FLP Submission to the Fiji Constitution Commission

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FLP Leader Mahendra Chaudhry in presenting the Party's submission to the Constitution Commission Friday morning, called for the appointment of a caretaker government to oversee the process of returning Fiji to constitutional rule via general elections.

He said the current administration was too tainted and lacked the credibility and legitimacy to oversee the process back to democratic rule.

Among other recommendations, FLP calls for the establishment of a minimum wage, an old age pensions scheme for those above 65 with no visible means of support; State assistance for native owners in developing their land resources and 50-year leases for agricultural land.

He also called for a judicial inquiry into allegations by former President of the Fiji Court of Appeal, Justice William Marshall, of interference by the Attorney General into the affairs of the judiciary.

On the electoral system, the FLP recommends reverting to the Open and communal voting system recommended by the Reeves Commission.

Herewith the full text of the FLP submission:

Preamble

We appeared before the Commission on 12 September 2012 to state our concerns about the credibility, integrity and legitimacy of the constitutional process as announced by the Prime Minister, and as subsequently promulgated in Decrees 57 and 58 of 2012.

Incidentally, we are still awaiting the Commission’s response to a number of questions we posed in the course of that submission.

How can one repose trust in a constitutional process that is driven by a regime that has broken every rule in the book and, has to date, shown no respect for the Constitution, for the rule of law, for the independence of the judiciary, for universally accepted individual and human rights, for good governance, and for transparency and accountability in administering the

affairs of the State?

Even today, as we present FLP's substantive submission to the Commission, we are acutely aware of the weight of history behind us that has forced our nation to yet again embark on the search for a national Charter that would, by some miracle, provide lasting peace, progress and prosperity to our little island nation.

We reiterate that there is no need to re-write an entirely new constitution. The 1997 Constitution should be retained as the base document. It was formulated following wide consultations with the people of Fiji and enjoyed the broad support of all sections of our community.

We admit that amendments and additions may be necessary because of the passage of time and the developments that have occurred subsequent to its promulgation.

We have, therefore, structured our submission using the 1997 Constitution as the reference document and outlined changes we deem necessary as we go along.

In our view the need for amendments/additions also arise because a number of key recommendations of the Reeves Commission were either not implemented or were drastically altered so as to render them irrelevant. As an example, we refer to the electoral system which in fact is a complete reversal of what the Reeves Commission had recommended.

Indeed, the FLP opposed the electoral arrangements under the 1997 Constitution which continued to give strong preference to the communal system of voting. We recorded our opposition during negotiations at the Joint Parliamentary Select Committee and later, in the parliamentary debates. But we lacked the numbers to make any difference.

In light of our experiences over the past few years, we realize that other areas of the Constitution may need to be strengthened, particularly, those relating to social justice, good governance, accountability and transparency.

The other so-called non-negotiable, universal values and principles are already adequately catered for in the 1997 Constitution. Our submissions will, therefore, basically focus on areas where we consider amendments to be necessary.

We must emphasise, the problem is not the Constitution. The problem is the lack of respect for the Constitution and the rule of law in Fiji. We can write up a dozen constitutions – they can all be trashed unless certain elements in our society learn to show respect for the constitution as the supreme law of the nation.

Even the new constitution may be trashed if the electoral outcome in the next general elections is not to their liking.

Constitution writing in Fiji is becoming something of a charade. We have had three substantive documents since independence in 1970, and several more attempts at writing new constitutions that were shelved part way.

Writing a new constitution is not going to solve the deep-rooted problems of our society. We can try and write in safeguards – but they will be thrown out along with the Constitution the next time it is trashed by the Army.

Our basic need is to inculcate in our people the need to respect the Constitution and the rule of law. We need to find a lasting solution to the problem posed by the Military. They stage-managed all four coups and tore up two constitutions in league with self-seeking politicians, unscrupulous and corrupt business elements, misguided ethno-nationalists and other opportunists, criminals and thugs. Greed, corruption and lust for power – are the three evils that Fiji has to come to grips with if it wants a lasting and more permanent solution to its economic, social and political problems.

Fiji has paid a heavy price for its coups. Our growth and development as a nation has been severely retarded – indeed, if one were to view things critically, except for some cosmetic changes, Fiji has basically remained where it was in 1987 in terms of infrastructure development, the exploitation of natural resources and growth of industries and the export sector. Most sectors of our economy have declined sharply over the years as have the living standards of a majority of our people.

The 2006 coup has been by far the most damaging and regressive. Although the regime usurped power in December 2006 on altruistic and lofty ideals such as the “clean up campaign” to root out corruption and establish racial equity, such ideals remain a pipe

dream six years later.

Instead, we have witnessed increasing authoritarianism since 2009. A series of draconian and repressive decrees have curtailed or snuffed out fundamental freedoms, stifled free thinking and public debate on issues of national importance, compromised the independence and authority of the Courts, stopped any form of legal action against the regime, and deprived workers and trade unions of their rights.

The media subjected to rigorous censorship for three years under the Public Emergency Regulations, has been so scarred and intimidated that it is still too scared to provide balanced and fair reporting on national issues, despite the PER being lifted. No, we don't have a free media in Fiji – they have virtually become extensions of the Information Ministry!

State finances are more precarious now than they were in 2006; the national debt crisis has deepened with State borrowings having risen sharply in the past three years. We are now borrowing new money to repay old debts.

The Asian Development Bank in its latest economic survey, Outlook 2012 released in April warned that unless the debt to GDP ratio is reduced significantly, there would be little scope for further fiscal expansion and the provision of public services would be adversely affected.

It also warned that Fiji's medium term macro-economic outlook was "weak and foreshadows greater poverty challenges". Even more worrying is ADB's assessment that private investment levels are now down to 2% of the GDP – the lowest on record – it reflects lack of confidence in the economy and is not likely to improve unless political stability is restored.

Corruption is rife. There is no transparency or accountability in the affairs of the State. Tender procedures for public works and the procurement of goods and services are ignored. For instance, a $1m consultancy contract on a dairy company was awarded by the Ministry of Commerce and Industries to a Suva accounting firm owned by the Attorney General's Aunty without tenders being called. It should be noted that the AG was the Minister for Commerce and Industries at the time.

Similarly, Cabinet pays have been taken out of the

public domain. They are no longer handled by the Treasury as was the practice but are being processed by the same accounting firm and no one knows how much the Prime Minister, the Attorney General and other Cabinet Ministers are being paid.

Public accounts and finance reports have not been published for public scrutiny since 2008. Not surprisingly, Transparency International gave Fiji zero out of 100 points in its last survey on budget transparency in 2010, noting that it is "virtually impossible for Fiji citizens to hold its government accountable for its management of the public's money".

Key sectors of the economy are deeply troubled. The sugar industry is in a highly critical state with sugar production virtually halved - down from 330,000 tonnes in 2006 to 165,000 tonnes in 2011. The Fiji Sugar Corporation is insolvent, surviving on borrowed funds and government grants.

Poverty levels have escalated and officially stand at about 45% of the population. Social distress is high as a result of insensitive policies and actions of the regime. The 20% devaluation of the Fiji dollar in April 2009 sent the cost of food, basic household items and other imports soaring. This was aggravated by the increase in VAT from 12.5% to to 15% in Budget 2011 which further increased the cost of all goods and services, including most food items.

Low wage rates are seen as the root cause of poverty in Fiji yet the regime has consistently either delayed or denied wage increases recommended by the Wages Councils for workers in the unorganized sector. Furthermore, decrees curtailing the right to freedom of association, collective bargaining, etc for workers and their trade unions in the public sector as well as selected "essential" industries in the private sector, will see worsening conditions of work and pay in the organized sectors as well.

Cost of utilities such as electricity, telecommunications and water have escalated in our stagnant economic climate. Of particular concern, is FEA's decision, with State approval, to carry out a tariff restructure which removed some 100,000 poor households from its life-line tariff while implementing sharp increases in electricity rates.

