



FIJI FIRST PARTY

The Uniting Force

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Dear Sir,

Submission from Fiji First Party

1. First Things First.

Sir, with all due respect, **Fiji does not need another Constitution.** The 1997 Constitution is a living document and is adequate for our meager needs. It may not be perfect but there are provisions within it for its own betterment, (amendments) achievable in a civil and democratic manner.

Constitutions are and ought to be the supreme law of the land. Nothing supersedes its authority—no man or paper- and any competing law which is inconsistent with the Constitution is irrelevant. Constitutions are sacred documents intrinsically sanctioned by the ‘collective will’ of the people of the land and thus must always be treated with respect and reverence. The Constitution is Sovereign - ***No mere man can arbitrarily abrogate a Constitution.***

2. The Constitution Making Process of the Reeves Commission.

The 1997 Constitution is the outcome of nation-wide consultations (of the Reeves Commission) and is inclusive of views and submissions from all sectors of Fiji’s community, including religious bodies, civil societies, military and most notably the indigenous cultural institution of the ‘Great Council of Chiefs’.

The people of Fiji did not shy away from venting their fears and feelings to the Commission. The Commission enjoyed respect and was accepted by the people as being neutral, capable and compassionate. The Reeves Commission had a 'healing' effect on those who felt their 'sense of belonging' in the country of their birth abruptly and rudely fractured by the 1987 military coup d'état. At its enactment the 1997 Constitution was hailed as one of the best Constitutions in the world and it belonged to 'we the people of Fiji'.

We must add your own observation, Sir, of the appreciation of the 1997 Constitution from a very unlikely quarter, the military, as you pleasingly reflected:

*"When I was in Fiji in October 2000, the Head of the Armed Forces invited me for consultations, particularly in view of the impending Court of Appeal decision on the legality of the coup. All senior officers were carrying copies of the Constitution. During our conversation, I was told that the Army had begun to study it, and, to their surprise, found it was an excellent constitution **and a better one could not be imagined**" [Prof. Y. Ghai, c4.5, our emphasis].*

Today, in our submission to you, Fiji First Party stands strongly in defense of the 1997 Constitution.

3. Saving What's OURS

The 1997 Constitution belongs to no particular person, politician, province, race or religion. It belongs to 'we the people of Fiji' and we MUST all come out in our droves to voice our protest against its 'purported' abrogation - to this esteemed Commission under the chairmanship of Professor Yash Ghai.

We appeal and call upon all those good Fiji citizens who were involved in the "Citizens Constitutional Forum" (CCF 95/96) during the currency of the Reeves Commission to come forth and voice your defense towards a document which is laden with our historical, intellectual and emotional investments and our hopes and vision – 'Towards A United Future' - (Title of The Reeves Report).

The CCF undertook the onerous task of educating the masses and creating public awareness on the importance of participating in the Reeve's Constitution- Making process and consultations.

The CCF, at that time, attracted aplenty of enthusiastic citizens - young professionals of all races – to volunteer their time, energy and brains - **to rally the cause of Constitution-Making and Constitutionalism in Fiji.** Perhaps it's time for CCF to come out of its dormancy - to save what matters and what's OURS!

Again, in 2001, Fiji Human Rights Commission (FHRC) was funded by the New Zealand Government to under-take Fiji-wide civic education programs, creating public awareness about people's **inalienable** human rights, in the 1997 Constitution.

4. When Things Fell Apart....

In the mayhem following the 19th May, 2000 attempted civilian coup d'état of George Speight, the 1997 Constitution fell as a causality. The entire 'People's Coalition Government' of Prime Minister, MP Chaudhry was kept hostage for 56 days by armed rebels, in the same complex where your esteemed Commission is presently based. On that fateful day, the city of Suva suffered an unprecedented scale of civil unrest resulting in lootings, break-ins and arson and damages estimated in the vicinity of \$F200 million dollars.

