

Submission to the Constitutional Review Committee

11th September 2012

“A Constitution is an agreement among a group of people who have decided to live together and form a political community”



Pacific Dialogue Board members Jone Dakuvula, Ratu Meli Vesikula, Surujmati Nand and Are Wakowako were on hand at the Suva Civic Center to read out the organisation's submission

1.0 CONSTITUTIONAL VALUES

The new Constitution of Fiji must be based on the following principles:

- a. The wishes of the people of Fiji expressed through a process that is broadly national and democratic in scope;
- b. The sovereignty of the people of different cultures and religions who have agreed to live together as one independent nation with one unifying national identity and one State;
- c. The Constitution is the Supreme Law;
- d. Inclusive democracy;

- e. Accountability and integrity of State institutions;
- f. Respect for the rule of law;
- g. Government based on the three arms of State: Executive, Legislature and independent Judiciary;
- h. Equality of citizenship and non-discrimination based on race, ethnicity, class, gender, religious beliefs, sexual orientation, and origin;
- i. Reconciliation and righting of past wrongs;
- j. Respect for individual and collective rights;
- k. Respect for and tolerance of cultural and religious diversities; and
- l. Respect for the cultural and other interests of the i-Taukei.

2.0 PREAMBLE

The above-stated values are to be expressed in the preamble of the Constitution. It should also express the reasons why a new Constitution is being enacted. These are some of the reasons:

- a) The people of Fiji have, since the Colonial period, been divided politically along racial, religious, and cultural lines and the Independence Constitution of 1970, 1990 and 1997 perpetuated those divisions;
- b) Such divisions have not engendered a stronger sense of national identity and unity and have, in fact, encouraged the entrenchment of fears, suspicions and mistrust – emotions encouraged by Fiji’s political leaders during election periods as bases for winning political power and State power;
- c) Since the first of two coups d’état in 1987, the Constitutions of 1990 and 1997 have, whilst introducing great improvements in the original Independence Constitution, retained electoral systems based on ethnic identities and representation – actions that perpetuated the causes of division and instabilities, themselves resulting in the coups of 2000 and 2006;
- d) Past constitutional settlements were influenced too much by the short-term interests of political leaders from the different communities, and their sense of insecurity led them to encourage ethno-nationalism of the majority ethnic (i-Taukei) community. Extreme ethno-nationalism was based on beliefs in the ‘right’ of political supremacy of the i-Taukei, the exclusion of other communities from political power, intolerance of and disrespect for, the interests and needs of other communities. These events compelled emigration of skilled people which stunted the development potential of Fiji;
- e) Past constitution-making processes have been dominated by political parties and politicians and vocal people with extremist political beliefs that were not genuinely representative of the milder, more generous, tolerant and mature beliefs of the body of Fiji’s people. Consequently, major aspects of past constitutions, such as the electoral systems, reflected more the short-term political interests of politicians, political parties, and political activists who thrive on the politics of division and hatred;

f) In order to fairly reflect the sovereignty of the people of Fiji, this constitution must be fully inclusive and fair nationally and internationally by encouraging the participation of all of Fiji's people in its formation and enactment through a Constituent Assembly that is broadly representative of all significant communities, organisations, political parties and civil society;

g) A constitution addresses conflicts, reconciles differences, heals the hurts of the past, respects the rights of all people, the differences of cultures, religions, political and other beliefs that exist and then unites people on the basis of shared values;

h) A constitution must affirm and establish the basis of a stronger sense of belonging to Fiji for all of its people — in these islands and overseas — as equal citizens with one national identity as FIJIANS;

i) A constitution commits all of a nation's people to support and demand the observance of good governance, principles of leadership integrity, rejection of discrimination on racial and other unlawful grounds, and the rule of law;

j) The Preamble to the Constitution is an affirmation of the spiritual dimension of life of the people of Fiji as manifested in their different religions and as stated in the Peoples Charter for Peace Progress and Prosperity: "We believe in God as a higher power that is in every human and in all of nature and creation. Therefore as trustees of our Creator, God, we are all one and inseparable from the source of all creation. Our loving God impels us to love each other."

