

National Federation Party Submission to the Ghai Commission on Fiji's new Constitution

1.0 INTRODUCTION

The National Federation Party (NFP) is the oldest political party in Fiji. The party was born nearly five decades ago out of the struggle of the people of the then colonial Fiji for dignity and respect. The late A D Patel and his followers formally launched NFP as a multiracial party in 1963.

The principal objectives of the party have been, are and will remain as follows: -

- *To create, promote, foster and preserve a sense of national consciousness among the citizens of Fiji, irrespective of any distinction of community, religion, race or sex;*
- *To promote, preserve and safeguard the political, economic and social rights of the citizens of Fiji, irrespective of any distinction of community, religion, race or sex;*
- *To strive to bring about political, economic, social and cultural integration among the citizens of Fiji by pursuing the ideal of seeking "Unity in Diversity", and by creating an atmosphere of goodwill, understanding and mutual respect for the culture and religion of all classes of citizens;*

These objectives are timeless and remain as true today as they did when the party was founded. Throughout its political life, working for the national interest the party has retained these objectives as its guiding principles.

While for much of its existence NFP has led the “opposition” in Fiji’s Westminster experience we have nevertheless promoted and supported social justice policies that were in the national interest and that conformed with the party’s objects.

Some of these monumental and permanent achievements which the NFP was instrumental in bringing to fruition are: -

- Establishment of Fiji National Provident Fund for the workers of Fiji;
- Establishment of Housing Authority for the ordinary and average working class citizens of Fiji;
- Enactment of Agricultural Landlord & Tenant Ordinance (ALTO in 1966) and Agricultural Landlord & Tenant Act (ALTA) in 1976 to provide long term stability and security to cane growers and agricultural tenants on leased native, state and freehold land;
- Negotiating the Denning Award and lead the struggle for the departure of Colonial Sugar Refining Company (CSR), bringing prosperity to cane growers and Fiji’s sugar industry for many decades;
- Peaceful achievement of Fiji’s Independence under the 1970 Constitution;
- Establishment of the Constitution Review Commission (Sir Paul Reeves led Commission) for the review of the racist and feudalistic 1990 Constitution;
- Successful promulgation of the universally acclaimed 1997 Constitution.

The NFP is the only surviving political party that has had a direct role and enduring impact in Fiji’s modern political transition from colonial rule to independence and subsequently providing a robust people’s voice in the first seventeen years of independence.

During this period the party also acted with great responsibility and sensitivity in managing the volatile and developing race relations in the country.

2. COUPS AND POLITICAL DEVELOPMENTS (May 1987- April 2009)

2.1 1ST & 2ND MILITARY COUPS

Fiji has suffered from four coups in the last 19 years. The first coup of 14th May 1987 was executed by the then Royal Fiji Military Forces that removed the five-week-old coalition government of the National Federation and Fiji Labour parties and abrogated the 1970 Constitution.

The second military coup of 25th September 1987 negated the Deuba Accord, which was a charter agreed by the leaders of the NFP/Labour coalition government and the Alliance Party led by Ratu Sir Kamisese Mara that had lost the April 1987 general elections. Fiji was declared a Republic and an interim administration headed by Ratu Mara formulated and enacted the racist 1990 Constitution under which two parliamentary general elections were held in 1992 and 1994.

It took Fiji ten years to recover from the 1987 coups with the promulgation of the 1997 Constitution. These were ten painful years for Fiji. They required immense goodwill, trust and confidence building to retrieve Fiji from the abyss that the coups had thrust us into.

The NFP again took up the challenge and its leadership worked tirelessly and with courage and patience to repair the volatile race relations and restore confidence of the people.

Those efforts were rewarded in the conclusion of the 1997 Constitution. The arrangements under it were and remain faultless and in our view still provide the best options for the people of Fiji.

In 1999, the country went to the polls under the 1997 Constitution that resulted in the election of the Fiji Labour Party led coalition government.

Despite the coalition enjoying 81 percent parliamentary majority, the Fiji Labour Party deliberately sidelined the defeated SVT party led by former Prime Minister Sitiveni Rabuka from the multi-party cabinet as required under Section 99 of the 1997 Constitution that required the PM to invite a party to his/her multi-party cabinet if that party won 10 percent or more of parliamentary seats in Fiji's 71 member House of Representatives.

From the outset, the government led by Prime Minister Mahendra Pal Chaudhry was embroiled in controversies. His son was appointed as his private secretary. Chaudhry got the Cabinet to approve thousands of dollars to renovate his private residence on the basis that he wasn't occupying the official PM's residence. The government also made rapid changes to boards of statutory organisations, replacing personnel with its own supporters and sympathizers.

The FLP government appeared forever on a warpath with Fiji's media after it began highlighting its inconsistencies.

In January 2000, the FLP government introduced a Bill to amend sections of the 1997 Constitution describing them as "editorial changes". This sowed the seeds of dissension in the indigenous community who felt threatened by the proposed amendments, which weakened the powers of the Fiji Senate that comprised of 14 Senators nominated by the Great Council of Chiefs.

2.2 3RD MILITARY COUP

The third coup was executed on 19th May 2000. The government was overthrown in a coup led by George Speight and backed by the soldiers of the Counter Revolutionary Unit of the Republic of Fiji Military Forces (RFMF) who stormed parliament. Members of the government were held as hostages in Fiji's parliamentary complex.

The RFMF then abrogated the 1997 Constitution, removed President Ratu Mara from office, and appointed an interim government headed by the then banker Laisenia Qarase. The Military managed to secure release of members of the deposed government after 56 days in captivity.

George Speight and his key advisors were arrested and in 2002 jailed for life for treason.

The RFMF, together with the interim government had also embarked on formulating a new Constitution. This process was stopped after the High Court of Fiji in November 2000 and later the Fiji Court of Appeal in March 2001, upheld the 1997 Constitution and ruled that its abrogation and the removal of the government were unlawful. The Fiji Court of Appeal also ruled that the Fiji Labour Party (FLP) led People's coalition government was the legal government of Fiji.

Despite that the military did not reinstate or provide security for the reinstatement of the deposed government.

This was however, overtaken by internal bickering and a struggle for leadership within the Fiji Labour Party which also prevented the FLP from assuming power once again.

