

## APPENDIX A

### THE COMMISSION'S RECOMMENDATIONS

#### Chapter 2: Constitutional Foundations

1. The primary goal of Fiji's constitutional arrangements should be to encourage the emergence of multi-ethnic governments.
2. The Constitution should continue to be based on the Westminster system of parliamentary government.
3. Power-sharing should be achieved through the voluntary cooperation of political parties, or increased support for a genuinely multi-ethnic party.
4. The people of Fiji should move gradually but decisively away from the communal system of representation. They should adopt electoral arrangements which encourage parties to seek the support of other communities as well as their own.
5. Backbench members of all parties should have the opportunity to take part in sector standing committees which monitor every aspect of the government's responsibilities.
6. The Constitution should
  - (a) recognise the important role of the Bose Levu Vakaturaga;
  - (b) protect individual human rights and the rights of groups, including rights to and in land;
  - (c) require social justice and affirmative action programmes for the Fijian and Rotuman communities as well as for other disadvantaged communities and groups.
7. The Constitution should be based on the principle that the interests of all communities must be recognised and protected. It should explicitly recognise the protective function of the principle that the interests of the indigenous Fijians are paramount, on the understanding that it does not involve the relegation of the interests of other communities.

#### Chapter 3: Purposes and Underlying Values

8. The Constitution should:
  - (a) enable the people of Fiji to make a fresh start in providing for the government of their country;
  - (b) be generally acceptable to all citizens;
  - (c) control the actions of governments;
  - (d) guarantee the rights of individuals and groups;
  - (e) promote important values such as the rule of law and the separation of powers;

- (f) act as an enduring basis for government.
  - (g) be written in accessible language and translated into Fijian and Hindi.
9. In order to promote racial harmony and national unity and the economic and social advancement of all communities; take account of the international standards concerning individual and group rights; and guarantee the rights, protect the interests and meet the concerns of the indigenous Fijian and Rotuman people and those of all other communities and groups, the Constitution should:
- (a) ensure that the office of Head of State and national symbols, such as the flag and the national anthem, have a unifying force: they should recognise the unique history and character of Fiji;
  - (b) provide a basis on which all citizens can describe themselves by a common name;
  - (c) encourage every community to regard the major concerns of other communities as national concerns;
  - (d) increase investor confidence by providing greater political certainty and reassuring all citizens that they and their children have a secure future in the Fiji Islands;
  - (e) provide for the election of the Lower House of Parliament on the basis of equal suffrage;
  - (f) retain some communal representation, based on the distribution of communities in the total population, as a transitional measure;
  - (g) maintain the separation of church and state, while reflecting the importance of Christianity and all other spiritual traditions present in Fiji;
  - (h) recognise the equal rights of all citizens.
10. The Constitution should recognise the principle that, in order to resolve any conflicts of interest among communities and groups in Fiji, the parties should negotiate in good faith in an endeavour to reach agreement. All communities should affirm their willingness, in such negotiations, to apply the paramountcy of Fijian interests as a protective principle, with the object of ensuring that those interests are not subordinated to the interests of other communities.

#### **Chapter 5: National Identity and Goals**

- 11. The name of the state should be "The Republic of the Fiji Islands".
- 12. Readmission to the Commonwealth, of which the Queen is the Head, would reestablish links with Her Majesty.
- 13. The citizens of the state should have the right to use the common name of "Fiji Islanders" if they so wish, and should be encouraged to do so, but it is not necessary to make provision for this in the Constitution.
- 14. The Constitution should continue to describe the state as "sovereign". In the expectation that the people wish to put in place a fully democratic system of government, the Constitution should also describe the state as "democratic".

15. Section 1 of the 1990 Constitution should be redrafted to read as follows:  
“The Republic of the Fiji Islands is a sovereign, democratic state.”
16. A separate section of the Constitution should prescribe the form of Oath of Allegiance. The form of Oath (or Affirmation) in Schedule 1 of the 1990 Constitution should be amended to provide for the swearing of allegiance to “the Republic of the Fiji Islands”, without mention of “the people”.
17. The members of all communities should be encouraged to learn one another’s languages, but this should not be seen as detracting from the importance of learning English.
18. An early provision of the Constitution should state that the Fijian, Hindi and English languages have equal status.
19. The Constitution should provide that members of the public dealing with government departments and other central or local government offices and statutory boards have the right, in the head office of the department, office or board, and in those divisional, district and local government offices where
  - (a) there is a significant demand for communications with or services from that department or body in any one or more of those languages, or
  - (b) because of the nature of the department or body, it is reasonable to provide for communications with or services from that department or body,
 to conduct their transactions in Fijian, Hindi or English, either directly or through a competent interpreter.
20. Section 66 of the 1990 Constitution should be amended to provide that the official languages of Parliament are Fijian, Hindi and English. A speech made in any one of those languages should be simultaneously translated into each of the other two. The records of parliamentary debates and committee proceedings should be kept in the language used by the member concerned, with a translation into English if the member spoke in Fijian or Hindi. Documents such as Bills, Acts, Resolutions and Reports should be in English unless the relevant House or Committee resolves that they should, in addition, be in Fijian or Hindi or both, or in any other language spoken in Fiji.
21. The Constitution itself should be adopted in three versions, Fijian, Hindi and English. It should provide that each version is equally authentic, but if there is any apparent discrepancy between one version of a provision and another version or versions, regard must be had to all the circumstances that tend to establish the true intent and meaning of that provision.
22. The *Preamble* to the Constitution should be brief, clearly expressed and broadly acceptable to all citizens.
23. It should state that the people of the Fiji Islands give themselves their Constitution.
24. It should deal mainly with the history of Fiji’s multi-ethnic society, and its shared beliefs and values.

25. The wording of the Preamble should be based on the following draft:

WE, THE PEOPLE OF THE FIJI ISLANDS,

Seeking the blessing of God who has always watched over these islands, Recalling the events in our history that have made us what we are: especially the settlement of these islands by the ancestors of the indigenous Fijian and Rotuman people; the arrival of forbears of subsequent settlers, including Pacific Islanders, Europeans, Indo-Fijians, Chinese and many others; the adoption and enduring influence of Christianity and its contribution, along with that of other faiths, to the spiritual life of Fiji; and the separate cession of these islands by the High Chiefs of Fiji and Rotuma to Her Majesty Queen Victoria,

Recognising that the descendants of all those who chose to make their homes in these islands now form our multi-ethnic society,

Acknowledging the contribution of all ethnic communities to the well-being of that society, and the rich variety of their faiths, traditions, languages and cultures,

Taking pride in the development of our economy and political institutions, our accession to independence and our common citizenship,

Committing ourselves anew to living in harmony and unity, promoting the economic and social advancement of all communities, respecting their rights and interests, and strengthening our institutions of government,

Reaffirming our recognition of the human rights and fundamental freedoms of all individuals and groups, safeguarded by adherence to the rule of law, and our respect for human dignity and the importance of the family,

GIVE OURSELVES THIS CONSTITUTION.

26. The Constitution should contain a section described as a *Compact* among the people of the Fiji Islands. It should reassure all ethnic communities that their rights and interests will still be protected, even if changes are made to the electoral arrangements. It should also provide guidance to political leaders and parties.
27. The *Compact* should record the people's recognition of the principles on which the conduct of government is based. It should also refer to the rights of ethnic communities and individuals under other provisions of the Constitution in the areas likely to be of greatest concern to them.
28. The courts should have no jurisdiction to enquire into the application of the principles or the recognition of the rights referred to in the *Compact*, except so far as these principles and rights are recognised by other provisions of the Constitution or other law.
29. The *Compact* should be based on the following draft:

***Compact among the people of the Fiji Islands***

The people of the Fiji Islands recognise that, within the framework of this Constitution and the other laws of the Republic, the conduct of government is based on the following principles:

- (1) The rights of all individuals, communities and groups must be fully respected.

- (2) These rights include those protecting the ownership of Fijian land according to Fijian custom, the ownership of freehold land, and the observation of the rights and obligations of landlords and tenants under leases of agricultural land. They also include the rights of all persons to practise their religion freely and to retain their language, culture and traditions.
- (3) The rights of the Fijian and Rotuman people include their right to governance through their separate administrative systems, as well as to take part in the government of the Republic along with all other citizens.
- (4) As citizens, the members of all communities enjoy equal rights, including the right to make their permanent homes in the Fiji Islands.
- (5) The rights of citizens include the right to form and join political parties, to take part in political campaigns, and to vote and be a candidate in free and fair elections of members of Parliament held by secret ballot and, ultimately, on the basis of equal suffrage.
- (6) The formation of a government that commands the support of a majority in the lower house of Parliament depends on the electoral support received by the various political parties or pre-election coalitions, and, if it is necessary or desirable to form a coalition government from among competing parties, depends on the compatibility of their policies and their willingness to come together to form or support a government.
- (7) In forming 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 should be taken of the interests of all communities.
- (8) To the extent that the interests of different communities are seen to conflict, all the interested parties should enter into negotiations in good faith in an endeavour to reach agreement.
- (9) In such negotiations, the paramountcy of Fijian interests as a protective principle should continue to apply, so as to ensure that the *interests of the Fijian community* are not *subordinated* to the interests of other communities.
- (10) Affirmative action and social justice programmes to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, should be based on an allocation of resources broadly acceptable to all ethnic communities.

#### **Application of the Compact**

- (1) The application of the principles or recognition of the rights referred

to in the *Compact* shall not, by virtue only of this section, be called in question before any court or other authority.

- (2) The *Compact* may be taken into account in interpreting and applying any other provision of this Constitution or other law.

30. The Constitution should contain a provision about its interpretation, based on the following draft:

#### **Interpretation of this Constitution**

- (1) This Constitution applies to circumstances as they arise from time to time in the Republic of the Fiji Islands.
- (2) Its meaning is to be ascertained from the text, read in its context and in the light of its purpose, taking into account the spirit of the Constitution as a whole.

31. Those charged with the task of interpretation should bear in mind that, in ascertaining context, purpose and spirit, regard should be paid to all relevant matters including any international instruments on which particular provisions are based, and the values expressed in the Constitution itself.

#### **Chapter 6: Citizenship**

32. The basic rules about acquisition and loss of Fiji citizenship should continue to be provided for in the Constitution.
33. The Constitution should provide explicitly for the making of laws by Parliament to give effect to the rules in the Constitution and to supplement them to the extent provided, in ways consistent with the Constitution.
34. A new and comprehensive Citizenship Act, consistent with the recommended new constitutional provisions, should be prepared at the same time as the constitutional provisions themselves, and should enter into force on the same date.
35. The new constitutional and statutory provisions should take full account of the international instruments designed to avoid statelessness and should be consistent with international human rights principles.
36. Any new constitutional provisions about citizenship should provide that every person who was a citizen of Fiji immediately before their effective date continues to be a citizen.
37. The Constitution should provide that every child born in Fiji after the effective date is a citizen of Fiji at the date of birth, unless, at that date, one of the child's parents possesses diplomatic immunity and neither parent is a citizen of Fiji.
38. A child found in Fiji should be taken as having been born in Fiji, in the absence of proof to the contrary.
39. The Constitution should provide that every child born outside Fiji after the effective date has the right to become a citizen of Fiji by registration, if, at that date, either parent was a citizen of Fiji.

40. The Constitution should continue to provide that an adult citizen of Fiji automatically loses that citizenship if he or she voluntarily acquires another citizenship, or voluntarily retains another citizenship in the circumstances referred to in Recommendations 11 or 12.
41. An adult person's involuntary acquisition of another citizenship, through marriage or a change in the law of another country with which the person has a connection, should not deprive the person of his or her Fiji citizenship, unless the person fails to renounce the other citizenship within 12 months of becoming aware of it, or of being required to renounce it by the Minister responsible for citizenship, whichever first occurs.
42. A child who, at birth, or by the action of a parent or guardian before he or she attained the age of 21, acquired both Fiji citizenship and the citizenship of one or more other countries, should automatically lose his or her Fiji citizenship on attaining the age of 22, if he or she has not, after attaining the age of 21 and before attaining the age of 22, renounced all other citizenships.
43. The procedures for the grant of Fiji citizenship by registration or naturalisation should continue to require an adult applicant to renounce the applicant's existing citizenships, but it should be recognised that, under the law of the country concerned, the renunciation of a foreign citizenship may be permitted only after the actual grant of Fiji citizenship.
44. If, for the purpose of retaining or acquiring Fiji citizenship, a person is unable effectively to renounce the citizenship of another country under its law, the Constitution should permit that person to make a declaration of intention not to exercise any of the benefits of that citizenship under conditions provided by law.
45. In view of the recommendations already made for the loss, by operation of the Constitution, of the Fiji citizenship of an adult person who remains or becomes a citizen of another country, it should not be possible, on that ground alone, to deprive such a person of his or her citizenship of Fiji.
46. The Constitution should entitle an adult person who was formerly a citizen of Fiji to be registered as a citizen if he or she has been lawfully present in Fiji for an aggregate of 3 out of the 5 years immediately preceding the application for registration.
47. A former citizen should have a constitutional right to enter Fiji and reside here, subject to compliance with the conditions applicable to other persons granted the right to enter and reside in Fiji.
48. A person should be permitted to renounce his or her Fiji citizenship only if he or she has attained the age of 21 years, and is a citizen of another country from the date of birth or has been granted the citizenship of another country by registration or naturalisation.
49. The Constitution should entitle a citizen of another country who is or has been married to a Fiji citizen to be registered as a citizen, if he or she has been lawfully present in Fiji for an aggregate of 3 out of the 5 years immediately preceding the application for registration and complies with other conditions imposed by the Constitution or by Act in the interests of national security or public policy.
50. The foreign wife or husband of a Fiji citizen should have a constitutional right to enter and reside in Fiji, subject to compliance with the conditions applicable to other persons granted the right to enter, reside and work in Fiji.

51. The Constitution should entitle a child adopted by a Fiji citizen when the child was under the age of 19 years to be registered as a citizen. Provision for the recognition in Fiji of an adoption under foreign law should be made by Act.
52. The Constitution should entitle a natural-born child of a Fiji citizen to be registered as a citizen if the child was under 21 when the parent first became a citizen.
53. The Constitution should provide that applications for registration under these provisions may be made by an adoptive or natural parent or a legal guardian, if the child is under 21 at the time of the application. If the child is 21 or over, he or she may make the application but will be entitled to registration only if he or she has been lawfully present in Fiji for an aggregate of 3 out of the 5 years immediately preceding the date of the application. Before registration as a citizen, the adopted or natural-born child of a Fiji citizen should have a constitutional right to enter and reside in Fiji, subject to compliance with the conditions applicable to other persons granted the same rights.
54. The Constitution should continue to make provision for the grant of citizenship by naturalisation.
55. It should specify that, to become eligible for naturalisation, a foreign citizen needs to have been lawfully present in Fiji for an aggregate period of five out of the ten years immediately preceding the application for naturalisation.
56. The Constitution should not specify which Minister should be responsible for decisions about citizenship. That should flow from the assigned responsibility for administration of the new citizenship legislation.
57. Immigration should not be dealt with in the Constitution but should remain a matter of government policy within the framework of the Immigration Act. In view, however, of the link between immigration policy and grants or extensions of work permits or refugee status, and a foreign citizen's eventual eligibility for citizenship by naturalisation, the Minister responsible for immigration should be assisted in these matters by an advisory body. The body could be set up under the Immigration Act or by administrative action. The Minister should not be bound to accept its recommendations, but his or her annual report to Parliament should disclose the number of cases in which its recommendations were not followed. The existing arrangements for consultation about whether people with special skills are needed from overseas should be retained.
58. The provisions of the Constitution about the ways in which Fiji citizenship can be acquired should be exhaustive. It should not permit Parliament to confer a right to citizenship by Act, either by direct grant or by the exercise of a discretion.
59. The Constitution should specify only the main conditions for registration as a citizen and criteria for naturalisation. It should, however, permit other reasonable conditions or criteria to be imposed by Act.
60. In those cases where the Constitution requires a foreign citizen to spend an aggregate period of time in Fiji before becoming entitled to, or eligible for, citizenship, it should permit provision to be made by Act excluding periods during which the person was present in Fiji for reasons that conflict with the purpose of imposing the qualifying period in that case.



61. The Constitution should provide that no person may be deprived of his or her Fiji citizenship otherwise than by operation of the Constitution itself, for the avoidance of multiple citizenship, or under a provision made by Act providing for deprivation on the grounds referred to in Recommendation 62.
62. The Constitution should authorise Parliament to provide by Act for a person to be deprived of citizenship in the following cases only:
- (a) where citizenship by registration or naturalisation was obtained by fraud, false representation or the concealment of any material fact; or
  - (b) where, as a condition of retaining or acquiring Fiji citizenship, a person, who is a citizen of another country and is unable under its law to renounce its citizenship, has declared an intention not to exercise the benefits of that citizenship, but nevertheless exercises a right pertaining exclusively to the citizens of that country.
63. The Constitution should provide that an Act conferring power to deprive a person of his or her Fiji citizenship in the circumstances referred to in Recommendation 62 must provide for that power to be exercised through procedures which are in conformity with the rules of natural justice.
64. For the avoidance of doubt and possible statelessness, the transitional provisions of the Constitution should include declaratory provisions to the following effect:
- Notwithstanding anything in Chapter IV of the 1990 Constitution,
- (a) a person born in Fiji in the period beginning on 28 September 1987 and ending on 24 July 1990 is to be taken as having become a citizen of Fiji at the date of birth;
  - (b) a person born outside Fiji in the period beginning on 28 September 1987 and ending on 6 October 1987 is to be taken as having become a citizen of Fiji at the date of birth if his or her father was a citizen on that date and was not himself born outside Fiji;
  - (c) a person born in Fiji in the period beginning on 25 July 1990 and ending on the day before the effective date is to be taken as having become a citizen of Fiji at the date of birth if that person would otherwise be stateless.

## **Chapter 7: Bill of Rights**

65. The Constitution should continue to contain a statement of judicially enforceable individual rights and freedoms. It should be called the Bill of Rights.
66. Wherever possible, particular rights and freedoms should be affirmed in positive terms.
67. In view of its function of protecting the rights and freedoms of individuals and groups from undue interference by the state, the Bill of Rights should expressly bind the legislative, executive and judicial branches of government at all levels: central, divisional, district and local, as well as all bodies exercising legislative, executive or judicial powers in relation to any ethnic community, and all persons acting in the performance of the functions of any public office or any public authority.

68. The Bill of Rights should not expressly bind private persons to a greater extent than it does already. However, its terms should not exclude its possible application to other actions of private persons if appropriate. The courts should take account of the developing international jurisprudence on this question.
69. If serious human rights abuses by private persons are found to exist in the Fiji Islands, the Government should address them by ordinary legislation.
70. The Bill of Rights should not conflict with the international human rights standards and should give effect to them where appropriate.
71. The main emphasis should be on clarifying the scope of rights and freedoms already recognised. However, the Constitution should provide that the people retain all other rights and freedoms recognised by the law of the Republic, even though they are not set out in the Bill of Rights.
72. The Bill of Rights should continue to affirm the rights and freedoms of all "persons" (whether citizens or not), within the wide meaning of that term as defined in the Interpretation Act. This definition enables individual rights to be invoked by or for the benefit of groups.
73. In the few cases where rights are conferred on all "citizens" rather than all "persons", the exclusion of non-citizens should be evaluated in the light of the Commission's recommendations that certain categories of foreign citizens should have a constitutional right to enter and reside in Fiji while waiting to qualify for registration as citizens.
74. It should be made clear that the Bill of Rights applies, not only to persons "in Fiji", but also in any circumstance in which the law of the Republic of the Fiji Islands applies to persons outside the Republic.
75. Where the language in which a right or freedom is expressed limits its scope or application, the limitation should be retained only if essential for the purposes of clarity.
76. Where the Bill of Rights permits a right or freedom to be limited by law for a specified purpose, the power to impose limitations for that purpose should be retained only if clearly necessary.
77. Each statement of a right or freedom should continue to specify exhaustively all the purposes for which it can be limited by law. To avoid excessive detail, those purposes should, so far as possible, be described in general terms.
78. Where limitations can be imposed by law for purposes described in broad language, and in any other case where the courts should be required to look in a qualitative way at the nature and extent of limitations for a particular purpose, the Bill of Rights should continue to provide that the law and anything done under it will not be valid unless "reasonably justifiable in a democratic society".
79. That test should not be made stricter, as has been done in some developed countries. However, despite the lower standard of justification required in Fiji, the courts in Fiji should look to the developing jurisprudence of other countries for guidance about the methodology of applying the test in the circumstances of the Republic.
80. The formulation of the test should make it clear that, if a law or something done under it is found to limit a right or freedom, the state has the burden of proving that the limitation is reasonably justifiable in a democratic society.

81. To avoid the risk of misinterpretation, the Bill of Rights should be introduced by a simple statement affirming without description or qualification the rights and freedoms it sets out.
82. Unless otherwise provided for good reason, the Bill of Rights should continue to apply to all the law of Fiji, whether enacted before or after its entry into force. If, in a particular case, there are likely to be substantial problems in giving effect to recommended changes involving an expansion of a right or freedom, the entry into force of the new provision should be expressly deferred for a specified period not exceeding two years, to enable the existing law to be brought into compliance.
83. The responsibilities of the courts to apply and enforce the Bill of Rights should be taken into account in judicial selection and training.
84. Without trespassing on the responsibility of the courts to enforce the Bill of Rights, the Constitution should create a Human Rights Commission with the functions of
  - (a) educating the public about the nature and contents of the Bill of Rights, including its origins in the international instruments and the responsibilities of United Nations bodies and member states in promoting respect for human rights;
  - (b) making recommendations to Government about matters affecting compliance with human rights, including compliance with the international standards and the desirability, on occasions, of seeking an opinion from the Supreme Court on the effect of particular provisions of the Bill of Rights; and
  - (c) exercising such other functions in relation to human rights as may be conferred on the Human Rights Commission by Act. These might include functions under any legislation enacted to deal with serious abuses of human rights by private persons.
85. The Human Rights Commission should consist of three members, of whom one should be the Ombudsman, *ex officio*, and one should be a person who is, or is qualified to be, a judge of the High Court.
86. The Bill of Rights in the 1990 Constitution should be thoroughly revised to take account of the foregoing recommendations, as well as the recommendations on particular rights and freedoms set out below. It should have a clearer structure and be written in a simpler style, enabling it to be read and understood more easily by the people of the Fiji Islands. Consideration should be given to seeking comments on the draft of a new Bill of Rights from a panel of experts inside and outside the Republic, before its adoption by Parliament.
87. The Constitution should affirm in positive terms that everyone has the right to life, without spelling out the content of the right.
88. The present provision qualifying the right to life by permitting the execution of a person sentenced to death for committing a criminal offence should be repealed. The Constitution should prohibit the imposition of the death penalty under the law of the Republic. Section 99(6) should be consequentially amended.
89. Without including provision to that effect in the Constitution, the policy in relation to the commutation of sentences of imprisonment for life or for a term of years should ensure that an offender serves a proportion of the sentence commensurate with the nature of the crime committed.