In dark of the night, in some remote and rural areas of Fiji, Indo-Fijian farmers were targeted for looting, assault, damage to property/ crops, arson and generally being terrorized. **The vigor of these attacks was; sustained, severe, violent and merciless.** Gangs, of thirty/forty Fijian youths (rebels), armed with cane-knives and crowbars would forcefully break and enter houses. The victims; farming families with children and elderly, had no choice than to flee from their homes - left to be ransacked at will by these thugs. Every drawer, box and bag, in every room were rummaged through and valuables; jewelry, money, clocks, camera, radios, ornaments, cooking utensils, farming implements – stolen. The worst were the damages the thugs left behind; beddings, pillows and mattresses were ripped and torn, so were their curtains, any ornaments not stolen were broken, the partitioning walls were often damaged by hammers or crow-bar. In the kitchen glassware, chinaware, porcelain plates were senselessly smashed and thrown about the floor together with flour, rice, dhal and spices – all mixed and messed and stepped on. **Fear reigned and ruled – real, intense and spine-chilling fear.**

Anyone who resisted was beaten-up. At times there were simultaneous attacks on three or four houses. Some 'rebels' rode a red 'Twin-Cab Toyota 4X4' which was loaded with the 'loot'. In broad day light, farmed 'root-crops' were looted and bullocks and calves slaughtered and loaded into 'Police' vehicles and transported, to the Parliamentary complex to feed George Speight and his growing number of armed rebels. Several houses were also razed in fire during the currency of this mayhem spanning six months since May 2000.

Families fearing repeat attacks started taking shelter in bushes, at nights, not far from their homes, with their children, their elderly and their pets. A bus load of victim families from the village of Muaniweni in the Tailevu/ Naitasiri Province fled their homes and took 'refuge' at the 'Sanatan Primary School' in Banaras, Lautoka. More families joined over the weeks from other villages (Waicelice, Damasamu) with similar horrific stories of human rights abuses.

This camp - of the 'internally displaced persons' IDP- , became commonly referred to as the 'refugee camp'- was later moved to the Girit Center, Lautoka to accommodate some 58 families (356 people including children and elderly) – all victims of Fiji's worst politically incited violence and human rights abuses. Nine families, in the camp, had lost their homes with everything, in fire set by politicized vandals. Some were assault victims. Children had witnessed thugs forcefully breaking and entering their homes and terrorizing them and witnessed the 'hopelessness' of the situations of their parents as their protectors.

Sir, we submit, that your Commission cannot complete its tasks, without meeting and hearing the plight of the 'poorest of the poor' in our country- the battered, the dispossessed and the displaced. It is not in their shy nature to come out and speak. It is for your Commission to seek them out.

These sad facts of our political history need to be recorded and thought over by your Commission whilst considering **a Constitutional guarantee against its reoccurrences.**

There were many good Samaritans, NGOs and businesses that came to immediate assistance of these families. The CCF also assisted the camp (as and when asked) with food and medicine. Fiji Red Cross assisted with weekly purchase of camp vegetable needs for about two months. Save the Children Fund took care of all the needs of the children – from food to education.

Meanwhile, Commodore Bainimarama abrogated the 1997 Constitution as a precondition demanded by the rebels, in exchange of releasing parliamentary hostages. This abrogation has been explained as ‘a doctrine of necessity’. An Interim Government (IG) headed by Lasenia Qarase was installed.

This IG sent various delegations, including one with the present (pretender) President, to the Girit Center persuading the ‘refugees’ to return home and made lots of ‘empty’ promises for rehabilitation and assistance. No assistance came to the refugees at the camp and negligible (token) assistance was given to those victims who returned, from Qarase’s IG.

5. The Agriculture Scam and Uncompensated Victims’.

It must be noted, Sir, that the Indo-Fijian ‘refugee’ victims of Girit Center, till today, remain **UNCOMPENSATED**, despite their constant pleas to two democratically elected governments of Lasenia Qarase (2001/2006) and one rather long unelected one of Commodore Bainimarama. All governments have a ‘duty of care’ towards its citizen, irrespective the citizens’ race or religion. The inability and/or the lack of political will of all governments since 2000 to resolve this historical grievance exhibit the fact - that they are uncaring towards the plight of the poor.

The 2000 IG of Lasenia Qarase promised, budgeted and allocated \$F1.5 million dollars for victim compensation / rehabilitation package. Upon finishing this entire \$1.5m, the caretaker government in about July 2001 added another \$0.5million bringing the budget to refugees to \$2m. Unfortunately barely 10% of the total reached the victims as diminutive support given to those who returned but victims at “camp” not receiving ‘a grain of rice’ from this \$2m budget.

