

FIJI FIRST PARTY

The Neutralising Force

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Independent Judiciary empowered by the 1997 Constitution.

FIJI FIRST PARTY welcomes the High Court Decision of Justice Angela Wati's ruling that the Court has jurisdiction to hear the application for leave for judicial review in the case of the 63 sacked Public Works Department workers claiming that they were unfairly dismissed.

Fiji First Party gave a press release last week that was printed in C4.5 and in fijipensioners.com blog that explains in some detail that following uplifting of the 'state of emergency', the Judiciary has become independent since it is now empowered by the 1997 Constitution for the purposes of adjudicating and determining 'Constitutional' matters as well as hearing cases filed against the State and the AG.

FFP had given their opinion that the 'Supreme Law of Republic of Fiji' (the 1997 Constitution) simultaneously kicked into life the moment "when the 3 long years of state of emergency went. The life of the purported abrogation remained in force only until the day of uplifting the state of emergency."

There has been no popular revolution in Fiji (at all) and the purported abrogation of the 1997 Constitution was presumably at the discretion of the present AG. This misconception could only be enforced until the uplifting of the state of emergency.

The Court of Appeal on 1 March 2001 in the landmark Chandrika Prasad Case comprising a five-judge Bench held that "**it (the Constitution) does not authorize permanent changes to a written Constitution let alone its complete abrogation.**"

Therefore the 1997 Constitution now relives from the date of uplifting of the state of emergency. The 1997 Constitution is a living document that the people of Fiji bestowed upon themselves 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 is truly independent as it is empowered under the 1997 Constitution. **This is unless the present judicial appointees 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 therefore welcomes and compliments the High Court Judge, Justice Angela Wati's ruling as a true reflection of an independent Judiciary.

We believe the Acting Solicitor General Sharvada Sharma is wrong in his argument that the restrictive and limiting document 'Administration of Justice Amendment Decree' is a superior document to the "Supreme Law of Fiji" –the 1997 Constitution. The restrictions and limitations of the said Decree are no longer valid and should not impede the proper functioning of an Independent Judiciary.

An Independent Judiciary has unrestrained /unlimited jurisdiction to accept, hear, determine or in any other way entertain any challenges at law by any person in relation to the validity or legality of any action, decision or order of the government, any minister, the PSC or any statutory authority or government entity.

What this means is that Judges must demonstrate their independence with rulings that are a true reflection of the rule of law under the 1997 Constitution over any Decree(s) as Justice Wati has aptly demonstrated.

1997 Constitution Now Lives On

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 category or where he was wrongfully advised by the present AG to abrogate the 1997 Constitution.

The 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); or 'ultimate reserve power' that the Executive considered the step necessary for purported national security to abrogate the 1997 Constitution.

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.

The purported abrogation remained in force only so long as the proclamation of the state of emergency remained in force. Therefore after uplifting the state of emergency, the 1997 Constitution is no longer dormant and is once again the SUPREME LAW OF THE REPUBLIC OF FIJI.