



**THE REPUBLIC OF FIJI MILITARY FORCES  
SUBMISSION TO THE  
CONSTITUTIONAL COMMISSION**

## INTRODUCTION

1. Honorable Chairman and distinguish members of our Constitution Commission. It is a proud moment in our history as we present the RFMF's submission. There is a sigh of happiness and a stream of sorrow amongst us as we recall the sacrifices made by numerous Fijians and members of the Armed Forces in their endeavors to achieve this milestone. Lives were sacrificed by our brothers and sisters at arms in an effort to steer Fiji on a new course, to happy and prosperous times, towards a better Fiji.

2. The efforts of the Honorable Prime Minister and Commander of the Republic of Fiji Military Forces are commendable. The vision to unite all Fijians, to develop a thriving and harmonious society, a forward looking Fiji that equates and meets the challenges of our evolving society and international setting is commendable. From the outset, we would like to reiterate that the Forces fully support the endeavors of our Honorable Prime Minister and Commander of the Republic of Fiji Military Forces and will continue to do so in times ahead.

3. For the RFMF, our support towards a unified and truly democratic Fiji has come about with many prizes and sacrifices. Despite the numerous sanctions and barriers being put in place, our effort and commitment remains undeterred. The Forces and its personnel accept the decisions taken against them, knowing that today's sacrifice will sow the seed for a prosperous and well aligned Fiji, a Fiji for our people and future generations. The efforts today are a legacy for tomorrow, a tomorrow in which we want Fiji to be a formidable Nation that is well respected, recognized and has the ability to look after the interest of its people and neighboring states.

4. The Republic of Fiji Military Forces fully supported the initiative of “Building a Better Fiji” through the “Peoples Charter for Change, Peace and Progress”. The Forces commends the milestone effort and are of the firm opinion that the “11 Pillars for Re-Building Fiji” will ensure enduring stability within Fiji. What the “People’s Charter for Change and Peace and Progress” advocates has been long outstanding, in fact, what has been propagated should have been thought of and implemented during the period of independence. It is long overdue, but the People’s Charter for Change and Peace and Progress now provides an opportunity where associated problems that have been lingering in Fiji can now be adequately addressed.

5. The nation’s effort in implementing the People’s Charter for Change, Peace and Progress is well underway. As contributors in this effort, the RFMF fully realizes the benefit which has been extended to all our people. The long outstanding infrastructure developments, like roads, bridges, schools, hospitals to name few have been implemented resulting in better facilities for all of us. One does not realize the true benefit, only until you meet with the people who have been long deprived of these basic social needs. The electrification program is well underway allowing for this vital resource to be delivered. Similarly, there is portable water now available to our community. Undoubtedly, in time all households will be fully supplemented with such provisions.

6. The process of the Constitution Commission has the RFMF endorsement. In accepting the proposal for the way forward, the RFMF supported the establishment of the Constitution Commission with the understanding that our new constitution would have a wide consultation from the people of Fiji. Having said that, we are of the opinion that the process of collating submissions for our new constitution should not be personalised or hijacked to suit one’s agenda. The process of getting submissions for our new constitution is a milestone event. This is not about any

individual or any institution; this is for and about the whole of Fiji. It is this spirit we must advocate.

7. One must understand that the RFMF could have averted the process now adopted of seeking the submission of the people of Fiji in the formulation of a new constitution. We could have gone directly to the Assembly and the drafting of the new constitution. This was not done. The RFMF believed that for true democracy and for the future of Fiji, the adoption of this process is vital. We understand that this whole process and opportunity has never been provided in the formulation of the last three constitutions. This time around, we want the expressions and opinions of the people captured in our new constitution. It is not our intention to undermine any individual, group or institution to the contrary. We are here to ensure that through this process we are able to formulate a constitution that is representative of all the people of Fiji.

8. Questions have been asked as to “what future role will the RFMF have in the government?” Not long ago, during the visit by the Ministerial Contact Group, in raising the same question, Australia’s Minister for Foreign Affairs, Senator Bob Carr alluded to the “**Reserved Seats in Parliament for the RFMF**”. Until that day, the issue had not crossed our mind, but the comments of the Honorable Minister made us think! “Was the allocation of the reserved seats in Parliament an option for the RFMF” If so, Should the same be provisioned in our new constitution. The State of Turkey, Egypt has such provision and has been very successful in implementing such laws – why not Fiji!

9. To allay any fears or concerns regarding RFMF having reserved seats in parliament, the RFMF calls for no such allocation or provisions. The RFMF will not have and does not call for any special positions in Parliament. However, the RFMF

will monitor the ongoing situation in the Parliament and in Fiji ensuring that what it had adopted since 2006 and through the People's Charter is fully implemented.

10. We now come to our substantive submission regarding the formulation of our new constitution.

## WHY A NEW CONSTITUTION?

### **Past Constitution Have Been Racist & Discriminatory.**

11. The most Striking feature of our past three Constitutions is its racial promotion. The electoral process was commonly through ethnic voting, with little regards to multiculturalism. As a result, candidates were chosen on communal preferences which afforded no opportunity to the voters to choose or vote for the ideal candidate, irrespective of race, religion or status within our community.

12. Ethnicity has been the trump card used by many politicians to fuel, fear, mistrust and dissent within our communities. This ploy has been very successful and has become the order of business as elections draw near. The issue of land is always been brought to the fore of any campaign manifesto, knowing that land affects all communities either as a landowner or a lease holder. In 2005 and 2006, such racial and discriminatory adoption of laws through our past constitution was more evident through the proposal of the following policies by the last Governments:

- a. Promotion of Reconciliation Tolerance & Unity Bill 2005;
- b. Qoliqoli Bill 2006( Bill No. 12 of 2006); and,
- c. Indigenous Claims Tribunal Bill (Bill No. 11 of 2006).

13. These instruments were not only deemed to be unconstitutional, controversial but extremist in nature, its promotion, its inception, would not have brought about peace and stability that was sought in Fiji. The bills had the potential to create conflicts in the itaukei race which would be disastrous for Fiji as a Nation. The bills were deviously constructed to capture the minds of the itaukei that it was ideal for

them. In reality, it was a quest to buy votes for political expediency and supremacy, for now and into the future.

14. Our past constitutions also failed to recognize outstanding aspirations of the people which have now been adequately presented through the non negotiable principles for our new constitution. Matters of common and equal citizenry, secular state, independent judiciary, social justice, one person & one vote, and voting age of 18 years and others are realised. These inclusions will undoubtedly remove the hurdles that had been long placed to bring about racial disunity.

#### **Past Constitution Has Allowed Events of 2000 and 2 November 2000.**

15. In 2000, the RFMF made all attempts to thwart the Coup and its progression. A daunting task indeed, as there were few in authority present then to help the RFMF in their efforts. A lot of party leaders and followers bolted out of the country as soon as trouble struck. Others had gone into hiding, not to be heard or seen in the public domain for months after the 2000 events. No statements were made by Unionist, or political leaders for the right of Fijians.

16. The RFMF looked towards our chiefs and church leaders, especially the Methodist Church to assist in the country's return to normalcy. These were the two groups who were supposed to have the interest for all Fijian at all times come to assist the RFMF. Unfortunately, at a time of real need, both our chiefs and the Christian Church Padres were already in Parliament supporting the rebel group. The Christian Church who was supposed to be preaching tolerance and praying for the well being of the people of Fiji, were instead praying for the demise of the RFMF and Fiji.

17. The fact that there was no one present to assist and support the RFMF in 2000, and, the subsequent killing of soldiers in the 02 November mutiny, had challenged, motivated and inspired the RFMF to continue with its reform effort despite all opposition. In the time of crisis and adversities, the RFMF stood alone but persevered in its efforts to bring about a harmonious and a new Fiji. The RFMF was abandoned by the Chiefs, by the Methodist Church, by the political parties, by the traded unionist, and by our neighboring States at a time when support was critically needed. It is also demeaning to think that these groups now claim to know better on how the RFMF should be structured or how Government should run.

18. It is simple, either you support the RFMF in its reforms and effort to bring about peace and stability within Fiji or support the contrary, which is corruption, racial and ethnic division, racial hatred, undermining of the under privileged, social injustice etc.

19. Surprisingly a lot of individuals, including trade unionists, who have presented submissions to the Commission have voiced dissent to the present Government and RFMF, have once or on numerous occasions visited the RFMF to pledge their support for Commodore Bainimarama when they were given appointments in Government or Boards of Government Subsidiary Companies. How convenient, that when they had occupied Board Memberships, or positions within Government, the present Government and the RFMF was right. However, as soon as they lost their Board positions and the benefits that came with the position, the Government and the RFMF became wrong. As long as their agenda and self interest were served, their loyalty remained. As soon as the money went- so did their loyalty and support!

**Mutiny at SVC Barracks, Labasa and Attempts to Remove Commander Republic of Fiji Military Forces**



20. As the events of May 2000 unfolded, RFBMF desperately tried to maintain stability within the country. The Forces and its resources were stretched to the limit having to cope with the demand of having to secure strategic positions throughout Fiji while at the same time trying to convince the public to have confidence in us. In the face of all these and on 04 July 2000, some fifty six (56) service personnel including two (2) officers took over the Sukanaivalu Victoria Cross Barracks in Labasa.

21. Soldiers involved were reported to have been incited by George Speight and Ilisoni Ligairi to take over the camp and demand the removal of Commodore Bainimarama as Commander of the Forces. The mutineers gained the support of local Chiefs like Ratu Jo Dimuri, Tui Nadogo – Ratu Viliame Rovabokola, Tui Labasa Ratu J. Ritova and the Tui Cakau Ratu Naiqama Lalabalavu.

22. During the takeover, civilians were terrorised, shot at and intimidated. Labasa Police Station was invaded, taken over and police officers were detained and assaulted. The takeover of the camp lasted some 30 days with wide spread disorder in the Northern Division. The Sukanaivalu Victoria Cross Barracks was finally retaken by a Task Force from Suva.

23. All fifty six (56) servicepersons who were involved have been convicted for mutiny and are currently serving or have served prison sentences in Suva. The chiefs who supported them were charged for criminal offences in the Labasa Magistrates Court and received light, non-custodial sentences.

24. Again, what became apparent was that the plot by George Speight and his Group with the support of the chiefs and the churches was to undermine military efforts and to destabilize it.

25. The loyalty of the officers and men was put to the test when they stood by the Commander in ensuring that the integrity of the military remains intact in such difficult operations under difficult conditions.

### **Vanua Revolts and Attempts to Destabilize the Republic of Fiji Military Forces.**

26. For an insight into May 2000 upheaval and its effect, the Vanua revolts around the country at the time would have to be highlighted in light of the many difficulties encountered by the Forces. Saddening to say, that while RFMF was attempting to stabilize the chaotic situation, some prominent members of our community were plotting to subvert almost all aspects of military operations.

27. On Tuesday 4 July, 2000, despite undue pressure from the George Speight Group, Mr Laisenia Qarase was sworn in as leader of the Interim Government.

28. Following this pronouncement, there was a exchange of gunfire outside parliament which compelled the RFMF to establish a military exclusive zone with the area. In the days that followed, the landowners disrupted power supplies around Viti Levu by sabotaging the flow of water into the Wailoa Power Station.

29. Furthermore, villagers from Naivucini in Naitasiri closed off all access roads to the Monasavu Hydro Dam. The worst to come was the armed take- over of Korovou

Town by individuals led by Varinava Tiko. In the process, soldiers and police officers were taken hostage.

30. Simultaneously, the situation in the West became volatile when chiefs and people of Sabeto led by Apisai Tora resolved to close off the Queens Highway and sealed off excess to Sabeto Police Station.

