form or to belong to "political parties" renders the giving of consent argument void. **Section 13(1)** applies to also include the right of other persons and political parties to associate with any registered political parties. These infringements must be seriously addressed as they will render this Bill unconstitutional and make all the efforts put into its preparation futile.

### 5.3 Schedule 2 of the Bill

**Schedule 2** outlines the minimum rules for coalition agreements. It needs to be noted that these are not rules at all. The Committee is concerned that some of the paragraphs infringe the Constitution.

(1) Paragraph 2 of the schedule describes the process for nominating the Prime Minister. However the national Constitution also has its process in its own Schedule 2. The Schedule 2 of the Constitution stipulates that all members are eligible for nomination as candidate for the Prime Ministers' position. Paragraph 2 is drafted to reconcile the two Schedules; however there is choice to follow the national Constitution schedule if there is disagreement on which process to follow. A constitutional amendment is needed to allow only one process to follow.

(2) Paragraph 7 state that the Leader of the Coalition shall consult the coalition executive on the names of members of parliament for appointment as minister. The prime minister is not obliged under the Constitution to consult the coalition executive. Section 33 (3) of the Constitution only recognize the Prime Minister to advice His Excellency for the appointments. The Prime Minister is not obliged to consult the coalition executive under the constitution. He has power as expressly stated in section 33 (3) in the constitution to do without consulting the coalition executive.

(3) Paragraph 9 stipulates the process for nominating the Deputy Prime Minister under the coalition agreement. This is different to that in section 33 (2) of the Constitution. It is an assignment by the Prime Minister under section 33 (2) to recommend appointments to the Governor General. So there is no need to be bound by him signing whatever declaration. He can do it having the constitutional rights just to nominate or assign that post to someone and recommend the name to the Governor General to become the Deputy Prime Minister.

(4) Paragraph 10 to 14 stipulates that if a political party to the coalition changes its party leader, the coalition rules shall apply. If the parliamentary party leader is the Prime Minister, the political party shall recommend to the leader that he or she resigns as Prime Minister. That is acceptable, that is a process within a party- an internal party thing. However constitutionally he can refuse to resign. The Prime Minister is elected on the floor of parliament and can only be removed on the floor of parliament according to section 34 of the Constitution.

(5) Paragraph 16 provides for the choosing of the parliamentary party leader of the Political Party in the Opposition coalition with the highest number of seats. That person shall be the Leader of the opposition group. The political party then recommended the Leader of Opposition in accordance with section 66 of the Constitution. This still acknowledge section 66 where the appointment of the Leader of Opposition is made by the Governor General acting on the advice of the Speaker. However the Constitution qualification is by reason of the numerical strength of that group or by reason of the support which he receives from the members of the opposition group and not necessarily the Leader of a party with more numbers. So there is need to realign this paragraph with the express provisions of the Constitution, this is because the Constitution does not recognise the person that commands more numbers in his political party. Hence the Constitution qualification is quite clear under section 66.

(6) Paragraph 20 states; 'the opposition leader shall in consultation with the opposition executive recommend to the Speaker for an opposition coalition spokesperson'. According to a court ruling, this is impossible unless these positions are established under the Constitution. In here we are assigning responsibilities to positions that do not legally exist. We do not establish them but we just assign them responsibilities. Spokesmen are officers that do not exist under the Constitution.

## 6 GENERAL ISSUES

There are other general issues with the other clauses of the Bill. They are;

(1) Clause 6 (g), mentions the political party's Commission issuing integrity standards and make regulations for it. However clause 72 also mention a similar function and provide for these standards to be tabled before parliament and became effective once published in the Gazette. The Committee favours clause 72 therefore clause 6 (g) must be made redundant. These standards must be scrutinized by the committee before it is tabled.

(2) Clause 7, mentions that the political party's Commission is not subject to direction or control by any person or authority other than the court. However in clause 5(1) the commission members are appointed on the recommendation of the Prime Minister. The Committee is concern that we are placing a lot of power over a body that purportedly should be independent in the person with the greatest vested interests to influence it, the PM.

Further the Committee is concern that a statutory body is given functions similar to other Commissions established by the Constitution. These functions include the authority to recruit and make regulations. The Committee is of the view that it will much safer for the Commission to be establish under the Constitution.

(3) Clause 8, Committee members were concerned that the six months rule of imprisonment both in sub clause (1) and sub clause (2) allows a person who serves six months or less to be eligible for appointment to the Commission. It would just be proper not to allow any person under any conviction of the courts to be eligible for appointment to the Commission.

(4) Clause 9, The Committee suggest that rather than stating what should be the normal budget process, it should place limits on what the responsible Minister can do so that any budget proposal will not be unduly cut or changed by cabinet or by the minister or by Ministry of Finance or other factors that could conspire to starve resources of the commission. The Committee also recommend the registrar of the Commission be stated in the clause as the accounting officer.