The FLP Leader and deposed Prime Minister Mahendra Pal Chaudhry, whose leadership was seriously under threat, went to the President, advised him to dissolve parliament and call for fresh elections. This after it seemed certain that the Prime Ministership would be changed should Parliament be reconvened.

The FLP's leadership struggle provided the President with the reason to dismiss Chaudhry as Prime Minister, appoint a member of his party and deposed Cabinet Ratu Tevita Momoedonu as caretaker PM, who in turn resigned as PM and advised the President to dissolve parliament and call for fresh elections.

In the meantime, the interim Prime Minister Laisenia Qarase formed the Soqosoqo Duavata ni Lewenivanua (SDL) political party to contest the August 2001 general elections.

Following the August 2001 general elections Qarase's SDL won 32 seats and the FLP 27 seats. Qarase managed to secure parliamentary majority after forming a coalition with the Conservative Alliance Matanitu Vanua (CAMV) Party, formed by supporters of George Speight, which had won 6 seats.

Ironically, the FLP had also tried wooing the CAMV to its side, together with independents, the Generals and the lone NFP member in a bid to form government despite the fact that George Speight himself was one of the 6 elected MPs in custody and awaiting trial.

The NFP was also invited by SDL's Qarase. However, the Party wrote to both Qarase and Chaudhry urging them to form a multi-party government, as they were the only two parties qualified under the Constitution to do so. The NFP had not and would not violate the Constitution.

(In August 2002, the lone Member of Parliament for NFP, Prem Singh, had to relinquish his seat. The FLP had mounted a court challenge against his election. A ruling by High Court Judge Anthony Gates, currently Fiji's Chief Justice, ruled that votes declared invalid for the FLP losing candidate be validated.

The Supreme Court of Fiji ruled that Judge Gates' ruling violated the Constitution and Electoral Act. However at the same time, the Supreme Court could not overturn Gates' decision because Section 73 (7) of the Constitution stated that the decision of the Court of Disputed Returns in an electoral case, in this case, the High Court is final).

Qarase went ahead and formed a coalition government with the CAMV and three independent members, giving it a parliamentary majority of 41 seats. The FLP challenged the legality of the cabinet in the High Court. The FLP leader rejected his appointment as Leader of the Opposition by the President claiming he was part of government. Hence the NFP's Prem Singh was appointed the Opposition Leader.

The High Court referred the case to the Appeals Court, which ruled in the FLP's favour in February 2002. The Qarase government appealed the ruling in the Supreme Court and in July 2003, the Supreme Court stated that the FLP was entitled to be part of the multi-party government.

It was clear that both Qarase and Chaudhry were never interested in multi-party Cabinet. Qarase offered the FLP 14 ministerial portfolios that did not hold much significance.

Chaudhry continued his legal battle in the Supreme Court staking a claim to 17 portfolios. Finally in November 2004, Chaudhry announced that his Party was no longer interested in joining Qarase's government and accepted the Leader of the Opposition's chair.

This after some three and a half years had been wasted waging legal battles and Talanoa dialogue sessions organized by Hawaii's East-West Centre.

The period between August 2001 and May 2006 was a period of uncertainty. Major issues like the sugar industry and finding a solution to the issue of expiring land leases were ignored.

Both Qarase and Chaudhry found comfort in consolidating their racial solidarity. This resulted in a racially polarized nation. The uncertainty was further compounded by constant saber rattling by the RFMF Commander Frank Bainimarama, and even the efforts of Vice President and high chief Ratu Joni Madraiwiwi to resolve issues through dialogue and not issuing threats through the media proved futile.

3. 2006 GENERAL ELECTIONS

The 2006 general elections were held between 6th and 13th May. Qarase's SDL party won the elections outright with 36 of the 71 parliamentary seats. The FLP won 31 seats while its coalition partner the United People's Party won 2 seats. Two seats were won by Independents.

On 18th May, Qarase was sworn in as PM after consolidating the support of the two independents. Immediately, he invited Chaudhry and the FLP join the multi-party cabinet in accordance with Section 99 of the Constitution. Qarase offered FLP seven major ministerial portfolios but Chaudhry demanded eight. In the end Qarase offered nine cabinet seats.

On 24th May 2006, nine FLP ministers were sworn in and joined 12 SDL ministers in Cabinet. Chaudhry declined a Cabinet offer.

Political parties, NGOs, trade unions, the business community and even the RFMF Commander welcomed the formation of a genuinely multi-racial multi-party cabinet, describing it as the way forward for Fiji.

3.1 4TH MILITARY COUP

The fourth military coup was staged on 5th December 2006.

The military coup was labelled a “Clean-Up” campaign and together with actions that followed was claimed to be within the ambit of the Constitution.

Fiji’s political situation deteriorated since the 4th military coup of December 5, 2006. There was a glimmer of hope until July 2008 when the regime led by Frank Bainimarama, who was appointed as Interim Prime Minister on 5th January 2007, had consistently maintained that his regime would honour commitments made to both the European Union and the Pacific Islands Forum Leaders.

The suspicions of many pro-democracy activists were confirmed however when he told the Forum Foreign Ministers who visited Suva that there would be no elections until the completion of electoral reforms propagated by the People’s Charter.

Bainimarama himself addressing the UN General Assembly repeated that elections would not be held by March 2009 that the regime had committed to before the EU and the Forum.

Three major political parties including the deposed SDL Party, the NFP and UPP, and trade unions affiliated to Fiji Islands Council of Trade Unions (FICTU) maintained their principled stand for restoration of parliamentary democracy and constitutional rule in accordance with the provisions of the 1997 Constitution.

The regime remained defiant. In January 2009, the regime through its interim Attorney-General told the Forum Leaders in a meeting called to review Fiji’s renegeing on commitments that there was no way elections would be held until electoral reforms and the People’s Charter was accepted by the political parties, trade Unions and NGO’s mysteriously claiming 64% of Fiji’s population support the Charter.

A President’s Political Dialogue Forum had provided hope that a political solution could be negotiated out of the coup and return to parliamentary government. This was dashed however when the NFP and SDL were excluded from the process and which was itself

abandoned and buried by the final abrogation of the 1997 Constitution following the Court of Appeal rulings in April 2009.

