



# FIJI FIRST PARTY

*The Uniting Force*

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His Excellency  
Ratu Epeli Nailatikau  
The President of Fiji Islands  
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Your Excellency

**Re: The 1997 Constitution Lives and the  
(Unconstitutional) - Constitutional Commission.**

## **Congratulations –Your Excellency!**

Fiji First Party is delighted with your reappointment as the President of Fiji. Congratulations! -Your Excellency. Sir, we wish you, your family and everyone in our country a happy new year.

Sir, you have had a long and distinguished career as a diplomat and soldier. You have been appropriately decorated and you are a proud recipient of many esteemed honors. You enjoy nation-wide and cross cultural respect. You have long been our national icon and as aptly stated by Commodore Bainimarama ‘we cannot think of a better person who can presently be our President’.

Fiji First Party reiterates its principled stand believing in the sanctity of the 1997 Constitution - as a living document.

Premised upon this basic and indispensable law of Fiji - Fiji First Party accepts you as our President – bestowed with powers of benevolence under the 1997 Constitution and bearer of status, respect, and ‘*mana*’, as is worthy of the title “Your Excellency”.

However, Sir, without the validity of the 1997 Constitution, you would, unfortunately go down in people's perception (and in history) as a 'pretender President' - who derived his powers not from the people's Constitution but sadly from 'lesser' laws (decrees) - and which are tantamount to 'self appointment'.

Sir, it is imperative (and indeed your Executive duty) to seek declaratory validation of the 1997 Constitution from the Supreme Court of Fiji which re-assures you of your rightful position as the 'legitimate' President of Fiji. **Your position, your Excellency, is not only secured but becomes dignified by the 1997 Constitution.** The 1997 Constitution is, indeed, *a priori*, an essential prerequisite for bringing into being an office of the Presidency.

In this manner, your Excellency would enjoy unquestionable and constitutional Presidential powers and an enhanced status which is devoid of any demeaning or derogatory connotations, as is always, associated with 'decrees' (despite its intentions –good or bad).

Sir, the 1997 Constitution would make you a much-loved peoples' President, an ideal 'peace-maker' and a progressive 'statesman', who can lead us back to Constitutional and democratic rule, international respectability and economic prosperity.

### **The 1997 Constitution Lives..**

Sir, with good intensions we share with your Excellency a basic statement of fact: "**The 1997 Constitution Lives!**" We cannot as a nation continue with the delusion of its purported abrogation. We are not in a Constitutional crisis. Our 1997 Constitution is a living document which needs to be reaffirmed, recognized and respected. Sir, this is regardless of the recommendations of the Yash Commission and the PM's proposed 'Constituent Assembly'.

Sir, unlike our previous Constitutions, the 1997 Constitution is a peoples' Constitution, whereby, '*we the people of Fiji*' gave ourselves the 1997 Constitution. As a peoples' Constitution, the 'sovereignty' is always vested (and remains vested) in the people of Fiji. No mere man (or even a mighty President) can amend or abrogate the 1997 Constitution – that's the prerogative of the people, vide their parliament. **Anything else is a delusion.**

Your Excellency, the people have given you limitless powers to protect the people's Constitution – within which rests the people's sovereignty, their self-respect and dignity. These values and virtues are fundamental to the philosophy of 'Constitutionalism' and integral to all 'Constitutions' – the seat of the symbolic sovereignty – and the lair of the collective 'will' of the people. Protecting the people's Constitution, is indeed, the paramount of the tasks of the peoples' President.

Otherwise, Sir, what delusional logic of law, morality and truth are we going to bequeath our next generation? What historical legacy would the next generation inherit as far as the notion of respecting one's Constitution goes? Wise are those who learn from their history! Abrogating the 20XX Constitution would not only be a challenge to another trigger-happy future adventurer – but a '*legitimate*' means to self-enrichment.

Lest it not be said, Sir that we didn't ask: 'Abrogating Constitutions - 'Why would it be any greater or lesser crime then, than it is today'?

Your Excellency, we are making a desperate plea for your executive intervention in saving what is ours -the 1997 Constitution - and doing what is moral, honorable, legal and Constitutional. Saving our 1997 Constitution is an urgent historic requirement, on your part, Sir.