3.0 'FIJIAN' AS NATIONAL NAME

3.1 We support the adoption of 'Fijian' as a national name for all citizens of Fiji as it is important that all ethnic groups in the country are united under a common name. This is something Fiji's citizens are yet to achieve, more than 100 years since settlement by non-i-Taukei.

3.2 'Fijian' has been the name by which the indigenous community of Fiji has been identified since the Colonial period and so the i-Taukei (and indeed all other communities) has accepted the name 'Fijian' as belonging to the i-Taukei. The name 'Fijian' is so entrenched with the indigenous people that a recent survey on this issue by the Citizens Constitutional Forum (CCF) amongst the i-Taukei revealed that only about 20% of the respondents regarded 'Fijian' as a name that could be shared by others .

3.3 However, 'Fijian' has operated as an exclusive ethnic identity - especially against other communities whose members were born in Fiji. The exclusivity of the concept 'Fijian' has the connotation of giving other citizens a lesser sense of belonging (and therefore rights), than have the indigenous Fijians, and thus it implies inequality of identity as well as of the rights of citizenship.

3.4 On the other hand, the concept of 'i-Taukei' is also regarded by the indigenous Fijians as also exclusively their identity as a community: in fact, when they (i-Taukei) speak with each other in the indigenous language 'Vosa Vaka Viti' on issues of national and local identity, they use the word 'i-Taukei' and not 'Fijian'. To each other they call themselves 'i-Taukei' and to others in the English or other languages, they identify themselves as 'Fijian' rather than as 'i-Taukei'. Thus, they maintain 'double exclusivity'.

3.5 Ethno-nationalists usually appeal to the insecurity of the i-Taukei by linking the loss of 'Fijian' as their identity to loss of their land and culture. This propaganda needs to be countered effectively under the new constitution through provisions that protect group rights and self-determination.

3.6 'Fiji Islander' as the national name was recommended by the Reeves Constitution Commission and enacted under the 1997 Constitution for all Fiji citizens but unfortunately that concept has not caught on over the past 17 years. 'Fijian' – the name given by foreigners to the i-Taukei inhabitants – remains entrenched in its exclusivity. However, when all citizens of Fiji travel and live overseas they are identified as 'Fijians' because they are from Fiji. We are all known internationally as 'Fijians' and yet this comprehensive name is not accepted at home.

3.7 Even though there is only minority support amongst i-Taukei for 'Fijian' to be an all-embracing national name, we strongly believe that this is the right time for it to be adopted as the national name for all citizens of Fiji. We must break this 'log jam' and persuade the majority of i-Taukei to embrace, or open up to, 'Fijian' as a national and inclusive name for all citizens. This step is in the interest of national identity and unity and for the sake of future generations; however, 'i-Taukei' should remain the name that reflects the identity of the indigenous Fijians.

3.8 This step will not take away the identity of the i-Taukei but rather encourage an important, inclusive, and embracing of all communities into a single community of Fijians – citizens who all belong to the islands of Fiji. The i-Taukei are not losing anything of material substance or in terms of rights by allowing use of the name 'Fijian' as a common national identity. Indeed, it should be regarded as their contribution to the nurturing of a sense of solidarity, belongingness and unity of i-Taukei with part i-Taukei, ethnic Indians, Rotumans, Banabans, Samoans, Tuvaluans, Tongans, Solomon Islanders, ni-Vanuatu, Europeans, Chinese and all other people of different origins and ethnicities who were either born in Fiji or have adopted Fiji as their home nation. This is a positive initiative for the decolonisation of the ethnic identity of the i-Taukei and rebuilding the concept of a new, multi-ethnic and multi-cultural nation that respects the rights of all citizens to equally belong here and be considered as equals in Fiji.