4. NEW LEGAL ORDER

On April 9, 2009 the Fiji Court of Appeal ruled that the coup of 5th December 2006, held as legitimate on 9th October 2008 by the High Court of Fiji, was illegal and the dismissal of Laisenia Qarase as Prime Minister was unconstitutional.

The three judges ruled that the President of Fiji appoint a Caretaker Government to take Fiji to general elections in accordance with the Constitution. The Court also ruled that the Caretaker Prime Minister should be some other citizen apart from Qarase and Bainimarama.

That same evening, Commodore Bainimarama briefly addressed the nation and asked everyone to remain calm. He claimed there was no government in place and there was a power vacuum. He said everyone should await the President Ratu Josefa Iloilo's decision on the next course of action.

At 11am on Good Friday April 10, 2009, the Constitution was abrogated by the President. He declared that a New Legal Order was now in place and that he had re-appointed himself as President. Iloilo disclosed he had done so in consultation with Bainimarama and claimed the regime had done a god job in moving the country forward since December 2006.

He announced that a new interim government would be appointed by him and that interim government would stay in power for 5 years until 2014. Iloilo said all judicial appointments – that of judges and magistrates were being terminated instantly with the abrogation of the Constitution.

On Saturday 11th April Bainimarama was re-sworn as Interim PM under the New Legal Order. At 3pm that same day all other Interim Ministers before his abrogation of the Constitution were also re-sworn under the New Legal Order.

5. APRIL 2009 TO DATE

The military government has imposed its rule through decrees. It has forced people to acquiesce to its rule, primarily through the strict enforcement of the Public Emergency Regulations and the Media Industry (Development) Decree.

The Emergency Regulations, absolute media censorship enforced physically by the regime's Information Ministry until early this year, totally curtailed freedom of expression, freedom of information and public gatherings requiring permits for even religious gatherings until early this year.

Despite relaxation of the Emergency Regulations to facilitate the constitution making consultative process, the media appears constrained in apparent self-censorship despite claims it isn't doing so. There is no sense of impartiality, and they seem obliged to parrot regime propaganda.

That the media is subservient to the regime was confirmed recently over Fiji TV's license renewal saga where it appeared to be held at ransom for fear of revocation if it gave prominence in reporting any news items by politicians and trade unionists.

Furthermore, Ministers of the military government are protected from civil litigation under the State Proceedings (Amendment) Decree 2012 if they are reported in the media as making slanderous, defamatory or frivolous comments against anyone.

There are other decrees that severely curtail worker rights and role of trade unions. The most regressive decree is the Essential National Industries (Employment) Decree 2011

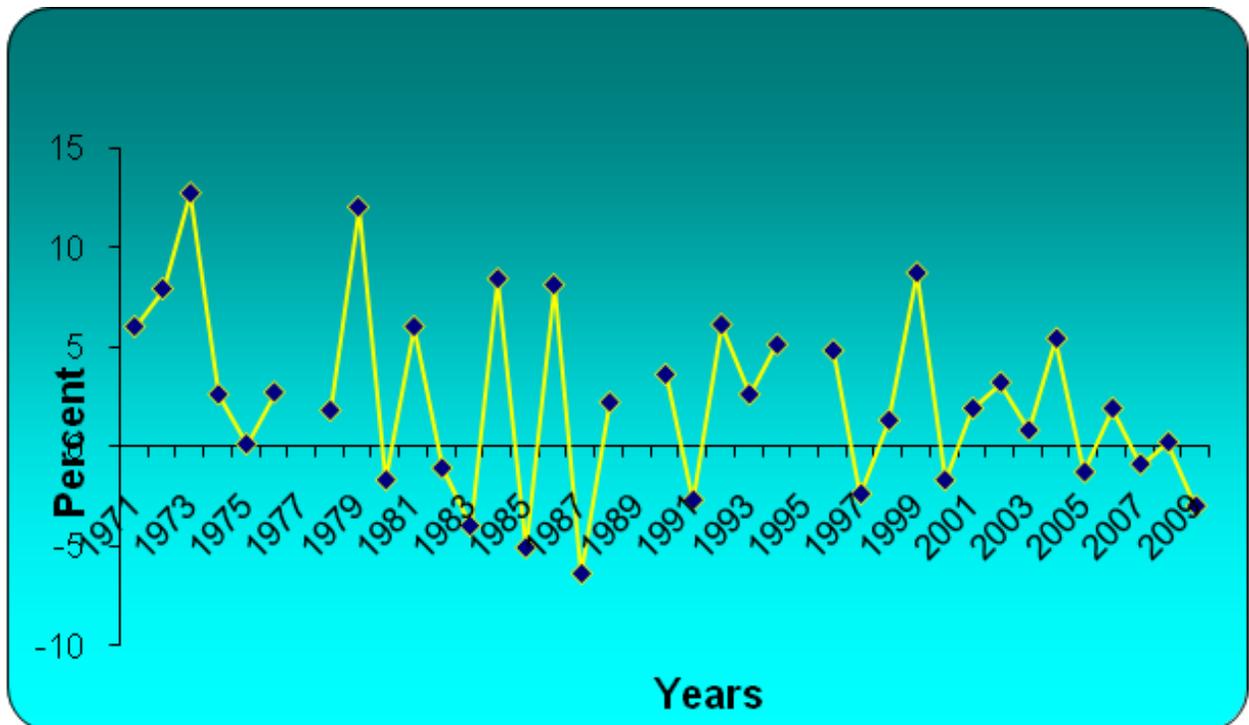
that has fragmented workers into small bargaining units and making them prone to exploitation from employers.

Despite the curtailment of fundamental rights and freedoms, the NFP has continued to function, as a political party in this climate of suppression through resilience of its officials and members.

6. FIJI'S ECONOMIC PERFORMANCE IN THE LAST 25 YEARS

Fiji gained its independence in 1970 and for the first decade it pursued an import substitution strategy for growth and development. It undertook significant investment in infrastructure and social development. The poverty rate during the 1970s was only around 10 percent. Today it is about 34 percent and another 33 percent are on the margins of the poverty line.

