

# LAWASIA Journal

2015

Journal of the Law Association for Asia and the Pacific

Published in association with the TC Beirne School of Law  
and the Centre for Public, International and Comparative Law  
of The University of Queensland



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

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Centre for Public, International and Comparative Law,  
TC Beirne School of Law  
The University of Queensland  
Brisbane, Queensland 4072  
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## FIJI'S POLITICAL PARTIES LAW: ANALYSIS OF THE 2013-2014 DECREES

Nainendra Nand\*

### 1. INTRODUCTION

Fiji became an independent nation on 10 October 1970, gaining peaceful transition from its former colonial power, Great Britain and adopted many English statutes and continued to apply English common law. Since independence Fiji has had four Constitutions. The British gave us the 1970 Constitution which was abrogated following a military coup in 1987 and replaced by a military government imposed Constitution in 1990. This was subsequently amended in 1997. 2006 saw another military coup and the casualty was the 1997 Constitution. This was replaced once again by a military backed constitution in 2013.

Over the years Fiji's electoral system has been the result of complex negotiations, compromises and experiments. Under the 1997 Constitution, the Fijian House of Representatives had 71 elected members, all from single member constituencies. Fiji used first past the post system for most of its history, but the 1997 Constitution replaced that with the alternative vote (AV) system, allowing votes to be transferred from a low polling candidate to higher polling candidates. The 2013 Constitution introduced further significant changes to the electoral process. It eliminated race based rolls, race based seat quotas and the unelected upper chamber, and has vested power in one legislative authority with a single chamber, 50-seat parliament. The 50-member parliament is elected from a single national constituency by a system of open list proportional representation. Parliament has a four year term unless dissolved after 3.5 years by the President on the advice of the Prime Minister. A political party or an independent candidate can only qualify for any seat in parliament if the political party or independent candidate receives at least 5% of the total number of votes cast.<sup>1</sup>

Some 18 months before Fiji promulgated this latest and fourth Constitution in September 2014, the Fijian government introduced a new law on political parties. The Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013, promulgated on 15 January 2013 ('the Decree'), sets out what can be regarded as a modern and transparent process for the registration and conduct of political parties. This Decree has, for the first time, introduced accountability and transparency in Fiji in relation to the funding and accounts of political parties. Under the Decree, all pre-existing 16 registered parties were required to re-register within 28 days, from 18 January 2013, with the Registrar of Political Parties. The Government did not provide an explanation for its reasons for promulgating this Decree.

Different objectives can be served by political party integrity legislation, of the sort which has now been introduced in various countries in the Pacific region. In the last few years, Vanuatu, Papua New Guinea, New Zealand and the Solomon Islands have introduced such legislation. One possible aim of such legislation is to stop members of parliament from defecting from the parties for which they were elected. This was one of objective in Vanuatu, Papua New Guinea and New Zealand (although the New Zealand provision

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<sup>1</sup> *Constitution of the Republic of Fiji* (Decree No 24 of 2013).

against 'party' or 'waka' hopping has been repealed). Other objectives include greater transparency, nation building and parliamentary stability. It is unclear whether the Fijian government had these in mind in promulgating the Decree, or whether the real objective was to strengthen the government's own position as opposed to strengthening all political parties.

The Fijian government turned to the Kenyan *Political Parties Act* of 2011 as a blueprint for the Decree. The Kenyan Act was passed following wide consultation with political parties and other key stakeholders over many months. There were also parliamentary committee hearings in which stakeholders voiced differing opinions. After its passage, the Kenyan law has been amended to iron out lingering political party reservations. By contrast, the Fijian Decree's promulgation took everyone by surprise. The author will make reference to the Kenyan Act whenever relevant.

Fijian political parties are now subject to a code of conduct and are required to adhere to its provisions. For example, they should respond to the interests, concerns and needs of the citizens of Fiji, respect, uphold and promote democratic values and principles and promote good governance, integrity, transparency and accountability.<sup>2</sup> The Decree is however not concerned with selection of candidates. That is dealt with by the 2013 Constitution and the Electoral Decree, which allow for the registration of both independent and party nominated candidates. All eligible candidates must be Fijian citizens, must be registered as voters and have resided in Fiji for not less than 18 months out of the last two years prior to nomination. A candidate cannot be an undischarged bankrupt nor be subject to a sentence of 12 months or more in imprisonment.

## 2. THE 2013 DECREE IN INTERNATIONAL PERSPECTIVE

Whilst there is no specific legislation governing political parties in many western democracies, the trend now is to enact legislation to govern specific aspects of political parties' existence and activities. In Great Britain the *Political Parties Elections and Referendums Act 2000* now ensures that financing of political parties is transparent. To that end, all parties now have to keep strict records of all receipts and expenditure which must be submitted at least once a year to the Electoral Commission. The Commission will audit the accounts, and if necessary, make them public.

Closer to Fiji, Australian law also prescribes a number of conditions which must be met in order to register a political party.<sup>3</sup> To begin with, the party must have a written constitution. It must aim to achieve the election of members to the House of Representatives or Senate. It must also have either 500 members whose names appear on the electoral roll or have at least one member who is a current member of Federal Parliament.