90. The Constitution should continue to provide that the right to life is not infringed by a person's death as a result of the use of force for the purposes specified in section 5(2) of the 1990 Constitution, if a law permits the use of an amount of force that is reasonably justifiable in the circumstances and the amount of force actually used does not exceed that limit.
91. It should also provide that the right to life is not infringed by the death of a person as a result of "a lawful act in the course of armed conflict", rather than "a lawful act of war".
92. The Constitution should affirm in positive terms, that everyone has the right to personal liberty.
93. To provide certainty, it should continue to list comprehensively the grounds on which a person may be deprived of liberty. The existing grounds should be retained, with the following exceptions:
- (a) Arrest or imprisonment for debt or failure to fulfil contractual obligations should be expressly prohibited.
  - (b) Imprisonment for non-payment of a fine should be prohibited. In default, a sentence of community service should be substituted.
  - (c) Imprisonment for a failure to pay tax or maintenance should be prohibited, except in cases of wilful default by a person who had the means to pay.
  - (d) The provision in section 6(1)(e) authorising a law permitting a person to be deprived of liberty merely on reasonable suspicion of being about to commit a crime should be repealed. A consequential change should be made to the wording of section 6(3)(b).
  - (e) The power to deprive a person of liberty in time of emergency in section 6(7) and the safeguards conferred on such a person by section 17 should be dealt with in a separate provision on emergency powers.
94. The Constitution should require the state to show that a law permitting a person to be deprived of personal liberty on any of the grounds referred to in section 6(1) is reasonably justifiable in a democratic society.
95. The Constitution should continue to recognise all the existing rights of arrested or detained persons, but some should be spelt out or supplemented as follows:
- (a) A person arrested or detained upon reasonable suspicion of having committed a criminal offence should have the right to be informed of the nature of any charges against him. Such a person, if not charged, should have the right to be promptly released.
  - (b) A person who is arrested or detained, or questioned by the police in a coercive situation on suspicion of having committed a criminal offence, as well as a person who has been charged, should have a right to consult a lawyer, and to be informed of that right as soon as it arises, as well as of the right to legal aid, as formulated in paragraph (d) below.
  - (c) A person suspected of having committed a criminal offence who wishes to consult a lawyer should not be questioned, or further questioned, until he or she has had a reasonable opportunity to exercise that right; should be entitled to

consult the lawyer of his or her choice, subject to any reasonable restrictions as a condition of being granted legal aid; and should be afforded prompt and adequate opportunity to consult the lawyer in private, in the place where he or she is being detained or questioned.

- (d) A person who is arrested or detained, or is being questioned by the police in a coercive situation on suspicion of having committed a criminal offence, or has been charged, should have the right to be provided with the services of a lawyer under a scheme for legal aid, if he or she does not have sufficient means to engage a lawyer and substantial injustice would otherwise result.
  - (e) If a person is arrested or detained, the police or other authority holding the person should be required to inform a relative or friend of that person as soon as practicable. A detained person should have the right to reasonable opportunities to receive visits from family members or friends, a religious counsellor or a social worker. He or she should be informed of this right as soon as practicable.
  - (f) A person arrested on the order of a court or on suspicion of having committed a criminal offence should have the right to be brought before a court no later than 48 hours from the time of arrest, or, if that is not reasonably possible, as soon as possible thereafter.
  - (g) Everyone who is arrested or detained should have the right to have the validity of the arrest or detention determined by way of habeas corpus, and to be released if the arrest or detention is not lawful.
  - (h) When a person is first brought before a court after arrest, the court should be required to order his or her release on reasonable terms and conditions pending trial, unless there is just cause for continued detention. Persons ordered to be detained pending trial should, so far as practicable, be kept apart from persons who have been convicted and are serving sentences of imprisonment.
  - (i) Every person arrested, detained or questioned by the police in a coercive situation, on suspicion of having committed a criminal offence, should have the right to refrain from saying anything and to be informed of that right.
  - (j) Every person deprived of liberty should have the right to be treated with humanity and with respect for their inherent dignity. A child who is deprived of liberty should, so far as practicable, be detained separately from adults, unless that is not in the child's best interests.
96. The Constitution should continue to provide that no person shall be held in slavery or servitude or be required to perform forced labour.
97. It should expressly exclude from the definition of forced labour any work reasonably required of a person sentenced to imprisonment, whether or not related to the hygiene or maintenance of the prison.
98. The substance of section 7(3)(a), (c) and (e) should be retained but the power to require the use of labour in an emergency in paragraph (d) should be dealt with in a separate provision on emergency powers.
99. The Constitution should continue to provide that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

100. It should expressly prohibit “disproportionately severe” punishment or other treatment.
101. It should also expressly prohibit scientific or medical experimentation on any person without that person’s informed consent.
102. The Constitution should continue to protect all persons against the compulsory taking of their property by an agency of the state. However, it needs to be clarified that a “taking” is something directed to a particular property or type of property, because the state wishes to use that property itself, or control its use by its owner. A “taking” should not include every circumstance in which the state may become involved in enforcing the general law by measures which may result in depriving a person of property.
103. The Constitution should permit the taking of property only on the following conditions:
- (a) It must be taken only under an empowering law.
  - (b) The acquiring authority must give reasonable notice to the owner and any other persons whose interests are affected of the intention to take the property.
  - (c) The High Court must authorise the taking.
  - (d) The taking must be for a purpose specified in the Constitution.
  - (e) If the taking is authorised, the acquiring authority must pay prompt and adequate compensation.
  - (f) If the acquiring authority is unable to reach agreement with the owner about the amount of compensation payable, the amount must be fixed by the High Court.
  - (g) The acquiring authority must pay the reasonable costs of the owner in connection with the High Court proceedings or any appeal to a higher court.
104. The present provision permitting the state to take property compulsorily on the ground that the taking is necessary or expedient “in the interests of its utilisation in such a manner as to promote the public benefit” should not apply to land. A provision permitting the taking of land for the more limited purpose of a public work or other public amenity should be substituted.
105. The definition of “public purposes” in section 2 of the State Acquisition of Lands Act should be amended to bring it into line with the permitted grounds for a taking of land under the Constitution as amended.
106. As a further safeguard, the Constitution should require the High Court to be satisfied that the particular public good to be served by taking the property in question outweighs any hardship caused to the owner.
107. The grounds on which property may be taken should include the case where a taking is necessary or expedient in the interests of preserving property of national, archaeological, palaeontological, historical, cultural, architectural or scenic value. The right to prompt and adequate compensation should be modified in such cases by requiring the High Court to take account of the need to ensure the preservation of the heritage of the Republic of Fiji at a cost which the nation can afford, without placing an unjust burden on the owner of the property concerned. Section 9(5)(b)(v) should be consequentially repealed.
108. The need for the state to share with the owners of land or customary fishing rights any royalties received from the extraction of minerals from the subsoil of the land or seabed,

and the taking of property in an emergency, should be the subject of separate constitutional provisions which do not form part of the Bill of Rights.

109. Section 9(5)(a)(i) and (ii), and (vii), so far as they relate to laws permitting the temporary holding of property for the purposes of an examination, investigation, trial or inquiry, should become permissible limitations of a separate right to be protected against unreasonable searches or seizures, so far as those laws are shown to be reasonably justifiable in a democratic society.
110. The substance of the remaining provisions of section 9 should be retained, unless they are the product of excessive legal caution about validating laws unconnected with the taking of property or the spelling out of matters of detail which can be left to implementing legislation.
111. All laws limiting the right to protection against the deprivation of property, or administrative action taken under such laws, should be shown to be reasonably justifiable in a democratic society.
112. The Constitution should expressly recognise the right of everyone to freedom from unreasonable searches and seizures.
113. Without affecting the generality of that provision, the Constitution should provide that any search or seizure must be authorised by law. Such a law should provide either for the obtaining of a search warrant on the ground that there is reasonable and probable cause to believe that the search will reveal evidence of the commission of a criminal offence, or, if the law permits search of a person or of property without obtaining a warrant, that law should be one in the interests of defence, public safety, public order, public morality or public health, and should be shown to be reasonably justifiable in a democratic society.
114. The substance of section 10(2)(a), (b),(c) and (d), so far as those provisions do not relate to search or seizure, should become part of a separate provision recognizing the right to privacy.
115. The Constitution should affirm, as a separate right, that everyone has the right to reasonable privacy of personal and family life.
116. A person's right to freedom from interference with his correspondence, at present recognised in section 13(1) as an aspect of the right to freedom of expression, should be regarded as an aspect of this right to privacy. The reference to "correspondence" should be expanded by adding a reference to "communications".
117. A person's right not to be subjected to the entry by others on his premises, at present recognised by section 10(1), should also be regarded as an aspect of the right to privacy.
118. The permitted limitations of a person's right to reasonable privacy of personal and family life should be based on those at present set out in section 10(2) and also in section 13(2), in each case so far as relevant. All laws limiting the right to privacy, or administrative action taken under such laws, should be shown to be reasonably justifiable in a democratic society.
119. The power to authorise "an officer or agent of the government, or of a local authority, or of a body corporate established by law for public purposes" to enter on premises for the specified purposes should be extended to include private persons or corporations supplying public utilities to the premises under contract.
120. Section 11, entitled "Provisions to secure protection of law" should be separated into

two separate sections. The first section should affirm that all persons are equal before the law and have a right to the fair trial of both criminal and civil cases in which they may be involved. It should spell out certain requirements for a fair trial which apply in both criminal and civil cases. The second section should spell out the minimum guarantees required to secure a fair trial in criminal cases.

121. The section applying to all trials should refer expressly to the following essential elements of the right to a fair trial:
  - (a) Everyone who is charged with a criminal offence or is a party to a civil dispute about a legal right or obligation has the right to have the case determined by an appropriate court or other tribunal.
  - (b) The court or tribunal should be established by law and be independent and impartial.
  - (c) The persons concerned should be given a fair hearing within a reasonable time.
122. The hearings of courts and tribunals established by law should be open to the public. The provision that, in civil cases, the parties may agree that the hearing should be held in private refers to private arbitral tribunals and should be repealed. The Constitution should apply only to courts, and to other tribunals established by law.
123. The discretion to exclude the public in both criminal and civil cases should continue to rest with the court or tribunal itself, exercising powers conferred by law for the purposes referred to in section 11(10)(a) and (b), but with the addition of a requirement that the law and anything done under it should be shown to be reasonably justifiable in a democratic society.
124. The parties or other witnesses should have the right to give evidence and be questioned in a language that they can adequately understand and use for the purposes of communication. The defendant in a criminal case, and all the parties in a civil case, should have the right to follow the proceedings in a language that they adequately understand. The right should apply to persons who are unable to understand because their hearing is impaired. It should arise if the persons concerned cannot adequately understand or communicate in the language used in any part of the trial.
125. The Constitution should provide that the services of competent interpreters, including persons able to communicate in sign language, should be provided as required, without cost to the witnesses or parties.
126. The section applying to criminal trials should guarantee to the defendant the following minimum procedural rights:
  - (a) Every person who is charged with a criminal offence should be presumed to be innocent until proved guilty beyond reasonable doubt, or until he or she has pleaded guilty and the plea has been accepted by the court.
  - (b) The Constitution should provide that wrongfully obtained evidence is inadmissible, unless the interests of justice require it to be admitted.
  - (c) Everyone who is charged with a criminal offence should have the right to be informed as soon as reasonably practicable, in writing and in a language that they understand, of the nature of the offence with which they are charged and also of the allegations of fact on which the charge is based, in sufficient detail to be able to answer the charge.



- (d) Every person who is charged with a criminal offence should be given adequate time and opportunities for the preparation of a defence. He or she should have a right of access, in person or through a legal representative, to all statements by witnesses held by the prosecution, whether or not the prosecution plans to call them. There should be no right to be provided with copies.
- (e) The Constitution should continue to provide that everyone has the right to defend themselves in person, or at their own expense by a legal representative of their choice. They should also have the right to be provided with the services of a lawyer under a legal aid scheme if they do not have sufficient means to engage a lawyer and substantial injustice would otherwise result. Defendants should be informed of these rights at the time of being given written notice of the nature and grounds of the charge.
- (f) The substance of section 11(2)(e) and (11)(b) about the right of the defendant or his or her legal representative to examine or cross-examine witnesses should be retained.
- (g) The defendant's right of access to the record under section 11(3) should be retained.
- (h) Every person convicted of a criminal offence should have a right of recourse by way of appeal to, or review by, a higher court.
- (i) The Constitution should continue to provide that the trial must not take place in the absence of defendants, unless the conduct of the defendant makes it impracticable to continue the trial in their presence or the defendants consent to the trial in their absence, but the failure to appear of persons charged with an offence punishable by imprisonment should not be taken as consent to the trial taking place in their absence.
- (j) The Constitution should retain the substance of the provision in section 11(4) that a person may not be convicted of a criminal offence if the conduct was not an offence at the time it was committed, or be punished by a more severe penalty than that applying at the time of its commission. If the penalty is reduced between the time of the commission of the offence and the time at which offenders are sentenced, they should have the benefit of the lesser penalty.
- (k) The Constitution should retain the substance of the provision in section 11(5) that prevents a person being tried more than once for a criminal offence arising out of the same conduct. However, the Constitution should make it clear that the prosecution cannot appeal against an acquittal, except for the purpose of clarifying the law for the future without affecting the outcome of the particular case.
- (l) The substance of the provision in section 11(6) which provides that no person shall be tried for a criminal offence if it is shown that a competent authority has granted him a pardon for that offence should be retained.
- (m) The substance of section 11(7) which provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial should be retained.

- (n) The Constitution should require a child taking part in a criminal trial, either as defendant or as a witness, to be treated in a manner which takes the child's age into account.
127. Instead of regarding freedom of thought and of religion as aspects of freedom of conscience, the Constitution should treat each aspect separately. It should positively affirm that everyone has the right to freedom of religion, conscience, thought and belief, including the freedom to change their religion or beliefs.
128. The Constitution should continue to recognise, but separately from the individual freedoms just mentioned, the freedom of everyone, either alone or in community with others, and both in public and in private, to manifest and propagate their religion or belief through worship, teaching, practice and observance.
129. It should recognise the subsidiary right of any community or group maintaining an educational or training institution to hold religious observances, or to provide religious instruction as part of any education or training they provide, whether or not that institution is wholly or partly funded by the state, and the associated right of young persons not to be required to receive religious instruction or to participate in religious observances relating to a religion that is not their own.
130. It should also continue to recognise the right of everyone not to be compelled to take an oath contrary to his or her religion or belief or to take an oath in a manner contrary to his or her religion or belief.
131. There should be no power to limit the right to individual freedom of religion, conscience, thought and belief.
132. The freedom of everyone, either alone or in community with others, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance should be subject to limitation by a law, or action taken under a law, for the purpose of protecting the rights and freedoms of other persons, as provided in section 12(6)(b), and also in the interests of public safety, public order, public morality or public health, as provided in section 12(6)(a). The present power to impose limitations in the interests of "defence" should be repealed. In each case the law should be one that can be shown to be reasonably justifiable in a democratic society.
133. The Constitution should recognise a new and separate right, not only of religious communities, but also of ethnic, social, linguistic and other communities, to establish, maintain and manage educational or training institutions.
134. The community or group which establishes such an institution should have the right to manage it, whether or not the cost of maintaining it is partly met by the state.
135. Except so far as may be necessary to maintain the special character of an educational or training institution, it should be open to all qualified students, without discrimination on any ground prohibited by section # (Right to equality under the law and freedom from discrimination), on such conditions as may be established by law.
136. The right to establish and maintain educational or training institutions should be subject to limitation by law for the purpose of imposing relevant standards or qualifications, but only so far as such laws can be shown to be reasonably justifiable in a democratic society.

137. The Constitution should affirm that everyone has the right to freedom of expression including the freedom to hold opinions, to receive and impart ideas and information without interference and the freedom to seek ideas or information.
138. The Constitution should not make specific provision about the form in which people are free to express themselves.
139. It should be specifically provided that freedom of expression includes freedom of the press, in terms that make it clear that the freedom extends to all media, but subject to the right of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law.
140. The Constitution should continue to require that all laws limiting the right to freedom of expression for a purpose authorised by the Constitution are reasonably justifiable in a democratic society.
141. The existing grounds on which laws may limit the right to freedom of expression for the purpose of protecting the rights and freedoms of others and the public interest should be retained.
142. The Constitution should be amended to permit the freedom of expression of public officers to be limited by law only for the purpose of imposing reasonable restrictions in order to secure their impartial and confidential service.
143. It should be further amended to permit the right of freedom of expression to be limited by laws forbidding improper criticism of traditional offices or institutions only for the purpose of preventing ill-will between different races or communities.
144. The permissible limitations of the right to freedom of expression should be expressed by a provision on the following lines:
- A law, or an executive or administrative action under the authority of a law, may limit the right to freedom of expression
- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the reputations, privacy, or rights and freedoms of other persons, preventing the disclosure of information received in confidence, or improper attacks on the dignity of respected offices or institutions in a manner likely to promote ill will between different races or communities, maintaining the authority and independence of the courts, imposing reasonable restrictions on public officers in order to secure their impartial and confidential service or regulating the technical administration of communications;
- but only to the extent that the limitation is shown to be reasonably justifiable in a democratic society.
145. Freedom of assembly and freedom of association should no longer be linked for the purpose of affording them constitutional protection.
146. The Constitution should positively affirm that everyone has the right to freedom of peaceful assembly.

147. It should continue to confer a power to limit the right to freedom of peaceful assembly by a law, or administrative action under its authority, in the interests of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of others, if the law or the action taken under it can be shown to be reasonably justifiable in a democratic society.
148. The existing laws imposing such limitations in the interests of public safety and public order should be reviewed, with a view to removing the power to prohibit an assembly in advance, on the grounds of public order. The need for a prior permit should be limited to assemblies in a public place. The only purpose of such a permit should be the imposition of reasonable conditions as to the time and place of the assembly, in order to protect the interests of other members of the public.
149. The Constitution should be amended to permit the right to freedom of peaceful assembly to be limited by laws imposing reasonable restrictions on public officers only for the purpose of securing their impartial service.
150. The Constitution should affirm in positive terms that everyone has the right to freedom of association. The right to associate should be described as being "for political, economic, labour, cultural, sports or other purposes".
151. The right to form or belong to trade unions or other associations for the protection of a person's interests, already recognised as an aspect of the right to freedom of association, should become part of a separate right to organise and to bargain collectively.
152. The Constitution should continue to confer a power to limit the right to freedom of association by a law, or administrative action under its authority, in the interests of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of others, if the law or the action under it can be shown to be reasonably justifiable in a democratic society.
153. The power to impose restrictions on the right of public officers to freedom of association under section 14(2)(c) should be amended to permit the imposition only of such reasonable restrictions as are necessary to secure their impartial service.
154. The Constitution should recognise a separate right to organise and bargain collectively. The new right should continue to affirm that the right of everyone to freedom of association includes the right of everyone to form or join trade unions or other associations for the protection of their interests, whether as a worker or an employer.
155. The Constitution should recognise that everyone has the right to fair labour practices.
156. It should also recognise the right of both workers and employers to organise and to bargain collectively.
157. The Constitution should confer in respect of the new right the same powers to limit it by a law, or administrative action under the authority of a law, as already apply in respect of the right to freedom of association. Limitations should be permitted in the interests of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of others, if the law or the action taken under it can be shown to be reasonably justifiable in a democratic society.
158. The Constitution should also permit the limitation of the right for the purpose of imposing reasonable restrictions on members of the armed forces or the police force.

159. Under the heading of “Right to freedom of movement”, the Constitution should affirm the following rights:
- (1) Every citizen of the Republic of the Fiji Islands has the right to enter and reside in the Republic, and the right not to be expelled from the Republic.
  - (2) Every citizen and every other person lawfully in the Republic of the Fiji Islands has the right to move freely throughout the Republic and the right to leave the Republic.
  - (3) Every citizen, and every other person who has been granted a right to reside in the Republic of the Fiji Islands has the right to reside in any part of the Republic.
  - (4) Every person who is not a citizen of the Republic of the Fiji Islands but is lawfully in the Republic has a right not to be expelled from the Republic except under a decision taken on grounds prescribed by law.
160. The rights of citizens in paragraph (1) should be capable of being limited by law only for the purposes of permitting their extradition, or the removal of children who have been abducted from another country, for the purpose of restoring them to the lawful custody of a parent or guardian. In each case the removal should require the order of a court. The power of removal for these purposes should apply to non-citizens as well as citizens. The power to remove a person to serve a sentence of imprisonment in another country should apply only to non-citizens. With amendments to give effect to these recommendations, the substance of section 15(3)(g) should be retained.
161. The substance of section 15(2), permitting restrictions on any aspect of a person’s freedom of movement if that person is lawfully detained, should be retained.
162. The substance of section 12(3)(e) which permits the right of freedom of movement to be limited, so far as may be necessary to give effect to restrictions imposed under the law of the Republic on the acquisition or use by any person of any property in Fiji, should be retained, but its purpose should be made clearer.
163. Section 15(3)(a), which permits restrictions to be imposed by or under a law on the freedom of any individual person to move freely throughout Fiji, to reside in any part of Fiji or to leave Fiji, if the restriction is reasonably required in the interests of defence, public safety or public order, should be repealed.
164. The Constitution should retain the power conferred by section 12(3)(b) to impose by or under a law restrictions on the right to move freely throughout Fiji, to reside in any part of Fiji or to leave Fiji of persons generally, or any class of persons, whether citizens or not, in the interests of defence, public safety and public order, public morality or public health, if the law can be shown to be reasonably justifiable in a democratic society.
165. The purposes for which such restrictions may be imposed should include the protection of the economy, ecology or distinctive culture of a particular area.
166. As a way of challenging the *policy* of a restriction, rather than its *legality* (which can be challenged in the courts), the Constitution should include a requirement to set up a tribunal of the kind provided for in section 15(4) at the request of a person whose freedom of movement has been restricted as a member of a class to which the restriction applies. The proposed Judicial Service Commission, rather than the Chief Justice, should be empowered to appoint its members.