The average investment during the first decade was around 21% of GDP and it achieved an average growth rate of 5.5 percent in the 1970s. The graph below shows Fiji's declining growth rates since the second decade of independence.



6.1 *The Beginning of the Decline- the 1987 Coup*

The high growth rate of the 1970s was disrupted by the 1987 military coup and since then we have continued on a downward slide not only in terms of growth but also in terms of all social indicators. The average growth rate in the 1980s was just 1.9%. The coups of 1987s caused major instability in the country and brought to the forefront racial stereotypes in almost every government policy. For the first five years of the Interim regime after the 1987 coups, government policies almost exclusively favoured the indigenous Fijian people in the country.

The civil service was purged, people of Indian origin were removed from all the significant positions of power and most promotions and appointments had racial bias in favour of the indigenous Fijians. The complete indigenization of the civil service forced large number of experienced and qualified indo-Fijian civil servants to leave the country.

In the last twenty five years, over 130,000 people have left Fiji with their skills, experience and capital and this is still continuing except in the last five years Indigenous Fijians have also started to leave the country.

Apart from the civil service there was a widespread and ill-conceived affirmative action policies which favoured indigenous Fijians in business, government subsidies, tax concessions which were a huge drain on the tax payers of this country.

The collapse of the National Bank of Fiji which went on a rampage to provide soft loans and with lack of appropriate collaterals to many who would not have qualified for a loan. These included many prominent chiefs, businessmen, military officials, politicians and civil servants. Some are still enjoying the benefits of the written off loans today.

6.2 *The 1990 Constitution and economic growth*

The 1990 Constitution was a complete subjugation of the rights of Indo-Fijians and it was a shameful Constitution and those that helped implement it, should have hanged their head in shame. How can a Constitution bar some of its citizens to hold important positions in government in their own country? We had gone back to the era of apartheid in Fiji between 1992 and 1998 when the 1990 Constitution was in force. We notice that some people in this country today still want elements of that.

The Economic performance was again very poor in the 1990s where the average growth was 3%. The lack of confidence in the country due to the imposition of the 1990 Constitution caused significant damage to the economy.

However, to the credit of the Coup Leader Sitiveni Rabuka and the Leader of the Opposition and NFP Leader, Mr. Jai Ram Reddy the 1997 Constitution was promulgated and the general election on it was held in 1999. In fact the economic performance began to improve from 1994 when the Constitutional Consultation process started. There was a return of significant confidence and Fiji achieved a growth rate of more than 8% in 1999 only to be disrupted by the 2000 coup.

6.3 *The 2000 Coup and economic growth*

The economy continued to decline after the 2000 coup and the average growth rate was a dismal 0.8%. The political instability continued because the leaders, Mahendra Chaudhry and Laisenia Qarase could not work within the spirit of the Constitution which required forming a multi-party cabinet.

The SDL government led by Mr. Laisenia Qarase was not prepared to accept the Labour Party after the 2001 election and when after the 2006 Election, SDL genuinely invited the FLP, its leader Mr. Mahendra Chaudhry refused to participate. The political instability continued and the government was over thrown by the Military in December 2006.

6.4 *The 2006 Coup and economic growth*

The significant decline in the economic performance occurred after the 2006 coup. The country experienced a negative growth rate of almost -6% in 2007 and it has not recovered to even 2% growth as yet. The average growth rate in the last five years has just been 0.1%. This is almost like negative growth. The level of private sector investment in 2011 was just 2% of GDP and this negligible.

6.5 *Way forward*

In summary the average growth rate in Fiji in the last four decades has been as follows:

- **1970s- 5.5%**
- **1980s- 1.9%**
- **1990s- 3.0%**
- **2000s- 0.8%**
- **Average last five years - 0.1%**

It is clear from the above that in the last three and half decades political instability has clearly been a significant factor in Fiji's poor economic performance. In fact, the trend is that we are on a path to a somewhat permanent economic decline and unless we move towards an inclusive political and economic system we will continue to see poor economic performance. How can we move forward economically?

First, we need to ensure that land legislations should not be exclusive and extractive institutions for indigenous Fijian elites who have over the last 25 years used that to justify political instability and instilled fear in the minds of the indigenous Fijian people.

The conversion of the Schedule A and B to native land, as suggest by the FLP government after 1999 and implemented by the SDL government was a regressive step. This was an attempt to make the state a landless entity.

The schedule A and B category of lands should be reverted back to the state and leased to tenants who can make productive use of it. For native land leases, the government should adopt the concept of the master lease where the state leases the land from the native owners and subleases it to tenants on secure and long-term leases and preferably 99 year leases.

This is an opportune time for the country to address the land issue in Fiji. The so called traditional ownership and institutions have been a colonial creation and Fiji must now find its own inclusive solution.

Second, racial discrimination of any sort should be considered a criminal offence. This would ensure that only merit is used in government policies.

Third, the civil service will have to have a serious overhaul. The last twenty five years of discrimination against the people of Indian origin has seen qualified Indo-Fijians sidelined in favour of poor and unqualified indigenous Fijians. Today, Fiji's civil service is riddled with inefficiency, nepotism, lack of skills and poor attitude. No matter, how

good a government we have, no matter, how good a Constitution we have, if the civil service is poor, there will be no delivery.

The Commission should recommend that recruitment in the civil service should be made on merit and this means that only those who are qualified in terms of their qualifications should be hired. For example, the recruitment at the graduate level should strictly be based on the grades they receive in their degree or diploma.

Fourth, to avoid future coups, the military should be down sized and there should be ethnic parity in the composition of the army.

7. CONSTITUTIONAL PROCESS

On Friday 9th March 2012, the military government's Prime Minister Voreqe Bainimarama announced the Constitutional Consultation Process.

The timeline announced by Bainimarama was: -

1. Civic Education in May
2. July-September: Consultation by Constitution Commission
3. October-December: Collation of all submissions and preparation of the draft report by the Commission
4. January – March 2013: Appointment of the Constituent Assembly. Meeting of the Assembly to consider the draft Constitution
5. Assembly to debate draft Constitution, make amendments where necessary and approve the Constitution. Constitution to be assented to by President at the end of February 2013.

