



FIJI LABOUR PARTY

Discussion Paper on the Multi-Party Cabinet

National Council Meeting

24th June 2006

The multi party Cabinet has become the focus of much public attention following the decision of the Fiji Labour Party to accept the Prime Minister's invitation to join his Cabinet. Consequently, nine of our MPs are now Cabinet Ministers.

A number of issues have arisen since then which make it imperative that the matter be discussed at the Party's National Council level and that firm guidelines and ground rules be drawn up to guide the operations of the multi-party Cabinet.

Party loyalty and obligations

Recent controversy over the workings of the multi-party Cabinet makes even more urgent the need to draw up ground rules to govern our relationship in the future.

Central to the whole issue is the question of loyalty and obligation to the Party.

It all boils down to a single question: *Do FLP parliamentarians who are now members of the Qarase Cabinet owe their primary allegiance to the Party or is their allegiance now solely to the SDL Cabinet?*

In resolving this issue, we must be guided by the Party constitution. **Article 7** on Discipline makes it very clear that every member shall undertake to:

- *Work for the interest of the Party and its members collectively in a spirit of mutual cooperation and*
- *To refrain from making false charges or personal attacks against any official or fellow member of the Party*

The interest of the Party must remain paramount. No member whether an MP or Cabinet Minister, is above the Party.

Principles and Objectives of the Party

That brings us to the other fundamental issue that has arisen regarding policy guidelines. **Are Labour Members of the Cabinet bound by Party principles and policies?**

The Labour Party constitution states quite categorically that every member, whether a backbencher MP or a Cabinet Minister, must uphold the principles and objectives of the Party.

Article 4 of the Party constitution is quite explicit on the matter of Party policies:

The Policy of the Labour Party shall be based on matters approved by the Annual/Special Delegates Conference and shall be:

- *Based on the principles and objectives of the Party*
- *Contained in the **manifesto** issued prior to each General Election and shall be the official policy of the Party....provided that any matter arising subsequent to an Annual/Special Delegates Conference and not provided for in the existing manifesto shall be determined by the National Council*

The directive here is very clear: we must be guided by Party policies and principles in conducting ourselves as MPs and Cabinet Ministers.

The FLP Manifesto thus becomes the supreme policy document for the Labour Party unless decided otherwise by the Delegates Conference or the National Council.

Labour's key policies are clearly stated in the Party's 2006 Election manifesto, and these must govern our conduct and regulate our actions.

For the benefit of the National Council, details on these will be provided later in this paper. At this point, we need to scrutinise in greater depth the argument that has emerged over whether a Labour member of the Cabinet, or backbencher for that matter, can openly and freely express his/her opinions in public.

The Party constitution makes it clear, as already shown, that Labour MPs and Cabinet Ministers must be guided by Party policies as enunciated in the Party manifesto.

Conflicting Policies

This obviously creates a dilemma for Labour members of the Cabinet in a situation where FLP policies are in sharp conflict with those of the SDL on crucial national issues. The Party constitution demands that the member uphold Labour policies. What happens to the concept of collective Cabinet responsibility in such a situation?

Here we have to seek recourse from outside authorities to show that it is quite in order for a Labour member of the Cabinet, and backbenchers, in the context of a multi-party Cabinet to express opinions and adhere to policies that may be in conflict with that of the ruling party.

But before we turn to other authorities, let me also make it clear that the first multi-party Cabinet under the power sharing provisions of Section 99 of the Constitution was established by the People's Coalition Government in 1999 under my prime ministership. We should, therefore, also draw on this experience for precedence.

The fact is that members of other parties in Coalition with us, and in the multi-party Cabinet, backbenchers in particular, were free to express their views on issues and legislation without restriction. And this happened quite frequently. There was absolutely no gagging.

But let's also draw guidance from a judicial authority: **the July 2003 judgment of the Supreme Court on the multi-party cabinet issue.**

It is obvious that Prime Minister Laisenia Qarase, and some of our colleagues, continue to have a mind set on the Westminster model of governance even though Fiji has taken a significant paradigm shift in adopting a power-sharing model.