31. These are a few of the many incidents involving some chiefs and their followers who made attempts to destabilise the Forces aimed solely at undermining military operations. Again, these misguided Vanua Revolts were instigated and led by rogue chiefs and certain individuals

32. At a time when the Vanua, the chiefs and people failed to come together to support our efforts in restoring law and order, the RFMF was made to stand alone and defend this country from total anarchy.

### **Mutiny at Queen Elizabeth Barracks, Nabua.**

33. On the morning of 2<sup>nd</sup> November 2000, some thirty eight (38) Counter Revolutionary Warfare (CRW) Unit members, including two from the Third Infantry Regiment attempted to takeover Queen Elizabeth Barracks with the main purpose of removing Commodore Bainimarama as Commander of the Republic of Fiji Military Forces. The incident, which lasted approximately seven hours, saw the takeover of strategic positions within the Camp including the taking of hostages. In the process of executing the mutiny, unarmed loyal troops were fired upon, indiscriminately.

34. As a result of the mutiny, eight lives were lost. What became apparent was that the majority of the officers and men stood by the Commander. All endeavors were made to retake the camp and protect the status quo of our proud institution.

35. Following the mutiny, General Court Martial proceedings commenced hearing cases against all thirty-eight service persons. Of the thirty-eight, of those involved including three (3) officers are now serving or have served prison sentences after being found guilty of mutiny.

36. One important revelation that was made during the inquiry and trials was the involvement of politicians and prominent leaders like Ratu Inoke Takiveikata, who has been tried and convicted in the civil court for inciting mutiny.

# THE ROLE OF THE REPUBLIC OF FIJI

## MILITARY FORCES

38. The RFMF pursuant to Section 94(3) of the 1990 Constitution entrusted with:  
*“the responsibility ..... to ensure at all times the security, defence and well being of Fiji and its people”.*

39. Section 112(1) of the 1997 Constitution has recognized these provisions. It reads as follows:

*Republic of Fiji Military Forces*

112.- (1) *The military force called the Republic of Fiji Military Forces established by the Constitution of 1990 continues in existence.*

(2) *The President, acting on the advice of the Minister, must appoint a Commander of the Republic of Fiji Military Forces to exercise military executive command of the Forces, subject to the control of the Minister.*

(3) *The Commander of the Republic of Fiji Military Forces is responsible for:*

- a. making appointments of members of the Forces;*
- b. taking disciplinary action against members of the Forces; and*
- c. removing members from the Forces.*

(4) *The Parliament may make laws relating to the Republic of Fiji Military Forces.*

40. We submit that the new constitution should reflect the responsibility given to the Forces through Section 94(3) of the 1990 Constitution and fully recognized through Section 112(1) of the 1997 Constitution.

41. The RFMF remains the last bastion for law and order in Fiji. There is an enveloping comfort that the Forces exist to deal with both Internal Security situation and external threats.

42. The Forces cannot and will not be complacent in dealing with situations that undermine national interest. The developments that have occurred since 2006 cannot be abandoned or derailed. We need to move forward in a constructive manner with national interest at heart. The RFMF will not allow any individual, group and organizations or another State to sabotage the efforts of 2006. This new course will continue. The RFMF will ensure it continues, not only to 2014 but beyond.

43. Section 94(3) of the 1990 Constitution purely reflects the over arching role of the RFMF within Fiji. **This provision must be retained.**

44. For RFMF, these provisions are the bench mark of its existence and functions. The responsibilities encompass both national and international security to provide enduring comfort that the interest and wellbeing of Fiji and its people are protected and recognised. There is a need to have a defense force that is capable to looking after such interest.

45. The role of the military cannot be restrictive. RFMF should not be judged solely for 1987, 2000 or 2006. Instead, we should look at what it represents and has to offer for the wider Fiji Community. What has evolved during the history of RFMF cannot be expounded in mere few words. The historical achievements and success are a testimony for themselves.

46. The Commander and his Forces has a vision. A vision that has been represented not only for today but for the future generations. A vision of a peaceful,

prosperous and well governed Fiji. What RFMF has endeavored to do, it can only achieve. There are no other institutions that are capable of bringing about this change.

47. RFMF will continue to be responsible in ensuring at all times the security, defense and well being of Fiji and its people. It does not intend to diverse from this commitment. In addition, RFMF will be the guidance of the governance of this country, ensuring that peace, prosperity and good governance is practiced and adhered to.

48. Having talked about the RFMF, its demographics, and role, what should the new Fiji present? The RFMF has been the custodian of this change and will remain so in ensuring the national objectives and aim of uniting one Fiji is achieved.

## **PREAMBLE**

49. The RFMF submits that the Preamble of our Constitution should be drawn from the spirit of common good, shared values, vision and principles expounded by the Peoples Charter for Change, Peace and Progress. As such the Preamble should be as follows:

**WE THE PEOPLE OF FIJI,**

**RECOGNISING** the prominence of the **ALMIGHTY,**

**AFFIRMING** our Constitution as the supreme law of our country that provides the framework for the conduct of the government and the people,

**COMMITTING** ourselves to the recognition and protection of human rights, in the dignity and worth, and equality for all persons.

**DECLARING** a common purpose and citizenship for fundamental freedom, justice, harmony, national sovereignty, national security, social and economic wellbeing, sustainable economic growth and the safeguarding of our environment.

**AFFIRMING** our commitment to a free, accountable and responsible government that promotes good and just governance, national development and holds all institutions accountable.



**ASPIRING** towards making Fiji a knowledge base society, allowing access to education and continued learning.

**ENHANCING** a strong and free civil society and allowing for global integration and international relation development.

**ENTRUSTING** our generations to uphold our Constitution, its values, vision and principles, thereby creating a truly Democratic Fiji as one Nation and one People.

50. There have been some notable Preambles from which inspirations have been drawn, to highlight a few:

#### **Preamble to the United Nations Charter**

51. The Preamble reads as follows:

*“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and*

*to regain faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*

*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and*

*to promote social progress and better standards of life in larger freedom,*

**AND FOR THESE ENDS**

*to practice tolerance and live together in peace with one another as good neighbours, and*

*to unite our strength to maintain international peace and security, and*

*to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and*

*to employ international machinery for the promotion of the economic and social advancement of all peoples,*

*HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS*

*Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.”*

52. (Jan Smuts originally wrote the opening lines of the Preamble as, "The High Contracting Parties, determined to prevent a recurrence of the fratricidal strife which twice in our generation has brought untold sorrow and loss upon mankind. . ." which would have been similar to the opening lines of the Covenant of the League of Nations. After considerable argument at the San Francisco Conference, Virginia Gildersleeve was successful in changing and shortening the Preamble, however, with much of Smuts' original text reattached at the end.

53. The opening phrase "We the peoples of the United Nations .." echoing that of the United States Constitution, was suggested by US congressman and delegate Sol Bloom. The pre - ambulatory phrase "In Larger Freedom" became the title of a UN reform proposal by Secretary-General Kofi Annan.)

### **Preamble to the United States Constitution**

54. The Preamble Reads

*“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general*

*Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”*

55. The Preamble serves solely as an introduction, and does not assign powers to the federal government, nor does it provide specific limitations on government action. Due to the Preamble's limited nature, no court has ever used it as a decisive factor in case adjudication, except as regards frivolous litigation.

### **Preamble to the Constitution of India**

56. The Preamble of the Indian Constitution reads

*“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:*

***JUSTICE**, social, economic and political;*

***LIBERTY**, of thought, expression, belief, faith and worship;*

***EQUALITY** of status and of opportunity;*

*and to promote among them all*

***FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;*

*IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”*

### **Enacting Formula**

57. The enacting words "We, the people of India... in our constituent assembly... do here by adopt, enact and give to ourselves this constitution", signifies the democratic principle that power ultimately rests in the hands of the people. It also emphasises that the constitution is made by and for the Indian people and is not given to them by any outside power (such as the British Parliament). The wording is close to the preamble to the Constitution of Ireland, which had been adopted in 1937; it reads "We, the people of Éire ... Do hereby adopt, enact, and give to ourselves this Constitution". The phrase "we the people" emphasizes upon the concept of popular sovereignty as laid down by J. J. Rousseau. All the power emanates from the people and the political system will be accountable and responsible to the people.

### **Sovereign**

58. The word sovereign means supreme or independence. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people. She allies in **peace and war**. The Popular sovereignty is also one of the basic structure of constitution of India. Hence, Citizens of India also enjoy sovereign power to elect their representatives in elections held for parliament, state legislature and local bodies as well. People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India.

### **Socialist**

59. The word socialist was added to the Preamble by the Forty-second Amendment. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex,

religion, or language. Under social equality, everyone has equal status and opportunities.

60. Economic equality in this context means that the government will endeavor to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasized a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.

### **Secular**

61. Indian Government shall respect all religions. It would not uplift or degrade any particular religion.

### **Democratic**

62. The first part of the preamble “We, the people of India” and, its last part “give to ourselves this Constitution” clearly indicate the democratic spirit involved even in the Constitution. India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as "one man one vote". Every citizen of India, who is 18<sup>[2]</sup> years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

### **Republic**

63. As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President Of India is not hereditary. Every citizen of India is

eligible to become the President of the country. The leaders of the state and local bodies are also elected by the people in similar manner.

### **Forty-second Amendment**

64. On 18 December 1976, during the Emergency in India, the Indira Gandhi government pushed through several changes in the Forty-second Amendment of the constitution. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment be enacted after being constituted to study the question of amending the constitution in the light of past experience. Through this amendment the words "socialist" and "secular" were added between the words "sovereign" and "democratic" and the phrase "unity of the Nation" was changed to "unity and integrity of the Nation".

65. The idea for the addition of 'socialist' was prompted by Indira Gandhi, as an ode to India's growing relationship with the erstwhile USSR.

(Abstract of "The Indian Constitution (Forty Second Amendment) Act 1976", Government of India, <http://indiacode.nic.in/coiweb/amend/amend42.htm>)

### **Preamble of the Philippines**

66. The Preamble reads:

*"We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution"*

"The 1987 Constitution of the Republic of the Philippines". 15 October 1986.

<http://www.thecorpusjuris.com/laws/constitutions/8-philippineconstitutions/70-1987-constitution.html>.

## **Preamble to the Canadian Charter of Rights and Freedoms**

67. The Preamble Reads:

*"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law"*

68. Writing in 1982, when the *Charter* came into force, constitutional scholar Peter Hogg noted that these words, being a preamble, could not really be applied by the courts but in theory could help to determine how other sections of the *Charter* should be read and applied. In this particular case, however, Hogg expressed doubt as to how much help this preamble could be, noting the term "rule of law" is "notoriously vague" and that the mention of the "supremacy of God" is contrary to section 2 of the *Charter*, which protects freedom of conscience, which Hogg felt would include a right to atheism. In *R. v. Morgentaler* (1988), Justice Bertha Wilson defined freedom of conscience as protecting "conscientious beliefs which are not religiously motivated", and balanced the preamble out with the statement that "the values entrenched in the Charter are those which characterize a free and democratic society".

69. In considering the legal implications of the preamble in the 1999 case *R. v. Sharpe*, the British Columbia Court of Appeal referred to it as a "dead letter" which the BC justices had "no authority to breathe life" into.

70. The Supreme Court did consider the preamble's mention of the rule of law in *Reference re Manitoba Language Rights* (1985), noting that striking down most of Manitoba's laws as unconstitutional (because they were not enacted in both languages as required by the *Manitoba Act*) might be a threat to the rule of law. This would

render Manitoba nearly lawless, and the principle of the rule of law was defined as meaning no one is above the law and that laws must exist, as they uphold society's values. The Court thus confirmed the *Charter's* preamble's importance by writing that "The constitutional status of the rule of law is beyond question".<sup>[3]</sup> As a result some time was given before the unconstitutional laws would expire.