3.9 A correspondent to the Fiji Times recently put the need for 'Fijian' as a national name very well: "I have a vision that one day, maybe in my lifetime, or maybe not, the debate on who is a Fijian is a non-issue and being a Fijian will mean more than having rights to own land. Being a Fijian will mean not being referred to as an alien in a country where you were born, spent all your life in, which is the only place you can ever call home, and the people you can call family"

4.0 NATIONAL FLAG

4.1 Fiji should de-colonise its national flag identity and have a new flag for a new nation.

4.2 The present flag has a prominent 'Union Jack' (emblem of the United Kingdom) on the above left-hand corner, against a pale blue background. It also has a plaque in the middle that is again symbolic of Fiji's colonial history. Fiji, through its coups d'état of 1987, 2000 and 2006, firmly rejected the constitutional link between Fiji and the United Kingdom, notwithstanding the coup-makers' ironic claim of continued loyalty to the British Crown.

4.3 The 1997 Constitution embodies the inheritance of Britain's rule in Fiji and the knowledge Britain imparted to us of the important values of the rule of law and later parliamentary democracy: those are the most important inheritance left by the British colonialists and are of far greater and meaningful value to Fiji than is any symbol – such as a flag, or street names. It is important because we, through our more recent history, have failed to uphold that inheritance of constitutional democracy and the rule of law.

4.4 Our challenge now is to ensure that our history is conveyed and understood from the Fijian peoples' perspective. Even though Fiji is now a republic with a president as head-of-state and therefore warrants a new flag, we submit that the new flag should be the symbol of a new beginning as a nation rather than a reminder of our negative colonial inheritances such as racism, divide and rule and cringing subservience .

4.5 There should be a flag design competition to create a new flag for Fiji: it should include symbols representing a new nation.

5.0 NATIONAL ANTHEM

5.1 There is also need for a revision of the national anthem: Fiji's present national anthem is sung in English – not the primary language of the majority ethnic groups in Fiji (i-Taukei and Indians). This situation is shameful.

5.2 We are impressed by the national anthem of South Africa, which reflects part of that nation's history: one stanza is written and sung in the (presumably) dominant African language, a second stanza is written and sung in Afrikaans, and a third in English. Fiji can 'take a leaf' out of South Africa's book' by having three verses in its national anthem: one in Vosa Vaka Viti, one in Fijian Hindi, and the third in English.

6.0 CHANGE OF STREET NAMES

6.1 Fiji should also start decolonising the street names, starting with those in Suva and later moving to other urban centres. There are very few figures in Colonial history that should be remembered – like Gordon Street (named after Sir Arthur Gordon, the first governor), Thurston Street and Gardens, and some others – but many names (like Pratt Street, McGregor Road, Cunningham Road) mean nothing to the people of Fiji because it is not known what the benefactors of those names contributed to the development of the country and why they should be remembered. The colonial names of these streets should be changed to names of Fijians, or events, who/which have made their marks in Fiji's history by contributing to various aspects of the development of Fiji's people and nation.

7.0 CONSTITUENT ASSEMBLY

7.1 Sections 8 and 9 of the Fiji Constitution Process (Constituent Assembly and adoption of Constitution) Decree 2012 say the members of the Constituent Assembly will finally discuss and approve the new constitution and they will be appointed by the prime minister.

7.2 This provision can be seen as detracting from the independence and legitimacy of the Constituent Assembly as it encourages the assumption that the prime minister will 'stack' the Assembly with people who are sympathetic to his views, and it may not include people who are genuinely independent in their political affiliations - including those who are known to be critics of the Interim Government of Commodore Bainimarama.

7.3 It may also exclude leaders of political parties who were deposed in the 2006 coup as they might be regarded by the prime minister as likely to be divisive and to bring in views and grievances from the past that could create disunity and problems that become political blockages to the government's attempt to move the country towards progressive and national unifying changes.

7.4 Many people in Fiji – and a number of governments outside of Fiji – had called for an inclusive Constituent Assembly and therefore expect the inclusion of leaders of established political parties like the Fiji Labour Party and especially the SDL Party of deposed and jailed former Prime Minister, Laisenia Qarase. Such inclusion will give it and the whole constitutional consultation process legitimacy and the chance of fostering national reconciliation and unity-building between the coup-makers and the deposed and the aggrieved at the Constituent Assembly.