The regime sanctioned the so-called FNPF reforms which substantially reduced pension rates to 8.7% from the existing 25%-15%. The move has caused

90% of our retired elderly acute financial distress considering that of the total 10,826 FNPF pensioners, 9627 were receiving less than $800 a month before the cuts. In almost all cases, the benefits were cut by 50%, leaving a majority of FNPF pensioners receiving less than $400 a month – pushing them into the poverty pit.

Recently also, welfare payments were withdrawn from some 3000 recipient families, depriving them of adequate means of support.

Much of the President's mandate to the interim administration given in January 2007, remains unfulfilled. There has been constant rhetoric from the regime that it will spend the first three years (2009 to 2012) on "reforms" such as growing the economy and fixing up the infrastructure. To date, there is little to show for it. The economy remains in recession and much of our infrastructure remains in poor condition, both in the urban and rural areas.

In the course of its consultations with the citizens, the Commission has, no doubt, been inundated with issues which do not belong in the realm of the Constitution.

By its own admission, the Commission has revealed that a large number of people appearing before it raised issues impacting on their daily lives – such as poverty, unemployment, poor service delivery, insecurity etc. These are important matters that deserve to be considered and addressed to achieve social stability, alleviate poverty and instill confidence in the people in their own future as citizens of Fiji.

We urge the Commission to report broadly on this aspect of their consultation for the attention of the next government.

So…Ladies and Gentlemen, this is the backdrop against which we now embark on our fourth constitutional journey within a span of 25 years with four coups to our credit.

Bon Voyage!

Chapter 1 - The State

Retain s1-5 of the 1997 Constitution but substitute the word "Hindustani" in s4(i) (2)(3) and (4) with the word 'Hindi'

Chapter 2 - The Compact (s6-7)

We should promote a non-discriminatory society. It is now widely recognized that the rights and interests of the indigenous community are well secured. They constitute the majority of our population, have ownership of all the natural resources, and their interests and welfare are well protected by the State.

If anything, it is the minority communities who feel vulnerable and need constitutional protection of their rights and interests.

If we aim to build a single, cohesive society then we need to move away from all aspects of the racial compartmentalization of our people. Unity in the long term can only be forged by removing all references that classify our people according to race.

While we wish to retain the main thrust of the Compact, we leave the Commission to use its discretion in rewording the provisions so as to remove all attempts at racial segregation of our people.

For instance, Subsection (k) – should be amended to make affirmative action and social justice programmes open to all citizens of all communities on an equal footing and a non-discriminatory basis.

Chapter 3 Citizenship (s8-20)

The Constitution should protect the citizenship rights of persons who:

• were citizens before it came into effect; or

• were born between 10 April 2009 and the coming into
force of the (new) constitution.

The question of acceptance of dual citizenship should be left to be settled by the new Parliament.

The Commission should recommend a comprehensive review of the Immigration and Citizenship laws to be undertaken as soon as practicable after the coming into force of the (new) constitution.

All persons acquiring citizenship or residency status between 10 April 2009and the date of coming into force of the (new) constitution should be permitted to

retain their citizenship or residency status unless such was obtained by fraud, misinterpretation or the concealment of material facts.

Chapter 4 - BILL OF RIGHTS (s21-43)

The Bill of Rights in the 1997 Constitution should be retained and further strengthened to preserve the dignity and honour of the (human) person. Adequate provision must be made to protect individual and group rights. It must be extended to provide social protection to the needy and the poor.

The State must be barred from:

(1) Reducing or withdrawing welfare benefits from recipients without following the rules of natural justice

(2) Reducing or withdrawing retirement benefits payable to members of a (recognized) statutory pension/retirement scheme

Religion and Belief

The right to freedom of conscience, religion and belief as provided for in Section 35 of the 1997 Constitution should be maintained. Strict laws must be enacted against sacrilege to deter sectarian or religious violence.

Constitutional Court

A special Constitutional Court should be established to expeditiously determine matters arising under the Constitution or involving its interpretation. The current practice of such matters being dealt with through the High Court has its disadvantages, is time consuming and expensive.

The Constitutional Court should be accessible to ordinary citizens who may wish to bring before it any matter of public interest which has a bearing on his/her constitutional rights.

The Constitutional Court should be required and empowered to have annual audits conducted to establish whether State institutions have properly discharged their duties and responsibilities to ensure compliance with the constitutional obligations required of them.

It is a fact that past governments (SVT, SDL and the

Military government) failed to comply with certain specific requirements of the 1997 Constitution – these relate particularly to:

• Recruitment, promotion and training policy in the State services (Section 140). Ethnic balance in the composition of the public service has not been maintained and has progressively worsened against members of the minority communities.

Nowhere is this as strikingly visible as in the security forces and other disciplined services. Official statistics of the ethnic composition of the public service is no longer published.

• Code of Conduct legislation – Section 156(3) of the 1997 Constitution requires Parliament to enact a code of conduct legislation setting out rules and standards of conduct for holders of high public office.

This requirement was ignored by the SVT and SDL governments despite repeated calls from the Opposition to comply. As a consequence, it can be said that Fiji is today plagued with extremely high levels of official corruption, the establishment of the Fiji Independent Commission Against Corruption (FICAC) notwithstanding.

FICAC has not so far investigated the holders of high office and their cronies in the current regime even though there are credible reports of corruption against them. Its primary purpose is to target dissenters or small-time public officers to justify its existence.

• Freedom of Information – Section 174 of the 1997 Constitution requires the enactment of a freedom of information legislation as soon as practicable after the commencement of the constitution. This provision was also ignored.

It must be stated that the FLP led Peoples Coalition Government, in its short stint of 12 months, had published draft Bills on the Code of Conduct and Freedom of Information legislations but was prevented from proceeding further because of the May 2000 coup.

It makes little sense to write up model constitutions only to have its transparency and accountability provisions ignored by governments or authorities who have little respect for the rule of law.

The Constitutional Court should be required to table its report on the constitutional audit to Parliament by

30 June each year.

Human Rights Commission (s42)

The establishment and functions of the Human Rights Commission should be maintained as provided for in Section 42 of the 1997 Constitution.

However, its membership should be enlarged to five (5) members drawn from a good cross-section of our society of whom at least two (2) shall be women.

The Human Rights Commission Act 1999 should be reinstated by revoking the Human Rights Commission Decree No. 11 of 2009.

Chapter 5 - Social Justice (s44)

The Constitution should provide that national laws should conform with the provisions of international conventions, instruments or treaties which have been ratified by Fiji. This is an important consideration particularly in relation to the rights of workers and trade unions, and the disadvantaged in society.

Poverty levels have been rising and Fiji's position in the UN Development Index has slipped considerably since 2004 when it was placed at 81 out of 185 countries, to 100 out of 187 countries in 2011.

A root cause of poverty in Fiji is directly associated with low wages. Independent sources have confirmed that more than 65% of Fiji's workforce is paid wages well below the official poverty line.

The situation has worsened remarkably since the military takeover of 2006. Workers and their unions have been targeted by the regime which is seen as pro-employer.

The devaluation of the Fiji dollar in 2009 resulted in sharp increases in the cost of living – Fiji is still highly dependent on imports. As the economy sagged because of the post-coup phenomena, employers exerted pressure on the regime to hold wages. They cut back on overtime payments and allowances of employees as a cost saving measure.

Businesses complained that they were unable to absorb or cushion the negative impacts of the devaluation which saw significant increases in the cost of doing business.

The regime was also at loggerheads with the unions which had been critical of its labour relations policies in the public service but more so the violation of human and trade union rights since the imposition of the PER following the abrogation of the Constitution in April 2009. It responded by promulgating decrees which completely removed the rights of workers in the public service and the so-called essential industries to organize and bargain collectively, in gross violation of ILO conventions 87 and 98 both of which Fiji has ratified.