71. In *Re B.C. Motor Vehicle Act* (1985), the Supreme Court also linked the rule of law to the principles of fundamental justice, as illustrated by sections 8 to 14 of the Charter. The Court noted the importance of these rights to the justice system, stating that sections 8-14 "have been recognized as essential elements of a system for the administration of justice which is founded upon a belief in 'the dignity and worth of the human person' (preamble to the Canadian Bill of Rights, R.S.C. 1970, App. III) and on "the rule of law" (preamble to the Canadian Charter of Rights and Freedoms)."

Hogg, Peter W, *Canada Act 1982 Annotated*. Toronto, Canada: The Carswell Company Limited, 1982

### **Preamble of the Swiss Federal Constitution**

72. The Preamble Reads:

*"In the name of Almighty God! The Swiss People and the Cantons, mindful of their responsibility towards creation, resolved to renew their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world, determined to live together with mutual consideration and respect for their diversity, conscious of their common achievements and their responsibility towards future generations, and in the knowledge that only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members; adopt the following Constitution"*



73. By opening with a solemn invocation of God, the preamble is in line with all preceding Swiss constitutional documents, back to the Federal Charter of 1291, except for the constitutions adopted under French sway in the time of the Helvetic Republic. Apart from continuing tradition, the *invocatio dei* is understood to be a reference to transcendental values underlying society, putting into perspective any claims to authority by the State – a merely human creation. The preamble was authored by journalist Daniel S. Miéville, and inspired in part by a 1977 draft by writer Adolf Muschg. It is a symbolic summation of the will to and purpose of statehood, a declaration of intent by the popular Sovereign, an integrating avowal of the Swiss people's fundamental values, and a binding mandate to the State's authorities.

### **Preamble to the Albanian Constitution**

74. The Preamble Reads:

*“We, the people of Albania, proud and aware of our history, with responsibility for the future, and with faith in God and/or other universal values, with determination to build a social and democratic state based on the rule of law, and to guarantee the fundamental human rights and freedoms, with a spirit of tolerance and religious coexistence, with the pledge for the protection of human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity, with the centuries-old aspiration of the Albanian people for national identity and unity, with a deep conviction that justice, peace, harmony and cooperation among nations are among the highest values of humanity, We establish this Constitution”*

75. The Preamble serves solely as an introduction, and does not assign powers to the Albanian government.

(The Preambles above were extracted from: <http://en.wikipedia.org/wiki/Preamble>).

## **SYSTEM OF GOVERNMENT**

76. In Fiji, we have been exposed to a modified West Minister System (some would like to call it the Parliamentary System) and more recently to a mixture of a modified West Minister and Presidential System of Government. We will not dwell on the West Minister Model as the RFMF has no intentions of suggesting the adopting of the System. We believe that our new blend of Government System – which we would like to call the New Presidential System will model well for Fiji. We are recommending that the new Government should be structured as follows:

### **OFFICE OF THE PRESIDENT**

#### **Appointment of the President**

77. The appointment of the President is to be ceremonial;
- a. The President is to be elected by the members of the House. Since the President is **NOT** the Head of Government, we do not see a need for the bearer to be voted directly by the People;
  - b. As to the nomination of the candidates suitable for the position, both the Prime Minister and the leader of the Opposition to nominate two persons each. The nominees' names are to be put to the House of Representatives and decided through secret ballot.
  - c. The President is to have a fixed term of one tenure of 5 years in office;
  - d. The President does not require the support of the House to continue in office. The President can be removed for breaches or conduct deemed undesirable or not in the interest of the State;
  - e. The persons nominated for the position of president must:

- i. be a Fijian citizen;
- ii. had a distinguish career in civil or public service;
- iii. be a undischarged bankrupt;
- iv. has no serious criminal record and no pending case against him or her;
- v. be medically fit; and
- vi. of sound mind.

### **Role of the President**

78. Undeniably, the president is the head of state and as such is formally recognized as the head of the executive, legislature and the judiciary. Importantly, he/she is also recognized as the Commander in Chief of the Armed Forces.

### **Powers and Duties**

79. **Legislative Powers** – the President has Legislative Powers to:

- i. summon Parliament;
- ii. dissolve Parliament;
- iii. will have powers to inaugurate Parliament after any general election and at the beginning of each session each year;
- iv. authority to accent to bills passed by Parliament, however in the interest of the State, may return a bill to Parliament for reconsideration;
- v. if the Bill that is presented with or without amendment the President is obliged to ascent; and
- vi. the President has the powers to recall Parliament at any time.

80. **Executive Powers** - The President will enjoy executive powers to:

- i. Appoint Prime Minister;
  - ii. Appoint other Cabinet Ministers;
  - iii. Appoint the Chief Justice and other Judicial office holders including Magistrates judges of the High Court, Court of Appeal, and Supreme Court;
  - iv. Appoint Ambassadors and High Commissioners;
  - v. Appoint the Commander, Republic of Fiji Military Forces;
  - vi. Appoint Ombudsperson;
  - vii. Appoint the Chairperson and members of the Fiji Human Rights Commission;
  - viii. Appoint the Auditor General;
  - ix. Appoint the Director of Public Prosecution;
  - x. Appoint the Commissioner of Police;
  - xi. Appoint the Commissioner FICAC;
  - xii. Appoint the Commissioner on the Prerogative of Mercy;
  - xiii. Appoint the Electoral Commission including
  - xiv. Elections Supervisor;
  - xv. Appoint the Constituency Boundary Commission;
  - xvi. Command the Armed Forces as their Commander-in-Chief; and,
  - xvii. Pardon and grant clemency;
- (the exercise of executive powers is in accordance with the advice of the Prime Minister).

81. **Judicial Powers** - The President:

- i. appoints the Chief Justice;
- ii. appoints other Magistrates and Judges on the advice of the Chief Justice;
- iii. has powers to ask for advisory opinion on question of law pertaining to the affairs of the State; and
- iv. Enjoys full judicial immunity i.e no criminal proceedings can be initiated against him/her during his/her term in office.

82. The president cannot be summoned or asked to answer for the exercise of his/her duties.

### **83. Diplomatic Powers**

- i. the President will be the first Citizen of the Nation;
- ii. all International treaties and agreements are negotiated and concluded on behalf of the President, however subject to Parliamentary approval;
- iii. the President's representative overseas is ceremonial; and
- iv. the President sends and receives Diplomats.

84. **Emergency Powers** - The President must have powers to exercise during:

- i. **National Emergency**
  - a. Such a declaration will occur in the cause of war, external aggression or Internal Security situation, (coups, armed rebellion or civil unrest).
  - b. Through a written request by the Prime Minister, the President will declare a State of Emergency.

ii. **State of Emergency**

- a. The emergency is declared when the Constitutional system of the Government no longer functions and there is a complete breakdown. For example – where the Government no longer enjoys a confidence of the House and fails to run in accordance with the given directives.
- b. In such a case, the President assumes power and will govern.

85. We submit that the stated Roles of President, inclusive of his Powers and duties should be presented in the new Constitution.

### **OFFICE OF THE VICE PRESIDENT**

86. We submit that there is no requirement for any office of the Vice President. In the absence of the President for any cause, we submit that the Chief Justice acts as the President and functions accordingly. We again would like to reiterate that the position is Ceremonial and should be treated accordingly. It must not be given undue significance or prominence that is unwarranted.

87. Also, we submit that unnecessary positions and titles only burden our Government expenditure. We must in Fiji streamline our structure and system to make it more conducive and be amendable to our economical position. The money unnecessarily expended in the creation of an office of the Vice President can be well utilized in other sector of Government.

## **HOUSE OF REPRESENTATIVE**

88. We submit that the past numbers of members in the House of Representative were over inflated and unnecessary. The House of Representative in 1970 comprised of 54 seats. Of the 54 seats only 25 seats were through general voting. The remaining 29 seats were divided through racial basis. In the 1990 Constitution, all of the 70 seats were race based. In 1997, there were 71 seats of the House of Representative. Of these, there were 25 open seats which were divided through general voting. The remaining 46 seats were divided through race votes. In 1997, we had members of the House of Representative representing averagely 10,500 people. This is an alarming statistic for a small nation state like ours. In Australia, there are 150 members in the House of Representative with a population of 22,713,511 (as of 29 Aug 12). In New Zealand there are 120 members of House of Representative with a population of 4,439,843 (as of 29 Aug 12). In average, in Australia, each member of House of Representative represents 151,423 persons. Similarly, in New Zealand each member of the House of Representative represents 36,998 persons. Similarly, the Cooperative Republic of Guyana has a population of 770,000. They have a total of 65 seats in Parliament. In average, in the Cooperative Republic of Guyana, each member of the House of Representative represents 11,846 persons. In our region, only Solomon Islands with a population of approximately 620,500 persons and having a 50 seat parliament compare to Fiji's old ratio of population v number of seat in parliament. They currently have a ratio of 1:12,500. With the one vote, one value proposition, we submit that the Fiji House of Representative should comprise of no more than 46 seats. In comparison, Fiji with a recorded population of 944,720 will see a representation of approximately 20,500 persons per a elected candidate. It's implication:

- a. Cost effective and financially less burdensome on the state's coffers;

- b. Eliminates unnecessary debates and persons in the System; and,
- c. It provides a more representative restructure choice of persons in the Parliament.

### **Qualification of Members of the House of Representatives**

89. We submit that individuals who stand to represent the general populous must be persons of character and have the intention to serve the interest of the larger community. We must ensure that persons with personal agenda and ulterior motives are kept away from this August Forum. It has been saddening to hear from politicians that we represent the group of people, or identity, or this ideology. We would like to hear persons say that we represent the people of Fiji and their causes. Not the personal agenda of a group or person.

90. We submit that the following qualifications should form the benchmark for the eligibility of any person to contest the election:

- i. is a Fiji citizen. For those holding dual citizenship the person has to renounce all other citizenships prior to contesting for any Parliamentary seat;
- ii. has no criminal conviction entered in the last 10 years preceding the date of election;
- iii. has no pending criminal charge against him/her in any court of law;
- iv. is not a bankrupt;
- v. has no pending bankruptcy filed against him/her;
- vi. has no business interest in Government through any listed companies/entities; and
- vii. mentally sound.



## **Tenure of the House of Representative**

91. For Fiji to have a robust system of Government in particular regarding the continuity and consistency in the decision making process, we submit the tenure of the House of Representative should be 5 years. A lesser period does not allow the Government to adequately implement policies. They must be allowed to run for a full term of 5 years. When you analyse the time spent by Parliamentarians debating bills and that of implementing policies and directive, not much time is left for the latter. We must allow the time and opportunity to the Government to fully implement their manifesto. We submit that the tenure of Parliament should be 5 years. The tenure of the House is conditioned provided the Government has the confidence and at no time a declaration is made for a “Vote of no confidence”. In such cases, the tenure may lapse towards the formation of a new Government or a call for a new General Election.

92. We also submit that once any seat becomes vacant for want of cause, the said seat should be filled within 3 months from the time it becomes vacant. There should be no delay in the filling of vacant seats.

## **Cabinet**

93. We submit that the Cabinet should equate to portfolios and not a percentage of the total Parliament. We submit that there should only be 12 Cabinet seats. The 12 Cabinet Ministers should share the 24 Government Ministries as deemed appropriate. In our observation the current composition of Cabinet, has evolved extremely well. Again, we cannot emphasis enough the huge savings that has resulted from this

reduced composition. Undoubtedly, the savings will be well allocated to infrastructure developments, Health Services and Education grants to name a few.