7.1 Commission and Commissioners

The Regime went ahead and appointed a 5 member Constitution Commission. The five members are Professor Yash Ghai (Chair), Professor Christina Murray, and local members Dr Satendra Nandan, Penelope Moore and Taufa Vakatale.

The NFP reacted to this announcement via a press release on 15th March 2012. We said:

“The consultation process announced by Frank Bainimarama has pre-determined outcomes, is unnecessarily elongated and is not all inclusive. So is the definition and composition of the Constituent Assembly.

Creating artificial restrictions to free debate on the matter such as pre-determined so-called “non-negotiable” items are also unhelpful to the integrity of the process.

Permanent solutions to the current political hiatus arising out of the 5th December 2006 military coup and subsequent events can be found within the framework of the 1997 Constitution.

From the outset the National Federation Party position has been extremely clear on the overthrow of a democratically elected government and the abrogation of the 1997 Constitution; these are acts of treason and continue to be so. The Constitution provided mechanisms for genuine parliamentary democracy and constitutional rule.

For some 29 months until 10th April 2009, the Bainimarama regime imposed its rule under the Constitution but told the world it had torn apart the supreme law of the land some 22 hours after the Fiji Court of Appeal’s ruling declaring the regime unlawful.

Indeed many of those clamouring for the 1997 Constitution after having hailed it’s trashing are now trying to shamelessly gain mileage by calling for its restoration.

This lends credibility to NFP's belief that the Constitution itself has never been proven to be dysfunctional. The leadership at the helm of Fiji since 1999 have time and again paid lip service to the Constitution. So the fault does not lie in the Constitution

The NFP had a major role in the creation of the 1997 Constitution. It remains the best hope for the people of Fiji through its provisions of social justice, power sharing, protection of group rights, media freedom, non-discrimination in appointments to the civil service and an internationally acclaimed Bill of Rights.

Until we see something better we have no reason to abandon it.

Mr. Bainimarama's announcements fall short. We cannot have genuine consultation in a restrictive environment. We need to see immediate steps to remove all impediments such as the plethora of decrees that severely restrict our rights, freedoms and access to the Courts."

7.2 DECREES 57 & 58

The constitution process was given some legitimacy and confine through these two decrees. Decree 57 is the **Fiji Constitutional Process (Constitution Commission) Decree**, which outlines the limits to the work of the Commission and stipulates the timeline for the acceptance of the Constitution and its assent by the President.

Decree 58, **Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree** sets out the limitations on the Constituent Assembly that will deliberate on the draft report prepared by the Commission.

Contrary to Bainimarama's announcement of 9th March, the decree reveals that the Constituent Assembly will not make the final decision on the new Constitution.

The NFP is concerned that the members of the Constituent Assembly will be appointed by the military Prime Minister and not the President.

Furthermore the combined effect of the two decrees not only result in an overly restrictive process but given the continuing restrictions on freedom of association and expression do not conform to international norms for post conflict constitution making.

8. 1997 CONSTITUTION

There has been a barrage of attacks on the 1997 Constitution, particularly by the military government. Commodore Voreqe Bainimarama (Fiji Sun, 19th June 2012) said there was no need to talk about the 1997 Constitution. He maintained the Constitution had been abrogated as it had many flaws and promoted racism.

On 25th March 2012 through Radio Fiji news, the Fiji Military Forces Land Force Commander Colonel Mosese Tikoitoga belittled the process adopted in the formulation of the 1997 Constitution saying, "... *the last constitution eventually was put through the cabinet subcommittee and the subcommittee changed a lot of things that was recommended by the constitution committee but this one (new Constitution) it will go through a constituent assembly and will be endorsed by a wide range of people.*"

Nothing can be further from the truth. The process adopted for the review of the unjust and feudalistic 1990 Constitution was by far the most transparent and accountable of any exercise carried in Fiji since our Independence in 1970.

The fact is the process to review the 1990 Constitution started in 1993 with an extended Cabinet sub-committee in which Mr. Filipe Bole who is currently a minister in the military regime played a prominent role. The terms of Reference for the review process drawn up by extended Cabinet sub-committee were debated in Parliament in September 1993 and received approval from the elected representatives of the people in the Lower House.

The selection of the Chairman and two members of the Constitution Review Commission (CRC) were also transparent and mutually agreed to both by the Rabuka Government and the Opposition led by NFP. The CRC traveled far and wide across Fiji, even to the remotest places to get submissions.

The Report of the CRC, commonly known as the Reeves Commission, was handed over to the then President Ratu Sir Kamisese Mara in September 1996. A 25 member Joint Parliamentary Select Committee was formed that included 11 elected Members from the Opposition and 14 from Government including prominent Senators. The JPSC was a representative body. It was not a Cabinet sub-committee.

Ninety percent of the Reeves Commission Report was adopted by the JPSC, most important amongst them being the Bill of Rights and provisions for meritorious appointments and appointments to the civil service to be made in proportion to the population.

The Report of the JPSC was unanimously endorsed by the Great Council of Chiefs on 6th June 1997. It was unanimously approved by the House of Representatives on 3rd July 1997 as well as the Senate less than 2 weeks later before being assented to by Ratu Mara on 25th July 1997.

Therefore the formulation of the 1997 Constitution was absolutely transparent.

The 1997 Constitution, borne out of a 10 year struggle following the military coups of 1987 has had a stormy ride from 1999 when it was first put to the test through democratic elections, until its abrogation on 10th April 2009.

The Military first abrogated the Constitution in May 2000 only to see it being restored through the Court of Appeal in March 2001 and then by abrogating it a second time and establishing a new order through force and trampling over fundamental rights and freedoms of the people since April 2009.

The 1997 Constitution was not about advancing the political fortunes of any individual or group. The Constitution was about the transformation of politics from confrontational to

consociational. It was about a comprehensive Bill of Rights protecting fundamental rights and freedoms of every citizen in the country. It was about guarantees and safeguards for all our communities who make up a multi-religious, multi-ethnic and multi-cultural Fiji. And most importantly, it was about genuine power sharing at the highest-level in government, which is Cabinet.

The bottom-line is that the Constitution has never been proven to be dysfunctional. Even Commodore Voreqe Bainimarama, who is now telling political parties to stop talking about the 1997 Constitution had no qualms about the Constitution for two and a half years until his regime refused to follow the rule of law and abide by the Court of Appeal Ruling in April 2009 when they abrogated the Constitution.