So much so that even the unorganized workers were denied wage increases awarded by Wages Councils – a statutory means of updating wages of workers not represented by unions. Almost all of these workers receive wages below the poverty line.

National Minimum Wage

The Constitution should require the establishment of a national minimum wage mechanism to determine minimum wage levels in the various sectors of the economy. The role and functions of the Wages Councils could be extended for this purpose.

Housing

Decent, affordable housing for the poor remains a major social issue. According to recent estimates, close to 25% of our people live in squalid conditions in squatter settlements in peri-urban areas. These are farming families who have been displaced because their agricultural leases were not renewed on expiry; or other rural dwellers who left their villages in search of jobs and regular incomes to sustain their families because of a lack of economic activity in rural areas; or the urban poor which would include single mothers or people with partial or permanent disabilities.

The Housing Authority which was established in 1966 to cater for the needs of such people is not sufficiently resourced to effectively address the worsening situation.

Section 44 (1) (b) of the 1997 Constitution specifically requires parliament to make programmes designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to land and housing.

However, this requirement has not been appropriately actioned, leaving the problem largely unaddressed.

Decent and affordable housing with adequate sanitation facilities for our poor and displaced persons, should rank among the top priorities under the social justice provisions of the constitution.

Rising Poverty Levels

Poverty levels have escalated and officially stand at about 45% of the population. Social distress is high as a result of insensitive policies and actions of the regime. The 20% devaluation of the Fiji dollar in April 2009 sent the cost of food, basic household items and other imports soaring. This was aggravated by the increase in VAT to 15% (from 12.5%) in Budget 2011 which further increased the cost of all goods and services, including most food items.

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In virtually all cases, the benefits were cut by 50%, leaving a majority of FNPF pensioners receiving less than $400 a month – pushing them into the poverty pit.

The depressed state of the Fiji economy resulting in low pays and high unemployment rates has aggravated the socio-economic plight of our people. Low business confidence and declining investment

levels have curtailed job opportunities.

Withdrawal of Social Welfare Benefits

According to an official report (Fiji Times Oct 8,2012) some 3000 recipients have had their social welfare benefits withdrawn by the State. Those affected were not given the opportunity to state their case to retain their allowances.

To counter the adverse effects of the escalating levels of poverty and social hardship, we recommend the following:

Social Welfare Benefits

The Constitution should protect the poor by requiring the State to follow the principles of natural justice in such circumstances.

State Pensions Scheme

We recommend the introduction of a State Pension Scheme to cater for all senior citizens above the age of 65 who are not in receipt of any other pension or other benefits and who are without adequate means of support to provide for their basic necessities of food, clothing and shelter.

Fair Opportunities

Section 44 (1) (c) separate “participation in commerce” from “in all levels and branches of the service of the State”,by creating a new subsection (d) for the latter.

Section 44 (9) – Who determines occupational preference? This provision has been used as a ruse to circumvent the provision for ethnic balance. The Indian community, for instance, is not encouraged or facilitated to join the Fisheries, Forestry, Army, Fire Services etc.

Amend the paragraph by deleting all the words after the word “whole” in the 3rd line.

Chapter 6 - The Parliament and its Institutions(s45-49)

The general provisions relating to the House of Representatives and the Senate as contained in Sections 45-49 of the 1997 Constitution, should be retained.

The system of Government

The Westminster system of Government should be continued under a bicameral Parliament. The Parliament should consist of the President, the House of Representatives and the Senate.

The House of Representatives (s50-63)

There are differing views on the size of the House of Representatives. Some have called for a reduction in its size, while others are happy to leave it as it was.

The size and shape of the House of Representatives was carefully considered by the Reeves Commission which decided to leave it at 70 seats for reasons stated in its report (pp 290-291). This number was increased to 71 during negotiations between the political parties in the Joint Parliamentary Select Committee.

We see no compelling reason to suggest a change and recommend accordingly.

The System of Representation (Electoral System)

We propose that the 71 members be elected as follows:

(i) Reserved Seats – There be 26 seats reserved for the various communities that make up Fiji, to be shared as indicated below:

Indigenous Fijians - 12
Indo-Fijians - 10
Rotumans - 1
General Electors - 3

The Reserved seats should be contested from single member constituencies with voter numbers in each constituency being, as far as reasonably practicable, the same or roughly equal.

For the purposes of voting in the Reserved Seat constituencies we propose that citizens of Melanesian, Polynesian (except Rotumans who have a constituency of their own) or Micronesian descent should vote with general electors and not the indigenous Fijian community.

(ii) Open Seats- There be 45 Open seats to be filled by voting in 15 three-member heterogeneous constituencies by members of the various ethnic

communities residing in Fiji. These seats to be contested from 15 multi-member constituencies with voter numbers in each constituency being, as far as practicable, the same or roughly equal.

(iii) Seats for Women – In order to enable and encourage the participation of women in politics we propose that should the number of successful women candidates be less than 15, then additional women be nominated to Parliament so that the total number of women members is not less than 15. The nominated members would not have voting rights but would otherwise enjoy all the privileges of a member of the House of Representatives.

Political parties should be encouraged to nominate a certain number of women candidates from constituencies where they would have a reasonable chance of success.
We reject the stand of the regime that the electoral system is a non- negotiable matter and that reserved seats for the different ethnic communities must be abolished. Indeed, this is listed as one of the 11 non-negotiables in Section 3(e) of Decree 57 of 2012.

The regime's position here is for proportional representation based on one man, one vote, one value. While we appreciate the arguments advanced in support of such a system, by no means do we consider it to be a non-negotiable matter.

The political intricacies of a multi-cultural society such as ours - still finding its way to a stable, sustainable democracy - need to be thoroughly understood. Multiculturalism, racial harmony and tolerance or national unity cannot be ordered. It has to be achieved gradually over a period of time through the building of mutual trust and confidence between the different communities that make up Fiji.

We are not a mature democracy as yet and it will be a while before we get there. But the journey must begin and it must begin in a sure-footed manner. It makes little sense to rush only to retrace our steps.

A major initiative was taken by the Reeves Commission in this direction when it recommended a mix of communal (reserved) and Open seats which was heavily tilted in favour of open seats. It is to be recalled that at the time all 70 seats in the House of Representatives were communal seats under the 1990 Constitution.

It was a big leap forward from such a racially biased

arrangement to one where two thirds (45) of the 70 seats would be open to all communities.

Unfortunately, this recommendation did not find favour with the then Prime Minister (Sitiveni Rabuka) and the Leader of the Opposition (Jai Ram Reddy). In the Parliamentary Select Committee negotiations the allocation of seats was reversed to 46 Communal and 25 Open in a 71-member House. All members were to be elected from single member constituencies.

The Fiji Labour Party objected to this gross reversal of the Reeves Commission recommendation and opposed it in the House.

We insisted that the electoral arrangements recommended by the Reeves Commission be implemented for reasons well documented in its report. Regrettably, we did not succeed. Consequently, the political landscape remained largely unchanged – communal politics had won the day.

The allocation of Reserved seats between the communities, as recommended by us, may not be strictly in accordance with their population numbers but the suggested distribution would give the minority communities greater confidence about their own future in Fiji. It has to be said that the Indo-Fijians can rightly claim to be the most aggrieved community as victims of abuse, violence, and racial discrimination unleashed on them after every coup.

Apart from misguided ethno-nationalists and extremist groups, the military was also involved in the abuse and violence perpetrated on them in the 1987, 2000 and 2006 coups, particularly, in the rural and the cane farming communities. The Police and the military did little to restore order after the 2000 coup, remaining silent spectators of the mayhem that was unfolding before them.

It is now a well-recorded fact that Police Commissioner, Isikia Savua, reported sick on 19 May, the day of the 2000 takeover of Parliament, leaving the Police Force leaderless and direction-less at a crucial time.