167. In view of the recommendation that a non-citizen should have no constitutional right to enter Fiji, the only special power required to deal with non-citizens is a power to make laws permitting their expulsion from Fiji on prescribed grounds. Section 15(3)(d) should be amended accordingly.
168. Section 15(3)(c), authorising laws restricting the freedom of movement within Fiji or the freedom to leave Fiji of any person, either to ensure that person's appearance before a court at a later date for trial or other proceedings, or in consequence of that person being found guilty of a criminal offence, should be retained.
169. The Constitution should retain the substance of section 15(3)(h), allowing the making of a law under which a person's right to leave Fiji may be restricted if reasonably required to secure the fulfilment of any obligation imposed on that person by law, so long as the enabling law and the action taken under it can be shown to be reasonably justifiable in a democratic society. The power to prevent a person who owes unpaid tax or maintenance from leaving Fiji should be limited to the case where there has been wilful default by a person who had the means to pay and an order restricting that person's freedom to leave Fiji has been made by a court.
170. Section 15(3)(f) should be amended to permit laws imposing restrictions on the freedom of movement of public officers only for the purpose of imposing and enforcing reasonable terms and conditions of their employment.
171. The Constitution should affirm that all persons are equal under the law. It should continue to provide that they have a right to freedom from discrimination on any ground prohibited by the Constitution.
172. The Constitution should retain the elements of the present test of what is discriminatory, in section 16(1) and (2), but should express it more simply and clearly.
173. The right to equality and freedom from discrimination on a prohibited ground should apply to the rights conferred by the Bill of Rights itself and to the application of all other provisions of the Constitution, unless, in the particular case, there is good reason expressly to exclude its application. The present introductory words in section 16(1), making the right subject to all other provisions of the Constitution, should be repealed.
174. The Constitution should continue to prohibit discrimination on the grounds of race, sex, place of origin, political opinions, colour, religion, or creed. The new grounds of ethnic origin, gender, language, economic status, age and disability should be added. The right to freedom from discrimination should not be widened by adding a reference to "any other ground".
175. The Constitution should continue to affirm, but in positive terms, the right of all persons under section 16(7) to freedom from discrimination in respect of access to the specified places of public resort, whether the proprietor of such places is the state or a private person. A right of access without discrimination to public services, such as transport, should be included. The proprietor of a place or service for the use of the general public should be required to provide access for disabled persons to the extent provided by law.
176. The Constitution should retain the substance of section 16(3)(e) validating any law which limits the right to equality under the law and freedom from discrimination on a prohibited ground if, having regard to its nature and to special circumstances pertaining to persons affected by, or excluded from, the law, it is reasonably justifiable in a democratic society. That should be regarded as the "standard" test for limiting the right. The Constitution should permit limitations for specific purposes only if strictly necessary.

177. Section 16(8), which makes it possible to limit certain other rights and freedoms affirmed by the Constitution on a discriminatory basis, should be repealed.
178. Section 16(3)(f), which prohibits laws setting standards or qualifications for office in the service of the state from discriminating expressly on a prohibited ground, but permits them to be discriminatory in their effect, should be repealed.
179. Section 16(4)(b), which prohibits any challenge to the exercise of a discretion relating to the institution, conduct or discontinuance of criminal proceedings, on the ground that it is discriminatory, should be reworded to allow such a challenge but permit the enactment of a law authorising the exercise of the discretion to take account of traditional processes in the Fiji Islands for the settlement of disputes.
180. Section 16(5), validating all law in force before 23 September 1996 and continuously in force ever since, should be repealed. To the extent necessary, the section should separately and specifically protect against inconsistency with the right to freedom from discrimination the legislation entrenched by section 78 of the 1990 Constitution. Any other pre-1966 law basic to the administration of Fiji should be amended to conform with the right to freedom from discrimination or be capable of being upheld as a permitted limitation of that right under the standard test.
181. During a period of two years after their introduction, the Constitution should protect against challenge for inconsistency with the recommended new, prohibited grounds of discrimination; ie, *language, birth, economic status, age and disability*, all law in force immediately before the date on which those grounds were introduced and remaining in force continuously after that date.
182. The substance of section 16(3)(a), barring challenges to Appropriation Bills on the ground that they are discriminatory, should be retained.
183. The substance of section 16(3)(b) should be retained in a revised form permitting the enactment of laws under which persons who are not citizens of the Republic may be subjected to a disability or restriction or entitled to a privilege or advantage not applying to citizens.
184. The substance of section 16(3)(c), permitting different personal law, with respect to such matters as adoption, marriage, divorce, burial, devolution of property on death, to apply to the members of different ethnic communities, should be retained. Such law should be shown to be reasonably justifiable in a democratic society.
185. Section 16 as a whole should be replaced by a provision on the following lines:
- # **Right to equality under the law and freedom from discrimination**
- (1) All persons are equal under the law, and have the right to freedom from discrimination on the ground of race, ethnic origin, sex or gender, birth, place of origin, political opinions, colour, religion, creed, language, economic status, age or disability.
- (2) Accordingly, no law, and no executive or administrative action of the state, may of itself or in its effect, impose disabilities or restrictions, or confer privileges or advantages, on any person or the members of any group on a prohibited ground.

- (3) Everyone has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, eating houses, places of public entertainment, services for the use of the general public such as transport, and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.
- (4) The proprietor of a place or service referred to in subsection (3) is required to facilitate reasonable access for disabled persons to the extent provided by law.
- (5) No law, or administrative action under the authority of a law, shall be held to be inconsistent with the right to freedom from discrimination on the grounds of language, birth, economic status, age or disability, during the period of two years after the date on which discrimination on those grounds was first prohibited by this Constitution, if the law was in force immediately before that date and has remained in force continuously after that date.
- (6) Except as otherwise provided in subsections (8) and (9) or section # (Social Justice and Affirmative Action), a law, or an administrative action under the authority of a law, may limit the right affirmed in this section, for the purpose of imposing a disability or restriction or conferring a privilege or advantage on a person or group on a prohibited ground, but only if, having regard to its nature and to special circumstances pertaining to the person or group, the limitation is shown to be reasonably justifiable in a democratic society.
- (7) A law, or administrative action under the authority of a law, is not to be taken as limiting the right affirmed in this section by reason only of the fact that it
  - (a) appropriates the revenues or other funds of the Republic of the Fiji Islands;
  - (b) imposes on persons who are not citizens of the Republic a disability or restriction, or confers on such persons a privilege or advantage, not imposed or conferred on persons who are citizens;
  - (c) permits any person who exercises a discretion vested in that person to institute, conduct, or discontinue civil or criminal proceedings in any court to take account of traditional procedures in the Fiji Islands for the settlement of disputes; or
  - (d) makes provision with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matter as the personal law of any person or the members of any group, but only so far as that law is shown to be reasonably justifiable in a democratic society.



- \* (8) A law, or an administrative action under the authority of a law, may limit the right affirmed in this section, for the purpose of
    - (a) providing for the application of the customs of Fijians, Rotumans or the Banaban community to the holding, use, transmission, or distribution of the produce or proceeds of land or fishing rights, or to the entitlement of any person to any chiefly title or rank; or
    - (b) imposing any restriction on the alienation of land or fishing rights held in accordance with Fijian, Rotuman or Banaban custom, or permitting the temporary alienation of such land or fishing rights without the consent of the owners;
  - \* (9) To the extent permitted by subsection (10), a law, or an administrative action under the authority of a law, may limit the right affirmed in this section, for the purpose of providing for
    - (a) the governance of Fijians, the Rotuman community or the Banaban community and of other persons living as members of a Fijian community, the Rotuman community or the Banaban community, or
    - (b) the application to persons referred to in paragraph (a) of Fijian, Rotuman or Banaban custom respectively, in respect of any matter other than those referred to in subsection (8)(a) or (b).
  - \* (10) A limitation for a purpose referred to in subsection (9) is valid only if it
    - (a) accords to every person to whom it applies the right to equality before the law without discrimination on any prohibited ground, other than the race or ethnic origin of that person or members of that community, and
    - (b) does not deny to any such person any other human right or fundamental freedom recognised by law.
- \* Gives effect to recommendations discussed and made in Chapter 17.

- 186. The Constitution should continue to give a person claiming that his or her rights or freedoms under the Bill of Rights have been contravened, or are likely to be contravened, a direct right to apply to the High Court for redress.
- 187. The High Court should continue to have original jurisdiction, and jurisdiction on a reference from a lower court, to determine claims that the Bill of Rights has been contravened. In conferring that jurisdiction, regard should be had to the outcome of the review recommended by the Commission of Inquiry on the Courts of Fiji (1994), about how the jurisdiction of the High Court should be defined.
- 188. The Constitution should continue to allow a lower court to refer a question as to the contravention of the Bill of Rights, arising in a case before it, to the High Court for determination, and require it to do so if either of the parties so requests.

189. The Attorney-General should be given standing to intervene in a case before any court in which a question concerning the Bill of Rights (or other provisions of the Constitution) arises, whether or not some other officer or organ of the state is a party, in order to ensure that the constitutional issues are fully argued. The court should also have the power in those circumstances to join the Attorney-General as a party.
190. The Constitution should not include special provisions about standing or class actions in relation only to cases concerning the enforcement of the Bill of Rights, but should be framed in terms which continue to allow those cases to be disposed of, taking account of any changes in the general law of the Republic on those matters.

#### Chapter 8: Ethnic and Social Justice

191. The Constitution should require the Government to put in place not only affirmative action programmes for the benefit of the Fijian and Rotuman people, but also similar programmes for other ethnic communities, and for women, and for all other disadvantaged citizens or groups in the Republic of the Fiji Islands.
192. The Constitution should include new provisions for this purpose. Sections 18 and 21 should be repealed.
193. The new provisions should treat on exactly the same basis, programmes for affirmative action for the benefit of communities or groups identified by their *race, ethnic origin or gender*, and individuals who need assistance on account of their *economic status, age or disability* - all of which are recommended as prohibited grounds of discrimination under the Bill of Rights.
194. The programmes for the purposes mentioned should be required to be "reasonable and necessary" for securing "effective equality of access" to education and training, land and housing, participation in commerce and all aspects of service of the Republic of the Fiji Islands, at all levels, and to other opportunities, amenities and services essential to an adequate standard of living.
195. The Constitution should authorise the limitation of the right to equality under the law and freedom from discrimination on a prohibited ground for the purpose of putting in place affirmative action and social justice programmes on the condition that each programme is authorised by an Act of Parliament.
196. Such an Act must specify the goals to be achieved by the programme, the persons or groups it is intended to benefit, and the means through which the goals are to be achieved. The Act must also set out the performance measures for judging the efficacy of the programme in achieving its goals, and the criteria for selecting the individuals who will be entitled to the privileges or advantages. The selection criteria must be applied without discrimination on a prohibited ground not relevant to the identity of the benefited group or the application of the selection criteria.
197. The Constitution should lay down monitoring and reporting requirements enabling the Government and Parliament to assess the efficacy of each programme.
198. An Act authorising a particular programme will lapse automatically after 10 years (if it has not sooner been repealed or expired), but the programme may be re-enacted, with or without amendment, unless the benefited persons or groups have demonstrably ceased to be in need of such a programme.

199. The Constitution should provide that no programme may directly or in its effect deprive any person not entitled to its benefits of a position, place in an educational or training institution or right to carry on a business or profession or any other opportunity, amenity or service to which he or she has already become entitled.
200. The Constitution should not reserve particular appointive positions in the service of the state for members of a particular ethnic community. Nor should it specify the proportions in which particular ethnic communities should be represented in the public service or other state services.
201. The Constitution should include a provision that will point to the need to take appropriate affirmative action to improve the qualifications and training of members of particular ethnic communities so as to enlarge the pool of eligible candidates if those communities are found to be under-represented in any aspect of the service of the state, or at any level of that service.
202. The question of whether there is a need to establish affirmative action programmes to equip more women for appointment and promotion in the service of the state should be kept under constant review.
203. Government should explore the possibilities for entering into fruitful partnerships with a range of non-governmental organisations, as a way of implementing effective affirmative action and social justice programmes, with the object of encouraging practical help to be given and accepted freely, across racial lines.
204. The recommended constitutional provisions should be based on the following draft:

**# Social justice and affirmative action**

- (1) The Government of the Republic of the Fiji Islands shall establish programmes which are reasonable and necessary to ensure for the Fijian and Rotuman people and other ethnic communities, and for women as well as men, and for all other disadvantaged citizens or groups of citizens, effective equality of access to
- (a) education and training,
  - (b) land and housing,
  - (c) participation in commerce and all aspects of service of the Republic of the Fiji Islands at all levels, and
  - (d) other opportunities, amenities or services essential to an adequate standard of living.
- (2) A programme for the purposes of this section is valid notwithstanding the fact that it confers privileges or advantages on persons or members of a group on one or more of the grounds on which discrimination is prohibited by section # (*Right to equality under the law and freedom from discrimination*), if the programme complies with subsections (3) and (4).

- (3) The programme must be authorised by an Act which specifies:
  - (a) the goals of the programme and the identity of the persons or groups it is intended to benefit;
  - (b) the means by which those persons or members of the benefited group are to be assisted to achieve the goals;
  - (c) the performance measures for judging the efficacy of the programme in achieving its goals;
  - (d) if the programme is for the benefit of a group, the criteria for the selection of the members of the group who will be entitled to participate in the programme.
- (4) The participants in a programme for the benefit of a group must be selected without discrimination on any ground referred to in section #, other than a ground relevant to their membership of the group or the application of the selection criteria.
- (5) The administering department or other agency must monitor the efficacy of the programme by reference to the specified performance measures. The responsible Minister must make an annual report to Parliament on the results revealed by the monitoring.
- (6) Unless it has sooner expired in accordance with its terms or has been repealed, an Act authorising a programme for the purposes of this section expires on the tenth anniversary of its entry into force, but the programme may be re-enacted, subject to compliance with subsection (2), unless the benefited persons or groups have demonstrably ceased to be in need of such a programme.
- (7) No programme for the purposes of this section shall, of itself or in its effect, deprive any person not entitled to its benefits of any position or seniority in any aspect of the service of the Republic, place in an educational or training institution, scholarship or other financial support, right to carry on any business or profession or to enjoy any other opportunity, amenity or service to which that person has already become, and would otherwise remain, entitled.

## # Definitions

In this Chapter, "service of the Republic of the Fiji Islands" means service in any capacity on appointment by the President, the Cabinet, a Minister, a Commission or any public officer, or by resolution of Parliament or any Committee of Parliament, or by or on behalf of any local authority, whether or not the appointee is remunerated wholly or partly by public money, but does not include service as a member or employee of a body provided for in an Act referred to in section # (*Entrenched legislation*).

## Chapter 9: Institutions of Government

205. The Constitution should provide that the chiefly council, known as the Bose Levu Vakaturaga, shall continue to exist, with the composition, functions and powers provided for in the Constitution.

206. The Bose Levu Vakaturaga should consist of 46 members, made up as follows:

*Ex officio members:* The President;  
The heads of the traditionally recognised confederacies of Kubuna, Burebasaga and Tovata;  
The minister responsible for Fijian affairs;

*Appointed members:* Twenty members selected by the heads of the three confederacies jointly;  
Five members, being persons of wide knowledge and experience in business, the professions, or other fields, nominated by the Chairperson of the Council and confirmed by the BLV as a whole;

*Elected members:* Fourteen members, each of whom shall be separately elected by each Provincial Council;  
One member elected by the Council of Rotuma;  
A person elected by the Rabi Island Council should be invited to attend when matters relating to the Banaban Land Act or the Banaban Settlement Act are under discussion.

207. The terms of appointed and elected members should be three years. There should be no formal qualifications for membership, apart from those of the members to be nominated by the Chairperson. Other aspects of membership should be dealt with as proposed in paragraphs 9.19 - 9.21.

208. The BLV should elect one of its members as Chairperson as the first item of business at its first meeting after the regular election of members by the Provincial Councils. Other aspects of its procedure should be provided for as proposed in paragraphs 9.22 - 9.23.

209. The Constitution should provide that the functions of the Bose Levu Vakaturaga are to advise the Government of the Republic of the Fiji Islands principally on any matter relating to the well-being of the Fijian people but also matters affecting the nation as a whole, whether referred to it by the Minister or the Fijian Affairs Board, or taken up by the Bose Levu Vakaturaga on its own initiative.

210. The Bose Levu Vakaturaga should also have the functions later recommended concerning the nomination of candidates for the office of President, and the approval of Bills altering the entrenched legislation relating to Fijians, Rotumans and the Banaban community, or any other Bill certified by the Attorney-General as affecting Fijian land or customary rights.

211. The Constitution should authorise Parliament to confer additional functions on the Bose Levu Vakaturaga by Act, so far as those functions are consistent with its recommended duty to act independently.

212. The Constitution should provide that the Bose Levu Vakaturaga shall not be subject to the direction or control of any other person or authority in the exercise of its functions.

213. As a facet of its independence from government, arrangements should be made for the Bose Levu Vakaturaga to have reasonable autonomy in matters relating to its secretariat and funding.
214. The Indo-Fijian community should be encouraged to explore informally the possibility of forming a body to bring together its religious and other community leaders on a widely representative basis for the purpose of regular consultations with Government. If such a body proves to be broadly supported, consideration should be given to providing it with a statutory or constitutional base.
215. The Constitution should provide expressly that the President is the Head of State of the Republic of the Fiji Islands.
216. It should continue to give the President the title of Commander-in Chief (which does not confer any powers of actual command).
217. The Constitution should provide expressly that the office of President symbolises the unity of the Republic.
218. The role of the President under the Constitution should continue to parallel the former role of the holder of the office of Governor-General, as proposed in later recommendations.
219. The Constitution should make provision for the office of Vice-President.
220. It should provide that the office of President shall be held by an indigenous Fijian and the office of Vice-President shall be held by a member of another ethnic community.
221. Candidates for each office should be required to be citizens of the Republic who have had a distinguished career in any aspect of national or international life, whether in the public or the private sector, and have the other qualifications required of candidates for election as members of Parliament. However, a person holding another public office should not be required to resign from it before accepting nomination for the office of President or Vice-President, but election to either office should automatically terminate his or her service in any other public capacity.
222. On each occasion when the election of a President is necessary, the Bose Levu Vakaturaga should be required to nominate not fewer than three and not more than five candidates.
223. Each candidate accepting nomination by the Bose Levu Vakaturaga should be required to nominate, as his or her choice of candidate for Vice-President, an eligible person belonging to another community.
224. The Constitution should provide that the members of the Bose Lawa and the Bose e Cake should sit together as an Electoral College for the purpose of electing, as President and Vice-President, one of the pairs of candidates nominated for those offices.
225. The election should be by secret ballot, held without prior debate, and conducted under the preferential system known as the alternative vote, under the general supervision of the Electoral Commission.
226. The President and the Vice-President should hold office for a term of 5 years. Before taking office, they should each take the Oath of Allegiance and an Oath for the due execution of their respective offices. Each should be eligible for election for a second term but not more.

227. The Vice-President should be empowered to discharge all or any of the functions of the office of President whenever the office of President is vacant, or the President is for any reason unable to discharge that function. If neither the President nor the Vice-President is available to discharge a function of the President, it should be performed by the Speaker.
228. If the office of President becomes vacant, the Vice-President will not succeed to that office, but will discharge the functions of the office until a new President and Vice-President are elected.
229. If the office of Vice-President becomes vacant, the President should be required to nominate another eligible person to be Vice-President. The nomination should be required to be confirmed by the positive votes of not less than 51% of the members of the Electoral College taking part in the vote.
230. The Constitution should provide for the removal of the President or Vice-President by the Electoral College, on the grounds of infirmity of body or mind making it impossible to carry out the functions of the office, or gross misconduct in or affecting the performance of the functions of the office. The Prime Minister should continue to have the responsibility of setting the processes for investigation and removal in train, if he or she has reason to believe that either ground may apply.
231. Allegations of gross misconduct should continue to be investigated by a Tribunal and allegations of infirmity should continue to be investigated by a Medical Board, as proposed in paragraphs 9.70 - 9.71. From the time at which a Tribunal or a Medical Board is appointed, the President should be taken as unable to perform the functions of the office.
232. The Prime Minister should be required to decide whether there is good reason to submit the report of the Tribunal or Medical Board to the Electoral College for its consideration. If so, the Electoral College should be free to debate the report. Removal should require the positive vote of three fourths of the members of the Electoral College present and voting.
233. Parliament should be empowered to make provision by Act for any matter incidental to the nomination, election, terms and conditions of office or removal of the President or Vice-President.
234. The Constitution should continue to make provision for a President's Council as a forum in which the President can discuss issues of national importance with a group of distinguished citizens.
235. It should provide that the Council will meet with the President in private and keep its proceedings confidential, unless the President, with the concurrence of the Prime Minister, decides otherwise.
236. The Council should be a standing body consisting of 10 to 15 citizens who have achieved distinction in the professions, commerce, industry, agriculture, cultural activities, social service, religion or the service of the state, but should not include serving members of Parliament or state servants. It should meet as and when convened by the President, but not less than once a year. The appropriation for the Office of the President should include reasonable funding for its operation.

