

SOCIAL DEMOCRATIC LIBERAL PARTY (SODELPA) SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON LAW, JUSTICE AND HUMAN RIGHTS

Friday 5th March 2021 | Bill 50,51,52 of 2020

INTRODUCTION

By SODELPA Party Leader – Hon Viliame Gavoka

The Chairperson and Members of this distinguished Standing Committee.

We are from the Social Democratic Liberal Party (SODELPA) and we offer you our greetings and good tidings for the rest of your Committee deliberations in the term of this Parliament.

Let me introduce the team that we have here today. On my right, we have our General Secretary Ms. Emele Duituturaga, on my left, our Deputy Party Leader Mr. Filimoni Vosarogo, and we have Pita Waqavonovono representing the Youth of SODELPA and Peniasi Daveta who is looking after the media with our Party.

Background to SODELPA

Let me just start by giving you a background to SODELPA. We are known as the Social Democratic Liberal Party or SODELPA in short. As you know in the new provisions required for all political parties, we were known as the SDL, Soqosoqo Duavata ni Lewenivanua. The new rules disallowed the use of ethnic names for any political party, and we went into Social Democratic Liberal Party trying to keep that acronym, SDL, but then the rules also changed and said that even the acronym has to be changed, hence the name, SODELPA to satisfy the requirements and to enable us to be operate as a registered political party.

We initially were led by Dr. Tupeni Baba and then later on, we appointed Hon. Ro Teimumu Kepa to be the Leader of the Party who took us to elections in 2014 when we won fifteen (15) seats. We have been loyal in our duties as the Opposition in Parliament in the four years from 2014 to 2018, and we believe we made an impact that by 2018, we gained six (6) more seats in Parliament. Now, we now are the second biggest Party in Parliament with twenty-one (21) seats.

Declining voter turnout

Honourable Members, I would start by highlighting the concerns of SODELPA in the trends in terms of voter participation in this country. In 1999, 89% of the population who registered voted in the general elections. In 2006, 87% voted. In 2014, it was 83%. In 2018, it had come down to 71%. SODELPA is very worried with this trend which continues to decline. In total numbers, in 2014, there was some 91,000 people that did not vote, four years later in 2018, this has ballooned

to 171,000 people – almost doubled! This is of serious concern to SODELPA, we believe that no one can say that our electoral process is working or successful if a huge segment of the population is not practicing or exercising his/her democratic right in the elections.

Honourable Members, we should ask the question as to why a huge number of our population are not voting. We believe, in SODELPA, that the confidence in our electoral process is lacking very badly and we need to put in place more confidence-building measures to help our people gain the confidence to make that step to exercise their right every four years. What we normally term in SODELPA is that – that is the moment of truth.

The moment of truth, Honourable Members, is that moment that is sacred to every Fijian in the exclusive room like a polling booth where they exercise their right to decide on how they wish to be governed over the next four years. Everything we do, like what we are doing here today on these three (3) Bills – everything that the electoral people do lead to that particular moment in time, that moment of truth.

It is very unfortunate that in 2014, 91,000 people did not get their moment of truth, in 2018, 171,000 did not get that moment in truth. And we need to ask ourselves, why? What we believe in SODELPA is that we need to put in place more confidence-building measures, for instance, why was it over the last two elections, people only had numbers to work with in the polls. No image of the member that they want to vote for, no symbols of the Party and they were not even allowed to take in any paper into the booth where they could record the number of the member they want to vote for.

Let's remember one thing, Honourable Members, the election environment can be quite intimidating for our people and there are many rules now that even I as a candidate, I'm not allowed to come near the voting booth in my village or in any booth in my constituency. So, all these are contributing to the erosion of confidence with our people on the day of the election.

My team will be speaking more specifically on some of these points but the overview of these, Honourable Members is that we must bring back confidence, we must convince our people that they will be given all the assistance they need for that moment of truth. Its only once every four (4) years and we really have to work really hard on these, Honourable Members of the Committee.