(5) Clause 38, mention the minimum age for membership in a political party is 18. Members of the Committee suggest lowering the age limit to 15 years of age to encourage younger people to begin involved in political parties as it is part of grooming young people for future leadership.

(6) Clause 40 (2), allows a person to formally resign from one political party to join another party. This clause allows the movement of MPs from one party to another.

(7) Clause 45 (2), mention the political party will nominate a person to become a candidate for election to Parliament. This is in contravention to National Parliament Electoral Provisions Act (Cap87) where any three registered voters can nominate a candidate. The Committee suggested removing the term “nominate”.

(8) Clause 48 (2), mention 10% of total candidates for a political party to be reserved for women candidates. Women through the Solomon Island National Council of Women had made a submission to the Committee suggesting penalizing political parties that contravene the clause instead of allowing them. They even suggested disallowing the contravening party from contesting.



(9) Clause 49, mention a temporary special measures grant be administered to political parties that are successful in returning women candidate at elections. Members of the Committee suggest instead of giving the grant after the election, it is much better to give upfront as it would help to have more women applying to be candidates and the money becomes available. They party can use the money to assist women candidates in their campaign and possibly get them into Parliament.

(10) Clauses 63, 64, 65 and 66, deals with penalties for breaches of any clause of the Bill. Committee members were concern that you cannot penalise someone who you unconstitutionally violate their basic rights.

(11) **Schedule 1** provides for minimum provisions for the constitution and rules of political parties. There is suggestion for the constitution of political parties to be explicit about the basic rights of persons being limited.

(12) **Schedule 2**, paragraph 8 mention the Prime Minister to pledge loyalty and allegiance to a coalition. The Committee think that the PM should pledge allegiance to the Constitution of Solomon Islands and to upholding the Constitution only. At the same time the wider scheme of the constitution gave the Prime Minister prerogatives, a part of our inheritance from the Westminster system, where at times the Prime Minister will use those prerogatives in his own best judgment in various circumstances and it should not be curtailed in any way. The Committee suggest the removal of the two paragraphs 7 and 8.

## **7 SUMMARY OF FINDINGS**

In the 2013 report on the same Bill the following core issues were identified by the Committee. There are no significant changes to the 2014 Bill therefore the Committee adopt the same observations;

### **7.1 Consultations**

As express by most of the witnesses who appeared before the Committee in 2013 they were not aware of any consultations done on the Bill. The women groups were more concern that without any consultations with them their views were left out. They feel that a lot of issues including international conventions were ratified on their behalf for the convenience of the country to receive international favors. However their plight for political recognition is still undermined as is done in the Bill.

### **7.2 Constitutional amendment**

A significant issue with this Bill as previously outline is, its contravention of the fundamental rights express in our national Constitution by some of the clauses, specifically the freedom of association, assembly and expression. There is great need for a constitutional amendment to be brought to Parliament to allow the Bill to be applied in its current form, or the Bill be amended to realign with the Constitution. With the 2014 version the Government did not make any Constitutional amendment in attempting to reconcile the Bill with what is already provided for in the Constitution. However in circumstances of impasse in our politics with regards to the application of the Bill and the Constitution, the Constitution will always prevail. Therefore the Committee recommends a Constitutional amendment to align with the Bill.

### **7.3 Bill focus more on political party stability**

Upon examination, the Bill maintains the overall structure and contents of the Bill that was prepared and presented to the Speaker by CNURA Government in 2010. However, its focus is more on the stability of the Government by strengthening the organisation and administration of political parties rather than ensuring political stability and integrity of the Parliament.

### **7.4 Cost analysis**

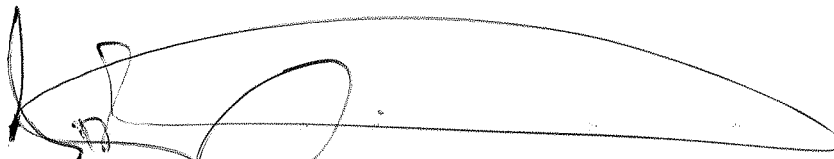
As with many of the Bills that have already come before the Committee there is no cost analysis that will indicate the cost of facilitating and implementing this Bill. The Committee feels that after some time it will seek the inclusion in the standing orders rules to request from the sponsors of any Bills to provide along with the Bill the cost analysis on any particular Bill. This Bill once enacted will see a significant amount of funds directed towards the establishment of the political parties Commission and the funding of political parties in the country. It would be better to have an idea of how much is to be allocated for each year's budget towards this.

## 8 RECOMMENDATIONS

After scrutinizing the Bill the Committee resolved to adopt the recommendations made in the report on the Political Parties Integrity Bill 2013 and restate them.