Indeed the power sharing provisions of the Constitution were fully adhered to following the May 2006 general elections when for the first time a genuine multi-party cabinet was formed between the SDL and FLP with both parties each having 12 and 9 Ministers respectively in Cabinet.

8.2 *Outcomes and Non-negotiable and the 1997 Constitution*

It is important to note that all but 2 of the proposed outcomes of a Draft Constitution are enshrined in the 1997 Constitution.

Table 1: Non-Negotiable and the 1997 Constitution

PURPOSE (3) OF DECREE 57	1997 CONSTITUTION
Full, inclusive and fair participation of all Fijians	YES
Meets the needs of Fiji and aspirations of its people	YES
Unites the people of Fiji	YES
Provisions for true democracy	YES

Respect, protection and promotion of Human Rights	YES
Common and equal citizenry	YES
A secular State	YES
Removal of systemic corruption	YES
An independent judiciary	YES
Elimination of discrimination	YES
Good and transparent governance	YES
Social justice	YES
One person, one vote, one value (common roll)	NO
Elimination of ethnic voting	NO
Voting age of 18 years	NO

9. The Myth of Racism

The NFP strongly denounces those who label the Party as racial and blame it for spearheading the formulation of a divisive 1997 Constitution.

Since its inception in 1963, the NFP has always put national interest above everything else including the personal political advancement of its leaders. A good example of this sacrifice was the defeat of the Party and its leader Jai Ram Reddy in the 1999 General Elections. Critics of the Constitution had labeled the document as being tailor-made to advance the political fortunes of Reddy and then Prime Minister Sitiveni Rabuka.

Both lost the elections, including their respective parties. Ironically those who criticized the Constitution and the two major leaders won landslide victories but failed to adhere to the spirit and intent of the Constitution. Yet again this is a perfect example of not the Constitution but leaders who are in power being dysfunctional.

The NFP has never espoused race based policies, preached or practiced racism. From 1968 until the coups of 1987, the NFP attracted many prominent members of all communities who make up our multi-ethnic, multi-cultural and multi-religious country. The Party's core support may have been Indian but our policies, leadership and vision for Fiji was what mattered and appealed to the many prominent non-Indian members who served in various capacities in the Party including representing NFP in the House of Representatives and in Senate.

The NFP wishes to put on record the names of some of these outstanding individuals:

Table 2: Indigenous Fijian members of parliament in NFP

	Name	House of Reps	Senate
	Apisai Tora	1972- 77	
	Isikeli Nadalo	1972- 86	
	Atunaisa Maitoga	1972- 77	
	Ratu Glaniville Lalabalavu		1970- 74
	Ratu Mosese Tuisawau		1970- 74
	Ro Asela Logavatu	1977	1972- 77
	Timoci Naco	1977	
	Sakeo Tuiwainikai	1977	
	Ratu Jullian Toganivalu	1977	
	Koresi Matatolu	1978- 86	
	Ratu Osea Gavidu		1982- 86
	Ratu Napolioni Dawai II		1982- 85
	Ratu Soso Katonivere	1982- 86	
	Filimone Nalatu	1982- 86	
	Temo Sukanaivalu	1982- 87	
	Edmund March	1972- 77	1982- 86

		1987	
	Colin Weaver	1974- 82	
	Boyan Crompton	1977	
	Auther Jennings	1982- 86	
	James Smith	1982- 86	

However the coups of 1987 destroyed racial harmony and the barrel of the gun was used to compartmentalize communities. The NFP, not by choice, but force, was left with no option but to fight for the dignity and respect of ordinary citizens who were predominantly Indians and rated as 3rd class citizens in their motherland. Racism was entrenched by the feudalistic provisions of the 1990 Constitution.

It took the Party and its leader ten years to negotiate what became our Constitution. Its electoral provisions that are the butt of much hatred were a product of painstaking negotiations with a group of Parliamentarians who totally opposed any changes to the entrenched provisions of the 1990 Constitution that guaranteed their supremacy.

The electoral provisions of the Constitution were a modest and gradual shift away from exclusively communal politics under the 1990 Constitution. Additionally, the Party, in keeping with its vision for a Fiji for all, did not entirely focus on negotiating only for its Indian based electorate but for all the people of Fiji.

The Constitution has safeguards for every community. It has a comprehensive Bill of Rights. It establishes Independent Constitutional Offices. And most importantly, it stipulates the need for mandatory power-sharing so that no community is alienated from the governance of our country.

However, we also acknowledge that the Constitution is not cast in stone but is a living document that requires amendments from time to time. But certainly not abrogation through the barrel of the gun to suit the personal and political agendas of certain individuals or institutions.

The NFP can speak with authority on this issue because we have not been tainted by any of the four coups in this country in the last 25 years. We have always upheld and emphasized the need for one and all to follow the rule of law to its letter.

Every other political party in Fiji which has been in Parliament at some stage throughout our Independent history – and in the case of the last coup a party (NAPF) that failed to win a seat in the 2006 elections – has either actively supported or joined illegal interim or military administrations after the overthrow of democracy since May 1987.

10. SUBMISSION AND RECOMMENDATION

10.1 Electoral System

- (i) The NFP recommends a Closed Party List Proportional Representation Electoral and Voting System. The closed list system will promote multi-racialism and promote the election of more women candidates without the need for reserved seats for women. This would be the ideal system for a one person-one-vote and one value outcome based on a non-racial platform. The alternative of Open Party List system of election would be cumbersome and complicated. Additionally, the Open List system will continue the voting pattern on racial basis. The tendency to vote for candidates of one's own ethnic community will be promoted through the open list system. The NFP therefore rejects categorically the Open List system of voting as it will defeat the purpose and objective of voting across racial lines.
- (ii) There should be large multi-member Constituencies for 35 seats or one national constituency with political parties winning

the number of seats in the House of Representatives in accordance with their percentage of total votes attained nationally.

- (iii) The other 36 seats should be on the basis of multi-member constituencies taking into account the demographic spread of the population.
- (iv) All political parties should be required by legislation to ensure that their closed party list reflects the multi-ethnic and multicultural make-up of our country as well as gender. We are saying this as we expect political parties to do this anyway.