The Supreme Court judges, in their decision in Civil Action No. 282 of 2001L took an unequivocal stand on this question of consensus on policies. Paragraphs 102/103 of the judgment clearly state that:

“The Constitution does not reflect some form of ideal model of the Westminster system of government. The adoption of a Westminster model of responsible Cabinet government does not, of itself, carry an implication that no Cabinet can be formed in the absence of prior consensus on policy...It is not permissible to adopt and apply an ideal type of Westminster model which leads to a strained construction of the words of the Constitution.”

The Judges go on to pronounce that Cabinet may consist of members of different parties who bring to it differing perspectives and policies

“and yet reach collective decisions after discussion, negotiation and compromise...That, it is hardly necessary to say, mandates a degree of give and take.”

Para 110-112 of the judgment deal with the issue of conflicting policies much more explicitly. The relevant paragraphs of the judgment are quoted herein in full because of their significance to the current controversy:

The Judges hold that the Prime Minister's invitation to qualifying parties to join his Cabinet

"is not simply an invitation for their members to be there without any agenda or policies of their own. This is a provision which advances the central constitutional purpose of power sharing

Subsection 99 (5) by referring to representation of the eligible parties allows that their representatives may take into Cabinet deliberations their own policies and agendas...this may mean a more difficult Cabinet to manage than a Cabinet whose members belong to the same party or a coalition that has worked out some consensus before its formation.

But this is the Cabinet that is envisaged by the Constitution and it cannot be rejected as unworkable in principle because of that difficulty.

Division of opinion in Cabinet is nothing new. The conventions of collective responsibility and Cabinet confidentiality respond to division and allow conflict in Cabinet to be managed so that effective government is possible.

The Prime Minister is entitled therefore to say that his own appointees intend to implement the policies of his party. That is not to prevent representatives of other parties from urging their own policies where they arise.

Nor is it beyond the bounds of possibility that negotiated outcomes in the national interest will be reached. Section 99 aims to encourage debate on contentious policies including debate across party lines ..."

Then again in para 129 the Judges make it clear that:

“In the context of the prior history and the constitutional crisis,...power sharing...was a central purpose of the Constitution.

That purpose would not be served and, indeed, could be fundamentally undermined, if an invitation by a Prime Minister under s99(5) could be subject to conditions or if the establishment of a multi-party Cabinet were to be determined by the fact, let alone by the Prime Minister’s opinion, that a political party which comprises at least 10% of the membership of the House, was unwilling to pursue or accept particular policies.”

It is clear from the 2003 judgment of the Supreme Court that the Labour Party is entitled, indeed required, to go into Cabinet with its own policies and agenda.

And that it has a right to demand that its policies be given cognition and fruition – albeit, this process may require “discussion, negotiation and compromise”.

That takes one back to the point made initially that the Labour Party has gone into Cabinet with its own policies and national agenda. And we are there to pursue this, not to act as stooges to the SDL.

It should be underscored that the Fiji Labour Party has a very strong identity – it is held in high national esteem for its integrity, and its steadfast adherence to stated Party principles and policies on good governance.

These standards must be observed at all times. It applies equally to all nine Labour Ministers as well as the backbenchers and those of us in Opposition. We must not allow our identity as members of the Labour Party to be swamped by a party whose reputation is already badly tainted through bad governance, corrupt practices and lack of respect for the rule of law.

Labour's *raison d'être* for joining Cabinet was to provide a new direction in the governance of our nation.

Labour's presence in the Cabinet must not mean or be seen as "business as usual in the SDL style". We have sent our representatives into Cabinet to make a difference and to provide a government based on the ethics and principles of good governance.

We are not going to be tainted with the scams, the corruption, the mismanagement and wastage of public funds, and the incompetence that characterised the previous government.