**The Committee finds this Bill to contain too many Constitutional violations and therefore recommends that;**

1. The Bill not to proceed in its present form through Parliament because of the need to bring in constitutional amendments.
2. The Bill be redrafted in such way that it does not infringe the Constitution.
3. The Bill be redrafted as a political party administration Bill only.
4. The Office of the Prime Minister and Cabinet to clarify to Parliament the constitutionality issues highlighted in this report.



**Hon. Manasseh Sogavare**

Chairman

Bills and Legislation Committee

5 May 2014

## 9 APPENDICES

### APPENDIX 1: MINUTES



BILLS AND LEGISLATION COMMITTEE

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NATIONAL PARLIAMENT OF SOLOMON ISLANDS

#### **Minutes: Meeting No. 1**

#### **Deliberative meeting into the Political Parties Integrity Bill 2014.**

Held: Wednesday 26<sup>th</sup> March 2014

Venue: Parliament Conference Room II

Time: 12:51pm – 12:57pm

#### **1. Members Present**

Hon. Manasseh D. Sogavare (Chairman)

Hon. Dr Derek Sikua

Hon. James Tora

Hon. John Maneniaru

Late Hon. Johnley Hatimoana

#### **Secretariat**

Mr Wilson Anij, Committee Secretariat

**Opening Prayer:** Hon. Chair

#### **2. Chair's Remarks**

The Chair made suggestion for the Committee to properly deliberate on the Bill tomorrow since they just finished inquiry hearing on the Constitution (Status of Magistrates) and the Constitutional Offices (Terms and Conditions) Amendment Bills.

#### **3. Close**

Closing prayer by Late Hon. Johnley Hatimoana

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#### **Minutes: Meeting No.2**

#### **Deliberative meeting into the Political Parties Integrity Bill 2014**

Held: Thursday 27<sup>th</sup> March 2014

Venue: Parliament Conference Room II

Time: 10:16am – 10:33am

#### **1. Members Present**

Hon. Manasseh D. Sogavare (Chairman)

Hon. Dr Derek Sikua

Hon. Matthew Wale  
Hon. James Tora  
Hon. John Maneniaru  
Late Hon. Johnley Hatimoana

**Secretariat**

Mr Wilson Anii, Committee Secretariat

**Opening Prayer:** Hon. David D. Pacha

**2. Chair's Remarks**

The Chair welcomes and acknowledges members for their attendance

**3. Confirmation of stakeholders and hearing date**

The Committee resolved that the same stakeholders for the Political Parties Integrity Bill 2013 will be called. The Committee also resolved that hearing will commence on 3<sup>rd</sup> April immediately after Parliament adjourn. The Committee further resolved that a further deliberative meeting will be held on Wednesday 2<sup>nd</sup> April to update if preparations and documents requested are ready.

**4. Close**

Closing prayer by Hon. J. Tora

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**Minutes: Meeting No.3**

**Deliberative meeting into the Political Parties Integrity Bill 2014**

Held: Wednesday 2<sup>nd</sup> 2014

Venue: Parliament Conference Room III

Time: 11:05am – 11:58am

**1. Members Present**

Hon. Manasseh D. Sogavare (Chairman)

Hon. Dr Derek Sikua

Hon. James Tora

Hon. Douglas Ete

**Secretariat**

Mr Wilson Anii, Committee Secretariat

**Opening Prayer:** Hon. James Tora

**2. Chair's Remarks**

The Chair welcomes and acknowledges members for their attendance

**3. Briefing on documents requested and the hearing Schedule**

Committee members were briefed by the Secretary that a legal officer of Parliament is putting together a comparative analysis of the 2013 and 2014 Bills. The Secretary also inform members that a written request had already been send to the AG Chambers to seek their Constitutional certification of the Bill. The Committee resolved that the requested documents must be obtained before the start of the hearing.

Members were also briefed on the Schedule. Invitations for appearance before the committee were not posted yet.

The Committee resolved to hear from reps from the Prime Ministers' Office on Thursday 3<sup>rd</sup> April and the rest of the stakeholders starting on Monday 6<sup>th</sup> April.

#### **4. Close**

Closing prayer by Hon. Douglas Ete

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#### Hearing 1

3 April 2014, Conference Room 2, Parliament House, 10:36am – 12:14pm

#### **Members Present**

Hon. Manasseh Sogavare, MP (Chair)  
Hon. Dr Derek Sikua, MP  
Hon. Milner Tozaka, MP  
Hon. Matthew Cooper Wale, MP  
Hon. James Tora, MP  
Hon. John Maneniaru, MP  
Hon. Douglas Ete, MP  
Late Hon. Johnley Hatimoana

#### **Secretariat**

Mr Wilson Anii, Committee Secretary

**Opening Prayer:** Hon Matthew wale

#### **1. Chairs remarks**

Chairman thanks members for attending. He informs the Committee that the hearing will be postpone to 4<sup>th</sup> April tomorrow because members feel that they are not prepared as documents requested last week were not available.