Fiji's political parties previously worked under the *Electoral (Political Parties Registration) Regulations 1991*, which were repealed by the 2013 Decree. This Decree, as noted, borrows heavily from the Kenyan *Political Parties Act 2011* and recites verbatim entire sections of its Kenyan counterpart. A closer study of the Kenyan legislation however reveals many omissions and additions on the part of the Fijian Decree. A recent report from the International Senior Lawyer's Project (ISLP) claims the Fijian Decree "jettisons pivotal elements; it raises the parent Act's prescribed fee

<sup>2</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013* (Decree No 4 of 2013).

<sup>3</sup> *Commonwealth Electoral Act 1918* (Aust) Pt XI.

schedule, timelines and criminal sanctions, and it grafts additional party obligations onto the underlying text.”<sup>4</sup> Further, in contrast to its Kenyan model, the Decree “charges political parties for the cost of publishing their declaration of assets in the media. [It] also excises a fee for re-registration of pre-existing political parties, which the Kenyan Act waves. The cost of compiling 5,000 signatures compounds the initial financial burden whose cumulative effect brands [the Decree] as an instrument of attrition, rather than of regulation. Furthermore the Decree denies political parties public funding which the Kenyan instrument grants.”<sup>5</sup>

### 3. KEY ELEMENTS OF, AND ISSUES WITH, THE DECREE

There are many notable provisions in the Decree which require closer scrutiny. All new and existing political parties are required to register as parties; otherwise they commit an offence under the Decree. The existing political parties are required to apply for registration within 28 days. If a party fails to do so, and continues to operate, then it is liable upon conviction to a fine of F\$50,000 or to a term of imprisonment not exceeding 5 years or to both.<sup>6</sup>

Any party that contravenes provisions of the Decree can be suspended and given up to 60 days to remedy that contravention. Failure to do this can result in de-registration of that party. Where a party is de-registered, it can no longer operate as a political party. Hence, it cannot summon a meeting of members or officers of that party, nor call a meeting or invite persons to support that party, nor make a loan of funds held by that party. However, if that party has representatives elected to Parliament, they will continue to serve the remainder of their term as independent(s) or as members of other political parties.<sup>7</sup>

Before promulgation of the Decree, Fijian law allowed political parties to register themselves under ethnic names. This is no longer the case and the Decree now requires that all political parties’ names must be in the English language. Under the Decree five people are now required to make application to register a party and they need 5,000 members from different divisions within Fiji to meet the criteria. From the 5,000 members, the proposed party must have 2,000 members from the Central division; 1,750 members from the Western division; 1,000 members from the Northern division and 250 members from the Eastern division. The party should also have a branch office in each division and the 5,000 members must bear the name, address, and signature and voter registration serial number from the voters register.<sup>8</sup> A one-off registration fee of F\$5,005 is also required.

No public officer can be a party member or hold office. This includes public servants, members of statutory authorities, judges and other judicial officers, members of the police and military forces. Furthermore no elected or appointed official of a trade union can either be a party member or hold office. Any public officer who wants to be a member or office bearer of a party must resign before doing so. This is a significant change in Fiji,

<sup>4</sup> International Lawyers Project, *Government of Fiji Decree 4 of 2013: A comparative Analysis against International Instruments and Precedent*, <<http://www.scribd.com/doc/126652014/Read-the-Analysis-by-ISLP>>, 4.

<sup>5</sup> Ibid 3.

<sup>6</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 3(5).

<sup>7</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, ss 19 and 20.

<sup>8</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 6.

as trade union leaders and other senior office bearers have long been associated with political parties and have contested elections under various party banners.

The Decree is pretty stringent on party funding. It allows funding through membership fees, voluntary contributions, grants and proceeds of investments. Individuals can only donate a maximum of F\$10,000 whilst corporations cannot make any donations. Although neither Canada nor the United States permit union or corporate donations, many other countries do. In the United Kingdom, as noted, the *Political Parties and Referendums Act 2000* established the Electoral Commission and required all political parties to register with it, set down accounting requirements for these parties but did not cap donations.

Although in many other jurisdictions, such as Australia, state funding is available to political parties, in Fiji there is no such funding available and parties rely heavily on donations from a variety of sources. Unlike in some western democracies, in Fiji corporate and union donations had been a key source of funding for most parties. There are not many rich individuals in a position to make meaningful donations. In the general elections of 2014, smaller parties complained of an inability to raise sufficient funds to compete with the bigger parties when it came to advertising in the media. There was a clear disparity evident where one party had the lion's share of advertisements compared to all others.

All political party office bearers are now required to make declarations of their income and assets, including that of their spouse and any children. This incorporates total assets, including money and property in Fiji and abroad, along with their business interests, directorships and gifts. All liabilities must also be listed. In addition, all election candidates are required to make declarations of income and assets in Fiji and abroad, on behalf of themselves, their spouses and children and to list all their liabilities. The law requires these declarations to be published in the Gazette. Under the Decree, failure to declare ones assets and liabilities fully is a criminal offence which carries a maximum imprisonment term of 10 years. In contrast, there is no rule in Australia for election candidates (as opposed to MPs) to declare family asset. In India the maximum term of imprisonment is three months and similar penalty applies closer to home in Solomon Islands.