7.5 On the other hand, the prime minister may prefer to have a Constituent Assembly dominated by people who could be regarded as politically neutral and 'untainted' by partisan political history so as to give Fiji a genuinely new and fresh constitution that satisfies the government's 'non-negotiable' positions, and is fair to all.

7.6 It will not be easy to appoint a National Constituent Assembly that is uncontroversial from some perspectives. What is important is that the Constituent Assembly should be genuinely representative of the major communities and diversity of political parties, communities, private sector organisations, trade unions, civil society and religious organisations.

7.7 A good procedure might be to identify all leading organisations and communities in Fiji that ought to be represented in the Constituent Assembly and invite them to elect their representatives, through their own democratic procedures. They should be appointed by the president of Fiji, who is more politically independent.

7.8 Since the constitution is going to be the fundamental law under which the people are governed, it is desirable that those that are going to decide it should either be elected at least, or be publicly known as representative leaders of their constituents.

7.9 The present Interim Prime Minister may not want recognised leaders of established political parties in the Constituent Assembly; therefore it is of interest if he will appoint politically independent people to

make up the majority of the Constituent Assembly. In this manner it may be easier for members to reach unanimity on all provisions of the new constitution.

7.10 However, because of the short time allocated to the Constituent Assembly to debate and reach unanimity, the provisions might be rushed through against objections from members and non-members: hence there is the danger that significant groups would not consider themselves bound by the new constitution.

7.11 The prescribing of prior immunity before the Constituent Assembly adopts the new constitution is a matter that should have been entrusted to the Assembly to decide naturally through discussion and debate in the spirit of genuine reconciliation and national unity.

7.12 Immunity should not be imposed. The concept of ‘blanket’ immunity is repugnant morally and in law. It would be better for the national Constituent Assembly to recommend to the president to exercise the Prerogative of Mercy provision rather than have a prior immunity provision in the constitution.

8.0 REFERENDUM

8.1 The other alternative is to put the new constitution to a national referendum before the general elections under the new constitution is held. For this, enough time will need to be given for the government and civil society organisations to educate people about the constitution given the short time frame towards the elections in September 2014. Although desirable, a national referendum as a measure to test its broad public support and legitimacy, is not feasible under the current time frame.

9.0 PARLIAMENT

9.1 House of Representatives

We support:

- the reduction of the membership of the House of Representatives from 71 members in the former parliament, to 60 members,
- setting up of a parliamentary committee system with resources and capacity to consider matters before parliament more critically and in a non-partisan manner, and
- Cabinet to be able to refer some matters at its discretion, to these parliamentary committees before making decisions and referring bills to parliament.

9.2 Senate

We recommend that the Senate, comprising unelected members, be abolished because Fiji needs a smaller parliament, and term of the Parliament (House of Representatives) should be four years.

9.3 Cabinet

We expect that:

- the leader of the political party that wins the most seats in an election by a majority vote in and whose leader is confirmed Parliament to be the Prime Minister, will be called upon by the President to form a Cabinet that comprises no more than 15 members,
- the prime minister be allowed to appoint to the Cabinet no more than three persons from outside of parliament having particularly desirable skills, knowledge or professional competencies as members of Cabinet, within the 15 member limit,
- such unelected Cabinet members may be permitted to speak but not vote in the House, and
- the prime minister and the leader of the Opposition, will be appointed by the President as provided for in the Constitution.