Later, the evidence in *Kunatuba* (2002) and *Dhansuk Patel* (2009) criminal cases suggests that ‘refugee’ rehabilitation money was most probably misused as the basis of the ‘*agriculture scam*’ for the purposes of ‘vote-buying’ by the Qarase’s IG to win popular support. The agriculture Scam has brought about serious questions of credibility and **unconstitutionality** of Qarase’s governments (2001/2006). This led to the demand of 6 weeks made by Commodore Bainimarama for the SDL Government to resign, in 2006, arising out of the ruling in the Kunatuba case.

6. The Legal Legacy of ‘resurrection’ of the 1997 Constitution’.

Kaka Chandrika Prasad, a ‘refugee’, sued the IG of Lasenia Qarase for compensation for his losses and human rights abuse under the Bill of Rights provisions of the 1997 Constitution and was surprisingly awarded an un-abrogated 1997 Constitution.

The 1997 Constitution exhibited its inherent ability to resurrect itself in this 2001 landmark case. Later, the Court of Appeal comprising a five-Judge Bench up-held the earlier decision and declared that “it (the Constitution) does not authorize permanent changes to a written Constitution let alone its complete abrogation”.

The 1997 Constitution has since enjoyed international attention and acclaim, especially in Fiji’s unique Constitutional case law developments / interpretations - the making of legal legacy. Fiji’s Judiciary stood proud–up-holding Constitutionality – as the supreme law of the land. **To even think of re-attempting another abrogation of the 1997 Constitution is fool-hardy.**

7. The Purported 2009 Abrogation of the 1997 Constitution.

It appears that after the Court of Appeal decision in Qarase –v- Bainimarama [2009] case, Fiji’s Head of State, the late President was placed in an extremely difficult, special and singular situation where he was **wrongfully** advised by the present AG to abrogate the 1997 Constitution.

The AG’s advice to the President, at that moment in time, **did not** constitute a situation under the ‘doctrine of necessity’ enabling His Excellency to use his emergency powers under section 187 (2) to abrogate the 1997 Constitution.

The relevant advice of the AG, was indeed reckless, illegal and a blatant contempt of court.

There was no popular revolution in Fiji which resulted in the 2006 military coup d'état. The purported 2009 abrogation of the 1997 Constitution was purely at the discretion of the present AG. This misconception could only be enforced by a Decree of the state of emergency.

If we compare the use of the President's prerogative powers to abrogate the 1997 Constitution in April 2009 to that of the purported abrogation in 2000, we find that the later President faced issues which were of a far lesser degree of severity than those placed before the former late President. The President in 2000 had to deal with the brutal gravity of releasing parliamentary hostages.

In April 2009 the late President purportedly abrogated the 1997 Constitution and simultaneously slapped a state of emergency which remained in force and was regularly and diligently renewed until recently.

However, on the date that the state of emergency was finally lifted the purported abrogation of the 1997 Constitution also lapsed.

8. The Vacant Office of the Presidency.

The office of the Presidency is a creation of the 1997 Constitution. The President is a creature of the Constitution. The moment His Excellency the President signs a Decree purportedly abrogating the 1997 Constitution - simultaneously with the same stroke of signature – the President abrogates himself.

Henceforth the office of the President is deemed vacant and all subsequent Decree(s) assented by the President are irrelevant laws which lack the moral (and sovereign) authority which was previously vested in the President vide the 1997 Constitution. Without the validity of the 1997 Constitution – there is no President, only a Pretender.

9. The reality of the Gun – Immunity /Amnesty.

Late Lord Denning described the 1215 document *Magna Carta* as the “greatest constitutional document of all time – the foundation of the freedom of the individual against arbitrary authority of the despot” [Wikipedia/ magnacarta].

In light of such wisdom, we wonder whether what we need to achieve here today is not the basis of, yet another, Fiji Constitution but a Fiji specific Magna Carta - to save us from the likes of those whose names we shall not take.

Everyone knows the real issue, or at least an expected outcome of this Constitutional Commission is to come up with an amnesty to the ‘wrong-doers’. We understand the undue pressures your commission must be feeling with recurring and unruly remarks from this regime. **Many are shying away from voicing their concerns to your Commission due to FEAR of repercussions.**

The issue of immunity or amnesty distracts your Commission from the tasks of Constitution-making to that of a Mediator. If amnesty is the single-most demanding issue at stake here than let us not pretend with this charade of Constitution-making exercise – which we don’t need. **Let’s save us time, money and rainforests.**

If the present regime is now ready to show remorse and (re)respect the 1997 Constitution- then the good people of Fiji can possibly be tolerant and forgiving. Just have a look at the tyrant of the 1987 – if he can walk free, so can George Speight and others.