237. The Constitution should maintain the present system under which a government must have the support of a majority in the Bose Lawa. It should do so in the expectation that the proposed changes in the arrangements for the election of the members of the Bose Lawa will encourage the emergence of multi-ethnic parties or coalitions with the necessary support to form a government.
238. The Constitution should continue to require the President, acting in his or her own deliberate judgment, to appoint as Prime Minister the member of the Bose Lawa who appears to the President best able to command the support of the majority of the members of that House. There should be no stipulation about that member's ethnicity.
239. The Constitution should also continue to provide that the President appoints the other members of the Cabinet on the advice of the Prime Minister.
240. The Constitution should not make any express provision about the ethnicity of either the Prime Minister or the other members of the Cabinet.
241. It should be clearly understood that, in exercising the power to appoint a Prime Minister, the President will take account of the electoral support received by the various parties and other relevant factors, including the outcome of negotiations about the formation of a government, the identity of the Prime Minister and the composition of the Cabinet.
242. The constitutional role of the Opposition should be respected for its essential contribution to democratic government. The emergence of multi-ethnic Oppositions, as well as multi-ethnic Governments, should be encouraged.
243. The Constitution should continue to provide for the office of Leader of the Opposition. On the assumption that the provision under which the President chooses and appoints the Leader of the Opposition under section 97 of the 1990 Constitution is generally acceptable, its substance should be retained.
244. The special responsibilities of the Leader of the Opposition should be recognised explicitly by including that office in the list of office-holders whose salaries, allowances and benefits ought to be set through constitutionally prescribed processes.
245. The need for broad agreement with the Opposition in decisions of a constitutional nature should be reflected in those provisions of the Constitution concerned with the appointment of high officers of state and other institutions intended to function independently of government, as well as the special majorities required to amend the Constitution or the entrenched legislation.
246. The Opposition should be represented at ceremonial state occasions. The possibility of achieving a multi-partisan approach to important issues on which it is important to achieve long-term consistency of policy should be explored.
247. A bicameral Parliament should be retained as a way of allowing citizens to be represented in Parliament on a different basis and so providing better opportunities for all interests to be taken into account.
248. The Constitution should provide that there shall be a Parliament for the Republic of the Fiji Islands, consisting of the President, the Bose Lawa and the Bose e Cake.
249. The provision making it clear that the President has no discretion to refuse assent to Bills should be retained.



250. The Bose e Caka should become a mainly elected body in which the 14 provinces should be represented on a basis of equality by members elected by all citizens resident in the province. There should also be an elected member representing Rotuma. In addition, there should be provision for a small number of appointed members to represent communities and groups which would otherwise be under-represented or not represented in Parliament.
251. The Bose Lawa should continue to consist of 70 members.
252. Approximately two-thirds of the seats should no longer be reserved for particular communities but should become open seats, candidates for which should be elected by the voters of all communities.
253. As a transitional measure, approximately one-third of the seats should be reserved for particular communities.
254. In the light of the recommendation that the retention of reserved seats should be transitional, no reserved seats should be allocated to communities or groups at present not separately represented.
255. Citizens of Pacific Island origin should again vote with members of the Fijian community rather than as general voters.
256. Citizens of mixed descent should have the option of regarding themselves as members either of their father's community or their mother's community for voting purposes (but not for any other constitutional purpose, and without any effect on any matter relating to the ownership of land).
257. The President should be empowered, in the exercise of his own deliberate judgment, to appoint six members to the Bose e Caka to represent communities or groups that would otherwise be under-represented or not represented in Parliament.
258. The allocation of reserved seats among communities should be based on population figures but should also take account of historical and other factors that have affected the present and past allocations of such seats.
259. Although the recommended arrangements for the filling of reserved seats restrict to some degree individual freedom to determine personal identity for representation purposes, and may be found to deviate slightly from the principle of equal suffrage when the results of the forthcoming census are known, they should, as a transitional measure, be recognised as being within the "margin of appreciation" that international law allows to states in applying the international human rights standards.
260. The seats in the Bose Lawa should be allocated as follows:

Reserved seats:	Fijians (including Pacific Islanders)	12
	Indo-Fijians	10
	General voters	2
	Rotumans	1
	Open seats:	<u>45</u>
	Total	70.

261. The recommended proportion of open seats to reserved seats in the Bose Lawa should be regarded as the minimum necessary to allow them to act as an encouragement to the development of multi-ethnic politics.
262. The 45 open seats should be filled by voting in 15 three-member heterogeneous constituencies - that is constituencies in which there is a mixed population made up of members of the different ethnic communities.
263. The provinces should no longer be the constituencies for the Fijian reserved seats, but, as already recommended, they should become the basis for representation in the Bose e Cake.
264. The constituency boundaries for all seats in the Bose Lawa should be drawn so as to divide the Fiji Islands into the requisite number of territorial constituencies for each category of seats. As far as possible, each constituency for a reserved seat should contain an equal number of inhabitants belonging to the community whose seat it is. Similarly, each constituency for an open seat should, as far as possible, contain an equal number of inhabitants regardless of their community. The drawing of constituency boundaries should ensure that the inhabitants of every constituency are effectively represented, taking into account geographical features, the boundaries of existing administrative and recognised traditional areas, means of communication and density and mobility of population, and, in the case of the open seats, the criterion referred to in Recommendation 196.
265. All elections of candidates for seats in the Bose Lawa and the Bose e Cake should be held under the preferential system known as the alternative vote.
266. The Bose e Cake should have 35 members, comprising 28 members elected to represent the provinces, one member elected to represent Rotuma and 6 members appointed by the President to represent communities and groups which would otherwise be under-represented or not represented in Parliament. The two members representing each province and the member representing Rotuma should be elected by all voters resident in the province or in Rotuma.
267. To assist the President in exercising the power to appoint 6 persons as members of the Bose e Cake to represent communities or groups who are otherwise under-represented in Parliament, the Electoral Commission, after each general election, should be required to provide the President with an analysis of the composition of both Houses, indicating the gender of their members, and their ethnicity and other relevant characteristics, as far as is known from the information available to it. The President should also be free to consult informally about possible appointments.

#### **Chapter 10: Parliamentary Elections**

268. The details of conducting elections by the preferential system of voting known as the Alternative Vote, should be provided for in an Electoral Act. Among other things, that Act should make provision for the following matters:
  - (a) In elections for the 3-member open seats in the Bose Lawa, the first, second and third preferences given to each candidate should be added together, before the candidate with the lowest number of votes is eliminated.
  - (b) Votes should be treated as formal if voters express preferences for at least 75% of the candidates.

- (c) There should be rules for preserving the validity of the ballot paper, so far as possible, even if candidates fail to number preferences in the correct numerical sequence.
  - (d) If the requisite number of candidates has not reached the quota when all the preferences have been distributed, those with the highest number of votes should be deemed elected.
  - (e) In the elections for all seats, an "above the line / below the line" ballot paper should be used. In the top part of the ballot paper voters should be given the opportunity to vote on a "ticket" basis, indicating support for the candidates in an order of preference registered by a party, coalition of parties or independent candidate. If the voter wishes to indicate a different order of preferences, he or she should be free to do so by putting numbers beside the names of the candidates in the bottom part of the paper.
  - (f) The Electoral Act should require the Electoral Commission to ensure that voters are given full information about the consequences of choosing a particular ticket.
  - (g) The Act should also provide that, if a ballot paper is marked both above and below the line, it should not for that reason alone, be treated as informal. If the preferences indicated below the line are otherwise formal, they should be regarded as the expression of the voter's intentions and counted accordingly. If, however, the preferences below the line are themselves informal, the vote for the party ticket, if formal, should be treated as expressing the voter's choice.
269. In applying the criteria for the determination of constituency boundaries for seats in the Bose Lawa set out in Recommendation 264, the distribution of members of communities, when relevant, should be determined by reference to the classification of the inhabitants of the Fiji Islands for census purposes as Fijians or Pacific Islanders, Indo-Fijians, Rotumans, and persons not belonging to any of those ethnic communities.
270. The boundaries of the provincial constituencies in the Bose e Cake should be the provincial boundaries prescribed under the Fijian Affairs Act. The boundaries of the Rotuma constituency should be those referred to in the definition of "Rotuma" in the Rotuma Act.
271. The task of determining the boundaries of constituencies for the election of members of the Bose Lawa should continue to be carried out by a Constituency Boundaries Commission. The Constitution should require the Constituency Boundaries Commission to determine the initial boundaries of all constituencies.
272. The Constitution should require the Constituency Boundaries Commission, in the year following each census, to review the boundaries of all constituencies and decide whether or not they require revision to take account of changes in the distribution of the population as a whole or of the members of any community. If so, it should redetermine the constituency boundaries accordingly. The Constituency Boundaries Commission should be empowered to review and redetermine all or any constituency boundaries at any other time, if it has reason to think that such a review and revision might be desirable on the grounds mentioned.

273. After the Constituency Boundaries Commission has reviewed constituency boundaries on any occasion, it should be required to report its findings to Parliament with an explanation of the reasons why it has decided either to redetermine boundaries, or not to do so.
274. The procedures to be followed by the Constituency Boundaries Commission should be prescribed by Act. Among other things, the Act should require the Constituency Boundaries Commission to give notice of its proposed determinations and hear objections before making a final determination.
275. The Constituency Boundaries Commission's determinations of constituency boundaries should continue to be final. Judicial review should be available to test whether it has acted within its powers and in accordance with the prescribed procedures.
276. The Constituency Boundaries Commission should be a standing commission with a membership entirely separate from that of the Electoral Commission. It should consist of three members holding office for terms of three years. The Chairperson should be a person who is, or is qualified to be, a judge of a superior court in the Fiji Islands, and should be appointed by the President acting in his or her own deliberate judgment, after consultation with both the Prime Minister and the Leader of the Opposition. The two other members should be appointed by the President on the nomination of the Prime Minister and the Leader of the Opposition respectively.
277. No person should be qualified to be a member of the Constituency Boundaries Commission if at any time during the four years preceding appointment he or she has been a member of Parliament or an elected member of the council of any municipality, as defined in the Local Government Act (Cap. 125). A serving member of any state service, including the police and the military forces, should also be disqualified.
278. The constituencies for seats in the Bose Lawa should be named after well-known physical features, like mountains or rivers, or after local flora and fauna, as in the examples supplied.
279. There should be a clear constitutional right to be registered as a voter, as well as to vote.
280. Everyone should have the right to be registered as a voter and to vote at the age of 18 (though a person should still need to attain the age of 21 before becoming a candidate).
281. A person should be disqualified from being or remaining registered as a voter
- (a) if the person has not been resident in the Republic at any time during the preceding two years, unless his or her absence was for a reason prescribed by law; or
  - (b) if the person is serving a sentence of imprisonment for a period of twelve months or more imposed by a court of the Republic of the Fiji Islands, or is under a sentence of death, or is serving a sentence of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in any other country prescribed by law; or
  - (c) if, in accordance with the law of the Republic, the person has been found to be of unsound mind; or
  - (d) if, in accordance with the law of the Republic, the person is disqualified from voting on the ground of a conviction for an offence connected with elections.
282. The Constitution should not require a person to have a period of prior residence in Fiji in order to qualify for registration.

283. In view of the Commission's recommendations that Fiji citizens will lose that citizenship automatically if they become citizens in another country, the ground for disqualification in Section 49(3)(a) of the 1990 Constitution is unnecessary in the context of the right to be registered as a voter, to become a candidate and to be a member of Parliament.
284. The Constitution should make it clear that a registered voter must be entered on a roll for a reserved seat constituency, an open seat constituency and a provincial constituency.
285. The rules about who is entitled to register on a roll for a reserved seat constituency belonging to a particular community should continue to be included in the Constitution, but all other rules about when a person becomes entitled to be registered in one constituency rather than another should be left to legislation.
286. The Electoral Act should provide, among other things, that the right to be entered on the roll for reserved, open seat or provincial constituencies should continue to be based on residence in that constituency. As a general rule, a person should be regarded as having become resident in a constituency only after having resided there for six months, but, to avoid hardship, it should allow bona fide residence to be established on the basis of other evidence.
287. The Constitution should deal only with the right to be entered on a roll for a Fijian reserved seat constituency. It should not define a "Fijian" for any other purpose.
288. A person should be entitled to be registered on the roll for a Fijian reserved seat constituency if descended, through either the male or the female line, from an indigenous inhabitant of the Fiji Islands (other than Rotuma) or any other island in Melanesia, Micronesia or Polynesia.
289. A person should be permitted to register on the roll for an Indo-Fijian reserved seat constituency if descended, through either the male or the female line, from a person who was originally from of the sub-continent of India.
290. A person who is descended, through either the male or the female line, from an indigenous inhabitant of Rotuma should have the right to be entered on the roll for the Rotuman reserved seat constituency.
291. The right to be registered on the roll for a general reserved seat constituency should be open to all persons who are not entitled to register on a roll for a Fijian, Indo-Fijian or Rotuman reserved seat constituency, or, if they have the option of registering on such a roll by reason of descent through the male or the female line, but not both, have chosen not to exercise it.
292. The Constitution should make it clear that no one may be registered on the roll for more than one reserved seat, open seat or provincial constituency.
293. The Constitution should require the Electoral Commission, the Supervisor of Elections and all other officers concerned with the registration of voters to take all steps reasonably necessary to ensure that all persons who are eligible to be registered as voters are in fact so registered.
294. It should be left to Parliament to decide whether it is necessary to impose an obligation on eligible citizens to apply for registration.

295. The Constitution should provide that every person who is a registered voter has the right to vote in the manner prescribed by law in every election in a constituency on the roll for which that person is registered, unless that person is disqualified from voting on the grounds provided in the Constitution.
296. The Electoral Commission and the Supervisor of Elections should make every effort, with the help of modern technology, to ensure that registered voters have ample opportunities to cast their votes without undue inconvenience or hardship. It should be left to Parliament to decide whether it is also desirable to impose on registered voters a legal obligation to vote.
297. The Constitution should continue to provide that registered voters are disqualified from voting on any ground which would have disqualified them from remaining registered as a voters, or if, in accordance with the law of the Republic, they are disqualified from voting by reason of responsibilities in connection with the conduct of the election.
298. The Constitution should clearly state that every registered voter who has attained the age of 21 years is eligible to be nominated as a candidate for election as a member of the Bose Lawa or the Bose e Cake, unless that person is disqualified on a ground provided in the Constitution.
299. The Constitution should provide that only a person registered on a roll for a Fijian, Indo-Fijian, Rotuman or general reserved seat constituency is eligible to be nominated as a candidate for a reserved seat of the relevant community. There should, however, be no constitutional requirement that a person can be nominated for a particular constituency only if on the roll for that constituency.
300. The Constitution should provide that all persons holding an office in the service of the state coming within the terms of the present definition of "public office" (which should include the office of the Commander of the Fiji Military Forces) should be treated as having vacated that office immediately before the time at which their signed nomination as a candidate for election as a member of the Bose Lawa or the Bose e Cake is filed. It should also provide that office-holders appointed to the Bose e Cake by the President will be treated as having vacated office immediately before being so appointed.
301. There should be a further provision that persons whose nominations as candidates for election as a member of the Bose Lawa or the Bose e Cake have been filed become disqualified for election to that office if, with their consent, they are appointed to an office in the service of the state.
302. Sitting members of either House of Parliament should be regarded as vacating office as members if they file a nomination as a candidate for another seat, either in the same House or the other House.
303. A person who has held office as a member of the Electoral Commission, the Constituency Boundaries Commission, the Parliamentary Emoluments Commission, or the Constitutional Offices Commission or as Supervisor of Elections should be disqualified from being a candidate for election as a member of Parliament for a period of four years after ceasing to hold that office.
304. The grounds of disqualification should continue to include any ground which would disqualify a person from being or remaining registered as a voter or from voting, and the fact that a person is an undischarged bankrupt.

305. The Constitution should include as a ground of disqualification the fact that the person has any such interest in a contract entered into by the Government of the Republic of the Fiji Islands as may be prescribed by law.
306. The Constitution should also make it clear that a person should be disqualified from being a candidate if any ground for disqualification applies to that person at the time of filing his or her nomination or becomes applicable at any time after that date and before the declaration of the results of the poll.
307. The maximum term of Parliament should be four years from the date of the first sitting of Parliament after a general election. Parliament should be able to extend its life by up to a year during a state of national emergency.
308. The automatic dissolution of Parliament on the expiry of its term or any earlier dissolution by the President acting on the advice of the Prime Minister, should have the effect of dissolving both the Bose Lawa and the Bose e Cake.
309. The Constitution should provide that, not later than 7 days after the day of the dissolution of Parliament, the President, acting on the advice of the Prime Minister, shall issue the writs for the election of members to fill all reserved and open seats in the Bose Lawa and all provincial seats in the Bose e Cake.
310. The Constitution should provide that the last date for filing nominations must be not more than 14 days after the date of the issue of the writs, and that polling must commence not more than 30 days after the last date for filing nominations.
311. The Constitution should provide that no by-election to fill a vacancy need be held if there is less than six months between the date on which the vacancy arises and the date on which Parliament will stand dissolved automatically.
312. The Electoral Commission should continue to be given general responsibility for, and the power to supervise, the registration of voters for the election of members of Parliament and the conduct of the election of the President and Vice-President, and of the members of the Bose Lawa and the elected members of the Bose e Cake. It should continue to have such powers and functions as may be prescribed by law in relation to other elections.
313. The main rules for the registration of voters and the conduct of Presidential and Parliamentary elections should be contained in a comprehensive Electoral Act. The Electoral Commission should have the power to make regulations only in respect of administrative matters. The requirement that proposed electoral legislation should be referred to the Electoral Commission and the Supervisor of Elections for comment should be retained.
314. The Electoral Commission should consist of a Chairperson and four other members, who should hold office for terms of four years. The Chairperson should be a person who is, or is qualified to be, a judge of a superior court of the Republic of the Fiji Islands, and should be appointed by the President, acting in his own deliberate judgment. The four other members should be appointed by the President on the advice of the Prime Minister acting after consultation with the Leader of the Opposition.
315. Sitting members of Parliament, members of the councils of municipalities under the Local Government Act (Cap. 125), candidates for any of those offices nominated with their consent, public officers and local government officers should be disqualified from membership.

316. The Public Service Commission should delegate the power to appoint election officers to the Electoral Commission.
317. In addition to its obligation to make an annual report to the President and Parliament, the Electoral Commission should be empowered to make such a report whenever it considers that matters have arisen which ought to be brought to their attention.
318. The Constitution should provide that, under the general direction of the Electoral Commission, the Supervisor of Elections has administrative responsibility for the registration of voters for the election of members of Parliament, and the conduct of the election of the President and Vice-President, and of the members of the Bose Lawa and the elected members of the Bose e Cake, as well as such other elections as may be prescribed by law. The Supervisor of Elections should be appointed by the Constitutional Offices Commission recommended below. Otherwise the substance of section 52 of the 1990 Constitution should be retained.
319. The Constitution should provide that the validity of the election of the President and Vice-President, or of any person declared elected as a member of Parliament can be called in question by means of an election petition, on the ground that the election, or the declaration of the result of the election, was unlawful.
320. The Constitution should provide that an election petition can be brought only within a period of six weeks after the declaration of the result of the poll, except in the case of fraud, when time should run from the date of its discovery.
321. Any person entitled to vote in the election to which the petition relates, and any person who was a candidate or who claims to have had the right to be a candidate at that election, and the Solicitor-General should have standing to bring an election petition.
322. The Solicitor-General should have standing to intervene if not a party. The person whose election is complained of should be the respondent, and if the election petition complains of the conduct of a returning officer or the Electoral Commission or the Supervisor of Elections, they should also be respondents.
323. The decision of the High Court on an election petition should continue to be final. An election petition should be the exclusive means of questioning the outcome of an election.
324. There should be a separate provision allowing an interested person to bring a proceeding in the High Court, at any time after a person has been declared elected as a member of Parliament, claiming that the member's seat has become vacant, or, if it is so provided, that the person should cease to perform the functions of a member pending the determination of that question.
325. Any other member of Parliament, and any registered elector, whether or not registered on the roll for the member's constituency, should have standing to bring such a proceeding. The Solicitor-General, if not a party, should also have standing to bring such a proceeding or to intervene. The decision of the High Court should be final. The proceeding should be the exclusive means of challenging the retention of office by a member of Parliament.
326. The Constitution should continue to provide that the seats of all members of Parliament become vacant upon a dissolution of Parliament. The substance of the present provisions that, after Parliament has been dissolved, a Prime Minister or Ministers may be appointed from among persons who were members of Parliament immediately before the dissolution should be retained.



327. The Constitution should continue to provide that the seat of a member becomes vacant if he or she resigns the seat. The resignation should be effective when received by the Speaker or by the President of the Bose e Cake, as the case requires:
328. The Constitution should provide that the seat of a member becomes vacant
- (a) if the member is not, or has ceased to be, a citizen of the Republic of the Fiji Islands;
  - (b) if the member is absent from two consecutive meetings of the Bose Lawa or the Bose e Cake without the permission of the Speaker or the President of the Bose e Cake, as the case requires;
  - (c) if the member is an undischarged bankrupt;
  - (d) if the member is under a sentence of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in the Republic or is under a sentence of death, or of imprisonment for a period of twelve months or more, other than a suspended sentence, imposed by a court in any other country prescribed by law;
  - (e) if, in accordance with the law of the Republic, the person has been found to be of unsound mind;
  - (f) if, in accordance with the law of the Republic, the person is disqualified from voting on the ground of a conviction for an offence connected with elections;
  - (g) if, with the member's consent, he or she is appointed to an office in the service of the state;
  - (h) if, with the member's consent, he or she is nominated as a candidate for election to another seat in Parliament;
  - (i) if the member has any such interest in a contract entered into by the Government of the Republic of the Fiji Islands as may be prescribed by Act;
  - (j) if the member resigns from the registered political party for which he or she was a candidate at the time of election to Parliament, or, by reason of conduct in or relating to the proceedings of Parliament, the member is in breach of the rules concerning party discipline contained in the constitution of such a party, and is for that reason expelled from the party, under the rules about expulsion contained in that constitution, and in conformity with the requirements of natural justice.
329. Paragraph (j) should be qualified by providing that the reference to "proceedings of Parliament", for the purposes of the paragraph, do not include proceedings in a select committee of the Bose Lawa or the Bose e Cake, or a joint select committee of those Houses. It should be supplemented also by a provision that the member's seat becomes vacant when the Speaker or the President of the Bose e Cake, as the case requires, receives a certificate signed by the President and the Secretary of the party, setting out the details of the member's resignation or expulsion from the party. But if the member wishes to challenge the validity of the expulsion in the courts the member should be relieved of parliamentary functions until the expulsion is overturned or that remedy is exhausted, whichever is the later.

