

MEDIA RELEASE

By L.Qarase

PROTECTION OF NATIVE LAND

The Attorney –General, Mr. Aiyaz Sayed Khaiyum, has travelled throughout the country telling people that Government’s draft Constitution provides better protection for native land than the 1997 Constitution. This is simply not true and it is a blatant lie. Mr. Khaiyum has told the lie so often that his colleagues in Government, including the Prime Minister, Commodore Voreqe Bainimarama, have come to believe him.

The truth is this: the 1997 Constitution provides for the entrenchment of certain laws covering group rights. These laws include the Fijian Affairs Act, the Native Land Trust Act, the Agricultural Landlord and Tenant Act (ALTA), the Rotuma Land Act etc. Amendments to these Acts would require special majority voting in Parliament, particularly in the Senate. In the Senate, any amendments must be approved by at least 9 out of the 14 members who represent the Great Council of Chiefs. Under this provision it would be difficult to amend any of the entrenched legislation. And if any amendment is passed it would mean that the amendment has the support of the great majority of the people of Fiji.

Under Government's draft Constitution there is no provision to entrench the rights of indigenous Fijians to their resources and other group rights. In other words the entrenched laws will be like other laws which require simple majority votes in Parliament to effect amendments or even the repeal of laws.

Where then is the greater protection claimed by Mr. Khaiyum? There is none! Mr. Khaiyum has argued that this protection is contained in the Bill of Rights. As chief legal adviser to Government the Attorney-General should know better. The Bill of Rights provides for rights of individual citizens, not group rights. Native Land is owned communally, and not by individual indigenous Fijians. His argument, therefore, is false and invalid.

Without the entrenchment of laws relating to indigenous Fijian rights it would be fairly simple to take these rights away from them. Indigenous Fijian rights to their land, for example, will be at the whim of the Government in power, since a simple majority in Parliament would be required to effect changes.

The Attorney General has cunningly diverted attention from the issue of “entrenched legislation” to the land swap or exchange in the Momi Bay Project. The land transaction in question involved the swap or exchange of 68.7 hectares of native land owned by Tokatoka Nasau with freehold land of equivalent area and value owned by Matapo Limited, the developer of Momi Bay Resort Project.

Upon exchange the native land was to be converted to freehold and the Matapo freehold was to be converted to native land and registered under Tokatoka Nasau. There was no loss of native land in the transaction because of the equivalent freehold land in exchange.

The land swap was made with the voluntary agreement of the two parties involved, Matapo Limited and Tokatoka Nasau. The NLTB gave its consent to the transaction and the Government of the day sanctioned the land swap under the Land Transfer Act. The terms and conditions of the land swap are recorded in an Agreement between the two parties dated 31st May, 2005.

The landowners were obviously satisfied and happy with the benefits they were going to receive which include the following:

- An equivalent land area was exchanged for native land, hence there was no loss of land;
- The landowners were paid a premium for the transaction;
- The landowners were to become shareholders in the operating company of the golf course;
- Higher rental income to landowners;
- Jobs priority for landowners and so on.

In addition the agreement reached between Matapo Limited and Tokatoka Nasau was going to make a huge contribution to the overall success of the Momi Bay Resort Project.

Mr. Khaiyum, there is no link between the Momi Bay land swap and the entrenchment in the Constitution of certain laws. The truth is that in the draft Government Constitution the protection of native land which has existed since independence in 1970 has been taken away. This fact is printed in black and white and the whole of Fiji knows.

While still on Momi Bay let us have a brief look at some of the significant effects of the military coup on both the Momi Bay and Natadola Resorts Projects. Developments on both properties were proceeding well.

Projections were that by 2010 – 2012 three to four 5 – star hotels would be operating at Natadola and two or three 5 – 6 star hotels plus a Marina at Momi Bay. About 10,000 direct and indirect jobs would have been

created; tens of millions of dollars were to flow into Government revenue annually by way of VAT, PAYE and corporate taxes. All these have been lost due to the coup as investors and potential investors on the two properties moved swiftly away from Fiji.

The absence of adequate protection of native land in the proposed Constitution is a major flaw. There are many other significant provisions which are repugnant and unacceptable in a modern democratic society. The bottom line is that the proposed Constitution will entrench the current dictatorship and for this reason alone it should be totally rejected by the people of Fiji.