9.4 Power Sharing

We believe that:

- the power sharing provisions under Section 99 of the 1997 Constitution are to be preserved in the new constitution because it is vital that all significant political parties in the parliament should have the opportunity to be represented in Cabinet.
- we disagree with the recommendation of the National Council for Building a Better Fiji (NCBBF) in the 'Peoples Charter' and 'The State of the Nation and Economy Report' that the formation of a multi-party government is to be voluntary,
- the provision for mandatory multi-party government — although resisted by the SDL Party in 2001 and 2006 — was beginning to work after the Supreme Court ruling and before the 2006 Coup d'état. Under the 1997 Constitution, power sharing did not work initially because the Parties who had majority votes in the Elections (and especially the SDL–Conservative Matanitu Vanua (CMV) Coalition Government) did not believe in the values and objectives of that constitution and therefore they tried to wreck the intention of the founders of the 1997 Constitution. They were only prevented from carrying out their intention to de-legitimise a secular constitution and resurrect the drive towards a racist and divisive system of government by our independent Courts,
- we need to be reminded that the SDL–CMV Government was elected in 2001 with a promise to introduce a new racist constitution to replace the 1997 Constitution that their extreme ethno-nationalist supporters had rejected through the failed coup led by George Speight in 2000. These racist supremacists have not changed their tune – as evidenced by their submission to the Constitution Review Commission – except that they are now defending the 1997 Constitution that they had rejected between 2000 and 2006,
- this new constitution must be a serious attempt to ensure that those who are elected do swear to uphold the values of the constitution and will therefore make power sharing work, in the interest of all people they represent. This is vital to establish a working system of inter-ethnic cooperative government,

- the public opinion polls after the 1997 Constitution was passed showed majority public support for ethnic co-operation in government. The 64% support for the Peoples Charter in 2008 also showed popular support for the ideas of equality and inter-ethnic cooperation in national government. Furthermore, throughout 2006 up until the Government was removed, public opinion polls recorded that a coalition government was popular despite the racial polarising of the 2006 Elections and the reluctant acceptance of the Supreme Court ruling by the SDL–CMV Government,
- a relevant and salutary lesson is the experience of Guyana, where two major ethnic communities comprise the nation. Guyana adopted the Proportional Representation Electoral System that is being advocated in our submission. In Guyana, the electoral system did not change the peoples’ habit of communal voting and formation of government along ethnic lines. In Guyana, the ethnic African community, which has not been in political power since 1992 (20 years) is asking for power sharing to be required by legislation. Unlike Fiji, Guyana has a history of ethnic tension and violence. Previous to 1992, the ethnic African block held power for more than 25 years.
- as in Guyana, the Proportional System of Voting in Fiji may not change the tradition of ethnic voting significantly at this stage of our history.

Therefore, we recommend that the provision for mandatory power sharing as provided for in the 1997 Constitution (with some modifications) should be retained in the new constitution.

9.5 Remuneration of Members of Parliament

One of the causes of the coups in Fiji is the large gap between the salaries of ministers and those of ‘back benchers’ and Opposition members. The shock of Election defeats and relegation to the Opposition benches, or total loss of income through the loss of seats, is usually traumatic for members of parliament – especially for ministers who had been used to power and privileges.

The experience in Fiji shows that when the ‘fall from political grace’ is so steep and politically shocking, the ‘victims’ become open to ideas of drastic and violent political action, aimed at restoring their loss of position. This is especially so for those who have no professional qualifications, business, or outside benefactors, on which to fall back. These ‘victims’ have gone to the Fiji Military Forces and appealed to ethno-nationalist sentiments, fears and hatreds, to overturn election results. The current FMF leadership however, ‘couped’ the politicians who had believed it to be a subservient ‘attack dog’ such that Fiji may now look forward to there being no more coups inspired by disenchanted Opposition members, ‘back benchers’ or past politicians facing bankruptcy.

A simple solution to the ‘coup culture’ is to ensure that there is no substantial gap between ministerial and back bench salaries. The salaries and allowances of ministers and non-ministers should be narrowed, so that those who are appointed as ministers are there because of their more genuine, public-spirited interest and less because of the privileges and status accompanying the position.