## Chapter 11: Functioning of Parliament

330. The Constitution should make the following provisions for sessions of Parliament:
- (a) the President, acting on the advice of the Prime Minister, should be required to appoint, as the date for the commencement of the first session of Parliament after any general election, a date not more than thirty days after the date for the commencement of polling prescribed in the writs.
  - (b) Otherwise, sessions of Parliament should commence at a time appointed by the President on the advice of the Prime Minister, but there should not be an interval of more than six months between the end of one session and the first sitting of Parliament in the next session.
  - (c) During the period when Parliament is not in session, the President should be empowered to call a session in the exercise of his own deliberate judgment if he is so requested in writing by not less than one-quarter of the members of the House of Representatives on the ground that it is necessary for the two Houses of Parliament to consider without delay a matter of public importance. A "matter of public importance" should be regarded as including a no-confidence motion.
331. The Constitution should provide that, if, while Parliament is in session, more than two months have elapsed since the last meeting of the Bose Lawa, the Speaker should be required to call such a meeting for a date not less than two weeks after receiving a written request to do so from not less than one-quarter of the members of the Bose Lawa, on the ground that a specific matter of public importance requires urgent consideration.
332. The substance of section 79(6), allowing the sittings of each House to be held in accordance with its Standing Orders, should be retained.
333. Whenever the office of Speaker is vacant, a Speaker should be elected by the Bose Lawa from among persons who are not members of that House but are qualified to be candidates for election as members of Parliament. The Speaker should be required to take the Oath of Allegiance before entering on the duties of the office.
334. The office of Speaker should become vacant on the day immediately preceding the first day on which the House meets after a general election. It should also become vacant
- (a) if the Speaker resigns from office, or
  - (b) in any circumstance in which, if the Speaker were a member of the House, his or her seat would become vacant, or
  - (c) if the House removes the Speaker from office by a resolution supported by not less than two-thirds of the total number of its members.
335. The Bose Lawa should elect a Deputy Speaker from among its members, other than a Minister or Assistant Minister. The Constitution should provide that, if the Speaker is unable to exercise any of the functions of that office, they may be exercised by the Deputy Speaker.
336. The office of the Deputy Speaker should become vacant on the day immediately preceding the first day on which the House meets after a general election. It should also become vacant if the Deputy Speaker resigns from office, vacates his or her seat in the House, is appointed as a Minister or an Assistant Minister, or is removed from office by a resolution supported by not less than two-thirds of the total number of its members.

337. If neither the Speaker nor the Deputy Speaker is available to preside over a sitting of the House, the Constitution should permit the members of the House to elect one of their number to preside over the sitting.
338. The Constitution should provide that the President of the Bose e Cake should continue to be elected from among persons who are not members of Parliament but the Vice President should be elected from among the members of the Bose e Cake.
339. The provisions concerning election and vacation of the offices of President and Vice-President of the Bose e Cake, and for a member of the Bose e Cake to be elected to preside at a sitting of that House in the absence of both the President and the Vice President of that House should correspond to those applying to the election, vacation of office and absence of the Speaker and Deputy Speaker.
340. No presiding officer in the Bose Lawa or the Bose e Cake should have a casting vote. All questions, other than those in respect of which the Constitution makes a different provision, should be decided by a majority of the votes of the members of the House present and voting.
341. Neither the Speaker nor the President of the Bose e Cake should have a deliberative vote, but the Deputy Speaker and the Vice President of the Bose e Cake, as well as a member of either House elected to preside at a sitting in the absence of any other presiding officer, should be entitled to exercise a deliberative vote.
342. The quorum for the Bose Lawa should continue to be 24 members and the quorum for the Bose e Cake should continue to be 12, including in each case a presiding officer other than the Speaker and the President of the Bose e Cake.
343. The Constitution should continue to empower each House to regulate its own procedure consistently with the Constitution, provided that a vacancy among its members or the participation of a person who is not a member should not invalidate its proceedings, and empower Parliament to make provision for the exercise of the powers of each House and its Committees and for the privileges and immunities of its members.
344. The Constitution should continue to give an independent body the task of reviewing parliamentary emoluments. That body should have the power to gather relevant information and consider submissions, and should be required to set out its recommendations in a report to the Speaker who should table it in Parliament.
345. The Constitution should provide that the salaries, allowances and benefits of those referred to in the provision should be as prescribed by Act.
346. The present Independent Parliamentary Emoluments and Benefits Committee should be replaced by a Parliamentary Emoluments Commission. That body should be a constitutional commission to which the general rules later recommended should apply. It should consist of a Chairperson and two other members, one of whom should be a qualified actuary with at least five years' practical experience. No person whose remuneration is reviewable by the Commission should be qualified to be a member.
347. The members of the Commission should be appointed by the President on the recommendation of a sector Standing Committee of the Bose Lawa responsible for overseeing Administrative Services. That Committee should make its recommendation after considering names placed before it by the Speaker.

348. There should continue to be a Secretary-General to Parliament, a Secretary to the Bose Lawa and a Secretary to the Bose e Cake.
349. The Secretary-General to Parliament should be appointed by the recommended Constitutional Offices Commission after consultation with the Speaker and the President of the Bose e Cake.
350. The Public Service Commission should be required to consult the Speaker and the President of the Bose e Cake as appropriate, before exercising any power in relation to any public officer appointed to the staff of the Secretary-General or of either House.
351. The Constitution should provide that the legislative power of the Republic of the Fiji Islands is vested in Parliament.
352. It should continue to provide that
- (a) the legislative power must be exercised by Act;
  - (b) to become law, a Bill for an Act must be passed by both Houses of Parliament unless the Constitution provides otherwise, and must be assented to by the President; and
  - (c) no Act shall come into operation until it has been published.
353. The Constitution should provide that all Bills must originate in the Bose Lawa.
354. The Constitution, supplemented by the Standing Orders of each House, should continue to provide that Bills, other than Appropriation Bills and other money Bills, urgent Bills, and Bills altering the Constitution or other entrenched legislation, must be passed in accordance with the following procedures:
- (a) Every Bill passed by the Bose Lawa is sent to the Bose e Cake.
  - (b) The Bose e Cake may pass the Bill with or without amendment or may reject the Bill.
  - (c) Where the Bose e Cake amends a Bill, the Bose Lawa considers the amendments. It may agree to them, reject them or agree to them in amended form.
  - (d) If the Bose Lawa does not agree to the amendments, the Bill is then returned to the Bose e Cake, in the form in which it was again passed by the Bose Lawa. The process of consideration by the Bose e Cake is then repeated.
  - (e) If,
    - (i) the Bose Lawa passes a Bill in two successive sessions, and
    - (ii) there is an interval of at least six months between the dates on which it is passed in each session, and
    - (iii) on each occasion the Bose e Cake rejects the Bill, or passes it with amendments to which the Bose Lawa does not agree,
 the Bill shall nevertheless be presented to the President for assent, unless the Bose Lawa resolves otherwise.

355. The provision under which the Bose Lawa can help break a deadlock by suggesting to the Bose e Cake amendments which the Bose Lawa will be taken as having agreed to if they are approved by the Bose e Cake, should be retained. The Standing Orders of both Houses should make provision for the setting up of ad hoc Joint Committees to consider Bills which are not acceptable to the Bose e Cake in their original form. The Joint Committee should endeavour to recommend amendments which would make the Bill acceptable to both Houses.
356. The Bose e Cake should continue to have seven days in which to pass an urgent Bill in its original form or with amendments to which the Bose Lawa agrees. Otherwise, at the expiry of the seven days, the Bill must be presented to the President for assent unless the Bose Lawa resolves otherwise.
357. The role of the Bose e Cake in passing Appropriation Bills and other money Bills and Bills altering the Constitution or other entrenched legislation should be as recommended later.
358. The Standing Orders of the Bose Lawa should establish sector Standing Committees with responsibility for all areas of Government policy and administration.
359. Sector Standing Committees should have
- (a) the duty to scrutinise areas of government activity on a systematic basis, and
  - (b) the legislative function of considering Bills referred to them by Parliament, hearing submissions on them from members of the public and reporting them back to Parliament with any amendments recommended by the Committee.
360. The parliamentary timetable should allow sufficient time for the work of the sector Standing Committees.
361. Their function of scrutinising should allow sector Standing Committees on their own initiative to take up matters within their subject areas. Their scrutiny could include all or any of the following activities:
- examining the estimates of expenditure prepared by departments and other government agencies;
  - financial reviews of departments;
  - reviews of regulations and other subordinate legislation made under the authority of Acts administered by departments;
  - reviews of the performance and current operations of statutory bodies;
  - follow-up and in-depth inquiries into particular matters;
  - reviews of State-owned enterprises;
  - reviews of audit reports and the responses made to them;
  - in-depth policy inquiries.

362. The legislative function of sector Standing Committees should be carried out by providing in Standing Orders that every Bill, other than an Appropriation Bill, stands referred to a sector Standing Committee unless the House has accorded urgency to its passing. The Standing Orders should also require the House to determine the Committee to which a particular Bill should be sent.
363. Consideration should be given to adopting the practice of holding the Second Reading debate before the Bill is referred to a sector Standing Committee, so that members of the Committee will have "an understanding of the mind of the House", before they consider the Bill. Sector Standing Committees should be empowered to recommend amendments that are relevant to the subject-matter of the Bill and consistent with its purposes and objects.
364. Unless there are special reasons for hearing submissions in private, all submissions should be heard in public. Other proceedings of sector Standing Committees should not be open to the public, and should remain confidential until the Committee reports to the House.
365. The members of sector Standing Committees should be appointed at the beginning of a new Parliament. All members of the Bose Lawa who are not Ministers or Assistant Ministers should be members of at least one. The overall membership of sector Standing Committees should reflect the balance of the parties in the House. The Chairperson and the Deputy Chairperson of each Committee should come from opposite sides of the House.
366. The Minister in charge of a Bill, while his or her Bill is being considered, should be permitted to take part in the proceedings of a Committee but not to vote. Ministers should also be encouraged to cooperate with Committees in the exercise of their scrutiny functions.
367. Consideration should be given to the possibility of creating a standing Joint Finance and Expenditure Committee of the Bose Lawa and the Bose e Cake, with wider functions than the present Public Accounts Committee of the Bose Lawa, and perhaps replacing it.
368. The Secretary-General of Parliament should develop a permanent but flexible structure for servicing sector Standing Committees by providing them with their own staff, and access to researchers, policy analysts and experts.

## **Chapter 12: Executive Government**

369. The Constitution should continue to vest the executive authority of the Republic of the Fiji Islands in the President, and provide for its exercise in accordance with the following rules:
- (a) The President, the Cabinet, or a Minister authorised by the Cabinet, as well as a department or other government agency acting under the direction and control of a Minister, should be empowered to exercise the executive authority of the Republic.
  - (b) To the extent that the executive authority of the Republic is exercised by the President, he or she should be required to act only in accordance with the advice of the Cabinet or a Minister, except in those cases where the President is required by the Constitution to act on the advice of, or after consultation with some other person or body, or in the President's own deliberate judgment.

- (c) The Cabinet should be collectively responsible to Parliament for any advice given to the President by the Cabinet or a Minister (except advice given by the Prime Minister about the appointment or responsibilities of Ministers or the dissolution of Parliament) and for all things done by or under the authority of any Minister in the execution of the Minister's office.
370. The Constitution should continue to require the Prime Minister to keep the President informed concerning the general conduct of the government of the Republic, and to supply such other information about any particular matter relating to the conduct of government as the President may request.
371. The Constitution should provide that there shall be a Cabinet, consisting of the Prime Minister and not more than 15 other Ministers appointed from among elected members of Parliament. It should also permit the appointment, from among elected members, of not more than 5 Assistant Ministers. There should be a convention that not more than a quarter of all Ministers and Assistant Ministers should be appointed from among the elected members of the Bose e Cake. The Constitution should no longer require the inclusion in the Cabinet of Ministers responsible for named portfolios.
372. The Constitution should provide that the office of Attorney-General must be filled by a member of the Cabinet qualified to practise as a barrister and solicitor in the Republic of the Fiji Islands. The Attorney-General should continue to be the chief legal adviser to the Government and have the right to take part in the proceedings of either House of Parliament, but to vote only in the House of which he or she is a member.
373. Section 83(4), providing that, if the person holding the office of Attorney-General is for any reason unable to perform the functions of that office, they may be performed by another qualified person, whether or not a member of Parliament, appointed by the President on the advice of the Prime Minister, should be repealed. The Constitution should provide that, in such a case, a Minister may be appointed to act as Attorney-General, whether or not legally qualified, and that the Solicitor-General may exercise any power specifically conferred on the Attorney-General by law, or by virtue of the Attorney-General's appointment to any office or body created by or under a law.
374. With particular reference to the Attorney-General, but with reference also to other members of the Cabinet, the substantive responsibilities of each Ministerial portfolio assigned to a member of the Cabinet, and those of the departments or offices coming under the general direction and control of the Minister holding that portfolio, should be clearly defined.
375. If after a general election, no one party or pre-election coalition is in a position to form a government, the President should, if necessary, facilitate negotiations among political parties about the formation of a coalition government. Unless the Prime Minister in office before the general election has tendered a resignation, the President should obtain the Prime Minister's consent before talking to the leaders of other parties.
376. The political parties should make public the outcome of their negotiations, to the extent that it provides a basis for the appointment of a Prime Minister.
377. Sections 84(2) and (3) should be rewritten to make it clear that, after a general election, a Prime Minister who has not been re-elected to the Bose Lawa, or who clearly no longer commands the support of a majority of the House, must tender a resignation, but remains in office in a caretaker capacity until a new Prime Minister is appointed. It should be

implicit that a Prime Minister who has not clearly lost the support of the majority is entitled to remain in office until Parliament meets. The President should have a residual power to dismiss the Prime Minister only if the Prime Minister is under a constitutional duty to resign but fails to do so.

378. Section 80(1)(b) of the Constitution, authorising the President, acting in his own deliberate judgment, to dissolve Parliament, if the President considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, should be repealed.
379. All members of the Cabinet should continue to take the Oath of Allegiance and the Oath for the due execution of office which binds the members of the Cabinet not to disclose without authority anything that has transpired in or in relation to the proceedings of the Cabinet while in office, or at any time thereafter.
380. The doctrine of Cabinet secrecy should be looked at critically in the light of the principles it serves, so that it can be reconciled with the competing principle that there ought to be freedom of access to official information unless there is good reason to withhold it.
381. The Constitution should continue to provide that a Minister or Assistant Minister may be dismissed by the President on the advice of the Prime Minister.
382. It should provide for the vacation of office by a Minister or Assistant Minister if its holder tenders resignation, or ceases to be a member of Parliament otherwise than by reason of a dissolution, or is not re-elected to Parliament after a general election, or if the Prime Minister vacates office. The Constitution should recognise that the Prime Minister and other members of the Cabinet who tender their resignations in anticipation of a change of Government remain in office until the new Prime Minister is appointed.
383. The substance of section 86(1) providing that the President, acting on the advice of the Prime Minister, may assign to any Minister, including the Prime Minister, responsibility for the conduct of any business of the Government, including responsibility for any department, should be retained. There should be a further provision that the Prime Minister has responsibility for any matter in respect of which no such assignment has been made.
384. The substance of section 87 concerning the performance of the Prime Minister's functions during illness or absence should be retained, apart from the requirement that a Minister performing the functions of the Prime Minister shall be a Fijian. There should be a corresponding provision allowing the President, on the advice of the Prime Minister, to authorise another Minister to perform the functions of a Minister who is ill or absent. The fact that a Minister has been authorised to perform the functions of the Prime Minister or another Minister should be notified in the Gazette.
385. Section 80(1)(a) should be rewritten to provide that, if the Government is defeated on a confidence vote, the Prime Minister must resign or advise a dissolution within prescribed time limits. A Prime Minister who fails to take either step should be dismissed by the President. The President should have no power to dissolve Parliament without the advice of the Prime Minister.
386. The Constitution should make it clear that, if a Prime Minister advises a dissolution, the President must act in accordance with that advice, unless



- (a) the Prime Minister was in office before a general election and his Government is defeated on a vote of no-confidence shortly after Parliament meets following a general election; or
  - (b) the Prime Minister is the leader of a new Government formed after a general election and that Government is defeated shortly after meeting Parliament; or
  - (c) the Prime Minister is displaced from the leadership of the governing party or coalition.
387. The Constitution should recognise that the Minister responsible for a department exercises general direction and control over it and is accountable to Parliament for its work. The Constitution should also state that, subject to the Minister's general direction and control, the Permanent Secretary or other officer in charge of the department is responsible to the Minister for the efficient, effective and economical management of the department.
388. The term "department" should include all government offices other than a disciplined service.
389. The Constitution should continue to constitute the office of Commissioner of Police, and provide that the Police Force is under the Commissioner's command.
390. The Commissioner of Police should be appointed by the Constitutional Offices Commission, after the Commission has consulted the Minister responsible for the Police Force.
391. The Constitution should provide that the Commissioner is responsible for the organisation, maintenance and administration of the Police Force, as well as for determining its use and controlling its operations.
392. In matters pertaining to the organisation, maintenance and administration of the Force, the Commissioner of Police should be under the general direction and control of the Minister responsible for the Police Force. The Commissioner should also be required to act in accordance with such general directions of policy with respect to the maintenance of public safety and public order as may be given by that Minister. In exercising the powers and authorities of the office for the purpose of determining the use and operational control of the Force, the Commissioner of Police should not be subject to the direction or control of any other person or authority.
393. The Constitution should provide that a military force may be raised or maintained in the Fiji Islands only under the authority of an Act. Section 94(1) of the 1990 Constitution, requiring the maintenance of the Republic of Fiji Military Forces, should be repealed.
394. The Constitution should give effect to the following principles:
- (a) The Republic of Fiji Military Forces should be under the control of the Government of the Republic of the Fiji Islands, exercised through the Cabinet and a Minister responsible for those forces;
  - (b) The Republic of Fiji Military Forces should be under the command of a Commander appointed by the President acting in accordance with the advice of the Prime Minister.

395. The purposes for which the armed forces may be raised or maintained should be specified in an Act, rather than the Constitution. Section 94(3) of the Constitution, specifying the present responsibility of the Republic of Fiji Military Forces, should be repealed.
396. Such an Act should set out the circumstances in which, and the machinery through which, decisions may be taken by the Government to use the armed forces or any part of them to perform a public service or to provide assistance to the police.
397. The Act should give members of the armed forces assisting the police, the powers that may be exercised by a member of the police and the protections of a member of the police against criminal and civil liability, but without prejudice to the legal protection they may otherwise acquire by having acted in obedience to a lawful order.
398. The Act should prescribe a procedure for obtaining the authority of a Minister before the armed forces are used to provide a public service or assist the police on a particular occasion.
399. The Constitution should make provision for the office of Solicitor-General.
400. It should provide that no legal proceeding in a civil case in which the state is the plaintiff may be initiated or discontinued and no legal proceeding in a civil case in which the state is the defendant may be defended or settled without the concurrence of the Solicitor-General. In giving or withholding that concurrence, the Solicitor-General should not be subject to the direction or control of any other person or authority.
401. The Constitution should provide that the Solicitor-General must be a person qualified to be appointed as a judge of the High Court.
402. The Solicitor-General should be appointed by the Constitutional Offices Commission. Before making the appointment, that Commission should consult the Attorney-General.
403. The responsibilities of the office of Solicitor-General should be kept distinct from other responsibilities which that office-holder has as, in effect, Permanent Secretary of a Department of Justice or any other department.
404. The Constitution should maintain the substance of the arrangements in section 96 of the 1990 Constitution under which the discretion in respect of prosecutions is vested exclusively in a Director of Public Prosecutions. It should continue to provide that, in the exercise of the powers conferred by the Constitution, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or body.
405. The Director of Public Prosecutions should continue to be a person qualified to be appointed as a judge of the High Court. Appointments to that office should be made by the Constitutional Offices Commission, after consulting the Attorney-General.
406. The substance of section 98 of the 1990 Constitution, which empowers the President to constitute offices for Fiji, make appointments to them and terminate the appointments, subject to the provisions of the Constitution and of any other law, should be retained.

### **Chapter 13: Administration of Justice**

407. The Constitution should vest the judicial power of the Republic of the Fiji Islands in a Supreme Court, a Court of Appeal and a High Court, and such other courts as may be established by law.

408. The court at present called the "Fiji Court of Appeal" should be renamed the "Court of Appeal".
409. The Supreme Court should be retained for the time being. The need for its retention should be considered again when it has heard a sufficient number of cases over a period to allow a study of the number of appeals considered, the grounds for appeal, the outcome on appeal, the time lag involved in hearing a second appeal, and the jurisprudence created by its decisions, as well as the cost involved.
410. The Constitution should constitute the Supreme Court, the Court of Appeal and the High Court. It would be premature to give constitutional recognition to the Magistrates' Courts before they are ready to be given the title and status of District Courts, as contemplated in the *Beattie Commission* report.
411. It should empower Parliament to create other courts by Act.
412. The Constitution should provide that the judicial power of the Republic of the Fiji Islands is independent of the legislative power and the executive authority of the Republic.
413. Judges should be required to take the judicial oath or affirmation in the following slightly revised form:
- I, \_\_\_\_\_, do swear [or solemnly affirm] that I will well and truly serve the Republic of the Fiji Islands, in the office of \_\_\_\_\_. I will in all things uphold the Constitution; and I will do right to all manner of people in accordance with the laws and usages of the Republic, without fear or favour, affection or ill will. So help me God. [To be omitted in affirmation.]
414. The substance of the provisions which prohibit the remuneration and other terms and conditions of a judge from being altered after appointment to the judge's disadvantage, and require judicial salaries to be prescribed by law and charged on the Consolidated Fund, should be retained.
415. In drafting any provision of the Constitution applying to all persons in the service of the state, care should be taken to avoid referring to members of the judiciary in a way that appears to equate them with persons serving in the executive branch of government.
416. The Constitution should continue to provide that a court has only such jurisdiction as is given to it by the Constitution or by law.
417. The High Court should continue to have unlimited original jurisdiction to hear and determine any civil or criminal proceeding and such other jurisdiction and powers as are conferred on it by the Constitution or by law.
418. The jurisdiction conferred on the High Court by the transitional provision contained in section 112 should be conferred directly on the High Court by a new High Court Act. As recommended by the *Beattie Commission*, that Act should not describe the jurisdiction by reference to English law and practice, but should use modern terms. If that cannot be done by the time that it is desired to put new constitutional arrangements in place, the substance of section 112 should be moved to a separate chapter of the Constitution containing transitional provisions.