Democratic Participation of the Community in politics

A second part of our concern, Honourable Members is the engagement of our people in politics. We need to make it easy for them and possible for them to engage in politics. A specific area, Honourable Members, is in the funding of political parties. As you know, our base is a segment of a community that are known as resource-rich, asset-rich, cash poor. Our people are the \$2 type, they are the ones who voted in these twenty-one Members in Parliament.

What we have today is that the process to collect contributions from someone contributing \$2 and from someone contributing \$10,000 are the same. So, we are at a disadvantage that a) the process by our people in the Party will be more cumbersome and complex, and that our people are reluctant because of what is required of them. We know that as a people, we have this phenomenon known as “solesolevaki”, we have this “soli”, that is how we raise funds as a community that backs SODELPA. We should not make it difficult for them to engage in politics and fund their parties by all these requirements that are now part of the Act. It is much too difficult; we have to make it easy for them.

Already, we cannot speak in our native tongue in the vernacular, they cannot exercise their right because they cannot communicate. We all know that democracy is a government of the people, by the people and for the people. If they are not allowed to speak in their native tongue, how can they engage in the democratic process. If they are given so many prohibitions on how to raise funds to contribute to their parties, how can they contribute to democracy in politics.

There, Honourable Members are some of the overviews that are of concern to SODELPA, and we would wish that we make every effort through these three (3) Bills to encourage the vast majority of our people to engage in politics, to take part in elections and for them to have that moment of truth that comes with them only once every four years. Everything must point towards that and our effort must be for everyone to exercise that sacred right.

CONSTITUTIONAL RIGHT

By SODELPA Deputy Party Leader – Mr. Filimoni Vosarogo

Democracy is said to be the fairest form of governance, of co-existence, of blending together shared values amidst different platform of ideas. It is not said to be perfect and no one expects it to be.

But it must be fair and it is fair only to the extent that the government allows it to be.

This session of this sub-committee hearing sits to hear submissions on the proposed bills to amend the three main electoral legislations prior to the 2022 General Elections.

Mr Chairman, the right to vote is a constitutional right – Section 23 of the 2013 Constitution. Under the heading of political rights, each citizen has the right to form and join a political party, participate and recruit members for the party, campaign for their party of choice or candidate of choice. Subsection 2 gives each citizen the right to free, fair and regular election.

I start with the constitutional provision because I need to remove the myth, if it exist, that it is the government that gives us an election every four years. It may be, administratively. But when a right exists under the constitution, it must be remembered that by design, a constitution isn't

a law prescribed by parliament to bind the people. It is the people saying to parliament, these are our rights, now you provide us by public fund the opportunity to exercise these rights without encumbrance, rigidity of law, impediment or inconvenience.

The constitution is a negative document. The theory behind it is to divide powers to protect liberty - that liberties, rights and freedoms are best protected when it is not in the same set of hands, because when power is contained in one set of hands, or a few, we have tyranny. So we divide powers between the legislators, you who make laws. The Executive arm of the State, the President. Then there is the Judiciary, they adjudicate complains between parties, based on the laws and interpret them according to the intents of parliament, not how they wish to interpret it. If that is not enough to protect citizens from powers in one hand, we add to it by giving ourselves a bill of rights to ensure that if the State would one day think it best to go heavy handed on its citizens, we will have a set of unalienable rights that should ensure our liberty and freedom at all times.

Having an election and how to have a fair one, accessible, not burdensome or rigid, is not the choice of government. It is the choice of the people. It is the government's role to give them a free and fair election through public funds.

Excessive Powers of Supervisor of Election

The various amendments in the three bills that gives additional powers to the Supervisor of Election is too much in the hands of one public servant.

Consider the proposed amendment Clause 35 to the Electoral (Amendment) Bill 2020, amending Section 144 of the Principal Act. Under the principal act, there already is existing laws relating to printing, publishing or electoral advertisements, notices etc. if you breach it, you can be prosecuted. There is a statutory defence available. Fair enough!