Amnesty is a matter of negotiation and mediation. The inherent knowledge, experience and expertise of your Commission would be an invaluable resource in regards to restoring democracy in our country, by persuading those holding guns to please prepare to return to their barracks – peacefully.

10. The 1997 Constitution hijacked by wanton Politicians..

Through no fault of its own the 1997 Constitution got hijacked by some wayward politicians, and greedy technocrats, along the way, but applied correctly our Constitution is potent of resolving many of our prevailing political problems, including the crucial question of 'immunity'/ amnesty of the very people who disrupted democracy to usurp power unconstitutionally.

All the Military, (as the final Bastion of the Constitution) had to do (in 2006) was to file an application to the 'Court of Disputed Returns' in the High Court to invalidate the 2001 and 2006 General Elections, under grounds of corruption (as was by then established by the Courts in the Kunatuba Case). Thereafter, it needed to assist in the implementation/enforcement of decision of that Court.

It seems that the Commodore and the Military Council, at that crucial time in our history, were ill-advised by certain self-seeking civilians and politicians to remove the Qarase Government, leading to yet another, sad historical mishap, the 2006 Military coup de tat.

These same politicians/civilians installed themselves as 'cabinet ministers' in the Military sanctioned Interim Government (IG) and intend on prolonging their stay in power went so far as suggesting to the Military Council that two years for IG was too short and asking their term to be extended to 5 years, hence undermining Commodore's promise to hold elections by 2009.

The Interim Government had initially committed itself to holding national elections in March 2009. There is now some doubt as to whether it will be able to meet this commitment in view of strong representations made in the NCBBF calling on the interim government to review Fiji's electoral system so as to remove its heavy communal bias and to replace it with a system that is truly democratic and representative. If this review proceeds than elections will certainly be delayed beyond March 2009. [www.flp.org.fj - annual delegates conference 23 July 2008 'Flawed democracy']

The terms of reference (TOR) of Peoples Charter was only to report on any Constitutional wrongs of the past 6 years that needed to be addressed and based on that to develop a "Code of Conduct" for the promised elections in **2009**. 'Equal Suffrage' is fully provided for under 'one man one vote', for two constituencies (Common and Communal) was **NOT** part of the TOR of Peoples Charter.

Calls for unconstitutional electoral reforms, are but lame excuses for prolonging usurper's stay in power.

It must be noted that the *Code of Conduct* as stipulated in the *Chapter 11, Part 1, section 56*, of the 1997 Constitution on *Accountability* was all that was needed to be addressed, given it was not done by the Peoples Coalition Government (1999). It clearly stipulates that the "Parliament must, **as soon as** practicable after the commencement of this Constitution, make laws to implement more fully the conduct rules set out as therein." We humbly request your Commission to examine both; the TOR of the Peoples Charter and as well as the stipulated provisions of the 1997 Constitution on 'Code of Conduct' to determine our contentions and to make recommendations accordingly.

11. Equal Suffrage on Constitutional Boundries or Vote of Equal Value

The 1997 Constitution required only the **first** elections to be conducted under 14 Provincial Boundaries but gave extra constituency seats for where they were heavily populated. It says future elections are to take into account electoral populations via Population Census every 10 years and to adjust the Provincial Electoral Boundaries accordingly.

We recall the military calling out for good governance and asking the SDL Government to first conduct population census before going into the 2006 elections. This did not happen therefore the Constitutional Boundaries of the Provincial Seats failed to meet equal suffrage principles as outlined in the constitution for the 2006 elections, which amongst other things, was one of the issues that were needed to be cleaned up.

FLP leader confirmed in his speech to his annual delegates' conference on 23 July 2008 that the Population Census has already been completed.

"The new **Population Census** which ought to have been carried out in 2006 **has been completed**. Data from this is being used by the Boundaries Commission to redraw constituency boundaries. Work on this is expected to be completed soon." [www.flp.org.fj - annual delegates conference 23 July 2008 'Flawed democracy']

Electoral boundary to meet equal citizenry for Provincial Constituencies was therefore set to be drawn as early as July 2008 which was 8 months to March 2009 Elections as lawfully provided under the 1997 Constitution.