Senior police officers, as well as the Police Mobile Unit were puzzled by the breakdown in the chain of command. Almost every eye-witness reported on the lack of Police presence in the city at the time of the

rioting in Suva.

Police reports put damage to the city that day estimated at $35 million. Altogether 15 buildings, shops and kiosks including the Yatulau Arcade opposite the market, were gutted by fire, 167 shops were broken into – except for two Chinese stores that were looted, the rest were all Indian owned. Standing glaringly intact and untouched in the midst of all the carnage were three foreign- owned departmental stores – HomeCentres, Morris Hedstroms and Courts – a visible testimony to the racist nature of the attacks. The burning down of the Lau-Province owned Yatulau Arcade was directed against the President, Ratu Sir Kamisese Mara.

The riots in Suva began at mid-day. Almost simultaneously a series of attacks were launched on innocent rural communities in the Mauniweni/Baulevu areas about 40 kms to the east of Suva, where George Speight comes from.

In the days and weeks that followed homes in the area were looted, burnt, people beaten up and crops and livestock stolen but they received no assistance from the security forces. Indeed, Police trucks were seen carting stolen livestock from these settlements to Parliament to feed Speight and his thugs. Similar attacks later took place in remote settlements out of Labasa in the North.

The two coups in 1987 also targeted the Indian community with the second takeover in September being the most vicious.

The Indian Commissioner of Police, PU Raman was removed from office, and many Indians fled the country in disgust following what was in effect an ethnic cleansing of the civil service with the removal of Indians from top positions in the service. With the imposition of the Sunday bans, rural Indian communities became a major target.

Reports were rife of atrocities committed against Indian women, in particular, by soldiers as a result of the Sunday bans. There were also reports of Indian women in isolated rural communities living in fear, often spending nights in ditches, to avoid rape and assaults in the mayhem that followed the 2000 coup.

The Indian community could not look to the Police Force or the army for assistance or protection. Quite apart from atrocities committed during the coups, the community is also the target of violent crime – home

invasions, shop break-ins etc. Personal insecurity is one of the main reasons cited by Indians for emigrating. The security forces have not been able to provide adequate protection to the community for their family and property.

One must not forget that the minority communities are now grossly under-represented in the security forces – particularly, the military which is comprised almost all of the members of the majority community. These factors provide little security or confidence to the Indian and other minority communities at large.

Constituency Boundaries (s52)

In determining the boundaries of the constituencies for election of members of the Reserved and Open seats, the Constituency Boundaries Commission must ensure that the number of voters in each constituency is, as far as reasonably practicable, the same.

Redistribution of Boundaries (s53)

The provisions of Section 53 of the 1997 Constitution to be retained.

Voting Method (s54)

The preferential system of voting known as the alternative vote is to be retained. A candidate must secure 50%+1 of the total valid votes cast to be elected as a member of the House of Representatives.

Registration as Voter (s55)

A person's right to vote and to be registered as a voter should be clearly prescribed in the Constitution.

We propose that these be as provided for in section 55(1) of the 1997 Constitution except that the age of 21 should be lowered to 18.

Residential qualification to be maintained

In particular, we wish to stress that residential qualification of two (2) years must be maintained. We have noted that this qualification requirement has been removed pursuant to Decree 54 promulgated on 28 June 2012 which repealed the Electoral Act 1998.

We submit that there is no logical basis for the removal of residency requirement which is an important credential in so far as a person's

commitment and loyalty to a country is concerned. No one should have a right to vote in a country where he or she does not reside except in exceptional circumstances as stated in Section 9 of the repealed Electoral Act 1998.

No reasons have been advanced by the regime for removing the residential qualification and their purpose in doing so appears to be suspect.

The requirement for residential qualification and for change of residency to be notified to the Electoral Office is an essential safeguard against fraudulent registration and vote rigging.

We see the surreptitious removal of the residential qualification as nothing but an act of manipulation intended to corrupt the electoral system. It must be stopped if Fiji is to have free, fair and credible elections.

Fiji citizens who have become permanent residents of other countries and who reside, work or live in retirement there should have the right to vote here only if they satisfy the residential requirement.

In our view, qualifications for registration as a voter should remain as is under the 1997 Constitution.

To recapitulate:

The right to register as a voter and to vote must be confined to persons who:

(a) Have reached the age of 18 years

(b) Are citizens of Fiji and

(c) Have been resident in Fiji for the last 2 years immediately preceding their application to register as a voter – unless their absence from Fiji for all or a part of this period is for a reason prescribed by Parliament

We strongly entreat the Commission to list Decree 54 of 2012 Electoral Registration of Voters Decree 2012 for repeal under the Repeal and Transitional Provisions of the Constitution, with a recommendation that the Electoral Act 1998 and the various Regulations issued thereunder be reinstated.

Compulsory Voting – Retain s56

Registration of Voters –Retain s57

Nomination of Candidates for Elections – s58

Retain s58 with appropriate amendments to conform with the recommended electoral arrangements pps 13-14.

The Constitution should also require that Parliament must legislate prescribing the kind of interest that must not be held by a Member of Parliament or a presiding officer of a House of Parliament, within six months of the first sitting of the House of Representatives following the next general elections. See s58 (2) (c).

The absence of such prescription made it possible for persons with substantial interest in agreements or contracts entered into with government or a government authority to contest and remain members of the House of Parliament and/or the Senate.

Term of House of Representatives (s59)

We propose that the full term of the House, unless sooner dissolved, should be reduced from 5 years to 4 years from the date of its first meeting after a general election [s59(i)].

All other provisions from [s59(2)-63] should be retained except that polling must commence no later than 21 days after the last day of the receipt of nominations (s62). The timeline for by-election on s63 should be amended to read 3 years and 6 months.

The Senate (s64-66)

The Reeves Commission had recommended an elected Senate of 35 members comprising 28 members elected to represent the 14 provinces, one member elected to represent Rotuma and 6 members appointed by the President to represent communities and groups which would otherwise be unrepresented or under-represented. This recommendation was not implemented.

Instead, the 1997 Constitution - (s64(1)(a) - provided for a 32-member nominated Senate with appointments of 14 members to be made by the President on the advice of the Bose LevuVakaturaga (GCC). In actual fact, these appointments constituted one member each from the 14 provinces. The remaining 18 were nominated by: the Prime Minister (9), Leader of the Opposition (8) and the Council of

Rotuma (1).

We propose that the Upper House or the Senate should be constituted of 35 members of which 30 would be nominated by the leaders of political parties based on the proportion of primary votes obtained by their parties.

The remaining 5 of whom at least one should be a Rotuman, to be appointed by the President to represent minority communities or groups which would otherwise be under-represented or not represented in Parliament.

We have deliberately moved away from nominations based on provincial boundaries.

The Senate should function more as a House of Review rather than as an extension of the House of Representatives driven solely by party politics or provincialism. We feel that the interests of the various provinces would be well served by members in the House of Representatives.

The Senate should not have any veto powers or powers that override the authority of the House of Representatives.

A person is not eligible to be appointed as a member of the Senate unless he/she is qualified to be a candidate in the elections to the House of Representatives.

Both Houses (s67-74)

The provisions of s67-74 of the 1997 Constitution should be retained except that the Constitution must require that a Bill may not pass unless there is present at least 50% of the Members (in either House) eligible to vote when the question is put after the third reading of the Bill.

This is a matter of accountability on the part of parliamentarians and a normal rule in other organisations or institutions when sanctioning important decisions.

We have proposed a term of 4 years for the House of Representatives because we consider 5 years rather long with governments running out of steam. Our feedback is that the people would want the mandate of governments renewed every four years – three as is in our neighbouring countries of Australia and New

Zealand, is considered rather short.

The term of the Senate should expire concurrent with that of the House of Representatives.

The provisions relating to public office holders (s67), sessions of Parliament (s68), voting (s69) should be retained.