Sir, our 'sense of duty' in writing to you has been immensely inspired by the following 'wisdoms' from two great elected world Presidents, of our time:

\* "Each time we gather to inaugurate a president, we bear witness to the enduring strength of our Constitution, We affirm the promise of our democracy. We recall that what binds this nation together is not the colors of our skin or the tenets of our faith or the origins of our names. What makes us exceptional — what makes us American — is our allegiance to an idea, articulated in a declaration made more than two centuries ago: We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain **unalienable** rights that among these are Life, **Liberty**, and the pursuit of Happiness." [44<sup>th</sup> US President Barack Obama, Inaugural Speech, 21/01/2013], and;

\* "Through the years, my activism continued and it became a non-negotiable part of my life, a political endeavour, when I realized that **we are each given a voice with which to speak** and that my silence and inaction would serve no one, least of all myself and the people I claim to care about." [John Dramani Mahama, President of Ghana, 2013 –In "My First Coup D'Etat: Memoir, Bloomsbury, London, 2012]

## Nation-Building

Sir, Our blue book - the 1997 Constitution - has proudly become a patriotic and an unassailable symbol for our 'nation-building' and national unity. Our Constitutional foundations have never been stronger. The 1997 Constitution enjoys popular citizen support- across race, religion and culture. Commendable 'case law' precedents, like Chandrika Prasad of 2001 and Qarase V Bainimarama of 2009, up-holding 'Constitutionality'(with wide academic referencing) – make us proud as a nation - in a global context.

## Crisis in the Unconstitutional Commission

Sir, Fiji First Party in its submission to the Constitutional Commission laid out the facts and invoked fundamental questions of law and requested the Commission to (re)consider and (re)examine the purported abrogation of the 1997 Constitution and subsequent and various other 'decrees of disgrace'. For example:

**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.

Sir, the Constitution Commission Chair, Professor Yash Ghai, an eminent Constitutional lawyer and scholar of international stature - could not have simply ignored the facts and substance of our submissions. And indeed, whilst in midst of Commission's examination of pertinent decrees the Commission's work was rather rudely disturbed by our quasi PM Commodore Bainimarama, followed by slapping of , yet another, decree of disgrace - No. 64 or so, Sir.

In an Australian radio interview (04/11/12) Professor Yash Ghai admitted that the independence of the Constitutional Commission has been compromised, saying:

"Yes I'm afraid that is quite true, there has been **massive interference**. Now I get emails from the PM **to do this or not to do that**, and this is a **kind of harassment**. We've also been now told to publish any newspapers ads for which we pay, every single expense we have incurred since the beginning of July..... And it's also a little bit puzzling that a government which is so wedded to secrecy should suddenly be converted to transparency".

Professor Ghai also expressed doubt that ‘free and fair’ elections are possible in 2014 as:

“Well it does because another position **they have removed is our examination of existing laws for possible incompatibility with the draft constitution.** And there are hundreds of decrees passed since the coup which have **stripped the rights of access to courts,** the media is under pressure, subject to heavy penalties, trade union rights have basically been removed, civil servants have no protection.

And it seemed to us that a lot of **these decrees needed to be amended and in some cases repealed.** Now that power has been taken away from us, and **I do not see how Fiji is going to have a free and fair election unless these decrees are cleaned up.** So that power has been taken away and it's **extremely worrying. This change was brought out last week in the last month of our process.** We have spent a lot of time, effort and money into examining all the decrees and the proposals for change, and at this last stage we are told that is not our responsibility”.

Sir, in response, our quasi PM Commodore Bainimarama also didn't mince his words and called Professor Yash Ghai a liar:

“It is a pity that he thinks that formulating a constitution after country-wide consultations that upholds unassailable democratic principles is difficult. And his claim that I have been harassing him **is totally without foundation,**” the Prime Minister said. “Yash Ghai can decide for himself whether he wants to be part of this process,"hesaid.

“Professor Ghai seems to believe that it is his **job to amend or repeal existing laws.** It is not. **It will be the job of an incoming democratically elected government** and that is how it should be and is in any democracy” [6/11/12 , \*\*].