We believe:

- that one of the first initiatives of the newly-elected government should be to appoint the independent Parliamentary Emoluments Commission with a directive to review the current salaries and allowances and recommend to parliament as soon as possible, salary and allowance packages that are more egalitarian between ministers and ordinary members of parliament.
- Parliament is to meet within 30 days of the results of a General Election to elect a speaker.
- The Speaker's responsibility will be to manage the process of forming a Government including nominating a candidate to be recommended to the President for appointment as Prime Minister.
- There is to be a vote by the Parliament for the Speaker's nomination of a Prime Minister. The nomination must be endorsed by a majority of Members of Parliament who support the formation of a government by the nominated prime minister unless rejected by an absolute majority of Members.
- An absolute majority of all MPs would need to vote against a Government on a motion of censure in order to force a Government to resign.
- Members of Parliament who wish to change membership of the political party under which he/she was elected, must first resign from Parliament. If they do cross over without resigning, they will lose their seats and their political party will nominate a replacement from its Election List.

9.6 Electoral System

We support that:

- Fiji's new electoral system be based on an a Closed List Proportional Representation system (PR),
- the Electoral Law should require political parties to provide lists of candidates who fairly represent all communities in Fiji - and especially minority communities,
- political parties contesting the election must also provide lists that reveal that at least one-third of their candidates are women,
- Fiji will be one national constituency,
- electoral laws are to have provisions against discrimination by political parties on grounds of race, religion, gender and other circumstances,
- the voting age to be reduced from 21 years to 18 years,
- there should be a two-year residential requirement for people holding dual citizenship with Fiji, but living overseas,
- candidates for elections to swear oaths to uphold the Constitution and electoral laws, and the results of the elections,
- preamble and objectives of political party constitutions are to declare that the party upholds the new Constitution,
- there be a provision in the Constitution that empowers the Courts to penalise - including orders for expulsion from parliament of members and political parties that engage in activities that breach important values of the Constitution,
- there be a provision in the Constitution that those found guilty of treason or coup-related offences, be prohibited from contesting national elections for life,

- the electoral system be removed from the Constitution and enacted as a law so that it may be amended from time to time according to the will of the people. However, principles of non-ethnic voting, equal franchise and proportional representation are to be enshrined in the Constitution,
- re-registration of political parties that intend to contest the 2014 Elections, and
- the registration of political parties to require open accountability of political parties' sources of finance and set limits on their spending when contesting national elections.

10.0 CARETAKER GOVERNMENT

After a General Election, it is possible that no political party might have won an overall majority to be able to form a government on its own or in coalition with (an)other political party/ies. In a situation of this nature, the caretaker government (i.e. the last elected government) may have to remain in power for some time until the President is able to appoint a member of parliament who commands sufficient majority in the new Parliament to form a government. The formation of a government might also be delayed by protracted negotiations between political parties on agreed policies and rules for running a coalition government. Hence a caretaker government should remain in power until the political and constitutional situation is crystallised. There are various permutations to such a situation after an Election and it is vital that political stability in the system of government is maintained and the people learn to be patient while political parties negotiate.

It is therefore necessary for the Constitution to recognise such a situation where the role of a 'caretaker government' will maintain the systems of government until a newly elected government is appointed. What needs to be clarified are the rules or conventions to be followed by the 'caretaker government' and the role of a professional civil service in dealing with such a situation.

As indicated earlier, the new parliament must elect a Speaker (and a Deputy Speaker) to manage the process of forming a government and especially the election of a prime minister to be appointed by the President.

Be advised that New Zealand experienced a change in the electoral system in the 1990s that also involved constitutional changes defining the roles of caretaker government and the civil service in handling the situations of an almost 'hung' parliament after the 1996 Elections. We therefore recommend that the Constitution Review Commission obtain advice, or at least authoritative publications from, New Zealand that addressed this situation, in case it should arise in Fiji in the future, and also consider providing for such development in the constitution.

The 'caretaker government' is to be clearly defined as the body that (i) will be appointed by the President to function before and after the general election and up to when an elected government is appointed by the President [in 2014], and (ii) in the event of any future elected government losing an election, the former elected government will manage the State until a newly elected government is formed through the Parliament.

11.0 BILL OF RIGHTS

The Bill of Rights in the 1997 Constitution is to be incorporated into the new constitution and it is to include other rights not yet recognised – such as social and economic rights as defined in United Nations conventions.

The right to life provision should include right to a minimum quality of life, and the State should be obliged to provide access to clean water, adequate housing and free education up to the end of secondary ('high') school.