Vacation of place of Member of Parliament - (s71 (1)-(6)

This section deals with the circumstances in which the place of a member of Parliament is deemed to have been vacated. These provisions should be retained with an addition that a member who has been suspended from the service of the House [s71(5)] shall be so suspended without pay or benefits, provided these may be restored retrospectively if the member succeeds in the court proceedings.

Members of the Senate who are appointees of political parties should also be similarly treated. The rationale behind a member losing his/her seat in such circumstances is simple. Members elected to the House of Representatives or appointed to the Senate on Party tickets represent the Party and are eligible to remain Members of Parliament as long as theyremain members of the Party.

This is an effective deterrent against members crossing the floor for their own personal gain or benefit in total disregard of their loyalty pledge to the people and the Party.

Vacancies in House membership (s72) and Court of Disputed Returns (s73) should be retained.

Proceedings of Parliament (s74)

English should remain the official language of Parliament but members may address in their vernacular languages (Fijian and Hindi).

Sector Committees (s74)

Past experience has shown that sector committees have added little value to the business of Parliament. Proceedings of these committees have been unduly prolonged, adding huge costs to parliamentary appropriations. The final outcome of the reports of the sector committees have supported the government position, irrespective of the merits of the arguments

advanced by the opposition.

We would like the Commission to consider recommending a more structured and time bound working arrangement which would deal efficiently with the business of the House thus enhancing its productivity and professional competence.

Electoral Institutions and Officers (ss 75-79)

The provisions relating to these institutions and offices should remain. The institutions and offices carry the heavy responsibility for the conduct of the elections and should be constituted of persons with impeccable reputation for integrity and political neutrality. Adequate safeguards must, therefore, be provided in the constitution to ensure this.

We recommend that the four-year time bar applicable to members of the Boundaries Commission [s77(a)] should also apply to members of the Electoral Commission [s78(9)].

President and Vice President of the Senate - Retain s81.

Leader of the Opposition - Retain s82

Parliamentary Emoluments Commission

Retain s83 but provide that the Commission should conduct a full review of the emoluments of Members of Parliament every four years from the date of its first determination following the next general election.

Secretary General to Parliament and Staff - Retain s84

Chapter 7 - Executive Authority (s85)

Retain s85 but provide that the President must act in accordance with the advice of the Cabinet except where by law he is empowered to act in his own deliberate judgment or on the advice of any Minister or other authority.

Office of the President and the Vice President (s85-95)

The Constitution should continue the offices of the President and the Vice President. The provisions relating to the qualifications for the President and the

Vice President, their functions, authority and their removal from office in the 1997 Constitution should be retained.

Nomination and election of President and Vice President as Candidates

Nominations and elections for the positions should be in accordance with the procedure outlined in Recommendations 222 - 225 of the Reeves Commission Report (pp 273/274), except that the offices should be open to qualified members of any community. The Constitution should provide that nominations may also be received from political parties represented in the House of Representatives.

President and Vice President to be elected by Electoral College

The Constitution should require that the House of Representatives and the Senate should sit together as an Electoral College for the purposes of electing as President and Vice-President one of the pairs of candidates nominated for those offices.

The election should be by secret ballot under the preferential system. A candidate to be successful must obtain at least 50%+1 of the valid votes cast.

The filling of vacancies in the office of the President or the Vice-President should be done in accordance with the procedures outlined in Recommendations 228,229 of the Reeves Commission Report (p 274).

The Constitution Commission is urged to consider making a provision for a President's Council along the lines suggested in Recommendations 234 -236 of the Reeves Commission Report.

Each nomination of a candidate for election to the position of President must be accompanied by another nomination of a Vice-President. (Somewhat similar to the system in the United States where on election as President, the running mate of the President assumes the office of Vice-President).

Term of office of the President and Vice President

The President's term of office should be limited to one term of 5 years and he/she should not be eligible for reappointment. The Vice President's term should be similarly limited except that he/she could be nominated for the office of the President on expiry of

his/her term as VP.

Filling of vacancy of Vice President (s92)

A vacancy in the office of the Vice President is filled by the President nominating another person who is eligible to become Vice President provided the nomination has the approval of both Houses of Parliament.

Removal from office of President or Vice President (s93)

Retain the provisions of s93 except that the removal from office should require the positive votes of three-fourths of the members of the Electoral College present and voting – see Recommendation 232 of the Reeves Commission Report –(p.275)

The Government (s96)

Retain s96 but clarify that the President does not have any reserve powers or authority other than that prescribed in the Constitution and that the President must act only on the advice of the Cabinet except where he/she is empowered by law to act on the advice of any other authority or Minister.

Responsible Government - Retain s97

Appointment of Prime Minister - Retain s98

Appointments to Cabinet (s99) -Multi-ethnic Cabinet

The constitution should require that the Prime Minister must establish a multi-ethnic Cabinet from among Members of the House of Representatives or the Senate.

The composition of Cabinet should reflect, as closely as possible, the ethnic composition of the population.

Size of Cabinet

We are of the view that there should be a cap on the size of Cabinet which may be reviewed from time to time. However, we suggest that the number of Cabinet Ministers should not exceed 18 and that Deputy Ministers should be limited to 6, mainly for the larger Ministries.

This will restrict office holders to 34% or roughly one-third of the Members of the House of

Representatives. Ministers and Deputy Ministers must be appointed from among members of the House of Representatives or the Senate.

The Multi-Party system of government under s99 of the 1997 Constitution, though well-intentioned as a method of power sharing between the communities, had practical difficulties which made it unworkable. Under such an arrangement, the dominant party, (Prime Minister's Party) had a distinct advantage to call the shots, relegating its coalition party to the rank of junior partner who must toe the line or be prepared to part company.

Reconciling policy differences and settling fair ground rules for its proper functioning were just not possible on account of the widely differing political agenda and programmes of the parties.

The Coalition party also ran the risk of internal dissent as some Ministers within its own ranks were seen to support government measures which stood in stark opposition to the policies of the Party as stated in its election manifesto.

Attorney General (s100)

We recommend that the person to be appointed Attorney General must be qualified to be appointed a judge of the High Court. This is an additional qualification to those already stated in s100(2) of the 1997 Constitution.

The other provisions of the section be retained.

Other provisions relating to Government – Retain s101-110

Commissioner of Police – s111

The provisions of s111 of the 1997 Constitution should be retained. But we recommend the establishment of an independent Police Integrity Commission (see below) to address issues of serious concerns to the public.

Currently there is a notable ethnic imbalance in the composition of the Force at all levels. This should be corrected as soon as is practicably possible. The Police Act must be amended to provide for the maintenance of ethnic balance in the Force along the lines of the civil service.

In a plural society, it is always important to ensure

that the ethnic ratio of members of the Force correlate as closely as possible to the ethnic composition of the population. This is for practical reasons as well as to infuse confidence of the various communities in the Police Force.

The arbitrary appointment of military officers to senior ranks have caused much discontent and lowered the morale of the Force as a whole, drastically compromising its independence and autonomy. Police investigations are conducted, and people charged, on “orders from the top”, to quote Police officers themselves. For political opponents, it is now a case of “charge first and look for evidence later”.

Huge challenges lie ahead to restore the independence, autonomy and professionalism of the Force. Restoring public confidence in the competence of the Force and its ability to curb high crime rates should receive first priority.

Corruption and discipline within the Force have emerged as other issues of concern. To address such problems, and to foster a higher degree of professionalism within the Force, we propose the establishment of an independent Police Integrity Commission (PIC) under a separate legislation from the Police Act. It should be headed by a person of integrity, qualified to be appointed a judge – and two other members, one of whom shall be a woman.

The appointments are to be made by the President acting on the advice of the Constitutional Offices Commission (COC) after the COC has consulted with the Minister. The term of office of members of the PIC shall be restricted to 5 years.

The PIC, may be modeled on the New South Wales unit in Australia and should be empowered to deal with all aspects of Police misconduct such as corruption, Police brutality including excessive use of force, abuse of powers, neglect of duty, breach of discipline as well as complaints lodged against particular officer(s) by members of the public or members of the Force.