We are saddened by exchanges of such unpleasantness, which has genuinely eroded our confidence in the ability of this Commission to have done what is right and Constitutional, that is, – to seek validity of the 1997 Constitution from the Supreme Court of Fiji – the most important (Supreme) of all *existing* laws of Fiji.

### **Recommendations of Fact;**

Sir, Professor Ghai's recommendations are of enormous relevance in confirming the validity of the 1997 Constitution as a living document. Consider, for example:

#### **SCHEDULE 7—REPEAL OF LAWS AND DECREES (Article 187)**

##### **1. Repeal of previous constitutions**

Any law, under whatever style or title, previously in force as a constitution within the territory of Fiji is repealed.

And;

## 22. Preservation of laws

- (1) **All law in force immediately before** the General Effective Date continues in force as from that date, subject to subsections (2) to (6), unless repealed in Schedule 7.
- (2) All law continuing in force as from the General Effective Date is subject to this Constitution, and must be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.
- (6) Any provisions of law set out in the Table of Repealed Decrees in Schedule 7 **in effect immediately before** the General Effective Date are repealed, and any Decree or other law made in substitution for any of them, is declared to be void as from that date.

Sir, why recommend repealing a previous constitution (1997) if it is deemed ‘abrogated’? If, as suggested, the 1997 Constitution is yet to be repealed, at some future ‘General Effective Date’, then there is no place for life for any ‘decrees of disgrace’ and or any other pretender laws, which are inconsistent with the spirit of the ‘supreme’ law of Fiji – the 1997 Constitution.

There are definite doubts (expressed by constitutional experts/technocrats) about the legal ability of Decree No. 1 to nullify the ‘supreme law of Fiji’- the 1997 Constitution. *The legal process, principles and philosophy are all very precarious - to say the least.*

But most importantly, the Decree No. 1 (and all subsequent decrees thereafter) is majorly inconsistent with the general will/spirit of the people of Fiji, as expressed in their 1997 Constitution. The Decree No. 1 lacks the moral/political/legal authority of the ‘sovereign’s seal’ (President’s assent) which legitimizes ‘laws’.

This is primarily because as we submitted to the Ghai Commission:

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.**

## A Burning Issue..

Sir, the revelation that 599 plus copies of the Constitutional Commission's recommendations have been 'burned' by the military/police is 'shocking' news –to us and the world. The message, however, is simple –*'something is seemly sinister! Something needs to be 'hidden' from the people of Fiji. A secret! An alternative agenda! And most significantly, it has become evident that the Ghai Commission always was but a farce!*

Sir, we respectfully submit that the remaining copy of Professor Ghai's recommendations, which are in your safe hands, should also be burned – for what it's worth (treasonous recommendations).

Perhaps the ideal Constitution-Making moment is NOT now, or if it was, it is now lost.

## Decrees of Disgrace..

The **laws** that the Commodore refers to are indeed not laws at all -but **decrees**. Decree(s) are irrelevant laws (lesser/quasi/pretender/despotic laws) and as Gandhi would have said (because Gandhi always spoke the truth) that it attaches no moral guilt or stigma - when decrees are disrespected, disregarded or disobeyed solely because decrees are '*laws without rights*'.

Indeed, Gandhi's whole crusade of 'non-cooperation' was premised upon an attitude of defiance and disrespect of draconian laws of the colonial British India. Why should 'decrees' of the Fiji's present regime, especially those which purportedly abrogates or otherwise interferes with and/or attempts to replace the peoples' 1997 Constitution, with a pretender Constitution, be viewed any differently?

Even the commercial and business culture frowns upon the arbitrarily ordained decrees (of disgrace) which are seen as disincentive to free market enterprise – which being the motive force for investments, employment creation and national prosperity.

Sir, it is time for us to reclaim our rights to (re)enact laws respectfully, as a nation, as ‘acts of parliament’ rather than continuing to endure the **indignity** of these relentless **decrees of disgrace**, as we have been forced to do.

### ‘Mahogany Castles in Sinking Sands’...

Sir, an internationally acknowledged ‘hand-book’, *Constitution Making and Reform: Options for the Process* (Brant, Cottrell, Ghai, Reagan, an inter-peace project, 2011), states as one of the reasons why Constitutions fail (in mostly developing countries) is because:

“the **government** becomes the principal means by which ministers, bureaucrats, and others with special access to the state accumulate **illegal wealth**, give state jobs and contracts to relatives and friends, and protect themselves from due process of the law (by impunity, bribery or intimidating the judiciary).”