419. The Constitution should retain the substance of section 113 which gives persons who claim that any provision of the Constitution other than a provision of the Bill of Rights has been contravened, and that his interests are being or are likely to be affected, the right to apply to the High Court for a declaration and relief. In exercising this right, there should be no power to raise issues which are to be determined exclusively under an election petition or a proceeding alleging that a seat of a member of Parliament has become vacant.
420. The substance of section 114(2) and (3) requiring a subordinate court to refer to the High Court any substantial question of law as to the interpretation of any provision of the Constitution other than the Bill of Rights should be retained.
421. The Constitution should confer appellate jurisdiction on the High Court to hear and determine appeals from courts subordinate to it in those cases where a right of appeal is conferred by law.
422. The substance of section 114(1) giving the High Court jurisdiction to supervise any civil or criminal proceedings before any subordinate court should be retained.
423. The Constitution should expressly confer on the Court of Appeal jurisdiction in respect of appeals from decisions of the High Court and such other jurisdiction and powers as are conferred by law. A transitional provision should provide that the renamed court is the same court as the Fiji Court of Appeal.
424. The Constitution should continue to confer on the Supreme Court exclusive jurisdiction to determine finally any appeal from a final decision or order of the Court of Appeal.
425. The question whether the Constitution should continue to articulate the doctrine of precedent as it applies to the Supreme Court should be examined in consultation with the Solicitor-General and the judiciary, as should the power of the Supreme Court to review its own decisions. The Constitution should continue to empower the President of the Supreme Court to make rules of court.
426. The Constitution should continue to empower the President, acting on the advice of the Cabinet or a Minister, to refer questions as to the effect of any provision of the Constitution to the Supreme Court for its opinion. The power should not be over-used.
427. The Constitution should continue to provide that the superior courts have power to punish persons for contempt of court in accordance with the law.
428. The Constitution should provide that appeals lie to the Court of Appeal as of right from final decisions of the High Court
- (a) in the exercise of its original or appellate jurisdiction, on questions as to the interpretation of the Constitution;
  - (b) in the exercise of its original jurisdiction to determine claims that the Bill of Rights or other provisions of the Constitution have been contravened; and
  - (c) in the exercise of its jurisdiction to determine whether a taking of property is constitutional, and if so, the amount of compensation (if any) that is payable.

It should also provide that appeals shall lie, as of right or with leave, in such other cases as may be provided by law, consistently with the Constitution.

429. As recommended by the *Beattie Commission*, the Constitution should provide that appeals from the Court of Appeal to the Supreme Court should not lie as of right. Such appeals should lie only
- (a) by leave of the Court of Appeal on a question certified by that court to be of great general or public importance; and
  - (b) by special leave of the Supreme Court in any criminal or civil matter.
430. The Constitution should provide that the High Court consists of the Chief Justice and not fewer than nine puisne judges or such greater number of puisne judges as Parliament may prescribe.
431. It should provide that there may be not more than two Masters of the High Court, or such greater number as Parliament may prescribe. They should have the jurisdiction and powers conferred by Act.
432. The requirement for a judge who has participated at an earlier stage of a case to disqualify himself or herself from sitting on an appeal should be reinserted in the Constitution as a general principle.
433. As now, the Chief Justice should not be a member of the Court of Appeal. The Constitution should provide that the Court of Appeal consists of:
- (a) a Justice of Appeal who is appointed to be the President of the Court of Appeal;
  - (b) such other Justices of Appeal as are appointed to be members of that Court; and
  - (c) the puisne judges of the High Court.
434. The Constitution should provide that the Supreme Court consists of:
- (a) the Chief Justice, who shall be the President of the Supreme Court;
  - (b) such Justices of the Supreme Court as are appointed to be members of that Court; and
  - (c) the Justices of Appeal, other than the President of the Court of Appeal.
435. The Constitution should provide that a person is not qualified to be appointed as a judge of the High Court unless that person:
- (a) holds, or has held, high judicial office in Fiji or in any other country that may be prescribed by law; or
  - (b) has had not less than seven years' practice as a barrister or solicitor in Fiji or in another country prescribed by law. The term "practice" should be interpreted as discussed in paragraphs 13.66 and 13.67.
436. The Constitution should make provision for a service commission dealing exclusively with the judiciary. It should be called the Judicial Service Commission.
437. The Chief Justice and the Chairperson of the Public Service Commission should be ex officio members of the Judicial Service Commission. The third member should be a person qualified to be a judge of a superior court but not in active practice in the Fiji Islands. That person should be appointed to the Commission by the President on the

advice of the Minister responsible for Justice, after the Minister has obtained the approval of the Select Committee of the Bose Lawa responsible for matters affecting the administration of justice. The term of office should be three years.

438. The third member of the Judicial Service Commission should be subject to the rules applying to members of other service commissions, about
- (a) disqualification for appointment, and
  - (b) appointment to other office in the service of the state, including judicial office, after ceasing to be a member.

The third member should be free to accept nomination as a candidate for election to Parliament.

439. To permit the appointment of a Chief Justice to be initiated by the Judicial Service Commission, the Constitution should provide that a Justice of Appeal or a Justice of the Supreme Court who does not wish to be considered for the office of Chief Justice should be appointed to preside over that Commission for any period during which the office of Chief Justice is vacant. The appointment should be made by the President on the advice of the Minister responsible for Justice.
440. The Constitution should provide that the President shall appoint the Chief Justice, Justices of the Supreme Court, the President of the Court of Appeal and other Justices of Appeal, and puisne Judges and Masters of the High Court, on the recommendation of the Judicial Service Commission, and with the concurrence of the Minister responsible for Justice and the approval of the Select Committee of the Bose Lawa responsible for matters affecting the administration of justice.
441. When the office of Chief Justice is vacant or the Chief Justice is absent or unable to fulfil the functions of the office, an Acting Chief Justice should be appointed by the President on the recommendation of the Judicial Service Commission, and with the concurrence of the Minister responsible for Justice. Corresponding provision should be made for the appointment of acting judges of the High Court.
442. The Constitution should give to the Judicial Service Commission the responsibility of appointing all magistrates and the Central Agricultural Tribunal appointed under the Agricultural Landlord and Tenant Act. Before making the last-mentioned appointment, the Commission should be required to consult the Prime Minister and the Leader of the Opposition.
443. The Constitution should require the Judicial Service Commission to appoint the holders of all other judicial offices for which provision is made by Parliament.
444. The Judicial Service Commission should be given power, by regulation made with the concurrence of the Prime Minister, to assume responsibility for appointing persons who are not strictly judicial officers in those cases where the Public Service Commission has excluded that responsibility under a corresponding mechanism.
445. The Constitution should not require the Judicial Service Commission to obtain the consent of the Prime Minister before recommending a non-citizen for appointment as a judge of a superior court. However, it should be required to obtain that consent before appointing a non-citizen to any other judicial office.

446. The Constitution should provide that, in appointing persons to judicial office, the overriding principle should be the maintainance of the quality of judicial appointments, while seeking in the longer term to ensure that the composition of the judiciary reflects the ethnic and gender balance among citizens as a whole. Section 124(3)(b), (4) and (5) should be repealed.
447. The Constitution should provide as follows:
- (a) The Chief Justice should hold office until the age of 70. It should not be possible to appoint a Chief Justice for a term of years.
  - (b) A Justice of the Supreme Court or a Justice of Appeal, including the President of the Court of Appeal, who is not appointed for one or more sessions of the Court or for a term of years, should hold office until the age of 70.
  - (c) A judge of the High Court, other than the Chief Justice, should hold office until the age of 65.
  - (d) A Chief Justice, Justice of the Supreme Court, Justice of Appeal, including the President of the Court of Appeal, or judge of the High Court, who has held office until reaching the retirement age, like expatriate judges or former judges, should be eligible for appointment as a Justice of the Supreme Court or a Justice of Appeal for one or more sessions of the Court or for a term not exceeding three years, if under the age of 75 years at the date of the appointment.
  - (e) A person should be eligible for appointment as an acting judge of the High Court if under the age of 70 years at the date of the appointment.
  - (f) A person appointed as Acting Chief Justice or as an acting judge of the High Court should vacate office when the holder of the office resumes the duties of the office, or, if the office was vacant, when the person appointed to fill the vacancy takes up office.
448. The Constitution should continue to allow a Judge of the High Court other than the Chief Justice to be appointed for a term of years. The term should be not less than four years and not more than seven years.
449. The retiring age or term of office of magistrates and other judicial officers should be as prescribed by the Constitution or other law.
450. The power to exercise disciplinary control over judges of subordinate courts and other judicial officers appointed by the Judicial Service Commission should be vested exclusively in that Commission.
451. Complaints about the conduct of individual judges of the superior courts should be channeled through the Secretary of the Judicial Service Commission and from that officer to the Chief Justice. There is no need to provide for this in the Constitution.
452. The Constitution should continue to provide that the only grounds for removing a judge of a superior court from office are inability to perform the functions of the office (whether due to infirmity or some other cause) or misbehaviour. If the President, acting on the advice of the Cabinet or a Minister, considers that the question of removing a judge from office on such a ground ought to be investigated, he should be required to constitute a tribunal consisting of not less than three persons who hold or have held high judicial office in Fiji or some other country. The tribunal should be required to inquire into the

matter and report its findings to the President. If it recommends removal, its report should be submitted to Parliament. The President should remove the judge only if each House adopts a resolution to that effect supported by three fourths of its members present and voting.

453. The Constitution should expressly give the Judicial Service Commission the responsibility for arranging study and refresher programmes for members of the judiciary.
454. The administration of the courts should be the responsibility of a separate Courts Department headed by a Courts Administrator. Such a department should remain part of the executive branch of government. The Public Service Commission should have the power to appoint its officers, including court registrars and other staff, but should consider delegating major aspects of that power to the Courts Administrator. The holder of that office could appropriately be appointed as Secretary of the Judicial Service Commission.
455. To the extent that the Public Service Commission itself exercises the responsibility of appointing or promoting members of the Courts Department, court staff or the secretarial staff of judges and magistrates, those responsibilities should be exercised only after consultation with the Courts Administrator and the Chief Justice, President of the Court of Appeal or Chief Magistrate, as appropriate.
456. A Minister should be assigned responsibility for the Courts Department.
457. There is no need to make provision in the Constitution for any of these matters.
458. The substance of section 99(1) of the Constitution codifying the content of the prerogative of mercy should be retained.
459. The Constitution should continue to make provision for a commission to advise the President on the exercise of the prerogative of mercy. The chairperson of the Prerogative of Mercy Commission should be the Minister responsible for Justice, *ex officio*. The other two members should be persons appointed by the President, acting in his own deliberate judgment. The President should be required to act in accordance with the Commission's advice.

#### **Chapter 14: State Services**

460. The Constitution should contain a provision along the following lines:

In recruiting and promoting members of all state services belonging to the executive branch of government, including the public service, the Fiji Police Force and the Republic Fiji Military Forces, and in the management of those services, the factors to be taken into account shall include:

- (a) the need to ensure that government policies can be carried out effectively;
- (b) the need to achieve efficiency and economy in all the state's services;
- (c) the need to make appointments and promotions on the basis of merit;



- (d) the need to provide men and women and the members of all ethnic groups with adequate opportunities for training and advancement;
  - (e) the need for the composition of each service, at all levels, broadly to reflect the ethnic composition of the population, taking account, however, of occupational preferences.
461. It should no longer contain provisions such as those contained in subsections 124(3), (4) and (5) and 127(10), (11) and (12) of the 1990 Constitution.
462. The Constitution should provide that no person or authority exercising a power to appoint any person to any office may appoint a person who is not a Fiji citizen and not already in the service of the State, unless the Prime Minister has agreed that person may be appointed.
463. The Constitution should continue to provide for independent service commissions with responsibility for the appointment, disciplinary control over, and removal of, state servants. It should provide that, subject to the Constitution, in the exercise of its powers, the commissions should not be subject to the direction or control of any other person or authority.
464. The Constitution should provide for:
- a new Constitutional Offices Commission, (the functions, powers and composition of which should be as recommended in the next Chapter);
  - a new Disciplined Services Commission to replace the existing Police Service Commission;
  - a Public Service Commission.
465. Responsibility for the appointment, discipline and removal of members of the Republic of Fiji Military Forces should continue to rest with the Commander, subject to ministerial responsibility for the armed forces.
466. The Constitution should make it clear that Government remains responsible for the structure of state services and, subject to any Act, the general policies involving their management.
467. Apart from the special case of the Judicial Service Commission, the Constitution should provide for the same procedure to be followed for selecting and appointing the chairpersons and members of all of the independent service commissions.
468. The Constitution should continue to provide that the chairperson and members of independent service commissions be appointed by the President. The Minister responsible for the particular commission should nominate a candidate to the appropriate sector standing committee of the Bose Lawa. The committee should have authority only to confirm or reject the Minister's nominations. If a nomination is confirmed, the Minister should advise the President accordingly, but if it is rejected, the Minister would have to nominate another suitable candidate.
469. The tenure of the chairperson and members of independent service commissions should remain three years. Persons who are appointed to fill casual vacancies should be appointed for a full term of three years. Commissioners should be eligible for re-appointment.

470. The Constitution should provide that if the office of chairperson of any service commission is vacant or if the holder is unable to perform the functions of the office, the members may elect one of their number to perform the functions of the chairperson.
471. The Constitution should provide that an acting member may be appointed when a member cannot for any reason perform the functions of his or her office. An acting member should be appointed by the President, acting on the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition.
472. The Constitution should no longer allow the appointment of a person to act as a member of a service commission in the case of a vacancy. Subject to the presence of a quorum, service commissions should continue to be empowered to act despite a vacancy in their membership.
473. The Constitution should no longer reserve any position on a service commission for members of any particular ethnic group and it should no longer contain provisions like those in subsections 128(2) and (6).
474. The Constitution should provide that a person is not qualified to be appointed to be a member of the Constitutional Offices Commission, the Disciplined Services Commission, or the Public Service Commission if he or she is, or, in the immediately preceding three years, has been:
- a member of either House of Parliament or an elected member of any municipal council or other similar body prescribed by Parliament;
  - nominated with his or her consent as a candidate for election as a member of either House of Parliament or any municipal council or other similar body prescribed by Parliament;
  - a national office bearer in any political organisation that sponsors or supports or in the previous 3 years has sponsored or supported a candidate for election to either House of Parliament;
  - a public officer or a local government officer.
475. The Constitution should also disqualify a person who is a member of a service commission, other than the chairperson of the Public Service Commission, from being a member of another service commission at the same time. It should, however, allow the person who is the chairperson of the Public Service Commission also to be the chairperson or a member of the Constitutional Offices Commission or the Disciplined Services Commission.
476. A person who is appointed to any service commission should be disqualified from appointment to any office in any state service for a period of three years after he or she was last the chairperson or a member of a service commission.
477. The Constitution should continue to provide that the Public Service Commission comprise a chairperson and not less than three nor more than five other members appointed in accordance with the procedure outlined in recommendation 468.
478. The Public Service Commission should have constitutional responsibility for appointing, removing and exercise of disciplinary control over, all offices and officers in the state services that are not specifically made the responsibility of some other commission, or other authority by or under the Constitution. The Constitution should provide that the

- Public Service Commission should not have the power to appoint, remove or exercise disciplinary control over the offices and officers that are the responsibility of another service commission, or any in the Fiji Police Force, Republic of Fiji Military Forces, or any naval or air force, or for which other provision is made by or under the Constitution.
479. The Constitution should continue to permit the Public Service Commission to make regulations with the concurrence of the Prime Minister by which any office or class of office is exempted from its constitutional responsibility.
480. Apart from the offices of the Director of Public Prosecutions and the Solicitor-General, the Public Service Commission should have responsibility for all non-judicial offices which are at present the responsibility of the Judicial and Legal Services Commission. These would include the State's legal officers, the heads of departments within the portfolio of the Ministry for Justice and senior officers in the administration of the courts.
481. The Constitution should require the Commission to consult both the Prime Minister and the Leader of the Opposition before appointing an agricultural tribunal.
482. The Constitution should continue to require the Public Service Commission to obtain the concurrence of the Prime Minister before making any appointment to the office of Secretary to the Cabinet, or any office of Permanent Secretary, or head of any government department or ministry.
483. The Constitution should require that the Public Service Commission should obtain the concurrence of the Ombudsman and the Auditor-General before exercising any of its constitutional powers over any office on their staff.
484. The Constitution should continue to require the Public Service Commission to obtain concurrence of the President before exercising any of its constitutional powers over any of the President's personal staff.
485. The Constitution should provide that the Commission should consult the Speaker before exercising any of its constitutional powers over the Secretary to the Bose Lawa and any member of the staff of the Bose Lawa. Similarly, it should be required to consult the President of the Bose e Cake in respect of the offices of Clerk to the Bose e Cake or any other member of the staff of the Bose e Cake.
486. The Constitution should require that all Permanent Secretaries and heads of departments should be consulted prior to any appointment or removal of a member of their staff.
487. The Constitution should continue to vest in the President, acting on the advice of the Prime Minister, power to appoint and remove ambassadors and principal representatives of Fiji to other countries and to international organisations. It should provide that before recommending the appointment of a person who is a state servant to be an ambassador or principal representative, the Prime Minister shall first consult the Public Service Commission.
488. The Constitution should also provide that the power to remove an ambassador or principal representative from office does not include the power to remove a person from the state services, if that person was already a state servant when appointed to be an ambassador or principal representative.
489. The Constitution should no longer empower the Public Service Commission to grant such officers early pensions. To the extent that it may be desirable to provide for pensions, provision should be made in an Act.

490. The Constitution should continue to allow the Prime Minister to prescribe specific state offices requiring residence overseas. Once prescribed, the power to make appointments on transfer between these offices should vest in the Prime Minister. The Constitution should allow this power to be delegated to a minister public officer. The power should be limited to transferring between offices carrying the same salary.
491. The Constitution should continue to allow the Public Service Commission to delegate any of its functions to an individual commissioner or a public officer. It should continue to prohibit any delegation of the powers over agricultural tribunals, the Secretary to Cabinet or any Permanent Secretary, head of department or other comparable officer. It should continue to allow Acts of Parliament to impose limitations on the power to delegate. It should allow the Commission to impose conditions on its delegations.
492. The Public Service Commission should expedite the consideration of the delegation of its powers.
493. The Government should re-examine the statutory functions of the Public Service Commission to see if all or any of these might be more efficiently, effectively or economically exercised either centrally by a Government ministry or by the individual departments and ministries.
494. The Constitution should authorise Parliament to provide by Act for a system of appeals against decisions of the Public Service Commission or any person exercising any of the Commission's powers by delegation. The provision should allow Parliament a discretion to prescribe the body to hear appeals and the types of decisions that may be appealed against.
495. In drafting new statutory provisions for appeals, care must be taken to avoid the difficulties experienced under the system established by the 1974 Public Service Act. State servants should be excluded from membership of the appeals body. Appeals against decisions involving transfers to rural areas should be provided for in a way which does not affect rural services unduly.
496. The Disciplined Services Commission should comprise a chairperson and two other members appointed in accordance with the procedure outlined in recommendation 468.
497. The Disciplined Services Commission should have constitutional responsibility for appointing, removing and exercising disciplinary control over all offices of the prisons service and all police officers above the rank of senior inspector. It should not be responsible for the office of Commissioner of Police.
498. The Constitution should continue to give the Commissioner of Police the responsibility for appointing, removing and disciplining police officers of, or below the rank of, senior inspector. It should provide that the Commissioner cannot remove or reduce the rank of any officer without the concurrence of the Disciplined Services Commission.
499. The Constitution should provide that in the event of any alteration in the ranks of the police force, the Disciplined Services Commission may by order specify the equivalent rank to senior inspector for the purpose of defining the extent of the respective responsibilities of the Commission and the Commissioner of Police.
500. The Disciplined Services Commission should have the power to delegate any of its powers to any member of the Commission. It may also, to the extent that the Prime Minister directs in writing, delegate any of its powers over gazetted officers to the Commissioner of Police.

501. The Constitution should also provide that, as with the Public Service Commission, the power to delegate should be subject to any Act of Parliament.
502. The Disciplined Services Commission should have a similar power to delegate any of its functions over prison officers to an individual commissioner or to the Commissioner of Prisons. This power should be subject to the same limitations as its power to delegate in regard to the police.