12. FLP Shifts Direction via The Peoples Charter to Unconstitutional Rule

It has not been the fault of the 1997 Constitution but rather an apparent lack of political will, vision and **statesmanship** to make the provisions of the Constitution work - as is intended. Politicians acted in contempt of the Constitution by neglecting the making of a 'Code of Conduct' for them but instead calling for a change in the electoral system - unconstitutionally.

For example, we want you to take note of FLP leader's speech to his annual delegates' conference on 23 July 2008:

Fiji Labour Party is participating in the charter process. In fact, the FLP made strong submissions to the NCBBF to bring in electoral reforms [www.flp.org.fj - annual delegates conference 23 July 2008 'Flawed democracy']

Following comments confirm it was FLP that wanted 'one man one vote' and electoral reform was NOT what Bainimarama or the military wanted:

PM Bainimarama said government had done all it could to prepare for the March 2009 election but had been compelled to reconsider the election date **due to pressure for changes** to the electoral system to make it more genuinely democratic by moving away from race based elections and adopting a system that would ensure a vote of equal value. [www.flp.org.fj - annual delegates conference 23 July 2008 'Flawed democracy']

The reserved communal seats form the basis of **proportionate representation** for **each race** to be fairly **represented** in **Parliament**. Communal voting **does not** mean politicians are going into parliament to favour their own constituency. Chapter 2 (6) **clearly directs** the conduct of government is based on following:

- (a) The rights of all individuals, communities and groups are fully respected;
- (e) As citizens, the members of all communities enjoy equal rights, including the right to make their permanent homes in the Fiji Islands.
- (h) In the formation of a government, and in that government's conduct of the affairs of the nation through the promotion of legislation or the implementation of administrative policies, full account is taken of interest of all communities;
- (i) To the extent that the interests of different communities are seen to conflict, all the interested parties negotiate in good faith in an endeavour to reach agreement;
- (j) In those negotiations, the paramountcy of Fijian interests as a protective principle continues to apply, so as to ensure that the interests of the Fijian community are not subordinated to the interests of other communities;

- (k) Affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, are based on an allocation of resources broadly acceptable to all communities.
- (L) The equitable sharing of political power amongst all communities in Fijito ensure all communities benefit from the nation's economic progress.

13. Purported 2014 Elections.

Our rights to periodic elections are long over-due. But there is hope that elections may finally happen. **Fiji First Party** is excited over the prospects of fielding candidates in the 2014 elections.

However, we are also cautious of continued danger to democracy by deliberate intent of this regime, which has its own agenda (some known, some hidden) in politicking / electioneering. ***This regime is potentially armed with the ability to RIG.***

13.1 Fair Elections and Transparent Processes

If this regime is serious about 2014 elections, than it **MUST** adopt and make transparent to all Fiji citizens a 'Code of Good Practice in Electoral Matters'.

If any of the members of the present regime so wish to contest the 2014 Elections then they need to resign from their positions as soon as possible so as to minimize accusations of 'vote-buying'.

Lessons can be learnt from The Commonwealth Observer Mission's observation on **vote buying** during 2001 General Election who had this to say.

One FLP candidate promised six-month work visas to poor farmers who wanted to work in New Zealand. According to him the first 40 farmers would leave Fiji before mid-September and they would be able to return with savings of F\$15,000 at the end of six months. Under the proposed scheme 100 farmers would go to New Zealand every six months.

The conversion of an interest free loan to the Fijian Affairs Ministry worth **F\$20 million** into a grant by the Interim Government was alleged to be an attempt by the **SDL to influence ethnic Fijian voters**. [www.thecommonwealth.org – Fiji 2001 COG Report].

The \$20m saga caused gross breach of equal suffrage making the electoral process of 2001 invalid. Main casualties were PANU, FAP, SVT, FLP, BKV and NLP.

Constitutional offices such as the Provincial Council Offices do not have any Constitutional role in supporting any political party or any candidate and/or any part to play in the electoral process. Yet the Electoral Commission, political commentators and all NGOs and human rights campaigners had been silent regarding these Constitutional Offices' involvement in the candidate selection for a political party in 2001 and 2006 general elections.