Sir, it suits the interests of certain self-serving politicians, individuals and ‘technocrats’ to subvert Constitutional provisions and law in their blind pursuit of ‘unjustified self-enrichment’.

Technocrats (usually for a hefty and undisclosed fee) come in pretext of rendering expert advice or services, ‘custom-made’ to suit particular needs of the ruling elites of a regime. Sir, we need not to name names.

The Nigerian political satirist / writer Chinua Achebe called this -‘mutual enrichment club’- the ‘*elitist factor*’. Our quasi PM Commodore Bainimarama is correct in saying “*we cannot allow a narrow band of elites to determine our future*” (AG’s Conference, 2012). How very true, when we (re)consider the fate of our nation, against the imposed ‘righteousness’ of a narrow few on the majority of the ‘silenced’, Sir, since 2006.

Fiji’s **elitist** factor exists, is small, visible and very powerful. To make it worse, the ‘power’ vests and rests in the ‘gun’. The omnipresence of the ‘gun’ (the subtle, unspoken but understood) permeates every transactions of the ‘public space’.

The majority citizens are subdued and ‘silenced’ (and assumed permissive) by the same power (gun) and more overtly by a systematic erosion of citizens’ fundamental (and unalienable) human rights –**by relentless ‘decrees of disgrace’**.



Fiji citizens are denied their fundamental rights to protest, criticize and challenge (in court of law) the imposed ‘righteousness’ (decrees of disgrace) of Fiji’s narrow band of power **elites**. Fiji’s ruling **elites** are law on themselves – they do as they please – usually, in their blind pursuit of self-enrichment.

Professor Richard Joseph coined the concept of ‘*prebenal politics*’ to ‘incisively’ describe the rise and fall of Nigeria’s Second Republic (79/83) in terms of the ‘illegal privatization of public offices and resources’ by ‘elected’ politicians who:

“felt that their positions entitled them to unbridled access to public resources with which they not only satisfied their own material desires but also serviced the needs or wants of subaltern clients who looked up to the office holders as protective patrons.

This kind of criminal diversion of public resources for self-fish private ends staved the polity of funds for development, increased poverty and inequality and intensified an unhealthy rivalry and competition for public office that triggered pervasive instability – election rigging, violent conflicts and ultimately coups” [“Democracy and Prebenal Politics in Nigeria: the rise and fall of the second Republic, Cambridge University Press, 1987].

A respected Pan-African political economist, Professor Claude Ake, has termed the same phenomena as “*the privatization of public space*” [<http://www.jsd-africa.com/Jsda/Vol14No2>].

God forbid incurrence of such *corrupt elitist* alliances in Fiji and we make no such inferences. However, Sir, it is always prudent to lean on the side of caution – because our country’s Treasury [Ministry of FINANCE], traditionally being the purview of the public domain, is presently (and very opaquely) in the private hands of a Begum Bano.

Sir, our quasi AG insults the collective intelligence of Fiji’s citizens, saying we suffer from ‘social amnesia’ (AG’s Conference), and yet it is the quasi AG who needs ‘reminding’ that he and his narrow band of **elites** have no mandate (**zilch**) to enter into any negotiations and/or to conclude any ‘corrupt’ deals to do with any **casinos** or **mahogany**.

This regime, again, enjoys **zilch** mandate to undertake any sweeping or far-reaching societal, cultural, political and Constitutional changes. Those, Sir, are the prerogatives of the people vide their Parliament. **Period!**

## **Democratic Rule**

Sir, peoples' right to periodic elections is long over-due.

We concur with the submissions of other political parties on the need to have elections under the electoral provisions of the 1997 Constitution. Any other way would be unconstitutional and illegal.

Fiji citizens have not enjoyed democracy since 2000. In the years 2000-2006, our *democracy*, unfortunately, had degenerated to *demoQarase* ; which was characterized by 'vote-buying', poll-rigging, corruption, unconstitutionality and/or otherwise a blatant disregard to the plights of the ordinary citizens who also happened to be Indo-Fijians, poor and down-trodden.