### **Nominees to Cabinet**

94. Question arises whether or not there should be provisions made to nominate persons into Cabinet outside of Parliament. In past practices, person(s) were brought to Cabinet and elevated to Ministerial positions through the Senate.

95. For example, during the last two tenure of the Soqososo Duavata Lewanivanua Government, Mr Kaliopate Tavola was appointed Foreign Minister and similarly, Mr Qoroniase Bale assumed the appointment of Attorney General.

96. We submit, having due regards to the democratic spirit being advocated, that the following positions be filled from outside Parliament through appointment by the President on the advice of the Prime Minister:

- i. Attorney General;
- ii. Minister of Finance; and
- iii. The Speaker.

97. Although the Attorney General stands as a political office, in function, it has a ministerial jurisdiction as well as an administrative function. The functions of the Attorney General are unique. In recognising the same we submit that he/she's inclusion in government be made through the nomination process outside of Parliament.

98. The suggestion of having the Attorney General nominated is not a new practice; rather, most countries in recognising the special position have adopted such practices. Some countries who have adopted the appointment of the Attorney Generals are:

99. In India, the President appoints the Attorney General on the advice of the Prime Minister.

***The Attorney-General for India***

*(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.*

*(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.*

*(3) In the performance of his duties the Attorney- General shall have right of audience in all courts in the territory of India.*

*(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.*

*(Extracted from: [http://india.gov.in/govt/documents/english/coi\\_part\\_full.pdf](http://india.gov.in/govt/documents/english/coi_part_full.pdf))*

100. Similarly, in Ireland the President appoints the Attorney General on the nomination of the Taoiseach.

**THE ATTORNEY GENERAL**

***Article 30***

1. *There shall be an Attorney General who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this Constitution or by law.*
2. *The Attorney General shall be appointed by the President on the nomination of the Taoiseach.*
3. *All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or some other person authorized in accordance with law to act for that purpose.*
4. *The Attorney General shall not be a member of the Government.*
5. 1° *The Attorney General may at any time resign from office by placing his resignation in the hands of the Taoiseach for submission to the President.*
- 2° *The Taoiseach may, for reasons which to him seem sufficient, request the resignation of the Attorney General.*
- 3° *In the event of failure to comply with the request, the appointment of the Attorney General shall be terminated by the President if the Taoiseach so advises.*
- 4° *The Attorney General shall retire from office upon the resignation of the Taoiseach, but may continue to carry on his duties until the successor to the Taoiseach shall have been appointed.*
6. *Subject to the foregoing provisions of this Article, the office of Attorney General, including the remuneration to be paid to the holder of the office, shall be regulated by law.*

*(Extracted from: <http://www.constitution.ie/reports/ConstitutionofIreland.pdf>)*

101. In Jamaica, the Governor General acting on the advice of the Prime Minister appoints the Attorney General.

- (1) *There shall be an Attorney-General who shall be the principal legal adviser to the Government of Jamaica.*
- (2) *Power to appoint a person to hold or act in the office of Attorney-General and to remove from that office a person holding or acting in it shall, subject to subsection (4) of this section, be exercised by the Governor-General acting in accordance with the advice of the Prime Minister.*
- (3) *Any person appointed to hold or act in the office of Attorney-General in pursuance of subsection (2) of this section shall not, except in accordance with the provisions of section 70 of this Constitution, be appointed a Minister.*
- (4) *Until an appointment of a person to hold or act in the office of Attorney-General is first made under the provisions of subsection (2) of this section, it shall be a public office and a person shall not be qualified to hold or act in that office unless he is qualified for appointment as a Judge of the Supreme Court.*
- (5) *On the occasion of the first appointment of a person to hold or act in the office of Attorney-General under the provisions of subsection (2) of this section, the office of Attorney-General as a public office shall be deemed to have been abolished.*

*(Extracted from: <http://pdba.georgetown.edu/Constitutions/Jamaica/jam62.html>)*

102. In Kenya, the Attorney General is appointed from outside Parliament.

- 156.** (1) *There is established the office of Attorney-General.*
- (2) *The Attorney-General shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.*
- (3) *The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice.*

(4) *The Attorney-General—*

*(a) is the principal legal adviser to the Government;*

*(b) shall represent the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings; and*

*(c) shall perform any other functions conferred on the office by an Act of Parliament or by the President.*

(5) *The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.*

(6) *The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.*

(7) *The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.*

(Extracted from: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=207672](http://www.wipo.int/wipolex/en/text.jsp?file_id=207672))

103. In Nepal, the appointment is done by the Prime Minister.

## **ATTORNEY GENERAL**

### **134 Appointment of the Attorney General:**

(1) *There shall be an Attorney General in Nepal who shall be appointed by the Prime Minister. The Attorney General shall hold office during the pleasure of the Prime Minister.*

- (2) *No person without the qualifications of a Supreme Court Judge shall be eligible to be appointed as the Attorney General.*
- (3) *The office of the Attorney General shall be deemed vacant under the following circumstances:*
- (a) *if he/she submits a resignation in writing to the Prime Minister,*
- (b) *if the Prime Minister releases him/her from the office.*
- (c) *if he/she dies.*
- (4) *The remuneration and other facilities of the Attorney General shall be at par with that of a judge of the Supreme Court. The other conditions of service of the Attorney General shall be as determined by law.*

**135. *Functions, Duties and Rights of the Attorney General:***

- (1) *The Attorney General shall be the Chief Legal Advisor to the Government of Nepal. It shall be the duty of the Attorney General to give opinions and advice on constitutional and legal matters to the Government of Nepal and to such other authorities as the Government of Nepal may specify.*
- (2) *The Attorney General or officer's subordinate to him/her shall represent the Government of Nepal in suits wherein the rights, interests or concerns of the Government of Nepal are involved. Unless this Constitution otherwise requires, the Attorney General shall have the right to make final decision to initiate proceedings in any case on behalf of the Government of Nepal in any court or judicial authority.*
- (3) *While discharging duties in accordance with clause (2) above, the Attorney General shall have the authority to work as follows:-*
- (a) *to defend on behalf of the Government of Nepal either as plaintiff or defendant in litigation on field.*

- (b) *to monitor or cause to monitor the interpretation of law or implementation of the legal principles propounded by the Supreme Court in the light of litigations.*
  - (c) *to investigate on the complaints or the information so received to by any means that their was not humanlike treatment to any person in custody, under this constitution, or was not allowed such person to meet his/her relatives directly in person or through legal practitioners, and give necessary directions to the concerned authorities to prevent from such situation.*
- (4) *In addition to the function, duties and rights as expressed in this Article, the other functions, duties and rights of the Attorney General shall be as determined by this constitution and other laws.*
  - (5) *In the course of discharging his/her official duties, the Attorney General shall have the right to appear in any court, office or authority of Nepal.*
  - (6) *The Attorney General may delegate his functions, duties and power under this Article to his/her subordinates, to be expressed and complied with, subject to the specified conditions.*

**136. Annual Report:**

- (1) *The Attorney General shall, every year, prepare an annual report on the works he/she has performed in accordance with this constitution and other laws, and submit it to the Prime Minister, and the Prime Minister make arrangements to present the same to the Legislature.*



(2) *The report as per clause (1) in addition to other subject matters shall include the number of constitutional and legal advises given in the year by the Attorney General, a summary of the litigations with the government as plaintiff, summary of the cases both with government as the plaintiff and the defendant, a summary of crime and improvements to be made in the future in cases where the government is the defendant.*

137. *Power to Appear in the legislature Parliament: The Attorney General shall have the power to appear and express his/her Constitutional Assembly opinion on any legal questions in the legislative Parliament, or any of their committees' meetings. Provided that he/she shall not have the right to vote.*

*(Extracted from: <http://theconstitutionofnepal.net/>)*

104. Like the Attorney General, we submit that the Minister of Finance and the Speaker of the House be appointed by the President on the Advice of the Prime Minister outside of Parliament.

### **ABOLISHMENT OF SENATE**

105. We submit that the Senate be abolished. Its oversight role is to be assigned to the Opposition Party within Government. In the past we have seen that the Opposition represented by 1 person like Mick Beddoes. The ability of one person to effectively contribute in the scrutinising of Bills presented to Parliament is a big task, in fact, it's an embarrassment to common intelligence that one person has the ability to shoulder all such responsibility.

106. With the current proposal, we submit that a functional opposition can handle this responsibility without incurring further cost and burden to our People. With the

Bills having constructive debate, analysis and scrutiny, there is no need to present it to another committee or body for further debate.

107. By this, we are:

- a. spared from the burden of paying and looking after a body that only duplicates work without substantive benefits;
- b. eliminating costs to our people;
- c. eliminating unnecessary delay of the Bill and its being enacted by law;  
and
- d. avoiding unnecessary debate.

## **ABOLISHMENT OF THE GREAT COUNCIL OF CHIEFS**

*(Bose Levu Vakaturaga)*

108. We submit that the Great Council of Chiefs be abolished. As all functions previously conferred to the Great Council of Chiefs in our recommendation now rests with the people of Fiji or through our representative in Parliament, the existence of such a body is no longer required.

## **SYSTEM OF DEBATE AND SCRUTINY OF GOVERNMENT**

### **FUNCTIONS**

109. We reiterate that for a small government system as ours, there is no need for a full Senate. Instead, we are of the opinion that the functions of scrutinizing Bills and functions of Government can be equally done by a strong representative opposition. We cannot have a one member opposition trying to fully scrutinize the functions of Government as Mick Beddoes was trying to do. You end up becoming an

opposition, not knowing whether you are going or coming, the least, to realize what is happening around you.

110. The fact that a Bill has had constructive debates and has been read more than once in the House of Representative is sufficient to satisfy whether or not it is made into an Act of Parliament.

### **REMUNERATION FOR MEMBERS OF THE HOUSE OF REPRESENTATIVE**

111. In our submission, we have suggested a high bench mark as to the selection of candidates as Members of Parliament. The conditions we have prescribed are honourous. To support our proposition, we recommend that Members of the House of Representative should be well remunerated. In turn, we firmly believe, we will have persons of high caliber vying for Parliament.

112. Also, by providing good remunerations, candidates would be discouraged from corrupt practices. This would eliminate self interest and participation in enterprises where there are personal gains.

113. We are entrusting the affairs of Fiji, and our people in the hands of the Parliamentarians. We require all their commitments and sacrifices. To do that, we have to look after their welfare and interest. They must not be distracted towards their financial affairs. We need their utmost commitment.

## CODE OF CONDUCT

114. In the past, questions have been raised as to the ethical practices by members holding public office. Similar concerns have been directed at Members of our House of Representatives. There were circumstances where personal interests were inconsistent with the functions of the Public Office. The Public Office was used for personal gains. The conflict of personal interest to that of executing public duties has led to the loss of confidence and questions the integrity of the office holder.

115. To eradicate such practices, we submit that a comprehensive Code of Conduct be implemented. The Code of Conduct must apply to the Office of the President, Members of Parliament, all Office established under our Constitution, Commission and Permanent Secretaries.