Currently, complaints against the Police are handled internally but the public, and even members of the Force, are not satisfied with the outcome of internal investigations.

The Republic of Fiji Military Forces (RFMF)(s112)

Section 112 of the 1997 Constitution continued in existence the RFMF established by the 1990 Constitution. The RFMF received mention for the first time in the 1990 Constitution. It had no reference in the 1970 Constitution.

The people of Fiji, including its indigenous community, have now fully understood that Fiji's present day problems of bad governance, disrespect for the rule of law, racial animosity, economic decline, social disorder and deprivation, human suffering, endemic corruption etc all have their genesis in the coups of 1987.

The coups laid the foundation for future military intervention in the affairs of the State as and when it considered warranted.

The coups of 1987 and 2000 were executed and/or supported by the military against Labour-led governments which they deliberately portrayed as a threat to the long term well-being and security of the indigenous community.

But the 2006 coup which removed an indigenous Fijian government from office, established that the military leadership can have other designs. It is obvious from all accounts that the military's intent is to legitimize its unlawful and unconstitutional rule through a constitutional process which is not independent, inclusive or legitimate. That in fact appears to be its exit strategy.

We draw attention to the observations and recommendations of the Reeves Commission on the RFMF (pps413-416) which proposed that provision for the existence of the RFMF should be made by subsidiary legislation (Act) rather than in the Constitution. The Constitution should state that a military force may only be raised or maintained in Fiji under the authority of an Act of Parliament.

The Constitution should also explicitly provide for both the ministerial control of the military forcesas well as its command. The military forces must remain under the control of the government exercised through the Cabinet and the Minister responsible.

The Commander of RFMF should be appointed by the President acting in accordance with the advice of the Prime Minister. The Commander serves at the pleasure of the government.

The Constitution should provide that the

circumstances under which the military forces may be deployed either in Fiji or abroad must receive the approval of Parliament.

Military expenditure is a significant drain on the public purse. Over the years, it has siphoned off millions which could have been productively utilized in other sectors of the economy, particularly in agricultural and rural development.

Fiji is an agricultural country with a large rural sector which remains largely under developed. We tabulate hereunder actual expenditure on RFMF, Agriculture, Education and Health for the past four years 2007-2010.

Sector	2007 ($m)	2008 ($m)	2009($m)	2010($m)
*RFMF	114	77.4	94	93
Police	74	81.4	86	81
Agriculture	53	48	60	54
Health	175	139	153	153
Education	312.4	239	243	239

*RFMF expenditure is net of reimbursements by the UN for Peace Keeping Forces
Source: Ministry of Finance Budget Estimates

It can be seen from the table that military expenditure is substantially more than that of the Agriculture Ministry.

Recent surveys on poverty in Fiji have revealed that rural poverty is substantially on the rise. This is a reversal of the earlier trend of urban poverty being higher.

Military expenditure also exceeds that of the Police Force and is roughly 60% of what the nation spends on its Health services. Viewed against the declining expenditure on Education in the recent years, one wonders whether we have our priorities right – the military budget is roughly 40% of what we spend on education!

Fiji is a peaceful nation with no real external or internal threat to its security. If there is any threat to the peace and security of our people, it is from the military under the current leadership and their self-

serving agenda and, of course, from violent criminal elements. Yet, the budget for the Police Force is lower than that for the Army.

The RFMF has a dismal record of financial discipline, breaking every rule in the book of sound administrative and financial management and accountability. Over the years it has consistently busted its budget without obtaining prior approval for excess spending. Between 2004 and 2010, its overspending amounted to a staggering $120m – an average of $17m annually!

One must note that since 1987, the RFMF has acquired a culture of supremacy – there is a noticeable lack of accountability in terms of military expenditure – this has been more marked under the current leadership. These are alarming trends and must be checked.

Regrettably, the RFMF - once a proud symbol of our nation, trusted by its people - is today seen as an oppressor, serving the political agenda of its leadership and their cronies.

Over the years, no serious efforts have been made to achieve ethnic balance in the composition of the RFMF. This is understandable, given the ethnocentric disposition of the governments since independence. In the six years of military rule, the situation has not changed, and may indeed have worsened, despite all the rhetoric one hears regarding racial equality and the removal of racial discrimination.

The constitution should address the issue of ethnic composition of Fiji's security Forces – military, police and prison services – and require that ethnic balance be achieved in these services within a given time frame of 3-5 years. The respective subsidiary legislations governing these institutions should be amended to so require.

Concurrently, an exercise should be undertaken to rationalize the numerical strength of the military forces. The present strength of 3600 of the regular force is far too large for our needs. The numbers in the Territorial Forces are believed to be very large as well. No one really knows the actual numbers in the RFMF.

Finally, opportunities should be made available to younger, well qualified and proficient officers to take up command positions within the RFMF. Priority should be given to transform the RFMF to a well

drilled, disciplined, professional and competent institution, dedicated to respecting and upholding the rule of law, and preserving and protecting the Constitution.

Solicitor General – Retain s113

Director of Public Prosecutions (s114)

Retain s114 but provide explicitly for the independence of the Office of the DPP from the executive. Subsection (4)(b) should be deleted; and 4(c)amended by deleting the words … "or another authority".

Prerogative of Mercy – Retain s115.

Chapter 8 - The Great Council of Chiefs – (s116) (Bose LevuVakaturaga) (BLV)

The GCC was disbanded by the promulgation of Decree 20 of 2012. The unceremonious disestablishment of this age-old indigenous institution caused considerable anger and unease among the people, not only of the indigenous community but also of the other communities.

We do not intend to go into the historical significance or importance of the GCC and the role it has played, as the apex institution of the indigenous community, in the affairs of the nation over the long period of its existence. It is generally well accepted by members of all communities.

We propose that the GCC be retained in its role as an advisory body to the government on issues relating to the well-being of the indigenous Fijians. The Council may act on matters referred to it by the Minister responsible or it may take up such issues on its own initiative.

We direct the Commission's attention to the observations, comments and Recommendations (205-213) of the Reeves Commission (pps 256-263 of its report) on this important subject with the request that the GhaiCommission also consider seriously the views expressed before it on this issue.

We accept the concerns generally expressed about the politicisation of the GCC since 1987 and its support for the coups of 1987 and 2000. We recommend appropriate measures be taken to make the Council politically neutral. The recommendations of the Reeves Commission which were not implemented,

may be of help in this regard.

It is to be remembered that the GCC has been arbitrarily disbanded by a military dictatorship without obtaining the views of the people.

Chapter 9 - The Judiciary (s117-139)

Retain s117-139 with changes as suggested below.

The independence and authority of the judiciary have been seriously compromised by the promulgation of the Administration of Justice Decrees 9 and 10 of 2009 which should be repealed. Judges and Magistrates are now appointed by the President on the advice of the Judicial Services Commission following consultation with the Prime Minister and the Attorney General.

Even magistrates cannot be appointed unless the Judicial Services Commission consults with the Prime Minister and the Attorney General.

The tenure of judges and magistrates, including the Chief Justice, are governed by employment contracts of 2 years!

The authority of the Courts has been circumscribed to exclude from its jurisdiction any application or matter challenging any decision or action of the regime – its Ministers and officials etc - retrospective to 5th December 2006. All actions pending in the courts in such matters were discontinued under the Decrees.

Interference with and manipulation of the judiciary by the Attorney General as alleged in a petition dated 12 July 2012 to the Prime Minister by former President of the Fiji Court of Appeal Justice William Marshall, has shaken the confidence of the people in the judiciary. Similar allegations of interference and bullying were made by magistrates and judicial officers whose appointments were terminated under questionable circumstances.

If these allegations are true, it then raises fears of miscarriage of justice in cases where the Attorney General is alleged to have interfered and, indeed, in other cases which may not have come to the attention of Justice Marshall. We are not alleging that the allegations are true but the truth of the matter can only be established after an independent investigation.