One of the biggest challenges for the existing political parties in 2013 was to obtain 5,000 signatures from across Fiji, within a short period of 28 days.<sup>9</sup> In 2006 elections, Fiji had 16 registered political parties, a number of which did not receive 5,000 votes. The Decree further requires that the 5,000 endorsements must bear the name, address, signature and voter registration serial number of each elector supporting the registration. Under Fiji's previous legislation, the requirement was for a mere 180 members. Australian legislation requires 500 members, Canada 250 and Kenya 1,000. In Kenya, the timeframe for providing registration details is 180 days. Commenting on this, ISLP said, "[the Decree's] restrictive measures may be justified in countries whose register is plagued by a glut of inactive and unregulated political parties, especially when such activities are abused as vehicles for tax evasion and money laundering. ... Fiji's current register contains only sixteen political parties, 13 of which fielded candidates in the 2006 elections. Fiji's political parties' field can thus not be viewed as a glut of empty shells crowding its register, which may justify consolidation by raising the bar for registration elsewhere."<sup>10</sup>

<sup>9</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, ss 4 and 6.

<sup>10</sup> Above n 4.

The Decree has conferred significant powers over political parties to the office of the Registrar who is also the Permanent Secretary to the Attorney General and Minister for Justice. The Permanent Secretary in Fiji's public service is directly responsible to the Minister for the smooth running of the Ministry and takes policy directives from that Minister. In contrast Kenya, under its legislation, provided for an independent and impartial Registrar to register, fine and de-register political parties.<sup>11</sup> The Kenyan Act also provides for a committee made up of nominees of the President, the Law Society, Institute of Certified Accountants of Kenya, Association of Professional Societies of East Africa and two persons mandated by political parties to choose the Registrar. In Australia, the Australian Electoral Commission is given this important responsibility. That Commission is an independent body comprising a chairperson who is either an active or a retired Judge of the Federal Court, the Electoral Commissioner and a non-judicial member. In Fiji the acting Permanent Secretary for Justice who was already overseeing the impending election preparations was appointed as the Supervisor of Elections and then became the person responsible for dealing with all day to day matters associated with elections. Some opposition parties and civil society organisations questioned the appointment process, claiming that the appointed supervisor had not applied for the position and did not have election administration experience.

The focus of the Decree is largely on political parties, and offers little information on the process independent candidates have to follow in order to be recognized as candidates for election. The Decree defines independents as "any person who stands as an independent candidate and who is not nominated or supported by a political party registered under this Decree".<sup>12</sup> Independent candidates receive mention in Part 3 of the Decree. Their sources of funds can come from voluntary contributions, donations, bequeaths and grants from a lawful source or proceeds from any investment, project, or undertaking in which the independent candidate has an interest. Where an independent candidate fails to disclose or give false information on funds, they are liable to a fine equal to the amount or value of resources not disclosed or to imprisonment for up to five years.

Another provision that needs some mention is the procedure of redress from a decision of the Registrar. The Decree provides for an appeal against the Registrar's decision. The aggrieved person can appeal to the High Court within 14 days from the date of the decision by the Registrar.<sup>13</sup> The decision of the High Court is final and binding on all parties and there is no right to a further appeal. The wording of s 30 of the Decree also restricts appeals filed outside the 14 day time limit and a High Court Judge is not given discretion to entertain appeals outside this period. Redress by way of judicial review is also not permissible. Clearly the law should have provided greater latitude for legal redress.

#### 4. POLITICAL PARTIES (REGISTRATION, CONDUCT, FUNDING AND DISCLOSURE) (AMENDMENT) DECREE 2013

This Decree, Number 11 of 2013, was promulgated on 16 February 2013: two days after the deadline for registration of political parties had lapsed. The amendment specifically targeted three key areas.

<sup>11</sup> *Political Parties Act 2011* (Kenya).

<sup>12</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 2.

<sup>13</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 30.



Firstly, further restrictions were placed on the names, acronyms and symbols that future political parties could use.<sup>14</sup> Hence, those who did not lodge their applications for registration by the 28 day deadline could not use their original identity when filing their application for registration.

By contrast, the Kenyan Act has no such restriction. It only allows the Registrar to refuse an application if the name of the political party, its abbreviation or symbol is obscene or offensive or if the name or abbreviation is that of another political party or too closely resembles that of another political party.<sup>15</sup> The ISLP argues that, "limiting choice of political party names constitutes a restriction on freedom of association and breaches international law."<sup>16</sup>

Secondly, an amendment to s 10 gives further leverage to the Registrar to refuse registration:

The Registrar shall refuse an application for the registration of a proposed political party if the Registrar is satisfied that the application contains any information or particulars which is false or incorrect or which has been obtained in a fraudulent manner.

This amendment imposes greater obligations on political parties to authenticate member's signatures and places greater burden on them to ensure that required information is correct and accurate. The amendment is silent in not giving the Registrar latitude in correcting information that may have contained clerical technicalities. Other jurisdictions provide detailed procedural rules for verification of signatures. A good example is Australia.<sup>17</sup>

Thirdly, an amendment to s 14 of the Decree bans, from holding membership of political parties, officers of civil society organizations who receive remuneration from such organisations. Hence trade union leaders who previously held membership in political parties now have to choose either to belong to a political party or be an official of a trade union. One cannot do both.