#### **Chapter 15: Accountability**

503. The Constitution should contain an Integrity Code containing general, broad standards of conduct for important office-holders.
504. In substance, the Constitution should provide that the President, the Vice-President, all Ministers, all members of Parliament, all constitutional office-holders and such other persons as may be prescribed by Act shall conduct themselves in such a way as not:
- (a) to place themselves in positions in which they have or could have a conflict of interest;
  - (b) to compromise the fair exercise of their public or official functions and duties;
  - (c) to use their office for private gain;
  - (d) to allow their integrity to be called into question; or
  - (e) to endanger or diminish respect for, or confidence in, the integrity of the Government.
505. The Constitution should place a duty on Parliament to provide a more detailed integrity code under an Act .
506. The mechanisms for monitoring, investigating breaches of, and otherwise enforcing, the code must be designed very carefully after a full study of the experience in other countries and should be provided for in the Act.
507. The Constitution should contain a general provision which confers freedom from direction and control on the person or body charged under the Act with investigating or monitoring compliance with the Code. It should also apply other measures which assure independence to other constitutional officeholders.
508. The Act must allow for the Director of Public Prosecutions and the Police to fulfil their respective roles in respect of offences.
509. The provisions of the Act should ensure that important officeholders remain liable to monitoring, investigation and prosecution for offences even after they have left office.
510. The Ombudsman Decree, 1987 should be repealed.
511. The office of Ombudsman should continue to be established by the Constitution.
512. It should continue to provide that the Ombudsman shall not, in the exercise of his or her constitutional functions, be subject to the direction and control of any other person or authority.

513. The Constitution should continue to provide that no proceedings of the Ombudsman in exercise of constitutional functions shall be called in to question in any court of law.
514. The Constitution should state the Ombudsman's functions in clear terms. It should provide that it is a function of the Ombudsman to investigate any decision or recommendation made, or any act done or omitted by any officer or authority (to whom the power to investigate applies), in the exercise of the administrative functions of that officer or authority and affecting any person or body of persons, whether incorporated or not, in his or her or its personal capacity. In substance, it should not allow complaints to be initiated by government bodies which are presently disqualified.
515. The existing requirement that private persons must have suffered injustice as a consequence of an administrative act before their complaint can be investigated should not be retained. The Constitution should allow personal complaints to be investigated if the person or persons are "affected" by an administrative action.
516. It should continue to require that private complaints must be lodged by a person or persons affected, but should allow the Ombudsman a discretion to investigate on the complaint of another if the person or persons affected cannot for any reason act for themselves. Parliament should continue to be authorised by the Constitution to make provision allowing individuals' complaints to be made on their behalf by a member of Parliament.
517. The provisions contained in subsection 135(5), under which the Ombudsman cannot investigate a complaint unless the aggrieved person is (or was at the time of death), resident in Fiji or the complaint relates to action taken in relation to the complainant while he or she was in Fiji or in relation to rights or obligations that accrued or arose in Fiji should be done away with.
518. The Constitution should continue to provide that the Ombudsman may investigate any action taken by an officer or authority in the exercise of administrative functions, if invited to do so by a member of either House of Parliament or on the Ombudsman's own motion. The Constitution should specifically allow investigations to take place on the invitation of a sector standing committee or any other committee of Parliament. It should allow the Ombudsman to report to the person or body at whose invitation an investigation was commenced.
519. The Constitution should continue to require the Ombudsman to find that the action, omission, decision, recommendation or practice investigated was either:
- contrary to law;
  - based wholly or partly on a mistake of law or fact;
  - unreasonably delayed; or
  - otherwise unjust or manifestly unreasonable,
  - before being able to state an opinion and make recommendations.
520. When the Ombudsman makes a finding referred to in the previous recommendation, the Constitution should, in respect of any matter investigated, continue to empower him or her to give the relevant principal officer an opinion:

- that the matter should be given further consideration;
  - that the omission should be rectified;
  - that the decision should be cancelled, reversed or varied;
  - that any practice on which the act, omission, decision or recommendation was based should be altered;
  - that any law on which the act, omission, decision or recommendation was based should be altered;
  - that any law on which the act, omission, decision or recommendation was based should be reconsidered;
  - that reasons should have been given for the decision; or that any other steps should be taken.
521. The Ombudsman should continue to be empowered to request the principal officer of the relevant department or authority to notify the Ombudsman within a specific time of the steps proposed to be taken or which have been taken. The Constitution should also empower the Ombudsman to make a report to both Houses of Parliament, if after a reasonable time, no adequate and appropriate remedial action appears to have been taken. Before so doing, the Ombudsman should be required to consider the comments of the relevant department or authority.
522. The requirement that the Ombudsman must send a copy of his or her opinion and recommendations to the Prime Minister and to any other Minister concerned should be retained in the Constitution.
523. Subject to the next recommendation, in substance, the existing offices and authorities which are made expressly subject to the investigating jurisdiction of the Ombudsman should be retained.
524. The Constitution should make statutory bodies subject to the Ombudsman, but should allow Parliament by Act to exclude a statutory body.
525. The Constitution should continue to allow Parliament to prescribe additional bodies and offices which are to be subject to investigation by the Ombudsman. The wording of the provision should be broad enough to provide for companies which exercise government functions but which may not strictly fall within the existing term "authority or officer".
526. The following persons and authorities should be exempt from investigation by the Ombudsman:
- The Bose Levu Vakaturaga;
  - The President and his personal staff;
  - The President's Council;
  - All constitutional commissions, (including the Native Lands Commission) in the exercise of their constitutional functions and such of their statutory functions as Parliament by Act may prescribe;

- All other persons and authorities in the exercise of appointing, disciplinary, removal or pension powers over state offices;
  - The Native Fisheries Commission;
  - The Director of Public Prosecutions.
527. The Native Land Trust Board, Council of Rotuma and Council of Leaders on Rabi Island should no longer be exempt in respect of the exercise of their administrative functions.
528. The Constitution should continue to give the Ombudsman the absolute discretion to determine whether to initiate, continue or discontinue any investigation. It should also confer the Ombudsman with the discretion to decide whether a complaint has been duly made in accordance with the constitutional requirements.
529. The Constitution should provide that if the person or persons aggrieved has or had a right of appeal, reference or review to a tribunal under statute or a right to take legal proceedings in a court of law, the Ombudsman shall not proceed to investigate their complaint unless satisfied that the person or persons cannot or could not avail themselves of the right or remedy or that a breach of any individual right protected by Chapter 2 of the Constitution may be involved.
530. The Ombudsman's existing discretion to decline to investigate any complaint which he or she considers frivolous or vexatious or trivial, or where he considers that the person aggrieved has insufficient interest in the matter complained of, or where the complaint has been delayed without reasonable cause for more than twelve months should be provided for in an Act.
531. The Constitution should continue to provide that the Ombudsman may not investigate any action which the Prime Minister certifies in writing was taken by a minister acting in his or her own deliberate judgement.
532. The Constitution should continue to give the Ombudsman wide power to require any minister, member or officer of any department or authority or any other person who in the Ombudsman's opinion, is able to do so, to disclose any information or produce any document relevant to any investigation.
533. It should continue to give the Ombudsman the powers of the High Court in relation to the attendance and examination of witnesses and the production of documents.
534. The Constitution should also continue to provide that any law which otherwise prohibits a state servant from disclosing official information does not affect their duty to supply the Ombudsman with any information or document.
535. The Constitution should continue to disallow the state from making, in relation to any document or information required by the Ombudsman, any claim of state privilege which might normally apply in a court of law.
536. The Constitution should authorise Parliament to provide in an Act for the ability of individuals to claim before the Ombudsman any other type of privilege available in a court of law.
537. The Constitution should continue to provide that information and documents relating to the proceedings of the Cabinet or any sub-committee of the Cabinet may be withheld from the Ombudsman following certification by the Secretary to the Cabinet, acting on the advice of the Prime Minister.



538. It should continue to authorise the Attorney-General to give notice to the Ombudsman that it would be contrary to the public interest in relation to defence, external relations or internal security if a specified document or information, or information or documents belonging to a specified class were disclosed. It should provide that in these circumstances those matters cannot be disclosed by the Ombudsman or his or her officers.
539. The Constitution should provide that the Ombudsman has a discretion as to how information is to be obtained and how an investigation is to proceed.
540. It should also provide for persons implicated in a complaint to have a general right to make comments to the Ombudsman on the complaint.
541. The Constitution should no longer provide for the other procedural matters contained in section 136. These should be provided for by Act.
542. The Constitution should continue to require the Ombudsman to make an annual report to the President concerning the discharge of his or her functions, and to require that the report shall be laid before the Bose Lawa and the Bose e Cake.
543. In order to provide necessary flexibility, the Constitution should provide for the existence of at least one office of Ombudsman but expressly allow Parliament to establish other offices of Ombudsman by Act. The Constitution should also provide that, in the event that other offices of Ombudsman are established, Parliament should provide for the designation of one of them to be Chief Ombudsman responsible for the administration of the office and the co-ordination and allocation of the work between the Ombudsmen. The Constitution should also provide that subject to this provision for the Chief Ombudsman, all powers and privileges conferred on the Ombudsman by the Constitution apply equally to each Ombudsman.
544. The President should continue to appoint the Ombudsman. He or she should do so on the recommendation of the Constitutional Offices Commission, with the concurrence of the Prime Minister and the approval of the sector standing committee of the Bose Lawa responsible for matters relating to administrative services.
545. If the office of Ombudsman is vacant or the holder of the office is for any reason unable to perform his or her functions, the Constitution should authorise the President to make an acting appointment on the recommendation of Constitutional Offices Commission and with the concurrence of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition.
546. The Constitution should provide that only a judge of a superior court may be appointed to act as Ombudsman when the office is vacant.
547. The existing disqualifications for appointment should also be retained.
548. The existing provisions that the Ombudsman shall not perform the functions of any other public office and that the Ombudsman may not, without the approval of the Prime Minister, hold any other office of emolument or engage in any occupation for reward outside the duties of the office of Ombudsman should be retained.
549. The Constitution should provide that the Auditor-General, at least once every financial year, shall inspect and audit, and report to Parliament on:

- (a) the public accounts of Fiji;
- (b) the control of public money and property of Fiji;
- (c) all transactions with or concerning public money or property of Fiji.

It should also require the Auditor-General to ascertain whether all transactions concerning public money or property have been authorised by or under the Constitution and any applicable law, and that all expenditure has been applied to the purpose for which it was authorised.

- 550. The provision should be drafted in a way which covers branches, all departments, agencies and instrumentalities of the Government. It should continue to allow statutory bodies to be exempted by Act.
- 551. The Constitution should allow the Auditor-General to have such additional functions and powers as may be prescribed by an Act of Parliament.
- 552. The Constitution should continue to provide that the Auditor-General shall not be subject to the direction or control of any other person or authority.
- 553. It should confer on the Auditor-General and on any other person he or she authorises, access to all records, books, vouchers, documents, cash, stamps, securities, stores or other government property.
- 554. The Constitution should continue to provide that the Auditor-General shall submit every report made by him or her in pursuance of the constitutional functions to the Minister responsible for finance.
- 555. It should, in addition, require the minister to lay the reports before Parliament within thirty days or, if Parliament is then not in session, at its next meeting.
- 556. The Constitution should also require the Minister, if so required in any other special report of the Auditor-General, to lay that report before Parliament within the same period.
- 557. The Auditor-General should be appointed by the President acting on the recommendation of the Constitutional Offices Commission, and with the concurrence of the Minister responsible for finance and the approval of the sector standing committee of the Bose Lawa responsible for public accounts.
- 558. In the event of a vacancy in the office of Auditor-General or the officeholder not being able to perform the office's functions, acting appointments should be made in the same way as a substantive appointment.
- 559. The Constitutional Offices Commission should comprise a chairperson and two other members. Membership should be subject to the general disqualifications we recommend for all service commissions in Chapter 14. The chairperson and members should be appointed in accordance with procedures outlined in that Chapter.
- 560. In addition to responsibility for recommending candidates for appointment as Ombudsman and Auditor-General, and for appointing:
  - The Solicitor-General;
  - The Director of Public Prosecutions;
  - The Secretary-General to Parliament;
  - The Supervisor of Elections; and

- The Commissioner of Police,

the Commission should also appoint :

- The Governor of the Reserve Bank of Fiji.

Before appointing the Governor of the Reserve Bank, the Commission should be required to consult the Minister responsible for finance and the Board of the Reserve Bank.

561. The Constitution should contain a provision establishing the position of Governor of the Reserve Bank. The provision should not provide that this office be a public office. The existing qualifications for and tenure of this office should continue to be provided for under the Reserve Bank Act (Cap. 210).
562. The Reserve Bank of Fiji Act should provide that the Deputy Governor should perform the Governor's functions when the position is vacant or if when the Governor is temporarily unable to perform the functions of that office. If an acting appointment is necessary, the Constitutional Offices Commission should be empowered to appoint a member of the Board with the concurrence of the Minister responsible for finance.
563. The Constitutional Offices Commission should not have disciplinary control over the independent constitutional offices.
564. In substance, the Constitution should provide that an officer appointed by or on the recommendation of the Constitutional Offices Commission can only be removed for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or misbehaviour.
565. The existing tribunal procedure for removing independent officeholders should be retained. However, in expressing the ground of misbehaviour, the Constitution should make a link with the integrity code proposed above.
566. The Constitution should provide that for all constitutional officers, the Constitutional Offices Commission should exercise the powers at present vested in the various service commissions and in the President.
567. Before exercising any power in regard to the removal of the holders of any office other than the office of Secretary-General to Parliament or Governor of the Reserve Bank, the Commission should be required by the Constitution to consult the Prime Minister. For the Director of Public Prosecutions and the Solicitor-General, it should also be required to consult the Attorney-General. Before exercising the power to remove the Ombudsman and the Auditor-General, it should consult the Leader of the Opposition.
568. Before exercising any power to remove the Secretary-General to Parliament from office, the Constitutional Offices Commission should first consult the Speaker and the President of the Bose e Cake.
569. Prior to exercising its powers to remove the Governor of the Reserve Bank, the Commission should be required by the Constitution to consult the Minister responsible for finance and the Board of the Reserve Bank.
570. The Constitutional Offices Commission should not be permitted to delegate any of its powers.

571. The Constitution should provide that the Ombudsman, the Director of Public Prosecutions, the Solicitor-General, the Auditor-General, the Secretary-General to Parliament, the Supervisor of Elections and the Commissioner of Police shall be paid such salaries and allowances as may be prescribed by Parliament.
572. It should provide that the salary and allowances and the terms of office of all constitutional officers within the area of responsibility of the Constitutional Offices Commission may not be altered to their disadvantage after appointment.
573. All constitutional officeholders within the area of responsibility of the Constitutional Offices Commission should be appointed for a fixed term of five years with eligibility for re-appointment.
574. The Constitution should allow the Constitutional Offices Commission, acting after consultation with the Prime Minister and the Minister responsible for finance, to permit the Auditor-General to continue in office for a period not exceeding six months after the expiry of his or her contract.
575. The Constitution should no longer stipulate any retiring age for constitutional officers.
580. The Constitution should continue to give all constitutional commissions and special constitutional tribunals freedom from the direction and control of any other person or authority except as otherwise provided by the Constitution.
581. The Constitution should provide that the salaries and allowances of all commissioners should be prescribed by Act of Parliament. It should also provide that these cannot be altered to a commissioner's disadvantage after appointment.
582. The Constitution should continue to provide that a member of a constitutional commission can only be removed for "inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or misbehaviour".
583. The tribunal procedure presently required for the removal of members of commissions should be retained, subject to changes we propose in the following recommendations.
584. The Constitution should require that the chairperson and at least one other member of a tribunal appointed to advise on the removal of a commissioner should hold or have held high judicial office.
585. The Constitution should provide that in any case involving the removal of any member of a constitutional commission, the President should act in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition.
586. The Official Secrets Act should be replaced with an Official Information Act. The proposed Act should provide that official information should be made available to the public unless there is a good reason to withhold it.
587. The Act should set out clear grounds upon which information may be withheld. These grounds may include:
- national security;
  - public order;
  - economic stability;

- commercial transactions;
- legal privilege;
- individual privacy;
- effective conduct of government business.

588. It should allow for progressive application of the principle to different categories of information held by the Government.
589. With necessary exceptions, the Act should give individuals a legal right to be told and if necessary, have corrected, any personal data held by the Government or its agencies.
590. The Act should vest some person or authority with the function of hearing and resolving complaints from the public about the withholding of official information. On the passage of the Act, a unit or department of the government should be charged with reviewing the practices of Government departments and agencies to ensure that official information becomes available to the public in accordance with the requirements of the proposed Act.
591. Necessary changes must also be made to the other existing statutes and rules. The Public Records Act (Cap. 108) should be immediately reviewed and amended to bring it into line with the new principle of official information. The Act should provide that all official records should be made available to the public after 15 years unless there is a compelling reason to withhold them. It should also provide a system for the timely de-classification of closed records, once the reason for withholding them no longer exists.

#### **Chapter 16: Revenue and Expenditure**

592. The public finance chapter of the Constitution should be re-written to provide for public finance in a simple, non-technical way. The Constitution should state the fundamental principles which should govern public finance in Fiji. It should also provide only those basic procedural and accounting rules which are necessary to allocate clearly among the relevant state institutions, the responsibility for estimating and accounting for revenue and expenditure, and to ensure the disciplined and accountable use of public funds
593. The drafting of new constitutional provisions governing public finance should take place in close consultation with officials of the Ministry of Finance and other officials involved in public sector management.
594. The Constitution should provide that the raising of revenue by the Government, including the imposition of taxation and the raising of loans, and the spending of money by the Government, shall be under the authority and control of Parliament and shall be regulated by an Act.
595. The Constitution should provide that the issue by the Government of any guarantee of the financial liability of any person shall be under the authority and control of Parliament and shall be regulated by an Act.
596. The Constitution should contain a provision requiring the Government to present a national budget to the Bose Lawa and the Bose e Cake before the beginning of each financial year.

597. The Constitution should require the budget to contain estimates of all government revenues and expenses for the year. It should require it to contain any other information that may be required by or under an Act of Parliament. The language of the provision should be flexible enough to permit the introduction of the proposed accrual accounting reforms as well as any other subsequent reforms, in accordance with recognised accounting practices in the public sector.
598. The Constitution should also require annual appropriation bills to be introduced in the Bose Lawa.
599. The Constitution should require appropriation bills, as a minimum, to contain the Government's estimated expenditure for the following year.
600. The Constitution should allow Acts of Parliament to prescribe the level of detail at which estimates are to be specified and to prescribe other matters, including estimates of the year's accrued expenses, which should be contained in appropriation bills.
601. The Constitution should continue to provide for supplementary appropriations in a general way which allows Parliament to approve both unanticipated and unauthorised spending.
602. The Constitution should state that no money of or under the control of the Government shall be spent except as provided by the Constitution or by or under an Act.
603. The Constitution should also state in general terms that all money of, or under the control of, Government shall be dealt with and accounted for in accordance with the law and generally accepted accounting principles in the public sector.
604. The Constitution should continue to provide for a Consolidated Fund into which, subject to any Act of Parliament, all public money shall be paid. It should also provide that no money forming part of the Fund may be spent except
- to meet expenses which are charged on the Fund by the Constitution or by or under an Act of Parliament
  - where spending has been authorised by an Appropriation Act or Supplementary Appropriation Act, or
  - in advance of appropriation as authorised by the Constitution.
605. The Constitution should provide that Acts of Parliament may make provision for all other public funds not forming part of the Consolidated Fund. It should require these to be administered and dealt with in accordance with Acts of Parliament.
606. The Constitution should continue to charge the Consolidated Fund with the salaries of the Judiciary and all independent constitutional office holders and commissioners.
607. All debt charges for which Fiji is liable, as well as all civil service and judicial pension payments due from the Government, should also remain charged on the Fund.
608. The Constitution should provide that any proposals to raise or spend public money may be introduced only in the Bose Lawa.
609. The Constitution should continue to provide that any proposal
- imposing or increasing taxes
  - increasing or imposing charges on public revenue

- authorising or increasing any spending, or
  - adversely affecting any debt due to the Government cannot be proceeded upon in the Bose Lawa without the recommendation of a Minister acting on behalf of the Cabinet.
610. The Constitution should allow Members of the Bose Lawa to propose reductions in taxation, charges and appropriations.
  611. The provisions should be drafted in such a way that the work of the proposed sector standing committees of the Bose Lawa will not be hampered.
  612. The Constitution should continue to provide that the Bose e Cake should have no power to amend appropriation bills and other money bills.
  613. The period for which the Bose e Cake should have the right to consider or delay any appropriation bill should be seven days beginning on the day the bill was sent to that House.
  614. For other money bills, the existing period of twenty-one days should be retained.
  615. After the relevant period has elapsed, the Government should have the right to present an appropriation or other money bill for the President's assent, unless the Bose Lawa has, in the meantime, resolved to reconsider the bill.
  616. The Constitution should no longer provide for any supplementary appropriation to be authorised by a resolution of the Bose Lawa alone. Supplementary spending should be authorised by Supplementary Appropriation Acts to be introduced into both Bose Lawa and the Bose e Cake.
  617. The Bose e Cake should have the right to consider or delay a supplementary appropriation bill for seven days.
  618. Subject to an Act, the Minister responsible for finance should continue to have power, to authorise spending, if the Appropriation Act for any financial year has not come into force by the beginning of the year. However, the provision should limit the total amount which he or she can spend to one-third of the total authorised expenditure of the Government for the previous financial year. Under this section the authority to spend should lapse when the Appropriation Act comes into force.
  619. The Constitution should no longer make express provision for a Contingencies Fund.

## **Chapter 17: Group Rights**

620. Instead of being constituted by the Native Lands Act, the Native Lands Commission should be constituted by the Constitution, with all the protections conferred on other constitutional commissions.
621. The Commission should consist of three members, any two of whom should be permitted to hear and determine a particular matter. They should be appointed by the President on the recommendation of the Bose Levu Vakaturaga. The current system of using assessors should be retained. There should be no provision for ex officio members, and the Minister responsible for Fijian Affairs should no longer have the power to designate a single Commissioner or some other person to hear a dispute.