116. The following disclosures are required of the office holders with:

### **Interests**

#### **a. Occupational Income, etc**

A remunerated trade, profession, employment, vocation or other occupation (other than that of office holder or member) of an office holder at any time during the appropriate period where the remuneration to the office holder, e.g. pay, pension, benefits-in-kind, rental income, etc, during the period.

b. **Shares, etc**

A holding by an office holder of shares, bonds, debentures, or other like investments in any particular company or other enterprise or undertaking, with an aggregate nominal or market value in excess of \$1000.00 at any time during the appropriate period. Holding does not include money in a current, deposit or other similar account with a financial institution but does include a holding in unit trusts or managed funds.

c. **Directorships**

A directorship or shadow directorship of any company held by an office holder at any time during the appropriate period.

d. **Land (including premises)**

Any interest in land of an office holder, including land in the State and land in any other jurisdiction, being an interest that exceeded in value \$10,000 at any time during the appropriate period. This includes the interest of any office holder in any contract for the purchase of land, whether or not deposit or part payment has been made under the contract. It also includes an interest of the office holder in any option held by him or her to purchase land, whether or not any consideration has been paid in respect thereof, or land in respect of which such an option has been exercised but which has not been conveyed to the office holder.

e. **Gifts**

A gift or gifts from the same person, given to an office holder during the appropriate period.

*Excluded from this requirement is a gift given to an office holder, for purely personal reasons, by a relative or civil partner or friend of the office holder or of his or her spouse or civil partner or child or of the spouse's child (child being a son or daughter of any age), unless acceptance of the gift could have materially influenced the office holder in the performance of his or her functions as a member or office holder.*

**f. Property and Services**

Property supplied or lent or a service supplied to an office holder, once or more than once by the same person, during the appropriate period, where the consideration or price was less than the commercial consideration or price by more than \$1000.00. Also included is property lent or a service supplied free of charge where the commercial consideration or price would have been more than \$1000.00.

Excluded is property supplied or lent or a service supplied to an office holder, as a gift for purely personal reasons, by a relative or civil partner or friend or the office holder or of his, or her spouse or civil partner or child or of the spouse's child, unless acceptance could have materially influenced the office holder on the performance of his or her functions as a member or office holder.

**g. Travel facilities, etc.**

Travel facilities, living accommodation, meals or entertainment supplied to an office holder during the appropriate period free of charge or at less than the commercial price must be disclosed.

h. **Remunerated Position**

A remunerated position held by an office holder as a political or public affairs lobbyist, consultant or adviser during the appropriate period.

i. **Contracts**

Any contracts, or contracts, for the supply of goods or services to a Minister of the Government or a public body during the appropriate period, to which an office holder was a party or in which he or she was in any other way, directly or indirectly, interested, if the aggregate value of the goods or services supplied to a Minister of the Government or a public body during the appropriate period exceeded \$1000.00

## **ENDORSEMENT OF NON-NEGOTIABLE PRINCIPLES**

117. There has been certain non-negotiable principles placed regarding submissions towards our Constitution. The RFMF fully endorses the non-negotiable Principles and values including the following:

- (i) common and equal citizen;
- (ii) a secular state;
- (iii) the removal of systematic corruption;
- (iv) an independent judiciary;
- (v) elimination of discrimination;
- (vi) good and transparent governance;
- (vii) social justice;
- (viii) one person, one vote, one value;
- (ix) the elimination of ethnic voting;
- (x) proportional representation; and
- (xi) voting age of 18 years.

118. We believe that these principles and values will reinforce the structure of government and at the same time foster national unity and pride. It would give rise to good mutual understandings and serve towards providing a harmonious and conducive friendly community. Also, these principles and values in our appreciation will fortify national security and good order within Fiji.



## SECULAR STATE

119. With a concept of secularism, Fiji should remain impartial on matters of religion. All citizens are to be treated equally regardless of religion. No one religion is to be given preferential treatment to others. The list of secular states is many. For illustration purposes we have listed all secular countries by Continent, those states with no state religion, with state religion and those who are ambiguous in their pronouncement.

120. What is a democratic Secular State? Rifat Odeh Kassis, President of Defense for Children International, in a 2003 paper delivered at the International Seminar on the Palestinian Struggle and Globalization at Bethlehem titled: "A One Democratic State might by The Solution, wrote:

*"In the sixties, the notion of a single democratic state where people of different nations and religions in the area could live had gained much currency. Many factions in the PLO believed in this solution...So, what are the contours of a single state solution? In fact this is not a popular one on the streets of Palestine these days nor indeed in Israel. It used to be a much-discussed idea some four decades ago as a viable idea. It was popular among the educated and informed progressive groups and many political factions who saw the benefit of having one democratic state.*

*A single state is one which is democratic and secular. Not Jewish. Not Islamic. It will stand for justice and equality of all races and religions. It will accept and tolerate each religious community and accord each of them their right to practice and propagate their religion. Those who oppose this are from both sides. The Jews, influenced by Zionism, fear being overpowered in demographic terms very rapidly and the balance of power in number*

*terms turning against them. The Palestinians, for their part, fear that the superior economic circumstances of the Israelis will enable them to maintain and perpetuate their higher status.”*

121. Similarly, in referring to the secular issue, in responding to the Archbishop of Canterbury’s remarks on disestablishment, the British Humanist Association (BHA) today reiterated the pressing need for a secular state in the UK.

122. Hanne Stinson, BHA Chief Executive, said:

*“While the Archbishop seems in favor of the principle of disestablishment of the church of England, he does not advocate it in the present climate and he perpetuates the myth that secularists’ secularism springs from anti-religious feeling.”*

123. Ms Stinson continued,

*“Disestablishment of the Church of England would be a fundamental factor in the creation of a secular state; one in which state institutions are separate from religious institutions and the state is neutral on matters of religion or belief. To have a constitution that neither privileges nor disadvantages individuals on the basis of their religious or non-religious beliefs is vitally important for our increasingly diverse society to live at ease with itself in a spirit of equality and justice – and it is essential if we are all to have full enjoyment of the benefits of human rights, democracy and equality before the law.”*

Abstracted from: <http://www.humanism.org.uk/news/view/201>)

124. During the first Constitutional Assembly address in Pakistan, having just gained independence, Quaid-e-Azam M.A. Jinnah on the issue of secular state said:

*“You are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State...You will find that in the course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State”.* (Aug 11, 1947, Quaid-e-Azam M.A. Jinnah’s address to the First Constituent Assembly).

125. He, in maintaining his quest for a secular state, added:

*“Pakistan is not going to be a theocratic state to be ruled by priests with a divine mission. We have many non-Muslims-Hindus, Christians and Parsis – but they are all Pakistanis. They will enjoy the same rights and privileges as any other citizens and will play their rightful part in the affairs of Pakistan.”*

(Feb. 1948, Quaid-e-Azam M.A. Jinnah’s broadcast address to the people of the United States of America).

(Abstract from Ibrahim Mahmood’s article titles: “Pakistan: A Secular State? June 28 2009: <http://www.pkhope.com/pakistan-a-secular.state/>)

126. We submit that Fiji should become a secular state.

## **REDUCTION OF VOTING AGE FROM 21 TO 18 YEARS OF AGE**

*“No right is more precious in a free country than that of having a choice in the election of those who make the laws under which ..... we must live. Other rights, even the most basic are illusory if the right to vote is undermined”*

**(Weberly v Sanders (1964) 376 US 1, 17)**

127. As an institution, the RFMF has been allowed to recruit persons and deploy them on active service operations or on military assignments at an age of 18. These individuals are old enough to sacrifice their life for Fiji, but arguably cannot make informed decision where election is concerned.

128. Our exposure to youths from the age of 18 years has be one full of admiration. Their attitude and maturity towards engaging in national duties have been commendable. We have found the youths to be well informed and display the eagerness to be appraised and at the same time take part in matters pertaining to national interest.

129. We, as a nation have allowed an 18 year old to drive on our roads, entrusting the lives of other way farers and the public in their hands. We have allowed an 18 year to get married and be responsible for a family. We have allowed them this complex and demanding responsibility and then shy away from a simple decision of whether or not to vote in an election.

130. We must invest in our younger generation as future leaders. What better than to expose our youths from the age of 18 years into politics. Their participation will further enhance their reasoning and ability and at the same time develop a society that is not stagnant.

131. We submit that our youths of 18 years should be allowed to vote in the next election.

## SYSTEM OF PROPORTIONAL REPRESENTATION

*“The System of Proportional Representation ensures that virtually every constituency in the country will have a bearing in the national and provincial legislature”.*

(Bishop Desmond Tutu, *“The Rainbow People of God”* (1944) Image Books, Doubleday, New York).

132. If one was to scrutinise the aspect of the past Government that drew most attention and criticism, undoubtedly, will relate to the Electoral System that had been adopted in time. There have been sweeping criticism and debate regarding the shortfalls of the electoral system and one that has questioned its fairness and integrity. We all know of the problems. There were instances of tampering with ballot boxes, non registration of voters, registration of voters in the wrong constituent and most classic where the return of ballot papers exceeded the number of voters in a constituent.

133. The European Union Election Observer Report (2006) has not been sparing. It came as a surprise that despite all the observations of shortfalls and inconsistencies, the report held the election of 2006 as fair!

134. Communal Roll voting is of the past. The race based election has no place in modern Fiji. In fact, we submit that the communal system was the catalyst of the negative image and problems that crystallised on Fiji’s Politics.

135. The RFMF submits that the list system proposed through the National Council for Building A Better Fiji may be the ideal electoral system for Fiji. The List System, in our opinion will be an ideal system to replace the Alternative Vote System – which has given all in Fiji nightmares.

136. Proportional Representation is an electoral system which allows the successful parties to acquire parliamentary seats in direct proportion to the number of votes received. As an example, if a political party received 10 percent of the vote, then the said party will enjoy 10 percent of the seats in Parliament. We have suggested 46 seats of Parliament, as such, a 10 percent win will entitle the party 5 seats in Parliament.

137. To assist the electoral process, we are recommending that there be four constituencies. These would assist the administration of the process and at the same time provide a more accountable and transparent system. The four constituencies are derived from the current Provincial boundaries of the Central, Eastern, Western and Northern Divisions. The adoption will minimise costs and administration, as the concept are already in existence and fully functional.

## **DECLARATION OF FINDINGS TO NON- GOVERNMENT ORGANISATION (NGOs)**

138. There are concerns that Non-Government Organisation Groups are funded or sponsored to advance interest against the Government. We are of the opinion that the practices are aimed at undermining and at the same time destabilise the good work done by the Government. If the Non-Government Organisation Groups are to operate, they have to be transparent in the practices and funding. As such, we submit that all Non- Government Organisation Groups are:

- a. to present annual audit accounts to Government;
- b. to disclose all funding in any form to Government; and
- c. Discloses any additional assets to the organisation.

139. Any Non-Government Organisation Group who fails to adhere to the requirement is to be de-registered.

## **BILL OF RIGHTS**

140. The Bill of Rights provided in the 1997 Constitution was consistent with the Provisions of the International Conventions in particular the International Convention on Civil and Political Rights (ICCPR).

141. We submit that the following provisional rights be restated in our new constitution:

- a. Right to life
- b. Right to personal liberty
- c. Freedom from unreasonable searches and seizure
- d. Rights of charged persons
- e. Rights to access to courts or tribunals
- f. Freedom of Expression
- g. Freedom of Assembly
- h. Freedom of Association
- i. Freedom of Movement
- j. Rights to privacy
- k. Protection against compulsory acquisition of property
- l. Enforcement
- m. Freedom of labour relations
- n. Right of Religion and Belief
- o. Right of Equality
- p. Right to Education



## **RIGHT TO LIFE**

142. Every person has the right to life. A person must not be arbitrarily deprived of life, except on such grounds as are established by law and are consistent with the principles of fundamental justice.