## 5. REACTION TO PUBLICATION OF THE DECREES: NATIONAL AND INTERNATIONAL

Reaction to the Decrees came fairly swiftly from many individuals, organisations and political parties, who asked questions about the need, timing and content of the Decrees. Professor Yash Ghai, who headed Fiji's Constitutional Review Commission which reported in 2012, wrote a critique of the amended Decree:<sup>18</sup>

[T]he Decree is inappropriate for another reason. It precedes rather than follows the constitution. It is in the constitution that fundamental principles of democracy are stated including the rules of representation and the role of political parties (and other elements of the electoral system). These matters must first be resolved by a representative CA [Constituent Assembly]. Then the law can follow.

<sup>14</sup> *Political Parties (Registration, Conduct, Funding and Disclosure) (Amendment) Decree 2011* (Decree No 11 of 2011) s 3(h).

<sup>15</sup> *Kenyan Political Parties Act 2011* (Kenya).

<sup>16</sup> ISLP, above n 4, 15.

<sup>17</sup> Australian Electoral Commission signature verification rules may be found at <<http://aceproject.org/ace-en/topics/ei/eif/eif07/eif07a>> (accessed 1 October 2015).

<sup>18</sup> Yash Ghai, 'Notes on Fiji's Political Parties Decree', *Fiji Leaks* (online) (nd 2013) <<http://www.fijileaks.com/archive-home.html>> (accessed 1 October 2015).

Professor Ghai also questioned some of the specific provisions of the Decree. He argued.<sup>19</sup>

In order to ensure neutrality as among political parties, it is extremely important that the administration of the law about political parties should be impartial. The Decree is so biased in favour of the government that it gives the minister responsible for elections and particularly the PS [permanent secretary] in that ministry great discretion as [to] its administration. There are inadequate safeguards to check that the discretion is not abused (including when a party is de-registered). And why should the assets of a party which has been wound up go to the state?

Equally, the conduct of elections is the responsibility of an independent elected commission. Not that of a Ministry. Highly objectionable is the provision that an MP can be removed if it considers that the MP was responsible for conduct leading to de-registration of the MP's party. Surely, such a decision should only be taken by an independent tribunal or a court. In general, the penalties are very high (up to 5 years imprisonment), including for relatively petty offenses.

The Commonwealth Secretariat issued a statement promptly on 21 February 2013.<sup>20</sup> It said:

Commonwealth Secretary General Kamlesh Sharma notes with concern recent Decrees issued by the Government of Fiji, and wishes to emphasise the importance to the Commonwealth of inclusive, independent and credible constitutional and electoral processes conducted in accordance with fundamental Commonwealth values. In relation to elections, it is essential that political parties are able to freely participate under fair, consistent and agreed rules and on a level playing field. It is equally important that the electoral process is conducted by an independent election management body.

The Fiji Trades Union Congress was particularly concerned with the Amendment Decree. In a press release dated 19 February 2013, its National Secretary questioned the need for amending a less than a month old Decree.<sup>21</sup> He said,

The Decree further strengthens provisions disqualifying and denying Trade Unions or their representatives and employees to participate in any political activity. ...

Trade Union officials are not public officers and are not paid from the public purse. This is a membership based movement and is funded by members only. Government has no business in the internal affairs of trade unions and this is clearly defined in the ILO Convention on Freedom of Association which this regime has obligation to respect.

<sup>19</sup> Ibid.

<sup>20</sup> The Commonwealth, *Statement by the Spokesperson on Fiji* (2013) <<http://thecommonwealth.org/media/news/statement-commonwealth-spokesperson-fiji>> (accessed 1 October 2015).

<sup>21</sup> The press release was stored on the Fiji TUC website: <[www.ftuc.org](http://www.ftuc.org)>. A copy is maintained at <<http://solivakasama.info/2013/02/20/fiji-sinks-deeper-into-dictatorship/>> (accessed 1 October 2015).

## 6. LEGAL CHALLENGE BY THE FIJI LABOUR PARTY (FLP)

The FLP applied for registration as a political party under the Decree. It also filed a challenge in the High Court, arguing that the Decree infringes the civil and political rights of parties and individuals in breach of international conventions and was out of sync with many of its provisions in comparison with political parties' integrity legislation elsewhere.

Unlike many of the Fiji Government's other Decrees, the Political Parties Decree and its subsequent amendments do not contain a provision which precludes challenging the Decree in court. Fiji's current courts began operating under the Administration of Justice Decree 2009.<sup>22</sup> They now operate under the 2013 Constitution. The courts, under the Administration of Justice Decree, did not have jurisdiction to accept, hear, determine or in any other way entertain any challenges whatsoever – including any application for judicial review questioning the validity or legality of any Orders or Decrees made by the President from 10 April 2009.<sup>23</sup> Whilst some Decrees have been repealed by the 2013 Constitution, it is still not possible under the Constitution to challenge decisions made by the Government and the President between 5 December 2006 and 6 October 2014 (the latter being the day of the first sitting of the new Parliament).

