

BY NFP PRESIDENT RAMAN SINGH

Regressive and draconian decrees

Free, fair and credible elections is a pre-requisite to parliamentary democracy and good governance.

The National Federation Party has made two submissions to this effect to the Electoral Commission, on 14th February and again on 24th February.

Following the first meeting, the Commission invited the Party to point out draconian provisions of Decrees that the NFP believes are not conducive to a fair electoral process.

We highlight the regressive and draconian provisions of the Political Parties (Registration, Funding, Conduct and Disclosures) Decree 2013, namely on the restriction on trade unionists and disallowing corporate organisations to donate funds. This was submitted to the Electoral Commission on 24th February.

Definition of trade union officials as public officers

In our submission we expressed our concern regarding the prohibition of trade unionists from becoming members or even expressing support towards a political party, holding office in a political party or even speaking at political party meetings, because they are defined as public officers under the Political Parties Decree 2013 (Decree 4 of 2013) and a subsequent amendment Decree (Decree 11 of 2013). The NFP points out that this Decree is inconsistent with the Kenyan Political Parties Act of 2011 that the Attorney-General claimed was the basis of the Political Parties Decree.

Section 14(2) (d) of the Political Parties Decree defines trade unionists as public officers. By doing so it prohibits a trade unionist from being a member and holding any position in a political party. It further restricts trade unionist from taking part in any political activity which may compromise or be seen to compromise the 'neutrality' of the office held.

A public officer in ordinary meaning is a person employed by the government. Such person must be on government payroll which the Kenyan Political Parties Act of 2011 also stipulates. The definition of public officer in the Decree is also inconsistent with the definition in the Fiji Constitution.

Section 14 (2) of the Decree lists all the other public officers to whom the Decree's restrictions under section 14(1) apply.

The NFP points out that no ordinary person will challenge the correctness of defining such others as public officers and applying the political restrictions under the Decree to them. They are all employed and paid by the government and their neutrality and independence is of paramount importance for the maintenance of public trust in them in the performance of their public duties.

The NFP further points out that a trade union is not a public organisation. It is a private organisation of workers. Its primary purpose is to protect and promote the interests of its fee paying members. Its affairs are conducted by officials elected or appointed under its own rules in accordance with its own constitution which itself is made and adopted by its members through its own various decision making bodies. Such trade union officials are paid from private union funds and they carry out functions and duties in accordance with its rules but always in the best interest of the members of the union and as approved by the union. These include negotiations, collective bargaining, campaigning and lobbying, etc. to achieve its purposes such as just wages and conditions of employment, safe working environment and just laws governing worker rights and mechanisms for conflict resolution.

It is therefore erroneous to define a trade union official either elected or appointed as public officer. It is wrong to deny a trade union official political rights as to do so means to deprive him or her of all available legal and peaceful means to represent its members.

The Commission is required by the 2013 Constitution to ensure free and fair elections and to monitor and enforce any laws

governing political parties. The Political Parties Decree therefore falls under your responsibility. It is your duty to ensure that the provisions of any laws, particularly laws under your responsibility do not unfairly disenfranchise any voter, trade union official and union members.

The NFP submits that the Electoral Commission strongly recommend that Section 14 (2)(d) is in violation of the Bill of Rights of the 2013 Constitution regarding Freedom of Association, Movement and Assembly.

We also note that recently the Attorney-General has taken to the broadcast media (Communications Fiji Limited and Fiji Broadcasting Commission) to announce that the Decree will be strengthened to make it an offence in respect of trade union officials who are seen to violate Section 14 of the Decree. When this happens, it will be yet another sign of a gross violation of fundamental rights of individuals who are trade union officials and union members.

Political Party Funding

The NFP had submitted its concerns regarding the restrictions on corporate organisations to donate towards fundraising initiatives of political parties.

Section 21 and 22 of the Political Parties Decree place severe restrictions on the ability of political parties to raise funds for its operations as well as election campaign.

Only individuals are allowed to donate a maximum of \$10,000 per annum to political parties. Corporate organisations are not allowed to donate, ether in cash or kind. Parties are required to disclose the source of all funds raised.

The NFP submits that the Commission seek amendments to the Decree with a view to: -

- (i) Removing the \$10,000 limit on annual donations
- (ii) Allowing corporate organisations to donate in both cash or kind to political parties

- (iii) Disclosure of sources of funds only if a donation is in excess of \$10,000