The politicians, RFMF and all those who believe equal suffrage is about one man one vote have failed to talk about this gross Constitutional breach on equal suffrage as stipulated in the 1997 Constitution of Chapter 2 Compact Section 6(f).

(f) the rights of a citizen include the right to form and join political parties, to take part in political campaigns, and to vote and to be a candidate in free and fair elections of members of the House of Representatives held by secret ballot and ultimately on the basis of equal suffrage;

We want your commission to address this matter as it appears the Commodore was deliberately led in the wrong direction by his **own** members of the Peoples Charter and the AG enticing the Commodore to make many unlawful decisions so they can create an environment to prolong their own stay in cabinet beyond 2009.

13.2 Financial Disclosures by Politicians and Political Parties

Fiji First Party strongly recommends that all intending candidates be required to make full financial and asset disclosures to the Commissioner for Elections before their candidacy being endorsed. This is for checking against corruption and plausible 'unjustified enrichment' whilst in positions of power.

The observations by The Commonwealth Observer Mission's observation on campaign financing during 2001 General Election had this to say.

Campaign financing:

Documents purporting to show that the FLP had deposited US\$195,000 in an external bank account were circulated. The FLP leader claimed that these documents were fakes and was supported in his assertion by the manager of the bank where the money was alleged to be. Mr Chaudhry said that he had given the police the names of the people responsible for the incident. Further allegations surfaced that FLP had received F\$160,000 from overseas donors and these were also denied by the party.

In order to halt allegations that he had misused money collected overseas the FLP leader revealed that he had received F\$82,394.88 during his overseas trip after his release from Parliament following the coup of May 2000.

Later in the campaign Mr Chaudhry called for all parties to file with the Supervisor of Elections a statement of donations received which should be open for public scrutiny. The Supervisor of Elections told us that there was no Code of Conduct for candidates and parties but that this may be considered for future elections. [www.thecommonwealth.org – Fiji 2001 COG Report]

13.3 The Rules of Elections

The rules of the elections must strictly follow the electoral provisions of the 1997 Constitution

These **five** fundamental rules of democratic elections must be diligently observed and achieved; 1) Universal Suffrage; 2) Equal Suffrage; 3) Free Suffrage; 4) Secret Suffrage; and 5) Direct Suffrage. For any democratic elections to be credible, none of these rules can be breached and/or compromised.

‘One person –One vote’ system has been proposed by the regime as promoting ‘equal suffrage’ and people voting on merits rather than on one’s race. Race-based ‘reserved seats’ is proposed to be abolished and all constituencies will be ‘open’ contests of candidates of different races.

If they are abolished under the guise of ‘equal suffrage, then we can be rest assured that the new system would be the **‘most racist’** of all previous ones. All open seats ever since 1972 to 2006 has been voted along racial line.

Race the historical ‘modus-operandi’ of Fiji’s body-politic has now been ‘decreed’ to cease to exist. Fiji voters are now expected to be politically astute and mature to make choices, differentiate and distinguish between varying political parties’ ideologies and vote accordingly. Right!

Race is a reality of life. We must acknowledge and deal with it. It can’t be wished away. It cannot be ‘legislated’ away. The architects of the 1997 Constitution placed the issue of race centrally into the equation of achieving harmonious race-relations in Fiji- “Towards a United Future”. The 1997 Constitution with its preference voting, and multi-party cabinet are all attempts at inter-racial cooperation and a move towards encouraging multi-racial political parties.

13.4 The Electronic Voter System.

The Regime has proposed the introduction and use of Electronic Voting System (EVS) in 2014 elections. Recently (2010), in Ireland EVS machines worth tens of millions of Euros were bought but never used precisely 'because there was no possible way to know that these machines calculate the results correctly' [[http://www: evoting.cs.may.ie.](http://www.evoting.cs.may.ie)].

The people of Fiji need to be assured that any introduced system meets the ***certified international standards criteria*** and those electoral processes and systems are as transparent as crystal and observed by neutral international parties. ***There should be zero chance of the present regime rigging the elections.***

14. Fiji First Party – Mission Statement: ‘The 1997 Constitution Lives’.

Fiji First Party is committed to the **1997 Constitution**. The removal of the State of Emergency this year undid the abrogation of the 1997 Constitution. The 1997 Constitution has since and once again become the supreme law of Fiji. Any Decree(s) to do with the electoral process or otherwise, including Decrees which interfere with and/or are inconsistent with any of the provisions of the 1997 Constitution are therefore irrelevant laws – and henceforth can be construed as ‘failed’ social justice experiments by an illegal regime.