When the High Court was presented with the argument from the Attorney-General's Office that, under the Administration of Justice Decree 2009, it did not have power to hear the case since it would essentially have to determine whether the President had validly enacted the Decree, presiding judge Justice Anjala Wati had no option but to terminate proceedings on the ground that she had no jurisdiction to deal with the case. Hence the FLP's proceedings, filed against the President of Fiji, Attorney-General of Fiji and the Registrar of Political Parties, was brought to a swift end. In a press release, the then registered officer of the FLP, Mr Mahendra Chaudhry said,

This decision leaves the Fiji Labour Party with no recourse in the court of law to litigate grievances that arise as a result of [the Political Parties Decree]. We are left without remedy against such infringement of our rights.<sup>24</sup>

The President of the International Commission of Jurists (ICJ) Mr John Drummond, in an interview with Radio Australia, said that courts elsewhere have ignored provisions in legislation which oust their jurisdiction. He took the view that there is no reason why a court in Fiji cannot do the same.<sup>25</sup> But there have been no other legal challenges filed against the Decree.

## 7. THE PARTY REGISTRATION PROCESS IN ACTION

Fiji had 16 registered political parties in 2006, although not all contested the elections that year. Following the military takeover of the government in December 2006, only three political parties remained active. The same three political parties applied for re-registration by the February 2013 deadline date set under the Decree. Both the FLP and the National Federation Party (NFP) applied under their own names. The Soqosoqo

<sup>22</sup> *Administration of Justice Decree 2009* (Decree No 9/Legal Notice 11 of 2009).

<sup>23</sup> *Ibid*, s 23

<sup>24</sup> Fiji Labour Party Press Release 'Court Ruling on the Political Parties Decree case' (15 March 2013).

<sup>25</sup> Radio Australia, 'Fiji Political Parties Appeal Dismissal Wrong, says ICJ' (15 March 2013) <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/fiji-political-parties-appeal-dismissal-wrong-says-icj/1102490>> (accessed 1 October 2015).

Duavata ni Lewenivanua Party (SDL) could not apply under its own name as it would fall foul of the ban on ethnic/non-English names in the Decree. The SDL could have amended its name under its constitution but decided against it. (Ro) Teimumu Kepa, its then interim leader, delivered a speech to a meeting of party supporters in which she explained the reasons for dissolving the SDL party.<sup>26</sup> She said:

Naturally the first option open to us was to pick a new name in English, but this would require an amendment to the constitution of the party of 2008. This would not be possible given the time limit of 28 days as the Party constitution requires a period of notice of 30 days for the general assembly in order to be able to do this legally. There is also no provision for extension of time in terms of the Decree. The Party would be taking a major risk if it were to follow this option.

The other option of forming a new party following the dissolution of Soqosoqo Duavata ni Lewenivanua (SDL) was considered a better option as the period provided for that in the relevant Decree was longer and more open.

The SDL party's executive therefore decided to wind up the party voluntarily and deal with its assets in accordance with the party's constitution. In its place a new party, named the Social Democratic Liberal Party (SODELPA), was born.

Following lodgement of these first applications for registration, the three political parties had an anxious wait for two reasons. Firstly, on 8 March 2013 the acting Permanent Secretary for Justice, Ms Mereseini Vuniwaqa, resigned. A prominent politician speculated that Ms Vuniwaqa's resignation may have resulted from ethical issues which she may have had to deal with.<sup>27</sup> As noted, the Permanent Secretary for Justice has extensive powers given by the Decree to register and de-register a political party. The second reason for the parties' anxiety was time frame of 14 days to publish the registration details in the Gazette and in a media outlet.<sup>28</sup> These fears proved unfounded as the process had been actioned by the acting Registrar before she left office. Some two months later, Mr Mohammed Saneem was appointed as a replacement acting Permanent Secretary for Justice.

Following publication of the registration details, the Registrar received allegations of impersonation and other irregularities in the member list of some parties. The parties were given time to respond to the allegations against them. On allegations against FLP field officers, the FLP spokesperson Mr Mahendra Chaudhry said:

[A]s far as I am concerned, there is no truth to these allegations. I am still waiting for police to get in touch with me; they haven't so far got in touch with me.<sup>29</sup>

<sup>26</sup> 'The Last Speech: Ro Kepa's Salutation to SDL until New Political Dawn in Repressive Fiji', *Fiji Leaks* (online) (nd 2013) <<http://www.fijileaks.com/home/january-26th-2013>> (accessed 1 October 2015). 'Ro' is a title used by Fijian chiefs in the Province of Rewa, as well as parts of Naitasiri, Namosi, and Serua. Both males and females are so styled.

<sup>27</sup> Radio New Zealand (International), 'Former Fiji Deputy Prime Minister Believes Registrar of Political Parties Resigned to Save Reputation' (March 2013) <<http://www.radionz.co.nz/international/pacific-news/210760/former-fiji-deputy-pm-believes-registrar-of-political-parties-resigned-to-save-reputation>> (accessed 1 October 2015).

<sup>28</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 9.

<sup>29</sup> Radio Australia, 'FLP Leader Dismisses Impersonation Allegations' (February 2013) <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/flp-leader-dismisses-impersonation-allegations/1090812>> (accessed 1 October 2015).