Even PM Chaudhary blatantly breached the Constitution, in 2001, by asking the President to dissolve the Parliament ahead of the imminent leadership challenge by Dr. Baba. The President also breached the Constitution by not seeking any other member of HOR of having confidence of the House to form the Government.

Sir, there was a visible 'sigh of relief', when *demoQarase* was disrupted by the Presidential/ Military intervention in 2006. However and despite its initial popularity, the present regime has long lost its way -and welcome.

Fiji has never been so united, as it is today, in its demand for democracy. To achieve democracy we don't need, yet another, Constitution. We just need to remove the impediments to democracy – the most obvious of which being the present interim regime.

Our quasi AG spoke quite unequivocally –that this regime intends to go nowhere without their immunities intact (AG's Conference, 2012). It is indeed an irony of history to witness the righteous plea for mercy –for what 'crime(s)' we ASK? 'Forgiving', Sir, is decidedly divine and 'forgive' we must in the greater interests of our nation and for same reasons as that of the last words of our Lord: **“Father, forgive them for they know not what they do.”** [Luke 23:34.]

## **So, Sir, it's time to talk amnesty.**

Sir, in our submissions to the Constitutional Commission, we said:

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.

Sir, as premised upon the 1997 Constitution, you are also the Commander in Chief of Fiji's armed forces and no one's command can ever supersede yours. Your Presidential powers in certain extreme and exceptional circumstances (as in now) may extend to 'granting of pardon' to those who in your wisdom deserve such benevolence - and in consideration of our greater and better national interests.

Your powers to pardon are rooted in the legal doctrine of 'Tyrant's Plea', which ironically derives its name from John Milton's epic (1667) poem '*Paradise Lost*'

In the famous English case of *The Queen v. Dudley and Stephens*(1884), whereby four men, stranded in a lifeboat, without food and water, had to kill and eat the youngest amongst them so as to satisfy their hunger. The court ruled it cannot accept 'hunger' as an excuse for 'murder' and found the accused guilty and ruled that they be hanged until dead. The court, however, also made the following classic dictum:

"There is no safe path for judges to thread but to ascertain the law to the best of their ability and to declare it according to their judgment; and if in any case the law appears to be too severe on individuals, to leave it to the Sovereign to exercise the prerogative of mercy which the Constitution has entrusted to the hands fittest to dispense it."

This doctrine, though rarely used, lies dormant in the sphere of reserve powers of the monarch / or a Constitutional President. It is for exceptional historical / judicial situations somewhat similar to what we are presently facing.

The courts of law are constitutionally bound to protect the constitution in its totality - as the 'supreme law of the land'. The courts of law cannot condone 'unlawful' abrogation of any constitution. The only way out of the present political predicament for those concerned is through a Presidential pardon- which however, **can only be derived from the 1997 Constitution.**

Consider, for example, the Court decision in the case – Koroï vs Commissioner of Inland Revenue (2001) – in which **Justice Gates said;**

*"It is **not possible for any man to tear up the Constitution.** He has no authority to do so... The fundamental law represented in a constitutional document may only be changed **in accordance with that Constitution**".* [Extract from SDL Submission to Ghai Commission]

Sir, people have given you 'limitless' powers to protect the peoples' 1997 Constitution - being the lair of the 'collective will' of the people of Fiji, their self-respect and dignity - and also being the 'supreme' and living law of our land. Your Excellency, you would not allow anyone to trample upon 'our rights to our Constitution', Sir.

Your Excellency, use of your powers to pardon is justified **ONLY** in an endeavor towards preservation and protection of our 1997 Constitution.

Forgiveness is also a virtue as Gandhi, Mandela and Lama have led us to belief. It makes possible a future – of freedom, hope and happiness – for all of your subjects. The recipients of Presidential pardon also need to heed some responsibility, for our future, by retiring completely (and irrevocably) from all spheres of public and political life. God bless Fiji and the 1997 Constitution!

**Sincerely,**

**Anit Singh**

**Interim Party Leader** [aunendrasingh@hotmail.com]

**PS:** Sir, hopefully, your latest 'decree of disgrace' [Political Party Registration] is now redundant. Otherwise, Sir, allow us to respond (at length) to that deplorable decree of disgrace, in due course.