## **RIGHT TO PERSONAL LIBERTY**

143. A person must not be deprived of personal liberty except:

- a. for the purpose of executing the sentence or order of a court, whether handed down or made in Fiji or elsewhere, in respect of an offence of which the person has been convicted;
- b. for the purpose of executing the order of a court punishing the person for contempt of the court or of another court or tribunal;
- c. for the purpose of executing the order of a court made to secure the fulfillment of an obligation imposed on the person by law;
- d. for the purpose of bringing the person before a court in execution of the order of a court;
- e. if the person is reasonably suspected of having committed an offence;
- f. with the consent of the person's parent or guardian or upon an order made by a court, for the purpose of the person's education or welfare during any period ending not later than the date of his or her eighteenth Birthday;
- g. for the purpose of preventing the spread of an infectious or contagious disease;
- h. for the purpose of the person's care or treatment or for the protection of the community if he or she is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant; or

- i. for the purpose of preventing the unlawful entry of the person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji.

144. Paragraph (143)(c) does not permit a court to make an order depriving a person of personal liberty on the ground of failure to pay maintenance or a debt, fine or tax unless the court considers that the person has willfully refused to pay despite having the means to do so.

145. If a person (detainee) is detained pursuant to a measure authorized under a state of emergency:

- a. the detainee must, as soon as is reasonably practicable and in any event within 7 days after the start of the detention, be given a statement in writing, in a language that the detainee understands, specifying the grounds of the detention;
- b. notice of the detention must be published in the Gazette within 14 days after the start of the detention, giving particulars of the law under which the detention is authorized;
- c. the detainee must be given the opportunity to communicate with, and to be visited by:
  - i. his or her spouse, partner or next-of-kin; and
  - ii. a religious counselor or social worker;
- d. the detainee must be given reasonable facilities to consult with a legal practitioner of his or her choice;
- e. the detention must, within one month and thereafter at intervals of not more than 6 months, be reviewed by an independent and impartial

tribunal established by the Judicial Service Commission and presided over by a person qualified to practice as a barrister and solicitor in Fiji; and,

- f. at a hearing before the tribunal the detainee may appear in person or be represented by a legal practitioner.

146. Following a review by a tribunal under subsection (144), the tribunal may make recommendations to the appropriate authority as to the continued detention of the detainee.

147. This right may also be subject to such limitations as are prescribed by law and are consistent with the principles of natural justice.

## **FREEDOM FROM SERVITUDE AND FORCED LABOUR**

148. A person must not be held in slavery or servitude and must not be required to perform forced labor.

149. In this section:

- a. *forced labor* means all work or service that is extracted from any person under the threat of any penalty and is not offered voluntarily but does not include:
  - b. Any work or service exacted in accordance with compulsory military service laws for work of a purely military character;
  - c. Any work or service which forms part of the normal civic, traditional or religious obligations;
  - d. Any work or service exacted from any person as a consequence of a conviction in a court of law, or a court order, provided that the work is carried out under the supervision and control of a public authority and

that he person is not hired or placed at the disposal of private individuals companies or associations;

- e. Any work or service exacted in cases of emergency such as war, calamity, threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests and in general any circumstance that would endanger the existence or wellbeing of the whole or part of the people of Fiji; or
- f. Communal service of a kind performed by members of the community in the direct interest of the community in accordance with their rules or customary practices.

### **FREEDOM FROM CRUEL OR DEGRADING TREATMENT**

150. Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

151. Every person has the right to freedom from scientific or medical treatment or procedures without his or her informed consent or, if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian.

### **FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURE**

152. Every person has the right to be secure against unreasonable search or seizure, whether of the person, property or correspondence or otherwise

153. Search or seizure is not permissible otherwise than under the authority, of law and are consistent with the principles of natural justice.

**RIGHTS FOR ARRESTED AND DETAINED**

154. Every person who is arrested or detained has the right:

- a. to be informed promptly in a language that he or she understands of the reason for his or her arrest or detention and of the nature of any charge that may be brought;
- b. to be promptly released if not charged;
- c. to consult with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice require legal representation to be available, to be given the services of a legal practitioner under a scheme for legal aid;
- d. to be given the opportunity to communicate with, and to be visited by:
  - i. his or her spouse, partner or next-of-kin; and
  - ii. a religious counselor or social worker;
- e. to challenge the lawfulness of his or her detention before a court of law and to be released if the detention is unlawful; and,
- f. to be treated with humanity and with respect for his or her inherent dignity.

155. The authorities holding a person who has been arrested or detained must promptly take all reasonable steps to inform his or her spouse, partner or next-of-kin of his or her arrest or detention.

156. Every person who is arrested for a suspected offense has the right:
- a. to be informed promptly in a language that he or she understands that he or she has the right to remain from making a statement;
  - b. to be brought before a court no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter; and,
  - c. to be released from detention on reasonable terms and conditions pending trial, unless the interests of justice otherwise require.
157. A person who is ordered to be detained pending trial is, so far as practicable, to be kept apart from convicted persons.
158. A detained child is, so far as practicable, to be kept apart from adults, unless that is not in the child's best interests.
159. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.

## **RIGHTS OF CHARGED PERSONS**

160. Every person charged with an offense has the right:
- a. to be presumed innocent until proven guilty according to law;
  - b. to be given details in legible writing, in a language that he or she understands, of the nature of and reasons for the charge;
  - c. to be given adequate time and facilities to prepare a defense, including, if he or she so requests, a right of access to witness statements;
  - d. to defend himself or herself in person or to be represented, at his or her own expense, by a legal practitioner of his or her choice or, if the

interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid;

- e. not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;
- f. to adduce and challenge evidence, and not to be a compellable witness against himself or herself;
- g. to be given, on payment of a reasonable fee prescribed by law, a copy of the record of proceedings of the court and of the decision of the court within a reasonable time;
- h. not to have the trial takes place in his or her absence unless:
  - i. the court is satisfied that the person has been served with a summons or other process requiring his or her attendance and has chosen not to attend; or
  - ii. his or her conduct in the proceedings is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence;
- i. not to be found guilty in respect of an act or omission unless the act or omission constituted an offence at the time it occurred, and not to be sentenced to a more severe punishment than was applicable when the offence was committed;
- j. not to be tried again for an offence of which he or she has previously been convicted or acquitted; and
- k. if found guilty, to appeal to a higher court.

161. Sub paragraph (160) (h) (i) does not apply if the offence with which the person has been charged is an offence punishable by a term of imprisonment.

162. A law is not inconsistent with paragraph (160)(k) to the extent that it:
- a. authorizes a court to try a member of a disciplined Force for a criminal offence despite his or her trial and conviction or acquittal under a disciplinary law; and
  - b. requires the court, in passing sentence, to take into account any punishment awarded against the member under the disciplinary law.
163. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.
164. We submit that this section complies with Articles 9, 10, 14 and 15 of the ICCPR.

### **ACCESS TO COURTS OR TRIBUNALS**

165. Every person charged with an offence has the right to a fair trial before a court of law.
166. Every party to a civil dispute has the right to have the matter determined by a court of law or, if appropriate, by an independent and impartial tribunal.
167. Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.
168. The hearings of courts (other than military courts) and tribunals established by law must be open to the public.



169. Subsection (168) does not prevent:

- a. the making by the Parliament of laws relating to the trial of juveniles, or to the determination of family or domestic disputes, in a closed court; or
- b. the exclusion by a court or tribunal from particular proceedings (except the announcement of the decision of the court or tribunal) of persons other than the parties and their legal representatives if a law empowers it to do so in the interests of justice, public morality, the welfare of persons under the age of 18, personal privacy, national security, public safety or public order.

170. Every person charged with an offence, every party to civil proceedings and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands.

171. Every person charged with an offence and every party to civil proceedings has the right to follow the proceedings in a language that he or she understands.

172. To give effect to the rights referred to in subsections (190) and (191), the court or tribunal concerned must, when the interests of justice so require, provide, without cost to the person concerned, the services of an interpreter or of a person competent in sign language.

173. If a child is called as a witness in criminal proceedings, arrangements for the taking of the child's evidence must have due regard to the child's age.

174. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.

## **FREEDOM OF EXPRESSION**

175. Every person has the right to freedom of speech and expression, including:

- a. freedom to seek, receive and impart information and ideas; and
- b. freedom of the press and other media.

176. A law may limit, or may authorize the limitation of, the right to freedom of expression in the interests of:

- a. national security, public safety, public order, public morality, public health or the orderly conduct of national or municipal elections;
- b. the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including:
  - i. the right to be free from hate speech, whether directed against individuals or groups; and
  - ii. the right of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law;
- c. preventing the disclosure, as appropriate, of information received in confidence;
- d. preventing attacks on the dignity of individuals, groups or communities or respected offices or institutions in a manner likely to promote ill will between races or communities or the oppression of, or discrimination against, any person or persons;
- e. maintaining the authority and independence of the courts;
- f. imposing reasonable restrictions on the holders of public offices in order to secure their impartial and confidential service;

- g. regulating the technical administration of telecommunications; or
- h. regulating the media industry.

177. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.

178. In this section:

***hate speech** means an expression in whatever form that encourages, or has the effect of encouraging, discrimination on a ground prescribed by the Rights to equality.*

179. We submit that this section complies with Article 19 of the ICCP, Article 10 of the ECHR, and that a similar provision is also found in the Constitution of South Africa, New Zealand Bill of Rights Act 1990, the Constitution of India and the Constitution Act 1982 of Canada.

## **FREEDOM OF ASSEMBLY**

180. Every person has the right to assemble and demonstrate with others peacefully.

181. A law may limit, or may authorize the limitation of, the right to freedom of assembly:

- a. in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of national or municipal elections;
- b. for the purpose of protecting the rights and freedoms of others; or
- c. for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service; but only to the

extent that the limitation is reasonable and justifiable in a free and democratic society.

182. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.

183. We submit that this section complies with Article 21 of the ICCPR, Article 11 of the ECHR, and that a similar provision is also found in the Constitution of South Africa, New Zealand Bill of Rights Act 1990, and the Constitution of India.

## **FREEDOM OF ASSOCIATION**

184. Every person has the right to freedom of association.

185. A law may limit, or may authorize the limitation of, the right to freedom of association:

- a. in the interests of national security, public safety, public order, public morality or public health;
- b. for the purpose of protecting the rights and freedoms of others;
- c. for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service;
- d. for the protecting industries and organizations which are essential to the Fijian economy; or
- e. for prescribing reasonable restrictions of the public service.

186. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.

187. We recognise that this section complies with Article 22 of the ICCPR, Article 11 of the ECHR, and that a similar provision is also found in the Constitution of

South Africa, New Zealand Bill of Rights Act 1990, the Constitution of India 1949 and the Constitution Act 1982 of Canada.

## **FREEDOM OF MOVEMENT**

188. Every citizen has the right to enter and remain in Fiji.

189. Every citizen who satisfies the conditions (if any) prescribed by the Parliament has the right to be issued with a passport.

190. Every citizen, and every other person lawfully in Fiji, has the right to move freely throughout Fiji and the right to leave Fiji.

191. Every citizen, and every other person who has a right to reside in Fiji, has the right to reside in any part of Fiji.

192. Every person who is not a citizen but is lawfully in Fiji has the right not to be expelled from Fiji except pursuant to an order of a court or a decision of the Minister on a ground prescribed by law.

193. A law, or anything done under the authority of a law, is not inconsistent with the rights granted by this section to the extent that the law:

- a. provides for the detention of the person or enables a restraint to be placed on the person's movements, whether:
  - i. for the purpose of ensuring his or her appearance before a court for trial or other proceedings;
  - ii. in consequence of his or her conviction for an offence; or

- iii. for the purpose of protecting another person from apprehended violence;
- b. provides for a person who is a non-citizen to be detained or restrained as a consequence of his or her arrival in Fiji without the prescribed entry documentation;
- c. provides for the extradition, on the order of the High Court, of a person from Fiji;
- d. provides for the removal from Fiji, on the order of the High Court, of a child who had previously been unlawfully removed from another country, for the purpose of restoring the child to the lawful custody of a parent or guardian;
- e. provides for the removal from Fiji of a person who is not a citizen for the purpose of enabling the person to serve a sentence of imprisonment in the person's own country in relation to a criminal offence of which he or she has been convicted in Fiji; or
- f. Regulates, controls or prohibits the entry of persons on to land owned or occupied by others.