On other allegations, Mr Chaudhry said:

[W]e filed the response last Thursday. We received 8,563 signatures from the members. We are informed some 73 people had signed up for the proposed Fiji Labour Party and at the same time they had signed up as members of other proposed parties but if you take that away, we still have more than the minimum 5,000 required.

The Acting Registrar received written replies from both the NFP and SODELPA and handed down his decision on 2 May 2013. All three political parties were given a green light to operate as political parties. Although there was anxious wait for the political parties then, their registrations were approved with the Registrar saying:

I had taken a liberal approach in assessing the applications and although there were anomalies in the membership list, I am satisfied that each obtained the required amount of valid signatures.<sup>30</sup>

The table below shows membership statistics of the three established parties.

	NFP	SODELPA	FLP
Total signatures	7,574	8,825	8,456
Discounted signatures due to anomalies	189	136	284

A new political party launched with the backing of the Fiji Trades Union Congress was subsequently also registered by the Registrar. The People's Democratic Party (PDP) was registered on 29 May 2013. It applied with a membership of 6,808 of which 539 were discounted for anomalies leaving a balance of 6,269 valid signatures.<sup>31</sup> Former members of the FLP who had fallen out with its leader were behind the formation of this party.

The Fiji First Party (FFP) was a second, entirely new party to apply for registration. It was the brainchild of the interim government and had interim government ministers amongst its officials. It submitted the largest list of members. A total of 40,083 members supported the formation of the party. Its critics said in local media that whilst the other parties had a very limited timeframe in which to register their members, with the assistance of government machinery the FFP utilized resources to canvass widely throughout Fiji and gather many more signatures than its rivals. Some of these critics lodged complaints with the Supervisor of Elections.<sup>32</sup> A total of five objections were received from rival political parties, and one member of a rival political party. The objections had similarities and the responses from the Supervisor of Elections were as follows:

1. The FFP Vice President, Mr Vijay Prasad had a previous conviction which he failed to declare.

Response: The conviction was a spent conviction under the *Rehabilitation of Offender's Act*.

<sup>30</sup> 'The Ongoing Conundrum of Forming Political Parties in Fiji', *Fiji Times* (online) (3 May 2013)

<sup>31</sup> Ibid.

<sup>32</sup> 'Saneem Clarifies Fiji First Party Objections', *Fiji Live* (online) (6 June 2014)

2. The FFP had carried out political campaigning prior to applying for formal registration in breach of the Political Parties Decree.  
Response: There was no evidence provided to support this claim.
3. A complaint by a Mr Anit Singh who claimed to be the leader of a party registered as Fiji First' in 2006.  
Response: Anit Singh's letter was unsigned.
4. The FFP was using the Coat of Arms of Fiji, which is prohibited under law.  
Response: The FFP was using a variant of the flag and there is no law in force prohibiting use of the flag in that manner.

Similar complaints were filed by a member of SODELPA, Mr Mick Beddoes, but all his allegations were similarly dismissed and the FFP was duly registered.

Two further political parties applied for registration. A party which was originally put together as the National Youth Party, but which later changed its name to the Fiji United Freedom Party, submitted its application for registration via the same proposed officials. It had been forced to change its name for legal reasons, as it could not call itself a 'Youth' party. Its spokesperson explained "we can't use youth under the 2013 Constitution because of the segregation issue".<sup>33</sup> On 23 May 2014 the party handed more than 6,000 member signatures to the Supervisor of Elections.<sup>34</sup> After analysing its application, the Supervisor of Elections rejected it saying he had discovered that the applicants did not provide the minimum required number of members.<sup>35</sup> Officials of the proposed party then sought further clarification from the Supervisor. Their application was then accepted by the Supervisor who corrected an error made by his office. The Fiji United Freedom Party (FUFPP) was duly registered on 1 August 2014.<sup>36</sup>

Subsequently, the One Fiji Party (OFP) applied for registration with over 5,000 signatures. Following scrutiny of its application, the Registrar declined registration, citing a failure to meet minimum requirements of the Decree. The bone of contention was the name. Fiji First objected to One Fiji's registration, citing similarities in name. The executives of the OFP party filed a comprehensive response. The Supervisor of Elections revisited his earlier decision and reversed it. He said,

Having considered the matter, I have decided that the applicant's official name – The One Fiji Party does not resemble Fiji First enough to cause confusion for voters. After the review, we were confident that the applicant met the minimum membership requirements in each division, making it eligible for registration.<sup>37</sup>

<sup>33</sup> Avinesh Gopal, 'Proposed Party Changes Name for Legal Reason', *Fiji Times (online)* (5 June 2014) <<http://www.fjitime.com/story.aspx?id=270566>> (accessed 1 October 2015)>

<sup>34</sup> Vijay Narayan and Tokasa Rainima, 'Another Group Applies for Party Registration', *Fiji Village* (June 2014).

<sup>35</sup> Nasik Swami, 'Registration Rejected', *Fiji Times (online)* (16 June 2014) <<http://www.fjitime.com/story.aspx?id=271580>> (accessed 1 October 2015).

<sup>36</sup> Nasik Swami, 'New Party Registered', *The Fiji Times (online)* (2 August 2014) <<http://www.fjitime.com/story.aspx?id=276099>> (accessed 1 October 2015).