The role of interpreting the constitution shall remain with the Judiciary.

The equality provision should specifically provide for gender equality.

12.0 CITIZENSHIP

Chapter 3 on 'Citizenship provisions' in the 1997 Constitution should, with some modifications, be included in the new constitution.

There is to be provision for acquisition of dual citizenry, especially for those who were born in Fiji and have migrated overseas (including their children). Those who were not born in Fiji may acquire citizenship by registration or naturalisation.

13.0 THE PRESIDENT

We believe that:

- there is to be a president of Fiji whose terms in office will be five years,
- if the president is absent, the Chief Justice will act as the president,
- the president is to be appointed on the recommendation of a bipartisan parliamentary committee set up for that purpose and its recommendation to be passed by a majority of the House of Representatives,
- the president can be removed only for reason of infirmity of body or mind or for misbehavior as provided for under Section 93 of the 1997 Constitution,
- the president is the Head of State and Commander-in-Chief,
- the president is to appoint the commander of the Republic of Fiji Military Forces on the advice of the Minister, and
- the commander of the Republic of Fiji Military Forces is to be subject to the control of the Minister in the exercise of military executive command of the RFMF.
- the President will appoint the Prime Minister who has the absolute majority of the MPs to form a government.

14.0 CONSTITUTIONAL OFFICES

We believe that:

- the following offices are to be provided for, as identified in the relevant sections of the 1997 Constitution: Human Rights Commission, Ombudsman, Supervisor of Elections, Auditor-General, Director of Public Prosecutions, Secretary-General to Parliament, Commissioner of Police, Governor of the Reserve Bank, Office of the Public Service Commission, Judicial and Legal Services Commission. (membership to be appointed by the president. The JLSC should at least have one senior lawyer and one lay person from the community and at least one woman and one man. The decisions of the JLSC must be recorded and can be reviewed by the Courts. The JLSC should, within six months of the passing of the Constitution, pass disciplinary regulations which allow for sanctions to be imposed on judges and magistrates short of removal. Removal should be done only after a tribunal hearing, as provided for in the 1997 Constitution.), Republic of Fiji Military Forces and Disciplinary Services Commission.(The oath of the Fiji Military Forces is to defend the State and the Constitution against internal and external threats. Within six months of the election of the new Government, there is to be an independent commission to review the FMF legislation and recommend legislative reforms.)Legal Aid Commission
- the following offices are to be considered for inclusion: Fiji Independent Commission Against Corruption, National Peoples Charter Council, Accident Compensation Commission

15.0 THE JUDICIARY

We believe that:

- the Chapter 9 provisions of the 1997 Constitution for an independent judiciary are to be included in the new constitution,
- the appointment of judges should be completely non-political (the vetting of judges by a sector select committee of parliament under the 1997 Constitution may be too political), and
- the judiciary should have its own Code of Conduct, breach of which should lead to discipline by the JLSC.

16.0 STATE SERVICES COMMISSION

Chapter 10 of the 1997 Constitution provisions on State Services are to be included in the new constitution.

17.0 CODE OF CONDUCT

We believe that:

- Chapter 11 of the 1997 Constitution, on accountability and a code of conduct, are to be included in the new constitution, and
- a Freedom-of-Information Act should be enacted by the new parliament under provisions of the new constitution.

18.0 REVENUE AND EXPENDITURE

Chapter 12 of the 1997 Constitution, on revenue and expenditure, is to be included in the new constitution.

19.0 SOCIAL JUSTICE

The Social Justice chapter of the 1997 Constitution is to be included in the new constitution.

20.0 GROUP RIGHTS

This is another sensitive area as it is tied up with the group identities of people who regard themselves as indigenous to Fiji or to the Pacific. The Constitution Review Commission should emphasise the maintenance and strengthening of these Group Rights.