Now comes the amendment – giving the SOE powers to direct a person, a service provider or a political party to take down any statement or information that 'he determines may contain false information or to diminish public confidence in the performance of any duty or function of the SOE and the EC'. This is a coercive power with a penal consequence, only seen in orders of the courts in Fiji, now, in the hands of the one person.

Then the new clause seems to pull wool over our eyes, by massaging us saying, look don't worry, if you don't agree with his ruling, appeal to the EC. But he is the Secretary to the EC, by virtue of the office of Secretary, he processes your appeal against his decision? What farce is this!

The former provisions make it an offence to publish incorrect statements and information knowing it to be false. If the SOE isn't happy with my FB posting or my tweet, he can refer me to FICAC and I will of course be interviewed and charged, not that I would want to. But at least, I get a chance to keep my post in the public domain because my other right, the freedom of speech and other people's right, the freedom of information can be maintained. For those two rights, mine of speech and others of information to be vetoed in a minute by someone who thinks it 'may' offend, isn't democracy, it is despotic. I would urge this committee not to recommend this change. Remember, too much power in the hands of a few is tyranny.

Clause 31 again, gives extra judicial powers to the SOE – powers that are exercised without due process of the courts.

The proposed bill gives powers to the Supervisor to remove any material that is in breach of the campaign rules. Who determines that? He does! Who executes that? He does! It doesn't stop there, he can even direct!! Who can he direct, political party or a candidate (fair enough) but listen to this – a police officer in this instance is under the direction of the SOE to take down a material that he thinks is not according to the rule?

For some light moments sake, if the police officer happens to be from Namosi and is the warrior for the Tui Namosi by tradition and he decides he will not accept being directed to by the SOE, he commits an offence and is liable to a fine of up to \$10,000 or to imprisonment of up to 5 years.

Mr Chairman, a police officer is an officer of a disciplined force. His directives are from the Commissioner and the rank and file of the Fiji Police Force above him. The only other way a police officer acts is upon a warrant or an order of the Court in Fiji to for him or her execute. That order is done by seal. Here, let's look at a scenario, the SOE, walks into town, sees a banner that he thinks is better than the banner of the Fiji First, he sees two police officers on duty and immediately directs them to remove it. They should and if they don't, they become liable to prosecution for not obeying a spontaneous order of the SOE. This is draconian. We are living in the 21st century where natural justice is observed and people's right to a free and unencumbered election is protected from legislative inroads such as the consolidation of powers we see in these amendments.

The Powers of the ROPP to deregister a party without according natural justice is another form of judge, jury and executioner.

The proposed Clause 9 of the PPRCFD Bill 2020 gives the ROPP the power to deregister after a 30 days' time period of paid noncompliance. The wording 'must' doesn't leave any room for natural justice. It doesn't even leave any room for review by any court of law.

Mr Chairman, when a party is registered, a minimum of 5,000 people have to sign up. A payment of fees follows. A lot of work is put into preparation for an election and thousands of dollars are spent in campaigns. For a party like Sodelpa enjoying the 2nd most votes in the country's election with thousands of voters behind it, for a one man band to determine its existence as a party is not only a procedural hypocrisy, but also criminal! It flies in the face of people's political rights under the constitution. For a technical breach to cause deregistration is a charade and an embarrassment to any claim that Fiji is a land of freedom, hope and glory!

The office of the Registrar of Political Parties and the office of the Supervisor of Elections must be distinct and must be held by two different individuals. They must not be the same person.

Amendments must be brought to ensure that there is a clear demarcation of the offices, one differently held from the other. It must be so because that distinction of office holders provides to the political parties the comfort transparency, accountability and clear demarcation of the roles that are dissimilar and separate in nature. The ROPP looks after the Political Parties (Registration, Conduct, Funding & Disclosures) Act 2013, the SOE looks after the Electoral Act 2014 and the Voters Registration Act 2012.