<sup>37</sup> Shalveen Chand, 'One Fiji in the Race', *The Fiji Times (online)* (6 August 2014) <<http://www.fjitime.com/story.aspx?id=276476>> (accessed 1 October 2015).

This brought the number of registered parties to a total of seven. A proposed Activist Party missed out during the registration process since its registration could not be completed by the deadline date for the 2013 election.<sup>38</sup>

## 8. DISCLOSURE OF ASSETS AND LIABILITIES

Once its registration process was over, all political parties and their office holders were required to file statements of assets and liabilities within 30 days. As noted, according to the Decree, any party official or applicant should provide a statement containing his/her total assets, whether in Fiji or abroad, total income in Fiji or abroad and the source of such income, any business connections, any directorships, any gifts received, any assets acquired by each of them whether in Fiji or abroad during the period to which the statement relates and the liabilities incurred or discharged by each of them.<sup>39</sup> Under the Decree, the parties may only be funded by membership fees and contributions from individuals. Foreign governments, non-government organisations or companies are not permitted to provide any funding. An individual may donate up to F\$10,000 in any one year. All registered parties must also provide details to the Registrar of all assets and expenditure including donations. The Registrar is required, under law, to make this information public.

All registered political parties publicly expressed their willingness to comply with the Decree. All of them however complained that the Decree gave no definition of 'children' of party officials. Furthermore, they also felt that where children were over 18, married and living independently, then they should not be required to disclose those adult children's assets and liabilities. The NFP's interim president, Mr Raman Pratap Singh, said his party officials were not willing to declare the assets and liabilities of their children who were over 18 years of age.<sup>40</sup>

On 17 October 2013, the Government promulgated a further amendment to the Decree. The amendment was designed to achieve two objectives. First, s 24 of the Decree was amended to provide a definition of "children". A child is now defined as any child, stepchild or adopted child who is under the age of 18 years, or is over the age of 18 years but still dependent on his or her parents for support.

The second change was designed to provide greater powers to the Registrar of Political Parties to obtain details from banks and other financial institutions of assets and liabilities. Section 26(a) now allows the Registrar to demand information or documents, by directing the relevant person to furnish such information or document to the Registrar. Failure to do so carries a heavy penalty. In the case of a natural person, a fine of F\$50,000 and/or a term of 5 years imprisonment can be imposed following a conviction. For a corporate entity, the fine is up to F\$500,000. No action has yet been taken against anyone for breach of this section.

### 8.1 Publication of Assets and Liabilities in the *Fiji Sun* Newspaper

Once declared, the Registrar must publish all financial information received by him in the Gazette and in the media, and the cost of such publication is to be recovered from the

<sup>38</sup> '7 Parties to Contest September General Elections' *FijiVillage* (online) (4 August 2014).

<sup>39</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 24.

<sup>40</sup> Fiji Village Facebook page, 'Government Amends Law regarding Declaration of Assets and Liabilities' (25 September 2013) <<https://www.facebook.com/fijivillage/posts/575173439207334>> (accessed 1 October 2015).

political party or the independent candidate concerned.<sup>41</sup> The Registrar published the initial declarations in the *Fiji Sun* newspaper and submitted bills to SODELPA, the NFP and the FLP. SODELPA's bill was F\$26,000, the FLP's was F\$7,000 and the NFP's was F\$6,000. SODELPA's bill was the highest for it presented detailed declarations of its member's assets and liabilities taking up 26 pages.

The three political parties protested that, prior to publication, the Registrar should have taken quotations from both dailies and, as this was not done, they separately lodged complaints with the Fiji Commerce Commission. This is a regulatory body set up to look into complaints under the *Commerce Act*. The Commission wrote to all the parties saying it did not have legal jurisdiction to make a determination on their complaint. Facing fear of suspension for nonpayment, SODELPA and NFP promptly settled their bills. The FLP did not. On 16 July 2013, the Registrar suspended the FLP. Under the Decree, following suspension, a party cannot operate, function, represent or hold itself out as a political party. A political party is given 60 days to remedy the breach and failure to do this can lead to deregistration of that party.<sup>42</sup> By 31 July, the FLP paid the sum of F\$7,000 and its suspension was immediately lifted.<sup>43</sup>

Whilst the procedure for registering political parties is somewhat taxing on the parties, it is less onerous on independent candidates. Independent candidates nominate themselves as candidates, 30 days before the date of general elections. Independents are however required to comply with the Decree insofar as disclosure of funding requirements and its publication is concerned.

## 9. FURTHER AMENDMENTS

The Political Parties Decree of 2013, in restricting public officers' participation in a political party, did not provide a criminal sanction for such violation. Rather, if a public officer engages in political activity that may compromise or is seen to compromise the political neutrality of that person's office, then that person is deemed to have vacated their office.<sup>44</sup> A subsequent amendment now also provides for an offence. Any public officer who is found in contravention may, on conviction, face a fine of F\$10,000 or imprisonment for a term of 5 years or both, in addition to losing their job.<sup>45</sup> This amendment was specifically aimed at a few trade union officials who were instrumental in founding the PDP but remained in the background due to restrictions imposed under the Decree. They, amongst others, have been critical of the Government for including trade union officials in the definition of public offices. This criticism is valid given the trade union officials are not defined as public officers in other common law jurisdictions.