Denial of justice is a serious matter and must be

investigated where there is credible evidence to support such a claim.

We note that both the Prime Minister and the Attorney General have remained silent about the allegations in the Marshall petition. No official statement has been issued on a matter of such grave concern to the people of Fiji. Why? we ask.

It is quite uncharacteristic of the Prime Minister and the Attorney General to remain silent in situations attacking the integrity or credibility of the regime. Normally, they are quick and abrasive with their responses to reports critical of the regime.

We request the Commission to consider recommending an independent judicial Commission of Inquiry, to be appointed by the President, to investigate allegations of interference and manipulation of the judiciary by the Attorney General, as detailed in the Justice Marshall Petition. The terms of reference of the inquiry should be wide enough for it to deal with other instances of interference and/or manipulation of the judiciary as may come to its attention during the course of their proceedings.

Appellate Courts

Justices of appellate courts other than the Chief Justice and the President of Fiji should be recruited from other compatible jurisdictions. This is proposed to enhance the independence of the appellate Courts.

Code of Conduct for Judicial Officers

We recommend that a Code of Conduct be also considered for judicial officers based on the Bangalore Principles. This is essential in light of disturbing developments in the judicial services since 10 April 2009.

The legislature should also require judges and magistrates to deliver their judgments/ decisions within six months of the date in which the hearing concluded. There have been cases where judgments remained undelivered for very long periods (years in fact) thus delaying and denying justice to the parties.

Chapter 10 - State Services (s140-155)

Retain sections 140-155 of the 1997 Constitution, including the various Service Commissions. As stated earlier, there should be a mechanism provided to

ensure compliance with the requirement to maintain ethnic balance at all levels in the composition of State services.

This requirement of the Constitution was not complied with by the SVT and SDL governments to the disadvantage of citizens of the minority communities. The situation has reportedly worsened since 2006 with the militarisation of the civil service.

Retirement age of employees in State services

The compulsory retirement age of employees in the service of the State was arbitrarily reduced from 60 to 55 years under the State Services Decree 6 of 2009 in order to "right size" the civil service.

In the process some 2500 employees were retired without due notice and in breach of their right to work as per their contracts of employment.

Most of the affected employees were financially disadvantaged as a result and had to make adjustments to their living standards which caused them and their families embarrassment and hardship.

While the retirement age of all State employees, including those in the security forces, was shortened by 5 years by a stroke of the pen, the Prime Minister, as Commander of the RFMF, made an exception for himself and retained the retirement age at 60 years!

Not only that, a number of the Prime Minister's immediate family were allowed to work well past the revised retirement age of 55 and some continue to work well beyond 60! So much for clean, accountable and transparent government!

We urge the Commission to provide specifically for the retirement age of 60 years by writing it into the Constitution. However, employees wishing to retire at age 55 when they become eligible to access their superannuation benefits, should be permitted to do so.

Disciplinary Services Commission(154)

The Disciplinary Services Commission should be retained with powers and functions as stated in s152 of the 1997 Constitution.

Chapter 11- Accountability

Code of Conduct – s156

Retain with a requirement to enact a Code of Conduct legislation within 12 months after the first sitting of the House of Representatives following the next general elections.

Ombudsman –Retain s157-165; The Ombudsman's office lapsed when the Constitution was purportedly abrogated in April 2009. It was not re-appointed. It should be re-instated.

Auditor General – Retain s166-168

Constitutional Offices – Retain s169-173

Freedom of Information (s174)

The Constitution should provide for enactment of Freedom of Information legislation within 12 months following the first sitting of the House of Representatives after the next general elections. As pointed out earlier, this legislation was not enacted by the SVT or the SDL Governments despite the constitutional requirement to do so.

Media Accountability

The founding principles of the Fiji Labour Party are premised on the principles of democracy, accountability and social justice. An important cornerstone of this is our belief in the freedom and independence of the Media. However, as with all such freedoms, accountability and responsibility are essential elements, particularly in a plural society where sensitivity in the handling of certain issues becomes very important.

We oppose the rigorous censorship of the Fiji Media that was imposed under Public Emergency Regulations and we call for the repeal of the Media Industry Development Decree No. 29 of 2010. Three years of rigorous media censorship has had a grim impact on the industry – it has severely retarded journalistic skills and professionalism, and has created a mentality of fear and self-censorship from which the Media has still not emerged.

While we welcome the emergence of a free and healthy Media, we wish to see one that is, at the same time, responsible and accountable for its actions.

We, therefore, recommend the setting up of an

independent Media Tribunal to adjudicate on complaints relating to the Media. The Tribunal should be a retired judge or a person qualified to be appointed a judge. The appointment should be made by the President on the advice of the Constitutional Offices Commission following consultation with the Minister.

It is important to ensure that aggrieved parties get swift justice. It is our experience that victims of media bias, defamation, slander etc find that the litigation process through the normal court system takes so long that by the time they obtain relief or justice several years later, the damage has been done and their reputation already sullied.

It may be important to digress here a little to provide background information on why media controls were imposed in the first place. Certain elements in the Fiji media have had a history of political bias – the Fiji Times for instance, has long been known for its anti-Indian stance going back to the colonial days.

Following independence, such bias was reined in by experienced and mature journalists, sensitive to Fiji's racial and political nuances. However, in the decade following the 1987 coups, Fiji lost many of its experienced journalists. A new cadre of reporters with little real down the line experience in political reporting took up positions of seniority in major news organisations.

As a result, irresponsible reporting reflecting overt political bias, sensationalism and a lack of sensitivity to ethnic issues became more pronounced. Such irresponsible journalism peaked at the time the Labour-led Peoples Coalition Government took office in 1999-2000, particularly with The Fiji Times and Fiji TV. Indeed, several independent academics and observers have accused The Fiji Times of playing a crucial role in instigating the 2000 coup through its incendiary reporting.

Such overt media bias and lack of balanced, responsible reportingwas also confirmed by an independent inquiry into the Freedom and Independence of the Fiji Media commissioned by the Fiji Human Rights Commission in 2007.

It commented on the deteriorating role of the Media which seemed to have "increasingly misused its unfettered freedom and turned it into a …licence to divide and despoil a fragile polity". Commenting on the media's claim that it is a watch dog – the inquiry

asked: “Is this ‘watch dog’ a law unto itself with no law to govern it?

Among several other recommendations, the inquiry report suggested the setting up of a Media Tribunal to deal with grievances against the Media.

Chapter 12 - State Finances and Appropriations (s175-184)

Retain s175-s184 of the 1997 Constitution. However, there should be additional constitutional provisions requiring governments to exercise due diligence in the management of State finances and the economy. A specific requirement should be to contain the national debt at sustainable levels. The Constitution should hold governments accountable for financial malfeasance.

Chapter 13 - Entrenched Legislation (s185 - 186)

The provisions of s185 and 186 should be retained except for 185(l)(k) and 185 (2)(b)(ii) which should be amended to require that the Bill has the support of three-quarters of the Members of each House.

Agricultural Land Leases

Agricultural leases on native land have been a long standing problem for the Indo-Fijian farmer.

The Agricultural Landlord and Tenant Act of 1976, a stop gap measure, had provided short term relief with 30 year leases. These leases began to expire in 1997, without agreement on a successor arrangement. Since then, the failure to renew expiring leases, has had devastating social and economic consequences, with over 6000 farming families displaced, and rendered homeless and destitute. This dislocation contributed to the overnight sprouting of squatter settlements on the fringes of all towns and cities, including Suva, and has contributed immensely to the growing poverty in the rural sector.

A long term solution to the land problem is now well overdue considering that Fiji is basically an agricultural nation. Although an agreement on ALTA has to date been snagged by political considerations, a final resolution of this important issue is imperative for the economic well-being of the nation.