#### **2. Committee preliminary review of Bill**

The Committee briefly go through the Bill clause by clause and discuss the contentious issues with the clauses.

#### **3. Closing**

Closing prayer: Hon. James Tora

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#### Hearing 2

4<sup>th</sup> April, Parliament Conference Room II, around 10:00am

After informal discussion with Committee members, the Chair informs witnesses that the reschedule Bills and Legislation hearing on the Political Parties Integrity 2014 is postponed until further notice. This is due to natural disaster affecting Honiara and Guadalcanal on 3<sup>rd</sup> of April. Some Committee members their constituencies were affected by the flash floods.

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### Hearing 3

29<sup>th</sup> April, Parliament Conference Room II, 1:18pm – 2:57pm suspend, Resume  
4:04pm – 4:05pm

#### **Members Present**

Hon. Manasseh Sogavare, MP (Chair)  
Hon. Dr Derek Sikua, MP  
Hon. Matthew Cooper Wale, MP  
Hon. James Tora, MP  
Hon. Andrew Manepora'a, MP  
Hon. Douglas Ete, MP

#### **Witnesses**

Dr Philip Tagini – Special Secretary to the Prime Minister, Office of the Prime Minister & Cabinet (OPMC)  
Mose Saitala – Chief Technical Advisor, OPMC  
Calvin Ziru – Director Governance, OPMC  
Ranjit Hewagama – Chief Legal Draftsman, AG Chambers

#### **Secretariat**

Mr Wilson Anii, Committee Secretary

**Opening Prayer:** Hon James Tora

#### **1. Chairs Opening Remarks**

The Chair call the Committee to order and welcome the presence of everybody attending. He acknowledges the presence of Officials from the Prime Ministers' Office and the Attorney Generals Chamber. The Chair also reminds the officials of their protection under Parliament privilege's and invites them to make their presentation.

#### **2. Presentations**

The SSPM introduce those appearing before the Committee and present his views on the Bill. The Chief Technical Advisor also made comments then the Director of Governance made his presentation on the Bill.

#### **3. Discussion**

The Committee question the officials on the policy issues of the Bill and discussion follow. Discussions were suspended to allow members who are also members of the Foreign Relations Committee to meet with a governmental delegation from Indonesia.

#### **4. Close**

The hearing resume and was adjourn due to time for closing.  
Closing Prayer: Hon. Douglas Ete

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#### Hearing 4

30<sup>th</sup> April, Parliament Conference Room II, 9:58am – 1:30pm

#### **Members Present**

Hon. Manasseh Sogavare, MP (Chair)

Hon. Matthew Cooper Wale, MP

Hon. James Tora, MP

Hon. John Maneniaru, MP

Hon. Andrew Manepora'a, MP

Hon. Douglas Ete, MP

#### **Witnesses**

Dr Philip Tagini – Special Secretary to the Prime Minister, Office of the Prime Minister & Cabinet (OPMC)

Mose Saitala – Chief Technical Advisor, OPMC

Calvin Ziru – Director Governance, OPMC

Billy Titulu – Attorney General, AG Chambers

Ranjit Hewagama – Chief Legal Draftsman, AG Chambers

#### **Secretariat**

Mr Wilson Anii, Committee Secretary

#### **Opening Prayer:** Hon Chair

#### **1. Chairs Opening Remarks**

The Chair call the Committee to order and welcome the presence of everybody attending. The Committees inquiry is a continuation of yesterday's presentations and discussions.

#### **2. Discussion**

The Committee go through the Bill clause by clause. The witnesses clarify the Gov't position on the different aspects of the Bill

#### **3. Close**

The Chair thanks the witnesses for appearing before the Committee.

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## **APPENDIX 2: SUBMISSIONS**

<b>Person/Ministry/ Organization/ Institution</b>	<b>Title of Document</b>	<b>No. of Documents Submitted</b>	<b>Date received</b>
Solomon Islands National Council of Women (NCW)	Submission to Bills and Legislation Committee	1	3/04/2014

### APPENDIX 3: WITNESSES

The following witnesses appeared before the Bills and Legislation Committee;

Date of appearance	Name	Ministry/Institution represented	Position/Job title
29 /04/2014	Dr Philip Tagini	OPMC	Special Secretary to Prime Minister
	Mose Saitala	OPMC	Chief Technical Advisor
	Calvin Ziru	OPMC	Director Governance
	Ranjit Hewagama	AG Chambers	Chief Legal Draftsman
30 /04/2014	Dr Philip Tagini	OPMC	Special Secretary to Prime Minister
	Mose Saitala	OPMC	Chief Technical Advisor
	Calvin Ziru	OPMC	Director Governance
	Ranjit Hewagama	AG Chambers	Chief Legal Draftsman