194. A law may limit, or may authorise the limitation of, the right of a person to freedom of movement:

- a. in the interests of national security, public safety, public order, public morality or public health; or
- b. for the purpose of protecting the economy of a particular area or the ecology or distinctive culture of the area;
- c. for the purpose of imposing a restriction on the person that is reasonably required to secure the fulfillment of an obligation imposed on the person by law; or

- d. for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment;

195. This right may be subject to such limitations as are established by law and are consistent with the principles of fundamental justice.

196. If a court has made an order requiring a person to pay tax or maintenance, a further order of the court restricting, his or her freedom of movement is to be taken as reasonable for the purposes of paragraph (194)(c) if the person has willfully refused to pay despite having the means to do so.

197. If action has been taken pursuant to paragraph (194)(b) restricting the movements of persons in order to protect the economy, ecology or distinctive culture of an area, a person whose interests are affected may request the Judicial Service Commission, in writing, to establish an independent and impartial tribunal to investigate the merits of the need to protect the economy, ecology or culture of that area.

198. Upon receipt of the request, the Judicial Service Commission must establish the tribunal and must appoint as its chairperson a person qualified to practice as a barrister and solicitor in Fiji.

199. Subsections 194 (a) and (b) apply to a person whose right to freedom of movement is restricted pursuant to measure authorized under a state of emergency in the same way as they apply to a person detained pursuant to such a measure.

## **RIGHT TO PRIVACY**

200. Every person has the right to personal privacy, and family life , his home, and his correspondence.

201. The law may limit, or may authorize the limitation of, the right to privacy:

- a. in accordance with the law and is necessary in a democratic society;
- b. in the interest of national security, public safety or economic-wellbeing of the country;
- c. for the purpose of preventing disorder or crime;
- d. for the protection of health or morals; or
- e. for the protection of the rights and freedom of others.

202. This right may be subject to such limitations as are established by law and are consistent with the principles of natural justice.

## **PROTECTION AGAINST COMPULSORY ACQUISITION OF PROPERTY**

203. Every person has the right not to be deprived of property by the State otherwise than in accordance with a law.

204. The acquisition of property under a law referred to in subsection (203):

- a. is permissible for public purposes or in the public interest; and
- b. subject to compensation the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court or tribunal to be just and equitable, reflecting an equitable balance between the public interest and the interest of those affected, having regard to all relevant factors including:



- i. the current use of property;
- ii. the history of its acquisition and the use of the property;
- iii. its market value of the property;
- iv. the extent of direct state investment and the subsidy in the acquisition and beneficial capital improvement of the property;
- v. the interests of those affected; and
- vi. any hardship to the owner.

205. This right may be subject to such limitations as are established by law and are consistent with the principles of fundamental justice.

206. In this section; the term **property** is not limited to land.

207. We recognize that this section is similar to the provision found in the Constitution of South Africa, the Constitution of India 1949 and the Constitution Act 1982 of Canada.

## **ENFORCEMENT**

208. If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.

209. The right to make application to the High Court under subsection (208) is without prejudice to any other action with respect to the matter that the person concerned may have.

210. The High Court has original jurisdiction:

- a. to hear and determine applications under subsection (208); and
- b. to determine questions that are referred to it under subsection (209) and may make such orders and give such directions as it considers appropriate.

211. The High Court may exercise its discretion not to grant relief in relation to an application or referral, made to it under this section if it considers that an adequate alternative remedy is available to the person concerned.

212. If in any proceedings in a subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the member presiding in the proceedings may, and must if a party to the proceedings so requests, refer the question to the High Court unless, in the member's opinion (which is final and not subject to appeal), the raising of the question is frivolous or vexatious.

213. When the High Court gives its decision on a question referred to it under this section, the court in which the question arose must dispose of the case in accordance with:

- a. the decision; or
- b. if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court--the decision of the Court of Appeal or Supreme Court, as the case may be.

214. The Attorney-General may, on behalf of the State, intervene in proceedings before the High Court that relate to a matter concerning a provision of this Chapter.

215. If proceedings before the High Court relate to a matter concerning a provision of this Chapter, the High Court must not proceed to hear and determine the matter until it is satisfied that notice of the matter has been given to the Attorney-General and a reasonable time has elapsed since the giving of the notice for consideration by the Attorney-General of the question of intervention in the proceedings.

216. A notice under subsection (214) is not required to be given to the Attorney-General if the Attorney-General or the State is a party to the proceedings.

217. The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications are to be made to the High Court).

218. This right may also be subject to such limitations as are established by law and are consistent with the principles of fundamental justice.

## **LABOUR RELATIONS**

219. Workers have the right to form and join trade unions, and employers have the right to form employers' organizations.

220. Workers and employers have the right to organize and bargain collectively.

221. Every person has the right to fair labor practices, including humane treatment and proper working conditions.

222. A law may limit, or may authorize the limitation of, the rights set out in this section:

- a. in the interests of national security, public safety, public order, public morality or public health;
- b. for the purpose of protecting the rights and freedoms of others; or
- c. for the purpose of imposing reasonable restrictions on members of a disciplined Force;
- d. for protecting industries and organizations which are essential to the Fijian economy; and
- e. for prescribing reasonable restrictions of the public service

## **RIGHT OF RELIGION AND BELIEF**

223. Every person has the right to freedom of conscience, religion and belief.

224. Every person has the right, either individually or in community with others, and both in public and in private, to manifest his or her religion or belief in worship, observance, practice or teaching.

225. The right set out in subsection (223) extends to the right of religious communities or denominations to provide religious instruction as part of any education provided by them, whether or not they are in receipt of any financial assistance from the State.

226. The right set out in subsection (223) may be made subject to such limitations prescribe by law as are necessary:

- a. to protect:
  - i. the rights or freedoms of other persons; or
  - ii. public safety, public order, public morality or public health; or

iii. to prevent a public nuisance.

227. Except with his or her consent or, in the case of a person under the age of 18, the consent of a parent or guardian, a person attending a place of education is not required to receive religious instruction or to take part in or attend a religious ceremony or observance if the instruction, ceremony or observance relates to a religion that is not his or her own or if he or she does not hold any religious belief.

228. A person must not be compelled to take an oath, or to take an oath in a manner, that is contrary to his or her religion or belief or that requires him or her to express a belief that he or she does not hold.

229. A person must not be compelled to take an oath, or to take an oath in a manner that is contrary to his or her religion or belief or that requires him or her to express a belief that he or she does not hold

230. The above provision complied with Article 18, 20 and 26 of the ICCPR and Article 15 of the ICESCR.

231. It also reflects the right to religion and belief as per Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief.

## **RIGHT OF EQUALITY**

232. Every person has the right to equality before the law.

233. A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her:

- a. actual or supposed personal characteristics of circumstances, including race, ethnic origin, color, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or
- b. opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others or on any other ground prohibited by this Constitution.

234. Accordingly, neither a law nor an administrative action taken under a law may directly or indirectly impose a disability or restriction on any person on a prohibited ground.

235. Every person has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places.

236. The proprietor of a place or service referred to in subsection (235) must facilitate reasonable access for disabled persons to the extent prescribed by law.

237. A law, or an administrative action taken under a law, is not inconsistent with the right to freedom from discrimination on the ground of:

- a. language;
- b. birth;
- c. economic status;
- d. age; or
- e. disability;

- f. During the period of 2 years after the date of commencement of this Constitution if the law was in force immediately before that date and has remained continually in force during that period.

238. A law is not inconsistent with subsection (235), (236) or (237) on the ground that it:

- a. appropriates revenues or other moneys for particular purposes;
- b. imposes a retirement age on a person who is the holder of a public office;
- c. imposes on persons who are not citizens a disability or restriction, or confers on them a privilege or advantage, not imposed or conferred on citizens;
- d. permits a person who has a discretion to institute or discontinue criminal proceedings to take account in the exercise of that discretion of traditional procedures in the State for the settlement of disputes; or
- e. makes provision with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters as the personal law of any person or the members of any group but only to the extent that the law is reasonable and justifiable in a free and democratic society.

239. This right may also be subject to such limitations as are established by law and are consistent with the principles of fundamental justice.

240. We submit that this section complies with Articles 2 and 26 of the ICCPR and Article 3 of ICESCR.

## **RIGHT TO EDUCATION**

241. Every person has the right to basic education and to equal access to educational institutions.

242. Primary and secondary education should be compulsory for all children.

243. Every religious community or denomination and every cultural or social community has the right to establish and maintain places of education and to manage them, whether or not it receives financial assistance from the State.

244. The admission policy of a place of education referred to in subsection (2) may be administered on the basis of the need to maintain its special character but, subject to that, those concerned in its management must ensure that it is open to all qualified students without discrimination on any ground prohibited by this Constitution.

245. Nothing contained in, or done under the authority of, a law prescribing standards or qualifications for educational institutions is inconsistent with this section to the extent that the requirements of the law are consistent with the principles of justice.

246. We recommend that the stated rights be entrenched in our constitution.

247. To ensure full dissemination and proper adherence, we are recommending the establishment of the Office of the Ombudsperson and the Office of the Fiji Human Rights Commission.



## IMMUNITY PROVISIONS

248. After the events of 14 May 1987 and 25 Sept 1987, in recognizing the special role of the Discipline Forces and those involved in the takeover (Coup d'état), immunity was extended through Section 164 of the 1990 Constitution. Although the provision had extended immunity from criminal and civil responsibilities there were members of the Discipline Services who had been investigated, few charged and convicted for breaches of our domestic laws.

249. Similarly, after the events of 2006, again, members of the Discipline Services have been investigated; few charged and sentenced for violation of domestic criminal laws. The following cases have been dealt with within our courts:-

- a. State v Patrick Nayacalagilagi, Taione Lua, Ulaiasi Radike, Etonia Nadura, Ratunaisa Toutou, Joeli Lesavua, Jona Nareki, Ilaisa Kacimavana and Napolioni Naulia.

All servicepersons were found guilty for manslaughter and assault occasioning actual bodily harm. The case involved the death of Sakiusa Rabaka and others. All servicepersons were sentenced to 4 years imprisonment.

- b. State v Maika Vuniwawa (Criminal Case HAC 170 of 2007S)

Maika Vuniwawa was convicted of manslaughter of Nimilote Verebasaga. He was sentenced to 3 years imprisonment.

c. State v Waisale Tuivuya (Criminal Case HAC 015 of 2005S)

Waisale Tuivuya was charged for the murder of Alifereti Nimacere, the notorious criminal wanted for the murder of Corporal Raj Kumar and Lcpl Joela Weleilakeba at Qiolevu. After a full trial, in a unanimous decision, the assessors and the Court found Waisale Tuivuya **NOT** Guilty of the offence.

d. Dr Anirudh Singh v Sotia Ponijese, Waqa Vakaloloma, Uate Qalo, Iliesa Raiqiso, Samuela Keni and the Attorney General of Fiji (Civil Action No 371 of 1993)

The plaintiff, Dr Anirudh Singh brought proceedings against the defendants for kidnapping, unlawful confinement and assault. The High Court in finding for the Plaintiff awarded the following damages:

- (1) \$75,000.00 for pain and suffering;
- (2) \$75,000.00 for detriment caused to Plaintiff career; and
- (3) \$100,000.00 exemplary damages against the Fiji Military Forces.

250. Despite the existence of a Limitation of Liability for Prescribed Political Events Decree 2010, investigations on complaints of criminal violations have occurred and systematically dealt with in our competent court of law.