This is well exemplified by a look at the downturn in the sugar industry in the past two decades. Cane production has fallen from 4 million tonnes

(1999/2000) to below 2 million tonnes today. In that time span, some 6000 growers have left the industry. The number of registered active growers fell from 18,615 in 2001 to 13,251 in 2010.

The sugar industry is too important for Fiji's economy to be allowed to stagnate for want of a reformed land policy.

We maintain that 30 year leases are too short to encourage good husbandry or to promote investment in the agricultural sector.

Apart from security of land tenure, several other issues need to be urgently addressed including land rent. Currently under ALTA, rent is capped at 6% of the Unimproved Capital Value (UCV) of the land with reassessments every five years.

However, landowners have been complaining that they do not get a fair return from their leased agricultural land. At the same time, growers cannot meet higher land rents. In 2007, the regime had raised the land rent to 10% of the UCV, with the State meeting the additional 4% as a rent subsidy to growers.

We propose the following:

- ALTA to remain an entrenched legislation

- Leases under ALTA to be given out for a minimum of 50 years to provide security of tenure and encourage investment in the agricultural sector

- Rent – rent should be put at 10% of the UCV but the State should continue to meet the additional 4% as subsidy to growers;

- Rent to be reassessed every 7 years instead of 5 years

- Rent assessments to be done in a transparent manner, based on the existing formula under ALTA

State assistance to Landowners

Ownership of 93% of all agricultural land is vested in the indigenous people but they lack the financial resources to develop it. The State needs to assist them by redeploying funds from unproductive sectors to help landowners embark on agricultural development projects that will enhance their incomes, boost rural

development, create job opportunities and add value to their land resources.

It is surprising that indigenous governments in the past have been so negligent in this area of resource development for their people. It is a root cause of why they are leaving their lands and villages in such large numbers to move to urban areas in search of a better quality of life.

The indigenous people in Fiji are owners of rich natural resources. There is no reason why they should be struggling to survive in squatter settlements in peri-urban areas when their own land resources remain largely undeveloped or under-utilised.

Coastal Waters and Inland Waterways (new provision)

The Constitution must make provision vesting control and ownership of coastal waters and inland water ways in the State, subject to the requirements of any international law in such matters.

Chapter 14 - Emergency Powers - Retain s187-189

Chapter 15 - Amendment to Constitution (s190-192)Retain s190.

Special Parliamentary Majorities– (s191-192)

These sections should be appropriately amended to reflect the changed composition of both Houses and requiring the support of 75% of the members of both Houses to alter or add to the Constitution.

Chapter 16 - Commencement, Interpretation, Transitional and Repeals (s193-195)

This part of the Constitution will need to be carefully drafted to reflect the changed situation. We leave it to the Constitution Commission to deal with it as it deems appropriate.

Transitional

We strongly urge the Constitution Commission to recommend the establishment of a civilian caretaker government to take Fiji through the transition to democratic and constitutional rule via general elections.

This should be done in order to ensure the legitimacy,

credibility and integrity of the process. In our previous submission to the Commission on 12 September, we pointed out that the process, as announced by the Prime Minister and as promulgated in Decrees 57 and 58, was fundamentally flawed and lacked credibility, legitimacy and integrity.

We drew the attention of the Commission to the Fiji Court of Appeal ruling of 9 April 2009 in the Qarasevs Bainimarama case, wherein the Court found that the military takeover of government in December 2006 was unlawful, as was the interim administration that followed.

The Court advised that the President had the powers "…to appoint a distinguished person, independent of the parties in litigation, as caretaker prime minister".

The caretaker prime minister should then appoint a caretaker administration to take Fiji through to general elections and the restoration of constitutional rule.

We submit that this is the only credible, lawful and acceptable path Fiji can adopt to return to democratic rule. There are compelling reasons why the current administration should be distanced from the constitutional and electoral process – it is too tainted, and lacks the independence and integrity to take Fiji through to fair and credible general elections and constitutional rule.

We remind the Commission that it itself has questioned the independence and integrity of the current process as sanctioned by Decrees 57 & 58. Clearly, the regime has vested interests in the outcome of the process.

Public opinion is also overwhelmingly in favour of an independent administration to take charge of the process of restoring Fiji to democratic and constitutional rule.

We urge the Commission to include a provision under the transitional arrangement of the draft constitution requiring the President to appoint an independent caretaker administration to assume charge of the government until such time as a government elected under the new Constitution takes office.

The caretaker administration should have a specific mandate to adopt a new constitution through a fully democratic, inclusive and participatory process and to hold free, fair and credible general elections under

that Constitution within 12 months of its adoption.

Repeal

• All decrees promulgated after 5 December 2006 and which transgress the fundamental freedoms and rights of citizens, individuals, groups or institutions as guaranteed in the 1997 Constitution, or any other laws applicable before the promulgation of such decrees, should be repealed in particular the Public Order (Amendment) Decree No.1 of 2012.

• All decrees promulgated after 5 December 2006 and which have removed, curtailed or otherwise disadvantaged the rights of workers and their trade unions, particularly in relation to ILO Conventions 87, 98 and 151, as existing before the promulgation of those Decrees, should be repealed. In particular, the Decree 21 of 2011 which removes the public service employees from the ambit of the Employment Relations Promulgation 2007, and Essential National Industries (Employment) Decree 35, 2011

• All decrees promulgated after 5 December 2006 and which have terminated or annulled the rights of (citizens) individuals, groups, corporate entities, or other institutions to pursue their claims or grievances against the State or other entities through proceedings in a court of law should be repealed, and their rights reinstated as if the decrees had not been promulgated.

• All decrees promulgated after 5 December 2006 and which compromised or circumscribed the independence of the judiciary and the powers of the Courts, should be repealed.

• All decrees promulgated after 5 December 2006 and which have in any way reduced or disadvantaged the pension, retirement or superannuation benefits of persons receiving those benefits, under a pension, retirement or superannuation scheme established by statute, should be repealed, and the benefits applicable before the promulgation of these decrees restored with retrospective effect. In particular The Fiji National Provident Fund Decree 52 of 2011.

• Other decrees that need to be repealed:
- Legal Practitioners Decree No.16 of 2009
- Media Industry Development Decree
- Crimes Decree No.44 of November 2009
- Administration of Justice Decree (Amendment) No.3 of 2010
- State Proceedings (Amendment) Decree 2012

- Human Rights Commission Decree 2009

This is by no means an exhaustive list. We recommend that the Commission does an audit of all decrees promulgated after 5 December 2006 and recommend the repeal of those decrees which in any way curtail, remove or circumscribe the rights, benefits and interests of Fiji citizens existing as of 9th April 2009.

Immunity from Prosecution

Decrees 57 and 58 require the Commission and the Constituent Assembly to ensure that adequate provision is made in the Constitution to granting absolute and irrevocable immunity from any civil or criminal liability to the President, members of the military forces (RFMF), Fiji Police force, Fiji Correctional Services, individuals appointed to Cabinet or any State services for their actions from 5 December 2006 up to the first sitting of Parliament elected under the new Constitution.

The immunity sought also covers those who were responsible for and/or supported the coups of 1987 and 2000.

We have already expressed our view rejecting the immunity as sought by the regime in our preliminary submission of 12 September.

We maintain that position.

Truth, Reconciliation and Compensation to victims of the Coups

The real truth behind the four coups has not come before the people of Fiji. There have been several versions, but none has fully explained the plotting, the motivations and the planning that went into the execution of these coups, or the real people behind these treasonous activities.

It is never too late for truth to be established. Indeed, it is a duty we owe to our future generations so that they may know what were the reasons for those painful years in Fiji's history and who were responsible for it.

Truth and justice must prevail and it is important that victims of the coups receive justice.

The Ghai Commission may wish to consider this and recommend measures that need to be taken to begin a

reconciliation process and consider compensation payments to the victims of the coups.

We urge the Commission to consider the matter and make appropriate recommendations