THE KEY ROLE OF POLITICAL PARTIES

By SODELPA General Secretary – Ms. Emele Duituturaga

Chairperson and Honourable members of this distinguished Standing Committee,

Electoral systems and political parties are both critical to enhancing electoral integrity and achieving more genuine representation. Without Political Parties, the electoral system is merely a system that does not deliver people's representation – a Government of the people, by the people, for the people, as earlier stated by SODELPA Party Leader, Hon Viliame Gavoka.

Today, it is almost inconceivable to have a functioning democracy without political parties. Political parties serve a wide variety of functions such as: aggregating and articulating interests, developing policies that provide voice and choice, selecting candidates for elected office, organizing legislatures, coordinating the formation and activities of government, recruiting and linking leaders and supporters and conducting electoral campaigns. None of these are achieved just by having an electoral system in itself.

SODELPA – the Social Democratic Liberal Party is founded on the respect for the rule of law, good governance, transparency and social justice. SODELPA is committed to observance of human rights, of women, of children of people with disabilities, of people with different gender and especially the protection of the rights of Indigenous Fijians as stipulated under the United Nations Declaration on the Rights of Indigenous Peoples.

At this point, I wish to point to Article 13 (1). Which states that Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. (2). States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Outlawing the use of vernacular for names of political parties and for use in parliament for that matter is against the United Nations Declaration on the Rights of Indigenous people!

To come back to the Bills, we want to clearly state that Elections is a public good and not a private good for the highest bidder, nor is it only for those who can afford.

Elections is a public good

The amendments particularly proposed particularly in Bill No. 52 of 2020 imposes increased high cost of administration, and more stringent and punitive measures. There are more barriers and hurdles escalating the cost of doing political business. The proposed amendments place an increasingly unfair burden on political parties on reporting and stringent compliance that seem to aim at deregistering parties that oppose or pose a threat to the ruling party.

Being at the heart of democracy, political parties require financial resources to perform their functions. Money is the all-important oil that keeps the party machinery going.

We recommend public financing for political parties which provide:

- 1) structural financing for the day to day functioning of political parties and for campaign financing as with many other countries;
- 2) In relation to campaign financing, a regulatory framework should cover both direct financing to parties from the government budget, and indirect financing through the provision of goods or services (tax exemptions; media access; use of state premises, etc.);

3) In the event of violations of the law, sanctions should be in proportion to the type of violation, and should be used not to prohibit but to discourage political parties from repeating the wrong doing.

BILL NO. 52 OF 2020

It is proposed that S21 (1)(c) be deleted - *the proceeds of any investment, project or undertaking in which the political party has an interest*. SODELPA proposes that this is not deleted but instead the proposed “income derived from any building owned by a political party” to be added rather than to replace (c).

SODELPA has proposed projects for the youth such as yaqona farming and other projects for income generation. Such income generating revenue should be allowed.

S23: Publishing sources of funds

We welcome S23 (1) deleting “30 days” and substitution of “90 days”

The proposed amendments are agreed to. Section 26 requires the annual audited accounts of political parties to be submitted to the Registrar within 3 months after the end of the financial year. This ties up with the requirement for the submission of audit of accounts. A specific problem encountered is the differences in the financial disclosures (unaudited accounts) submitted within 30 days and the final audit accounts within 3 months.

The Registrar should accept the audit accounts and there should be also be a time limitation by when the Registrar further verifies what is presented by the Party. It is unacceptable and should not be allowed that the Registrar is seeking to verify Party records 5 years later – as was the case for SODELPA and now the Party has been referred to FICAC by the Registrar!

A new subsection (2) is proposed. A political party must publish the information provided to the Registrar under subsection (1) in any national daily newspaper within 90 days of the end of its financial year. If the objective is transparency and accountability, this information to be published on the website of the Party and the website of the Fijian Elections Office – this is readily available 24/7, not just one day (66% internet penetration). Not everyone has access to or reads the newspapers, least of all people in rural. The itemisation of support from members for membership fees – over 2,000 names. This is very expensive. A huge cost!