10.2 House of Representatives

The 71-Member House of Representatives should be retained. We believe that this number which was in the 1997 Constitution will provide a reasonable proportion of voters to be represented by the members of parliament. Fiji may be a relatively small society but it is complex. Large majority still live in remote areas and would require attention of a reasonable number of members to represent them fully in parliament.

10.3 Senate

The NFP submits for the retention of the Senate as the House of Review. We recommend a Senate comprising 25 members to be nominated for appointment by leaders of political parties in proportion to the number of seats in parliament.

10.4 President and Vice President of Fiji

The President and Vice President of the Republic of Fiji should be elected by an Electoral

College comprising both Houses of Parliament. The President and Vice President must symbolize the unity of the nation and promote its multicultural character. The President and Vice President should serve one parliamentary term and would be eligible for election for another term.

10.5 Language and Culture

The Constitution should fully reflect the multicultural and multilingual character of the nation. To that end, all the three principal languages of Fiji --Fijian, Hindustani and English should be as a compulsory language to be taught in all primary schools from classes 1-8

10.6 Fiji should remain a secular state

There should be complete separation of religion and the State. All the faiths must be respected in equal measure and supported by the State.

10.7 Power-sharing

The NFP strongly submits that the power sharing provisions enshrined in the 1997 Constitution must be retained. It is astounding that those in leadership, while talking about and promoting mutual co-existence on one hand, are trying to prescribe the alienation of communities from having a say in the governance of this country. Many democracies in the world are now moving away from the winner take all concept to power sharing, either mandatory or through coalitions. We recommend that political parties which achieved a minimum of ten seats in the parliament should be entitled to be in government.

10.6 Land

Land and the issue of agricultural leases has always been contentious and a source of bitter and acrimonious debates. Since May 1999, both the Labour and SDL Governments

have tried the wild bull in the china shop approach to resolve the issue resulting in eviction of tenant farmers and their families as well as loss of rental income to the landowners.

The NFP's has in the past advocated the need for a lasting solution to the issue of expiring land leases. We believe that if our Party's recommendation had been accepted, this issue would have been resolved more than a decade ago. We submit: -

- (i) The incorporation into the Constitution of a Master Lease concept where Government leases all available agricultural land from landowners and then re-leases it to tenant farmers for a minimum tenure of 99 years.
- (ii) In the 50th year of the lease, Government assesses the future of the lease after its expiry. If it is assessed that the landowner will need the land for use by his or her landowning unit in future, then the tenant is informed that his/her lease will not be renewed upon its expiry in the 75th year. He/she then has 24 years to plan the future. This would create certainty and confidence in the minds of the tenants and land lords.
- (iii) Government leases land under Native Land Trust Act (NLTA) from the landowners at fair rental that could be prescribed at 10% premium.
- (iv) Government re-leases land to tenant farmers under Agricultural Landlord & Tenant Act (ALTA) at 6% Un-improved Capital Value of Land.
- (v) The 4% difference in rental is to be subsidized by Government.
- (vi) Under this proposal Government will act as the buffer landlord

10.7 State or Crown Land

In April 2002 Government converted Crown or State Lands Schedule A & B to Native Land by amending the Native Land Trust (Amendment) Act and Native Lands

(Amendment) Act. More than 2000 tenants who had agricultural leases on such lands were affected.

Upon expiry of their land leases, most of these tenant farmers were evicted without compensation. It was a painful and traumatic experience for them.

Every government after Independence has tried to convert Schedule A & B Lands to Native Land but was convinced by the then parliamentary opposition and its leaders not to do so. However in October 1999, the then Fiji Labour Party government went ahead and started a process to revert these lands to Native Land, a process which was completed in April 2002 by the Qarase government.

The Burns Commission Inquiry of 1960 was conducted at a time when there was no legislation governing land lease arrangements. The Burns Commission Report eventually led to the enactment of ALTA (Agricultural Landlord & Tenant Ordinance) in 1966, succeeded by ALTA in 1976.

The Report emphatically concluded that Crown Schedule A & B Lands should be held in trust by the State for the disadvantaged. The Inquiry established that there were no legitimate claimants to Schedule A & B lands as the mataqalis were extinct.

We recommend that

- (i) State Schedule A & B Lands be reverted to State or Crown Land and, be once again available for use by agricultural tenants as per the master lease arrangement with a minimum tenure of 99 years as proposed by us.
- (ii) We recommend that agricultural and residential tenants leasing Crown C Land be provided the option to buy the land at a price following valuation of the Un-improved Capital Value of the Land.
- (iii) We further recommend that Constitutional provision be made to preserve Schedule A and B retained as state land.

10.8 ***Civil Service***

The Civil Service of this country has been rocked with nepotism, cronyism, racial and gender disparity and militarization since 1987. While there was a slight improvement after the enactment of the 1997 Constitution, the civil service has remained in a state of decay. The militarization of the civil service after the 2006 coup has been unprecedented. Military officers occupy positions of authority at every echelon of the civil service. Meritocracy has been replaced by militarization. Recruitment and promotions are mostly based on racial considerations. It is hugely disproportionate to the population of our individual communities. This is unacceptable.

The NFP submits: -

- (i) Recruitment and promotions in the civil service must be based on academic (based on the average GPA of the degree or diploma) merit and reflect the ethnic composition of the population
- (ii) There should not be any discrimination on the grounds of race, gender, colour or creed
- (iii) All military officers appointed to the civil service must resign their positions and return to their role as military officers
- (iv) In future if military officers who are meritorious or qualified to hold positions in the civil service wish to continue to do so, they must resign from the Fiji Military Forces.

10.9 ***Social Justice***

Chapter 5 of the Constitution stipulates the guidelines for Social Justice. However the last 4 governments including the military government since May 1999 failed to follow the guidelines.

The Constitution disallows Affirmative Action to be race-based. The aim of Affirmative Action or Social Justice is to raise the standard of living of every citizen without curtailing the fundamental rights of each other. It means that legislators must make provisions for programs to achieve quality of access to specified services or sectors.