The Labour Party must continue to be guided by its conscience and the national interest in considering legislation and other matters that come before the House of Representatives.

The Party manifesto for the 2006 general elections must form the crux of our policies – it has a long term vision for the nation and well thought out strategies to deal with crucial problems plaguing the nation.

Where there is a major conflict in the policies of SDL and FLP on an issue of national importance impacting on our constituents, which after due negotiations and discussions cannot be resolved, then Labour Ministers and MPs will be expected to abide by Party policies and vote along Party lines.

Key policies and a Minimum Common Programme

In the 2006 general elections, the Party campaigned strongly on the basis of good governance with major focus on:

- Revitalising the national economy
- Alleviating poverty and creating jobs
- Restoring respect for the rule of law
- Ending racial discrimination
- Promoting agricultural growth

- Retaining ALTA as the principal legislation for the leasing of agricultural land
- Stamping out corruption and abuse of public funds
- Opposition to the PRTU Bill, particularly its amnesty provisions
- Dismantling monopolies at the market place

We cannot lose sight of these just because we are now represented in the multi-party Cabinet.

Our members in Cabinet have a responsibility, nay they are duty bound, to pursue these Party policies and the promises made to the electorate.

It must not be multi-party Cabinet at any cost! Our main objective is the long term interest of the Party – the Labour Party must come out of this experience united and with its national esteem and integrity intact. That has to be the bottom line.

Recommendations

The concept of collective Cabinet responsibility is fine as far as it goes but that does not mean we back off on issues where we have taken a position. Labour's stand must prevail on key national issues such as:

- ALTA
- The enactment of a Code of Conduct legislation and measures to deal with corrupt practices (Section 156 of the Constitution)
- Amendments to the Constitution
- Racial discrimination
- Amnesty provisions of the PRTU Bill; and
- Other controversial legislation such as the proposed Qoliqoli Bill and legislation on the Land Claims Tribunal

On any of these key issues all FLP Members of Parliament, including our Ministers, must be bound to vote along Party lines. We must put Government on notice now to this effect.

Minimum Common Programme

The National Council must agree on a minimum common programme of action to be presented to Government with a definite timeline for implementation. These must include:

- The enactment of a comprehensive **Code of Conduct** legislation, as required by Section 156 of the Constitution, to be tabled by the September sitting of Parliament
- This must be supported by tough **anti-corrupt practices** legislation under which should be appointed an independent commission to investigate and prosecute those engaged in corrupt practices
- The enactment of Freedom of Information legislation
- All vestiges of **racial discrimination** to be removed from government policies and its affirmative action programmes. These are clearly unconstitutional and the Labour Party will not condone unconstitutionality.

A report on the issue of racial discrimination has just been released by the Human Rights Commission. It condemns a number of policies of the SDL Government's affirmative action programmes as "unconstitutional". In doing so, the report vindicates the strong stand taken by the Labour Party against these discriminatory measures and our fight for them to be scrapped.

Labour must continue to vigorously oppose a bloated Cabinet – this is against all the norms of good governance, and imposes an unnecessary burden on the taxpayer. Labour must also oppose the Prime Minister's recent recommendation for each Minister to be allotted a private secretary to handle constituency matters. Quite apart from its implications on the taxpayer, it is unconscionable that taxpayers be asked to fund something that is clearly political in nature!

Government must begin to right size the Cabinet and State Ministries. Labour must not be a party to such blatant attacks on the tenets of good governance.

Those who support the multi-party concept glibly, based on some misguided notions of national interest, should first understand what the terminology means. It must not be confused with self-interest!

Labour's participation in the Cabinet must be based on the understanding that FLP policies will be considered for implementation.

Yes, the nation wants the arrangement to work. But it wants Labour to go in there and make a difference in the governance of the nation – not to itself become part of a corrupt and self-serving apparatus.

The Council is requested to adopt the recommendations in the paper as ground rules and guidelines for the operation of the multi-party Cabinet.