This also applies to S26 New 2A – A political party must publish its audited accounts in any national daily newspaper within 3 months after the end of each financial year. THIS SHOULD BE READILY AVAILABLE ON THE WEBSITE

The proposed new section (4) states that if a political party that fails to comply with subsection (1) is liable to a penalty of \$100 for each day the non-compliance continues, and if the political party is still non-compliant after 30 days, the Registrar must deregister the political party. This is too harsh to register the political party – this is too punitive. Section 19 should apply (read section 19)

SECTION 24:

New subsection 2A

Any person who is nominated by a political party as a candidate for election to Parliament must within 30 days of polling date provide to the Registrar – statement of income, assets, directorships, assets acquired from date of nomination until polling day.

New subsection 2B

Any candidate (whether elected to Parliament or not) must, within 30 days of the return of the writ, provide to the Registrar the following information in writing –

- (a) The amount of any money received by him or her;
- (b) The amount and sources of any donation received by him or her; and
- (c) The income and expenditure

Why is this necessary? Candidates should be free to campaign and be supported by their family members and relatives and supporters. SODELPA does not agree with these additional excessive reporting requirements.

SECTION 25:

New subsection 1A A political party must within 30 days after polling submit to the Registrar a written declaration giving details of all assets and liabilities as at polling day and income and expenditure, including contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made from the date the writ is issued to polling day...

The Act already requires the Party under Section 25 (1) [A political party shall at least 30 days before general elections, submit to the Registrar a statement of its assets and liabilities] to submit its statements of financial disclosure 30 DAYS BEFORE; NOW IT IS REQUIRED 30 DAYS AFTER POLLING. **This is a lot of administration and paperwork! And another reason to deregister a Party!**

Women in Politics

Women generally face discrimination to enter and stay in politics. They already face barriers especially without access to finance. These excessive reporting requirements and huge financial burden will deter especially women into politics.

UNFAIR DISTURBING HINDERANCE

By SODELPA Youth Representative – Mr. Peter Waqavonovono

The Chairperson and Honourable members of this distinguished Standing Committee, following the conversations that you’ve heard from our Honorable Party Leader, The Deputy Leader and our General Secretary.

I end with how these 3 legislative documents and its amendments, reinforce an unfair and disturbing hinderance to the progress of our Democracy.

Caretaker governments and Campaigning using tax payers dollars

From what we can ascertain from the speakers before me, our elections systems are out of wack! Before a General Elections, Government Plans. Government allocates a budget. From our experience over two elections under the 2013 Constitution, Prime Minister Frank Bainimarama announced that the elections would be held on a specific date. President Jioji Konrote subsequently dissolved parliament in accordance with section 58(3) of the constitution, on the advice of the Prime Minister. The State assumes Caretaker roles!

Section 113 (4A) must be reworded to literally dictate to those who have the privilege of the use of taxpayers fund, that they are prohibited from using state resources in the use of campaigning. In fact, let’s look at the 2018, and 2014, and see how important it is to set a level playing field and not abuse State resources. To open schools during campaigning, open roads during campaigning, and mix daytime official duties with partisan campaigning issues. Like the Prime Minister traveling to Ovalau with a full Government Delegation for official duties, in the evening he would do FFP partisan events. This is no longer falling into the premise of a caretaker.