In May 2000 when the then government introduced a Bill on Affirmative Action, a report titled “Social Justice and Affirmative Action” – Yash Ghai and Jill Cotrell, pointed out the disadvantages of basing affirmative action on race

The Report had too much emphasis was on ethnic dimensions of social justice and was likely to produce resentment and harm inter-ethnic relations.

The Constitution Commission’s consultation process also received submissions from people of all races and walks of life highlighting bread and butter issues, lack of housing, land, deteriorating infrastructure, inadequate social welfare assistance and delays on the part of the State machinery to administer assistance.

We recommend that Social Justice and Affirmative Action: -

- (i) Is strictly based on the provisions of the 1997 Constitution

10.10 Fiji Military Forces

The Fiji Military Forces has been responsible for executing four military coups in our country in the last 25 years. A few may argue that the 3rd coup of 19th May 2000 was carried out by civilians but the fact remains that it was executed by a group of soldiers from the elite Counter Revolutionary Warfare (CRW) Unit.

Commodore Frank Bainimarama has even confirmed that the military toppled governments 4 times. We here quote Commodore Bainimarama's remarks he made to villagers in Nadoi, Rewa during the opening of a Church extension on 22nd May 2008.

He said, "We have taken over leadership because politicians have failed us. I have spoken to (Laisenia) Qarase and the head of the Methodist Church was there (Reverend Laisiasa Ratabacaca, politicians have failed us, that is why the military took over in 1987, 2000 and 2006." - *Fiji One National News In-depth Report*.

Fiji's coup culture can only end if the military conforms to the following principle, espoused by United States President Barack Obama. President Obama made the following statement on 23rd June 2010 when announcing the resignation of General Stanley McChrystal, Commander of the US and ISAF Forces in Afghanistan, following mocking of senior US officials including Vice-President Joe Biden.

President Obama said, "It is also true that our democracy depends upon institutions that are stronger than individuals. That includes strict adherence to the military chain of command, and respect for civilian control over that chain of command. And that's why, as Commander-in-Chief, I believe this decision is necessary to hold ourselves accountable to standards that are at the core of our democracy".

Unless and until the Commander, officers, men and women of the Fiji Military Forces uphold this principle, there is no guarantee of ending the coup culture in Fiji.

We re-iterate our recommendations that we made to the Reeves Commission in August 1995: -

- (i) There should be an independent Armed Forces Service Commission for recruitment and promotions within the Armed Forces.
- (ii) It shall be the responsibility of the Armed Service Commission to ensure the recruitment of non-indigenous Fijians with a view towards balanced

racial representation.

- (iii) The Constitution shall provide for the principle and mechanism of civilian control of the Armed forces.
- (iv) The functions of the armed forces shall be to assist the government in the defense of Fiji and provide special skills and expertise through manpower and resources when summoned by government during times of natural disasters.
- (v) The size of the military of has increased significantly since 1987 and more than \$100 million dollars is being spent annually and this is very high relative to the size of our economy. Much of this is wasted as unproductive expenditure.
- (vi) The police at all times should have responsibility for the maintenance of law and order in Fiji.

10.11. *Judiciary*

- (i) The judiciary has undergone significant changes since the 2006 coup and there have been several questions relating to the independence of the of the Judiciary.
- (ii) Therefore the provisions of the 1997 Constitution should be retained because those provisions ensure that judiciary always remained independent if the executive arm of the government. It also included the formation of the Judicial and Legal Services Commission which included established mechanisms for all appointments in the Judiciary.

10.11 Bill of Rights

The Bill of Rights in the 1997 Constitution is an internationally recognized provision and should be retained in its entirety.

11. Transitional Provisions towards 2014 General Election

11.1 *Caretaker government*

(i) The NFP calls for an appointment of a caretaker government immediately after promulgation of the new Constitution according to the timeline provided in the decree.

(ii) The caretaker government should immediately appoint the following commissions:

- (a) Judicial Services Commission
- (b) Constitutional Officers Commission
- (c) Public Service Commission
- (d) Electoral Commission

All position holders appointed by the Judicial Services Commission, Constitutional Officers Commission and Electoral Commission should vacate their offices and new appointments be made by the various Commissions. The Public Service Commission should also review all appointments made since 2006 to ensure that merit is upheld.

11.2 *Constituent Assembly*

(i) The formation of the Constituent Assembly as provided in the decree is unacceptable. This is because it provides powers to the Prime Minister to appoint every member of the assembly. This will compromise the independence and integrity of the Constitutional process. We therefore recommend that the Constituent assembly be appointed on the basis of representatives of political parties nominated by political parties and those nominated by other representative stakeholders.

(ii) To ensure that the credibility and integrity of the process undertaken by the Constituent Assembly the Fiji Military Forces must not be included in the Constituent

Assembly.

12. Immunity Provisions in the Decree

(i) The immunity as sort in the decree should not be granted. The immunity provisions should be considered by the Constituent Assembly. The immunity considered should be based on the following:

- (a) acknowledgment of wrong doing;
- (b) apology and genuine remorse; and
- (c) restitution and reparation.

(ii) Even if immunity is granted by the Constituent Assembly this time around the next parliament should address the issue and set up strict provisions for future treasonous acts.

13. Conclusion

This submission by the NFP is in the spirit of moving Fiji forward. We do so with some reservation as the processes we participated in the past have been unrestricted and negotiated. We are, however, encouraged by the work of the Chairman of the Commission, Professor Yash Ghai and his members and we hope that this will be the last time Fiji would be going through this process. Our submission is also based on the fact that military coups in Fiji have caused significant economic and social pain in the country for the last 25 years.

As indicated in our submission, with the exception of three non-negotiable, all the others are already part of the 1997 Constitution. We therefore ask the Commission to retain those provisions of the 1997 Constitution. In addition support voluntary voting and reduction of voting age to 18 years.

The NFP has always provided the leadership at critical junctures in Fiji including the negotiations leading to the independence of Fiji from United Kingdom and the

formulation of the 1997 Constitution. Unlike all other political parties which have in the last twenty five years at some point supported directly or indirectly coups in Fiji, the NFP is the only party that has maintained its principle stand on the need for democracy and elected government for the progress and prosperity for Fiji in the last 42 years of independence.