622. The Constitution should provide that, in the exercise of its powers, the Commission shall not be subject to the direction or control of any other person or authority, except by way of appeal or judicial review.
623. The rules about disqualification for membership of the Commission, or for appointment to public office, or eligibility to be a candidate for election to Parliament within three years of ceasing to hold office as a member, should be those applying to other constitutional commissions.
624. The Secretary of the Commission should be a public officer.
625. The Commission's functions should be those of determining the ownership of native land and the boundaries of parcels, as well as questions of headship. It should not have the power to give opinions or decisions on matters relating to custom, except so far as is necessary to determine those matters.
626. The Constitution should provide that provision for appeals against decisions of the Native Lands Commission on matters concerning either the title to land and its boundaries or on questions of headship may be made by Act. The Native Lands Act should be amended to constitute an Appeals Tribunal for this purpose along the lines of that provided for in section 7. The Appeals Tribunal should continue to consist of three members, but the opportunity should be taken to review the method of appointing them.
627. There should be no right of appeal to the courts on the *merits* of decisions of the Appeals Tribunal. However, the courts should have the power of judicial review in respect of the decisions both of the Native Lands Commission and of the Appeals Tribunal.
628. The Native Lands Act should be consequentially amended so far as is necessary to take account of the constitution of the Native Lands Commission by the Constitution and its status as a constitutional commission.
629. All aspects of the operation in practice of the Native Land Trust Act, "for the benefit of the Fijian owners", as well as the country as a whole, should be kept under constant review within the framework proposed below in relation to all matters affecting agricultural land.
630. The section of the Bill of Rights affirming the right to equality under the law and freedom from discrimination on prohibited grounds, including those of race and ethnic origin, should permit the limitation of that right, by or under a law, for the purpose of imposing restrictions on the alienation of land held in accordance with Fijian custom, or permitting the temporary alienation of such land without the consent of the owners.
631. There should be no comprehensive review of what land is native land or of existing titles or boundaries.
632. The Rotuma Lands Act and the Banaban Lands Act should be protected against the consequences of inconsistency with the Bill of Rights in the same way as the Native Land Trust Act.
633. The following Acts should continue to be protected against amendment by ordinary Act of Parliament, by means of constitutional entrenchment:
- the Fijian Affairs Act;
  - the Fijian Development Fund Act;
  - the Native Lands Act;



the Native Land Trust Act;  
the Rotuma Act;  
the Rotuma Lands Act;  
the Banaban Lands Act;  
the Banaban Settlement Act; and  
the Agricultural Landlord and Tenant Act.

634. The Bose Levu Vakaturaga should have a power to veto any amendment of the entrenched legislation protecting Fijian rights and interests, or the rights and interests of Rotumans or the Banaban community.
635. There should be a steady flow of clear, accurate, well-coordinated, up-to-date and reasonably detailed public information about what Government and the bodies working under its direction are doing, and planning to do, in the sensitive areas concerning the renewal, termination or grant of new ALTA leases of native and State land.
636. Steps should be taken to reach an accord among all political parties and communities in the Fiji Islands on policies relating to the use of land and the renewal or grant of leases for agricultural purposes.
637. The provisions of the Fisheries Act which recognise and protect Fijian customary fishing rights should continue to be protected against amendment by ordinary Act of Parliament under constitutional provisions which give a veto power to the Bose Levu Vakaturaga in respect of Bills affecting Fijian land or customary rights.
638. The Constitution should not permit the state to grant any right to extract minerals from the subsoil unless, as a condition of that right,
- (a) approved measures are taken to prevent environmental damage, and
  - (b) consideration has been given to establishing a fund for the purpose of meeting the cost of further measures necessary to prevent, repair or compensate for any environmental damage that may nevertheless occur.
639. The owners of land or of a registered customary fishing right should be entitled to an equitable share, fixed by law, of royalties received by the state in respect of minerals extracted from the subsoil of their land or the seabed in the area covered by their customary fishing rights. In determining what is an equitable share, account should be taken of
- (a) other benefits which the owners are likely to receive as a result of the exploitation;
  - (b) the risks of environmental damage to the land or fishing rights of the owners;
  - (c) the risks of environmental damage to the land or fishing rights of persons other than the owners;
  - (d) any legal obligation of the state to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;
  - (e) the cost of administering the exploitation right; and
  - (f) the need for the benefits of the exploitation to contribute to general revenue.

640. The Fijian Affairs Act should be consequentially amended to reflect the recommendation for the constitution of the Bose Levu Vakaturaga in the Constitution instead of in the Act.

641. The Constitution should provide that the right to equality under the law and freedom from discrimination on a prohibited ground may be limited by laws providing for the governance of Fijians, the Rotuman community or the Banaban community, and of other persons living as members of a Fijian community, the Rotuman community or the Banaban community, if those laws

(a) do not discriminate against any person on any prohibited ground other than race or ethnic origin, and

(b) do not deny to any person any other human right or fundamental freedom recognised by the Constitution or by law.

Section 16(6) of the 1990 Constitution, validating all regulations made under the Fijian Affairs Act, should be repealed.

642. Consideration should be given to the question whether the governance of Fijian villages, Rotuma and Rabi Island should, in the longer term, continue to be based on a body of law applying to persons identified by their race or ethnic origin, or should instead be based on the concept of local government legislation applying to all persons living within a particular area. That possibility should be borne in mind in making decisions in the meantime about the exercise of the existing powers to make laws applying to Fijians, Rotumans and the Banaban community.

643. The substance of section 100(1) and (2) of the 1990 Constitution, allowing for the application of custom by Act, should be retained, but section 100(3), providing that, until such time as an Act of Parliament otherwise provides, Fijian customary law shall have effect as part of the laws of Fiji, should be repealed.

644. The customary law relating to

(a) the holding, use or transmission of land or fishing rights, or

(b) the distribution of the produce or proceeds of land, fishing rights or minerals, or

(c) the entitlement of any person to a chiefly rank or title

should not be open to challenge, even if it is discriminatory on a prohibited ground. The customary law applying to other matters should be protected against challenge by reason of discrimination on the ground of race or ethnic origin, as long as it does not deny to any person to whom it applies any other fundamental right or freedom, including the right to freedom from discrimination on any other prohibited ground.

645. Section 16(3)(d), protecting all customary law against possible invalidity on the ground that it is inconsistent with the right to freedom from discrimination, should be repealed.

646. Strenuous efforts should be made to improve the way in which the Magistrate's Courts deliver justice in the outer islands and other remote parts of Fiji. Courts should be held more frequently and in a wider range of places.

647. Section 51 of the Magistrates' Courts Act should be amended to provide that hearings may be held in languages other than English, but, to facilitate appeals, the record should continue to be kept in English. Magistrates serving predominantly Fijian areas should be required to be fluent speakers of the Fijian language.

648. Section 122 of the 1990 Constitution, establishing Fijian courts, should be replaced by a provision that the settlement of disputes in accordance with traditional Fijian processes of dispute settlement should be recognised, under conditions prescribed by Act. Such an Act should provide for the following matters:
- (a) Settlements should be a bar only to prosecution for reconcilable offences coming within section 163 of the Criminal Procedure Code, with the exception of domestic violence, as recommended by the *Beattie Commission*.
  - (b) There should be provision for setting aside settlements on the grounds of public policy.
  - (c) Fijian conciliators should be appointed in all the larger villages, to facilitate agreements to use the traditional processes and the settlement itself. They should be persons of standing in the community, should receive training in their duties, should be required to make a record both of the facts and the terms of the settlement, and should be paid a suitable honorarium
  - (d) Initially, the system should apply only to disputes involving Fijians, but, if it is successful, persons who are not Fijians should be permitted to use it. The scheme should be set up by Act of Parliament, not by regulations under the Fijian Affairs Act.
  - (e) The settlement reached should not be directly enforceable in the courts, but a party who claims that it has not been honoured should be able to pursue in the courts, or by complaint to the police, the remedy that would have been available if there had been no traditional settlement. It should be a defence that the terms of the settlement were fulfilled, and that the court action is therefore barred. Even if the action is not barred, reparation already made should be taken into account in the sentence or award of the court.
649. If the parties do not agree to use the traditional method of dispute settlement, the matter should, if necessary, be the subject of criminal or civil proceedings in the ordinary courts.
650. As suggested by the *Beattie Commission*, the people of Rotuma should have the same access to the regular court system as other people in Fiji, specially in more serious cases including the trial of indictable offences. They should be consulted about such a change.
651. In addition, ways should be explored of enabling a court to be held in Rotuma at any time, to deal with minor matters, without waiting for a Magistrate to come from Fiji. The people of Rotuma should also be invited to consider whether there is a traditional system of dispute settlement which could be given recognition, along the lines of the recommended system for recognising traditional Fijian processes for settling disputes.
652. The existing arrangements for a Rabi Island Court and a Banaban Land Court should not be changed.
653. There should be no change in Rotuma's status as an integral part of the Republic of the Fiji Islands as long as that coincides with the freely expressed wish of a majority of the Rotuman people.
654. Rotuma should be given greater autonomy in matters of local concern. The law-making power under the Rotuma Act should be enlarged, so that it is not necessary for all Rotuma Regulations to be confirmed by resolution of Parliament before they become law.

655. In settling the level of funding for Rotuma, the recommended constitutional principle that the interests of all communities must be taken into account and any differences settled by negotiations in good faith should be applied.
656. Consideration should be given to some grant funding on a basis which gives the Rotuma Council the freedom to use the funds in accordance with its own priorities.

#### **Chapter 18: Local Government**

657. The Republic of the Fiji Islands should continue to be a unitary state.
658. The Constitution should not expressly recognise local government or guarantee local government autonomy.
659. No seats on municipal councils should be reserved for any community or group.
660. The Constitution should not provide for advisory councils.
661. The Government should commission a broad and comprehensive review of all local government arrangements in Fiji to be carried out by an independent and broadly representative body. The review should, in light of modern needs, re-examine the organisation, functions and powers of all the existing local government bodies provided by law. The Terms of Reference should include a review of the Local Government Act (Cap. 125). Ministerial supervisory powers over local government and electoral arrangements should also be re-examined. It should also include a review of the operation of those bodies which exist without a statutory basis. The reviewing body, among other things, should be required to inquire into appropriate democratic systems of local government for rural areas.

#### **Chapter 19: Emergency Powers**

662. The Constitution should provide clear guidance about the circumstances in which emergency powers can derogate from the Bill of Rights, and the extent to which derogations are permissible. It should strengthen the present provisions for supervision of the exercise of emergency powers by the Bose Lawa if they involve such derogations.
663. Section 162 of the 1990 Constitution, giving Parliament the power to pass certain Acts, even if they are inconsistent with the Bill of Rights, should be repealed.
664. Although the Constitution should not expressly exclude the possible sources of emergency powers under the common law, the powers needed in the Fiji Islands to deal with emergencies should, in principle, be conferred either by Parliament or by the Constitution.
665. Section 163, giving the President the power to issue a Proclamation of Emergency, if "satisfied that a grave emergency exists whereby the security or economic life of Fiji is threatened", and conferring unlimited powers on the executive and Parliament, should be repealed.
666. The constitutional provisions dealing with emergency powers should be based on the expectation that Parliament, in the exercise of its ordinary legislative power, will, in anticipation of foreseeable emergencies, confer on the President the power to proclaim a state of emergency in the Fiji Islands or any part of them, in such circumstances as the Act prescribes.

667. Parliament should be encouraged to enact “sector” emergency legislation, enabling the emergency powers granted to the executive to be specially tailored to the particular type of emergency and incorporating some provision for monitoring by the Bose Lawa, but there should be no constitutional requirement to this effect.
668. A power conferred by Act to make emergency regulations should remain in abeyance until triggered by the declaration of an emergency.
669. The Constitution should not confer any power to derogate in time of emergency from rights under the Bill of Rights which can be limited on broad grounds.
670. In permitting derogations from other constitutionally protected rights in time of emergency, the Constitution should comply with the international standards.
671. The Constitution should not permit any derogations from the Bill of Rights unless all the following conditions are satisfied:
- (a) The Cabinet has reasonable grounds for believing that, by reason of the actual or imminent situation within the Fiji Islands described in a proclamation of a state of emergency, the life of the Republic of the Fiji Islands is threatened, and that the situation is of such proportions or danger that it cannot be dealt with effectively by the exercise of powers conferred by law, in conformity with the Bill of Rights.
  - (b) Parliament has, by Act, conferred on the President, acting on the advice of the Cabinet, the power to proclaim a state of emergency in the circumstances referred to in paragraph (a).
  - (c) The President has issued such a proclamation.
  - (d) Any emergency powers derogating from the Bill of Rights have been conferred by Act, or by the executive in the exercise of a power to make emergency regulations conferred by Act.
  - (e) Provision has been made for the exercise of the supervision of the Bose Lawa in the following manner:
    - The proclamation of the state of emergency remains in force only for an initial period of three months or such shorter time as it may specify.
    - Immediate notice of the proclamation of the state of emergency must be given to the public and to the Bose Lawa, or, if the House is not then sitting, it must be summoned to sit as soon as practicable and be given notice of the proclamation as soon as it sits.
    - The state of emergency terminates if not confirmed by resolution of the Bose Lawa within five sitting days from the date on which notice of it is given to the House.
    - The state of emergency may be continued in force by proclamation for further periods of not longer than six months if the continuation is confirmed by the Bose Lawa. (The number of renewals is not limited.)
    - The Bose Lawa may revoke the state of emergency at any time. A motion that a state of emergency be revoked takes effect without a

vote if parliamentary time is not made available for its consideration within three days of the date on which notices of motion are given by at least 18 members of the Bose Lawa.

- Emergency regulations cease to be in force as soon as the state of emergency terminates.
- All emergency regulations must be laid before the Bose Lawa within two days of being made, if the Bose Lawa is then sitting, or, if it is not, on the first day on which it next sits. The House may amend or revoke them at any time.
- A motion that emergency regulations be amended or revoked takes effect without a vote if parliamentary time is not made available for its consideration within three sitting days of the date on which notices of motion are given by at least 18 members of the Bose Lawa.

672. The Constitution should include procedures for bringing forward a session or a meeting of Parliament or a sitting of the Bose Lawa, if the President has proclaimed a state of emergency and it is desired to exercise powers derogating from the Bill of Rights. The substance of section 80(5) providing for the summoning, in such circumstances, of the members of the former House, after a dissolution and before the next following general election, should be retained.

673. The Constitution should permit the following derogations from the Bill of Rights during a state of emergency proclaimed in compliance with the constitutional requirements (a "state of national emergency"):

- (a) It should confer an express power to derogate from the right to personal liberty and the right to freedom from forced labour for the purpose of taking, during a state of national emergency, such measures as are authorised by law and are reasonably justifiable for the purpose of dealing with the situation described in the proclamation.
- (b) It should provide that a person detained under a derogation from the right to personal liberty should continue to have the substantive rights provided by section 17(1) and (2), requiring the review of the justification for the detention by a tribunal with recommendatory powers, unless an Act provides that the recommendations are binding. In addition, the detained person should have the procedural rights referred to in Recommendation 95 (d), (e), (g) and (j), from which no derogations should be permitted. (Those recommendations deal with the right of every detained person to legal aid, to have a family member or friend notified about the fact of detention, to habeas corpus, and to be treated with humanity and respect for their inherent dignity.)
- (c) It should give an express power to derogate from the right to freedom of movement for the purpose of imposing, during a state of national emergency, such restrictions on any person's freedom of movement or residence within the Fiji Islands, or on any person's right to leave the Fiji Islands, as are authorised by law and are reasonably justifiable for the purpose of dealing with the situation described in the proclamation. A person whose movements are restricted under a derogation from the right to freedom of movement should have the same substantive and procedural rights as a person who has been detained during a state of national emergency.

674. The Constitution should provide that no other derogations from the Bill of Rights are permitted in any circumstances.
675. Section 9(2), which establishes a special regime to protect the interests of the owner or other affected person if the state compulsorily takes possession of property during a period of public emergency, or other emergency or calamity, should not be regarded as a "derogation" from the Bill of Rights. Its substance should be retained as a permissible limitation of the right not to be deprived of property, in situations including, but not limited to, a state of national emergency.
676. Section 16(3)(g), providing that the right to freedom from discrimination may be limited by a law authorising the taking, during a period of public emergency, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period, should be repealed. If, during a state of national emergency, there is a need for measures directed against persons or groups of a particular race, ethnic origin or place of origin, those measures should be shown to be reasonably justifiable in a democratic society, having regard to their nature and to special circumstances pertaining to the persons or groups concerned.
677. The Constitution should provide that no law may authorise the exercise of an emergency power involving a derogation from the Bill of Rights if that exercise would be inconsistent with the obligations of the Republic of the Fiji Islands under international law.

#### **Chapter 20: Constitutional Amendments**

678. The Constitution should continue to provide that it is the supreme law of Fiji and that if any other law is inconsistent with it, to the extent of the inconsistency, that law shall be void.
679. In principle, Parliament should be empowered to alter the Constitution in accordance with special procedures which should be contained in the Constitution.
680. The substance of section 77(8) which defines an alteration to the Constitution should be retained.
681. The Constitution should require that any bill to alter the Constitution should state that it is a bill for that purpose.
682. Any bill to alter the Constitution should be required to be passed by both the Bose Lawa and the Bose e Cake.
683. The Constitution should require that no bill to alter the Constitution shall be passed by the Bose Lawa unless it has been read and voted on at least three times in that House. It should provide that such a bill must be supported by the votes of not less than two-thirds of all of the members of the Bose Lawa on the final vote as well as on the vote immediately prior to the final vote. It should require both these votes to be preceded by a full opportunity for debate in the Bose Lawa.
684. The Constitution should provide that the final vote and the vote immediately preceding it must take place during different meetings of the Bose Lawa and must be separated in time by at least two months.

685. It should also require the bill to be referred to the relevant sector standing committee of the Bose Lawa at some time before the mandatory debate preceding the final vote. It should require that the third and final vote should not take place until the committee has reported back to the House.
686. In order to allow for expedited passage of a widely-supported urgent amendment to the Constitution, the Constitution should allow the Bose Lawa to waive the requirements that the last two votes be held in different meetings and be separated by at least sixty days and that the bill be referred to a sector standing committee. It should provide that these requirements may be waived if the Prime Minister certifies that the amendment is "so urgent and important" that the requirements should not be complied with and if the waiver is supported by a resolution passed by the votes of at least three-quarters of the all members of the Bose Lawa. It should also provide that a bill to alter the Constitution for which the requirements were waived, shall not be passed by the Bose Lawa unless it is again supported at the final vote by the votes of at least three-quarters of all of the members of the Bose Lawa.
687. The Constitution should require that a bill to alter the Constitution shall not be passed by the Bose e Cake unless it is supported at the final voting thereon by the votes of two-thirds of all of the members of that House. No additional constitutional requirements should apply in the Bose e Cake.
688. The Constitution should give the Bose Levu Vakaturaga a veto power over any bill to alter:
- the section which provides for the special entrenched legislation;
  - the sections establishing the Bose Levu Vakaturaga and setting out its composition and constitutional functions;
  - the section giving landowners and owners of customary fishing rights a right to a portion of the royalties from mineral extraction;
  - the provisions which gives it a veto power over alterations to the foregoing sections.
689. If any bill to alter any of these provisions of the Constitution is passed with the required majority in the Bose Lawa and the Bose e Cake, the Constitution should require that before the bill is produced to the President for assent, it should first be referred to the Bose Levu Vakaturaga. The Constitution should require that the President shall not assent to any such bill unless it is approved by consensus of the Bose Levu Vakaturaga or failing that by the support at a vote of two-thirds of all the members of that body. It should require the Chairperson of the Bose Levu Vakaturaga to certify to the President that the Bose Levu Vakaturaga has approved the bill in accordance with the constitutional requirements and provide that the President may not assent in the absence of that certificate.
690. If the provisions of the 1990 Constitution are replaced by other provisions which are broadly acceptable to all the people of Fiji, the existing mandatory requirement for full reviews of the Constitution at least once in each ten years, should not be retained. Instead the Constitution should place the duty on Parliament to consider, every ten years, whether a review of the Constitution or any part of the Constitution is necessary or desirable.



691. The Constitution should continue to require that any bill to alter any provision of:
- the Fijian Affairs Act (Cap. 120);
  - the Fijian Development Fund Act (Cap. 121);
  - the Native Lands Act (Cap. 133);
  - the Native Land Trust Act (Cap. 134);
  - the Rotuma Act (Cap. 122);
  - the Rotuma Lands Act (Cap. 138);
  - the Banaban Land Act (Cap. 124); and
  - the Banaban Settlement Act (Cap. 123),
- may be passed by a majority of the votes of all of the members of each House.
692. The substance of the existing definition of an alteration should be retained.
693. The Constitution should contain a requirement that a bill to alter any of the entrenched Acts must contain a statement that it is a bill to alter that Act.
694. If any bill to alter one of the specified Acts is passed by both Houses, the Constitution should require that before it is presented to the President for assent, it should first be referred to the Bose Levu Vakaturaga for its approval. That approval should be expressed either through consensus or through a majority of two-thirds of the votes of all of the members of the Bose Levu Vakaturaga. The Constitution should provide that the President shall not assent to any such bill unless the Chairperson of the Bose Levu Vakaturaga has certified that the Bose Levu Vakaturaga has approved the amendment.
695. We propose that the general part of section 78(1) which requires any bill otherwise affecting Fijian land, customs and customary practices should be replaced. The new provisions should empower the Attorney-General to certify that a bill is one affecting Fijian land, custom and customary rights otherwise than by alteration of one of the entrenched Acts. The Constitution should provide that if the Attorney-General so certifies, that bill shall, after it is passed by the Bose Lawa and the Bose e Cake be referred to the Bose Levu Vakaturaga for its consideration. The procedures and rules which we propose for alterations to the entrenched Acts will then apply in the Bose Levu Vakaturaga.
696. The Constitution should make the Attorney-General's certificate conclusive. It should require that bills which affect Fijian land, customs or customary rights but which are not alterations to one of the entrenched Acts, be referred to the Bose Levu Vakaturaga only in cases where the Attorney-General has so certified. The Constitution should also not allow any Act, which is not an alteration to an entrenched Act, to be challenged on the basis that it should have been referred to the Bose Levu Vakaturaga.
697. We recommend that any alteration to the Agricultural Landlord and Tenant Act should continue to require the support of at least two-thirds of all of the members of the Bose Lawa and the Bose e Cake. The Constitution should also require a bill altering this Act, to be referred to the Bose Levu Vakaturaga in the same way as a bill to amend any of the other entrenched Acts. It should also require certificates to be provided by the Speaker, the President of the Senate and by the Chairperson of the Bose Levu Vakaturaga that the constitutional requirements have been complied with, before the President may assent to such a bill.