We thus expect that:

- Chapter 13 of the 1997 Constitution, on Group Rights, is to be included in the new constitution but the Parliamentary procedure for Bills to alter the following Acts need to be changed: Fijian Affairs, Fijian Development Fund, Native Lands, Native Lands Trust, Rotuman, Rotuman Land, Banaban Lands, Banaban Settlement, Agricultural Landlords and Tenants
- the change we propose here is that Bills cannot be tabled in Parliament unless there is a certificate produced by the Speaker of the House from the relevant councils (the 'Bose Levu ni Veiliutaki Vakavanua' in the case of the i-Taukei [see below], Council of Rotuma, and Banaba Council) that the relevant council had approved the proposed amendments to such legislation by majority consensus or vote.
- there is no need for entrenched protection of such legislation: the protection should lie in the required approval of the relevant Councils which, when certified, Parliament can then pass changes by simple majority.

21.0 BOSE LEVU VAKATURAGA (BLV)

We also believe that:

- the constitutional status of the BLV (under the 1997 Constitution) should be cancelled,
- a council of chiefs, to be called the 'Bose ni Veiliutaki Vakavanua', is to be established as an advisory council to the Minister of i-Taukei Affairs on matters of interest to the i-Taukei,
- the new constitution should contain a statement of State policy commitment to direct the review of all i-Taukei laws and the Rotuman and Banaba Acts. It should have the objective of modernising and strengthening leadership participation in such councils based on culturally-appropriate mechanism of consultation, accountability and good governance principles for new leadership creation, addressing and resolving conflicts, meeting the needs of the new generations of i-Taukei, and empowering the communities concerned to develop their resources to improve their standards of living and contribute to national development and welfare, and
- this review and reform of indigenous group institutions is to be undertaken within the first six months of the new parliament and is to be completed within two years, including the passing of legislation and regulations.

In addition, the following provisions under the Group Rights Chapter of the 1997 Constitution are to be retained in the new constitution, viz: “The Parliament must make provision granting the owners of land or of registered customary fishing rights an equitable share of royalties or other moneys paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed. A law fixing amounts under subsection (3) must require that account be taken of: a. any benefits that the owners are likely to receive as a result of the mineral exploitation; b. the risk of environmental damage; c. any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensation for any environmental damage; d. the cost to the State of administering exploitation rights; and e. the appropriate contribution to the general revenue of the State to be made by the person granted exploitation rights.”

22.0 LOCAL GOVERNMENT

We believe that:

- there will be a constitutional policy commitment to review and reform existing local government laws together with i-Taukei Affairs laws so that they are consistent with the Peoples Charter recommendation to reform Provincial and Divisional administrative and consultative structures, and
- the CRC will consult with the Commonwealth Local Government Forum Pacific Project.

23.0 EMERGENCY POWERS

Chapter 14 of the 1997 Constitution on Emergency Powers (with necessary modifications) should be retained under the new constitution.

24.0 AMENDMENT OF THE CONSTITUTION

We believe that:

- the Amendment chapter of the 1997 Constitution is no longer relevant,
- Parliament should be able to amend the constitution with the vote of three-quarters (3/4) of the Members – 45 members in a Parliament of 60 members, and
- there is to be provision in the constitution for the conduct of a referendum on particular issues of national importance.
- There is to be a provision that states this Constitution cannot be abrogated, removed or permanently suspended in any way other than through the procedures for change and amendment set in the Constitution.

25.0 PREROGATIVE OF MERCY

The president’s power to grant a pardon under the 1997 Constitution is to be retained in the new constitution.

26.0 REPARATION

The right to reparation is to be recognised. The concept of reconciliation must be accompanied by the term 'reparation' whenever it arises.

We further believe that national reconciliation between leaders who have been enemies will encourage individuals to reconcile.

Reconciliation should be an objective of the Constituent Assembly to be achieved during its term or, if not, then through the establishment of a National Reconciliation Commission under the National Peoples Charter Council.

27.0 DRAFTING THE CONSTITUTION

The Constitution Review Commission's legal experts should also assist an independent constitutional draftsman in drafting the new constitution.

If possible, Professor Yash Ghai should make himself available to the Constituent Assembly to explain the CRC Report and answer questions.