Ecclesiastes 3 clears directs the faithful, that *“There is a time for everything,
and a season for every activity under the heavens:*

- 2 *a time to be born and a time to die,*
a time to plant and a time to uproot,
- 3 *a time to kill and a time to heal,*

*a time to tear down and a time to build,
 4 a time to weep and a time to laugh,
 a time to mourn and a time to dance,
 5 a time to scatter stones and a time to gather them,
 a time to embrace and a time to refrain from embracing,
 6 a time to search and a time to give up,
 a time to keep and a time to throw away,
 7 a time to tear and a time to mend,
 a time to be silent and a time to speak,
 8 a time to love and a time to hate,
 a time for war and a time for peace”*

Handing out rubbish bins paid for by the taxpayers of Fiji during an election. Handing monetary rewards to first time mothers, paid for by the taxpayers of Fiji during an election. Sewing machines to women in our rural areas paid for by taxpayers. A minister of the FFP Government in 2018, traveled to areas like Taveuni, Seaqaqa and Bua, handing out 2288 micro and small business grants to the recipients in Seaqaqa alone.

If Government can't plan their projects to eclipse before the dissolution of Parliament, and caretaker mechanisms kick in, it becomes the job of the lawmakers to legislate it.

Should the Electoral Commission handle Political Party Disputes

On the desire to normalize this idea that the Electoral Commission is qualified to handle political party disputes - The SODELPA has gone to court a few times to sort out internal differences and interpretations of the law. In the end, our case is heard by very capable men and women who have been in service for years. Section 30A of the Political Parties (Registration, Conduct, Funding and Disclosures) Act to be amended, reads “Act has introduced dispute resolution processes in the law. The decision of the Electoral Commission on whether to mediate or arbitrate is final and is not subject to any further appeal or review by any Court, tribunal or any other adjudicating body.”

Following common-law precedence, how is it that Fiji would leave the handling of intra/inter party disputes with a body of unqualified Fijians? And their decision is final?

A Former member of the Electoral Commission, Professor Vijay Naidu, during a panel discussion on the ‘State of Democracy’ organized by the NGO Coalition for Human Rights to take stock of the country’s achievements, challenges and discuss on ways forward for Fiji to mark 50 years of

Independence claimed that the Supervisor of Elections is no longer being overseen and supervised by the Electoral Commission when in fact, he should be.

He says the members of the Commission during the 2018 General Elections had no experience in elections and the only experienced person was the Supervisor.

The Professor adds that the decision to make the Supervisor the Secretary to the Commission was made after the Court of Appeal's decision that the Supervisor must not direct what the Commission should do. These sentiments were published and covered in every media outlet from 19th October 2020. How shameful is it, that even a former EC member does not think it wise to consolidate power and adjudicating over a body that is not even in charge of their own affairs. This brings me to my final comment, on the LAVE LIGA SYNDROME.

A system of Leeches and Yes-Men

The current amendments do not go as far as we expect electoral progressive regulations and rules to follow in a progressive democratic nation like Fiji. Constitutionally, every Fijian is guaranteed "One Vote, One Value", instead of the first past the post model the system is dependent on the calculations of the D'Hondt Structure that rewards political parties.

One vote, one value. We have come to see that it is one vote, one star!

For a generation of Fijians that grew up under representative democratic models and now enforced electoral engineering models, one has to ask as to what type of leaders emanate from a system. This system, D'Hondt, encourages big party politics and is led by superstar's whose votability or tactics of gaining votes forces everyone under the threshold in the Party to become subservient to the star.

One vote, cannot over-ride the votes of others! Unfortunately, a person with 100,000 votes blocks at least 20 more credible candidates from becoming parliamentarians. Under the D'Hondt, that 100,000 votes drag in 20+ of his own party list of candidates, filling the ranks with persons who Fijians didn't think were even on the ballot.

By shifting to the first past the post model and observing the principles of representative democracy coupled with our constitutional promise of "One Vote One Value", candidates will work on getting every vote in their many constituencies/districts or voting centers. Every Parliamentarian in the Fijian Parliament will be a star in their own right, and not YES MEN – sufferers of the Lave-Liga Syndrome.

After 2 elections, the common sense move would be to remove the D'Hondt structure and put in place a system that ensures every vote matters.

Conclusion

Before we float into questions, I would like to reiterate that we as a political party stand ready to assist Government in improving its services and making sacred constitutional spaces, like our elections, more fairer, more free!