Fiji First Party is first and foremost premised upon our conviction of the supremacy of the 1997 Constitution – as a living document. This and our faith in the goodness of the human heart form the core pillars of **Fiji First Party**. This reflects and expresses our political vision and activism beginning from the freedom of our thoughts – our unalienable rights - enshrined in the Bill of Rights provisions of the 1997 Constitution and as well as the UN Declaration of Human Rights.

Fiji First Party recognizes and respects the sanctity of the cultural and Constitutional institution of the **Great Council of Chiefs**.

15. Independence of the Judiciary.

“The purported abrogation of the 1997 Constitution is just that – purported!” This bold assertion of Fiji First Party needs to be tried, tested and determined in an independent Court. Now are our Courts independent?

Our Executive is a Pretender. Our Legislative is armed usurpers. Now the third arm of the state - the impartial and independent Judiciary – is duty bound to uphold Constitutionality. For the Courts to be truly independent, it must accept the sanctity of the 1997 Constitution- as the supreme law of the land and as a living document - with no powers vested in any individual for its partial amendment and/or its total abrogation.

Following the uplifting of the state of emergency, the Judiciary should be truly independent as it is empowered under the 1997 Constitution. ***This is unless the present judicial appointees are political appointees and purposely ignore the letter of the law and/or choose to behave unconstitutionally and are legal mercenaries outside the tradition of the Westminster legal system.***

The Fiji judiciary is now independent. It can hear all Constitutional matters given the courts have reverted to pre-2009 state of emergency and purported abrogation and therefore back to the 1997 Constitution.

Fiji First Party is now at liberty to move the Supreme Court for appropriate declaratory Orders ---Or is it not???

We humbly request your esteemed Commission to assist us in being a joint-party to our legal suit so as to test the ‘purported’ abrogation of the 1997 Constitution – for both our mutual interests.

16. The Validity of Your Esteemed Commission.

It is incumbent on your Constitutional Commission to immediately request the President to refer to Fiji Supreme Court for its opinion on the validity of the 1997 Constitution as per Section 123 Advisory jurisdiction which reads inter-alia;

Section 123 Advisory jurisdiction: “The President may, in the public interest and on the advice of the Cabinet, refer to the Supreme Court for its opinion any question as to the effect of a provision of this Constitution that has arisen or appears likely to arise, and the Supreme Court must pronounce in open court its opinion on the question”.

On the 5th day of October 2000 and prior to the Chandrika Prasad ruling, former Late President Iloilo had appointed a Constitution Review Commission (CRC) on the recommendations of the Interim Prime Minister Qarase. This CRC was tasked with reviewing the previous Constitutions of Fiji and examining the Constitutions of other countries before making recommendations on new Constitutional arrangements for Fiji.

The work of the **CRC was suspended** by President Iloilo following a writ by Labour Party President Jokapeci Koroi and others stating that its hearings had no legal standing. Furthermore, given that the State of Emergency is now over, no matter what the oath of allegiance the judges took during the State of Emergency, the courts must be able to hear the case on continued validity of the 1997 Constitution and therefore validity of your Constitution Commission.

A rule to hear cases are based on 1997 Constitution itself given it is the purported abrogation of this living document that sets the validity or invalidity of your Commission. Refer Section 125 Rules of Court in the 1997 Constitution which say:

“The President of the Supreme Court may make rules of court, **not inconsistent with this Constitution** or a law made by the Parliament, for regulating and prescribing the practice and procedure to be followed in the Supreme Court”.

Sir, and with utmost respect, we submit that it logically follows; ‘that if the 1997 Constitution is a living document than **we do not need another**’.

Your Commission can still assist in restoring democracy in our country and in mediating with the Constitutional wrong-doers - as mentioned in paragraph 9 above.

Sir, we therefore, submit that your Constitutional Commission is surplus to the requirements of the 1997 Constitution and therefore **–unconstitutional**.

Anit Singh

Interim Party Leader