A fourth and final amendment was made on the eve of the inaugural general elections under the new Constitution. On 27 June 2014, s 24 of the Decree was amended. It now requires all applicants, office holders of political parties and independent candidates to declare their assets and liabilities. Two political parties, namely the NFP and the PDP, changed some of their party officials after they were originally registered under the Decree. The amendment to s 24 now provides that office holders who were appointed

<sup>41</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, ss 16(4) and 24(4).

<sup>42</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, s 19(2)(c).

<sup>43</sup> Fiji Village Facebook page, 'FLP Suspension Lifted' (30 July 2013) <<https://www.facebook.com/fijivillage/posts/550978144960197>> (accessed 1 October 2015).

<sup>44</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013*, ss 14(1)(c) and (14)(5).

<sup>45</sup> *Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014* (Decree No 10 of 2014), s 4.



after 20 June 2014 are also required to submit their total assets and liabilities, along with original party officials.

## 10. CONCLUSION: CRITIQUE AND REFORM

The Decree and its four amendments were promulgated in quick succession, and can best be described as an imposition on the formation and operation of political parties in Fiji. These measures are clearly intended to control activities of all political parties. Hence all political parties are now registered under strict guidelines, including being required to disclose to the Registrar, 30 days before elections, a list of all members and details of the party's total assets, expenditure and all donations. In addition, all political party office bearers and election candidates must declare their income and assets on behalf of themselves, their spouses and any dependent children. Initially the Registrar and now the Supervisor of Elections has been given extremely wide powers to deal with even the slightest violation and can take punitive measures to deal with all infringements. Under the Decree this can mean a fine or party suspension or deregistration. The four amendments were brought in over a relatively short period of time without any consultation with stakeholders. The fact that these amendments were necessary clearly demonstrates the haphazard approach to drafting legislation without proper consultation with all stakeholders. The nature of some of the amendments leaves one with the impression that they were brought in as afterthoughts by the government to deal with new situations as they arose. Clearly the Decree and its amendments were promulgated to allow the Fijian Government to maintain an electoral advantage over rival political parties.

The Decree also prevents appointed trade union officials from being party members, holding party positions or even speaking at party gatherings. The International Covenant on Civil and Political Rights (ICCPR) says that: "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interests". Section 14 of the Decree not only contradicts this but excludes all public officers from party memberships. Quite deliberately the Decree stretches the definition of public officer to an elected and appointed officer of trade union and employer associations, who are excluded from party membership. There is a history of differences between the Fiji government which came into power following the December 2006 coup, and trade unions in Fiji which were vocal against the government. It is clear that certain provisions of the Decree are clearly aimed at them. Furthermore these provisions appear to be aimed, in particular, at the PDP.

Since December 2006, the post-coup regime has controlled unions through various means. Decrees restricting collective and individual rights were introduced and unions attempted to enter into dialogue. These attempts usually failed to bear fruit, and unions on occasions have threatened industrial action and called for international trade union support. The specific restrictions in the Decree are, in my view, further aimed at controlling trade unions associated with political parties.

Despite verbal protests and misgivings that the parties had about the registration process, by close of registration on 4 August 2014, 7 political parties had registered, alongside two independent candidates. A total of 591,101 electors registered to vote and 240 candidates contested the 2014 elections.<sup>46</sup> The election was observed by a Multinational Observer Group (MOG), co-led by Australia, Indonesia and India. The Fiji Elections Office

<sup>46</sup> Fijian Elections Office, '2014 Candidates List' <<http://www.electionsfiji.gov.fj/2014-candidates-list/>> (accessed 1 October 2015).

accredited the MOG to assess whether the outcome of the 17 September 2014 general election broadly represented the will of the Fijian voters. Its observers had freedom of movement around the country and were generally able to communicate freely with all stakeholders. Its final report made a number of observations, including that:<sup>47</sup>

- The outcome of the 2014 Fijian Election broadly represented the will of the Fijian people. The conditions were in place for Fijians to exercise their right to vote freely.
- The Fijian Elections Office and the Electoral Commission ran an extensive voter information campaign which appeared to reach most voters. Some voters in remote areas did not have sufficient access to voter information.
- The counting process, while onerous appeared well organised and thorough, both at polling stations and at the National Counting and Results Centre. The MOG did not observe any significant irregularities in the counting process, but the progress of the count could have been better communicated to the public.
- The MOG did observe some problems, particular in voter registration, pre-polling and postal voting, which stemmed at least in part from the short preparation time and miscommunication, especially relating to pre-polling.
- No challenges were submitted to the Court of Disputed Returns.

Clearly there is room to amend portions of the Political Parties Decree before the 2018 elections. The current range of penalties for breaching the Decree is quite high and should be proportionate and appropriate to international standards and practices. Candidate names and political party symbols should be on the ballot paper, although this is currently prohibited. There does not appear to be any logical reason to exclude public officials (unless they are very senior officials who are charged with conducting elections) from party membership and appropriate amendments should also be made to reduce the current stringent numbers required for political party registration. The strict number allocation per electoral division should also be abolished.

<sup>47</sup> Multinational Observer Group, *Final Report on 2014 Fijian Elections* (12 April 2015).