251. We submit that the provision of the Prescribed Political Events Decree 2010 be adopted in our constitution with an entrenched provision for modification or repeal.

252. We also submit that the Prescribed Political Events period should include the period until the formation of the new government. Under our new constitution we submit that the Limitation of Liability Decree 2010, para 2, under definition “prescribed political events” should include a new paragraph which should read as follows:

*“all related acts or omission by the prescribed persons in any form leading to the formation of a new constitution and election”.*

253. The granting of immunity to Discipline Forces is not new. It has been a practice that has been enjoyed through times. After military expeditions, wars, internal armed conflicts and more recently interventions of covert operations, servicepersons have been granted immunity for their roles and participations in the operations. We have extracted documents where there has been continued arrangement raised in favor of the granting of immunity for servicepersons (and civilians) involved in military operations.

254. For example:

- a. The call for immunity for US personnel serving in Iraq, the Secretary of Defence, Leon Panetta stated:

*“if you want the benefits of what we can provide, if they want the assistance, if they want the training, if they want the operational skills that we can provide, then I think they have to understand that they’ve got to give us some protection in that process”.*

In the news: Should US troops have immunity?  
<http://govunomics.wordpress.com/2011/10/08>.

- b. The Australian Prime Minister, John Howard in 2003 insisted that the Solomon Island Government adopt additional legislation giving sweeping powers to intervening force personnel (Regional Assistance Mission to Solomon Islands) and granting them legal immunity for any action they take. Prime Minister Howard said:

*“I would expect the Parliament to pass the legislation. If the legislation is NOT passed, well, we don’t go in. If the legislation is passed in a form that’s acceptable to Australia, we go in. They’re the alternatives”.*

Will Marshall, *“Solomon Islands bullied into accepting Australian led Military Intervention”*,

<http://www.wsws.org/articles/2003/jul2003/solo-j12.shtm>.

- c. During the Northern Ireland conflict, British servicepersons were granted immunity indemnifying them from threat of court proceedings. Document stated:

*“The discovery of this document indemnifying British soldiers from the threat of court proceedings whilst they took their ‘war’ to nationalist communities with the ‘utmost vigor’ is the first official documented evidence...”*

Kerry O’Shea, *Secret British Government memo shows soldiers had legal Immunity;*  
<http://www.irishcentral.com/news/secret.British.government-memo-shows-soldiers-had-legal-immunity-160223145.html>.

255. The explicit provision providing Privileges and Immunities were expressed in the Solomon Islands Facilitation of International Assistance Act 2003. A summary of the privileges and immunity is contained in the Review of Regional Assistance

Mission in the Solomon Islands, Foreign Relations Committee, National Parliament of Solomon Islands, 2008.

256. Our servicepersons have been called to participate in situations that are different to a normal occasion. They will be engaged in operations that call for the protection of persons and property. In situations of threat and riot, there is an expectation the members of the Armed Forces will react to eliminate the threat and risk.

257. As the last bastion of law and order, we are mandated to Act. If we don't Act, we are failing in our duty which we were entrusted to uphold. At such crossroads, we do not want servicepersons to be thinking of the legal implications. The "what ifs" are detrimental to our operations. We want them to have a satisfaction of mind that they have adequate legal cover to protect them. We cannot leave such considerations to chance.

258. I will give you an example of what we are implying. We have already heard of the hostage taking of Parliamentarians in 2000. Mahendra Chaudhary and others were held captive in parliament for 56 days. The RFMF made all efforts to protect them and ensure their well being. So much, we had to alter our operation plans and *modus operandi* to ensure no harm would come to them.

259. What did the Republic of Fiji Military Forces get in return! All parliamentarians sued the RFMF! The institutions that protected them and brought them out of captivity were sued!

260. The following cases which had been filed are cited:

- a. Mahendra Chaudhary v RFMF & Other
  - i. HBC 348/04S
  - ii. MISC 98/03
- b. N. Kumar v RFMF & Others
  - i. HBC 191/03
  - ii. MISC 96/03
- c. Gyanendra Prasad & Nagamma Swamy v RFMF & Others
  - i. HBC 188/03S
  - ii. MISC 95/03
- d. A. Singh v RFMF & Others
  - i. HBC 192/03S
  - ii. MISC 97/03
- e. Rajendra Chaudhary v RFMF & Others
  - i. HBC 409/02S
  - ii. MISC 134/02
- f. Gaffar Ahmed & Others v RFMF
  - i. 100/03
- g. Lekhram Vayeshnoi v CRFMF & Others
  - i. 179/03

261. This simple example is a testimony of the concerns of the RFMF. None of us wakes up in the morning and declares we will harm someone today. To the contrary, we wake up to ensure that through us there is a harmonious, peaceful and law abiding society where we all can live in. Where compliance to the laws are the order of the day.

262. If immunity is not granted, future operations will be affected as there will be questions raised regarding legal implication. We cannot leave this issue to chance and hope all will be good and resolved within its own time.

263. The servicepersons deserve to be absolved from legal implications for the acts done from 2000 until the formation of a new government.

## **EXISTING PROMULGATION AND DECREES TO BE RECOGNISED**

264. Since 2006, there have been numerous Promulgations and Decrees that have been gazette which has affected the day to day operation of the Government, individuals and our Court System. Included is the appointment of persons within Government and subsidiary organisations. One cannot over emphasis the need for the continuance of such Promulgations and Decrees and the same been recognized in our new constitution. We submit that the new constitution must recognise all the Promulgations and Decrees that have been brought about since December 2006. In addition, there should be an entrenching provision ensuring that the said Promulgations and Decrees are not revoked or challenged in any competent court of law.





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YEAR	CHARGES LAID	NO. PERS CHARGED	CASES TO COURT	CONVICTION	ACQUITTAL	NOLLE PROSEQUI
2009	161	47	41	8		
2010				15	05	02

### **Law & Justice & National Security**

267. Changes have been made to the Penal Code under the Crimes Decree 2010 to enable prosecution of modern crimes and satisfy Fiji's international obligations under the Rome Statute regarding crimes against humanity. The Decree also contains provisions, which has lifted Fiji from Tier 3 to Tier 2 status in terms of having more effective systems in place to combat human trafficking. Tougher measures to address violence against women and children have also been adopted under the Domestic Violence and Child Protection Services Decrees. Community policing initiatives have been strengthened through the declaration of crime free towns and cities, blue light programs for school children; crime stoppers scholarships, youth engagement and crime prevention committees.

## **SOCIAL SECTOR**

### **Human Development Index (HDI) & Millennium Development Goals (MDG)**

268. The HDI is a widely accepted measure of a country's progress in attaining satisfactory levels of education, health, and income. According to the 2005 UNDP Human Resource Report, Fiji ranked 92<sup>nd</sup> out of 177 countries. In 2010, the UNDP HDI Report ranked Fiji at 86 out of 177 countries, a slight improvement positioning

us in the medium human development category. However, the country's performance in meeting the Millennium Development Goals has not improved. The 2004 MDG Report found that Fiji was on track to achieving six out of the eight goals. However, the 2010 MDG Report concluded that Fiji was on track to achieving 5 out of the 8 goals, with 3 MDG's which Fiji unlikely to meet, being; poverty; promoting gender equality and empowering women; and combating HIV/AIDS and other diseases by 2015. While Government is committed to achieving these three MDGs as reflected in strategies adopted by key line Ministries like the Ministry of Health and Ministry of Women, Social Welfare & Poverty Alleviation, donor assistance is critical to the achievement of these strategies.

### **National Identity & Social Cohesion**

**269.** Government has undertaken a number of initiatives to strengthen unity and solidarity, which includes naming of our country 'Fiji'. Fijian is now the common name for all citizens with the name I Taukei adopted for indigenous Fijians. The Ministry of I Taukei Affairs and other Government agencies and public sector organizations have amended legislation to reflect this name change. The Ministry of Education, Culture, Art and Heritage has advanced most of its strategies towards National Identity and Social Cohesion through appropriate curriculum development, promoting the teaching of the vernaculars, comparative religious studies, and establishing special schools and institutions. Moreover, fifty out of sixty schools with names denoting racial affiliation have officially changed their names in support of multiculturalism in Fiji.

## **Social Welfare & Poverty Alleviation**

270. According to the 2008-2009 Household Income and Expenditure Survey (HIES) the Basic Need Poverty Line (BNPL) is estimated to be to around \$175 per week for a household of 4 adults, which represents the average family size and indicates that poverty in Fiji is relatively skewed towards the rural population. The proportion of households living in poverty has declined from 35 percent in 2007 to 31 percent in 2009. Measures taken to alleviate poverty include:

- a. Family Assistance Scheme;
- b. Welfare Graduation Program;
- c. Grants to Voluntary Organizations;
- d. Free School Tuition and Textbook Assistance;
- e. Transportation Assistance Scheme;
- f. Food Voucher Program;
- g. National Policy Framework for the Elderly; and,
- h. Disability Inclusive Development

## **Education & Training**

271. Major achievements by the Ministry of Education in 2007 – 2011 include:

- a. An increase in the proportion of pupils enrolling and remaining in the primary school system from Classes 1 to 5 from 90 percent to 95 percent.
- b. There was also a significant increase in the progression rate from 67 – 80 percent for the same period.

- c. Average net enrolment rate for secondary schools hovers around 89% and Fiji likely to meet the MDG target to achieve primary education for all by 2015.
- d. Education expenditure has averaged 16.4% of the total national budget in the last 5 years.
- e. Other achievements include the adoption of policies and allocation of resources to provide: free and compulsory education; incorporation of Hindustani and iTaukei language courses into the curriculum; free stationeries and text books; bus fare assistance for school children from needy families; building of additional classrooms and school facilities; and the improvement of rural education. To improve citizenship awareness, 704 primary and 166 secondary schools have observed the national anthem and flag raising ceremony on a weekly basis and as stated above name changes have been adopted for schools with names denoting non-racial affiliation.
- f. Government has allocated substantial amount of funds for the upgrading of primary and secondary schools in the rural areas to ensure all Fijians have access to education and thus ensure realisation of potential for all.

## **Health**

272. Health indicators show that Fiji has made significant progress in improving life expectancy, maternal and infant mortality, with under-five mortality rate ( per 1000 live births) declining from 27.8 in 1990 to 23.2 in 2009, a 33% decline. The Min of Health has effective strategies in place to address the major health issues under primary and curative health care with significant achievements recorded in the last four years in the outreach of clinical services to divisional hospitals; protection of

public health; implementation of immunization programme; adoption of the HIV/AIDS Decree to protect people living with the disease; and ensuring basic treatment and therapies for common diseases are readily available.

273. Successful implementation of these strategies is dependent on the right human resource development strategies to address technical and specialised staff shortages and adoption of a properly coordinated and sequenced capital investment programme to update medical facilities and equipment. In this regard Government has approved the creation of 56 posts for doctors and also an increase in the nursing establishment to 170 annually for the next 3 years. Nursing trainee placements have been increased accordingly in anticipation of new graduates to fill these positions.

274. New nursing stations and relocation of Hospital of Navua and improvement in public health is a priority of government for the last 5 years.

### **Rural and Outer Island Development**

275. As part of Governments effort to strengthen development planning and improve service delivery, the integrated rural development framework was adopted in 2009. Since then significant improvements have been noted in the coverage and implementation of rural development programmes. In addition to the projects administered by the Ministry of Provincial Development, other key projects for rural development include infrastructure development, housing, energy and food security and income generating projects. Since the commencement of Northern Development Programme in 2008, approximately 1351 projects have been funded through a grant of \$4million to support resource based projects.

## **INFRASTRUCTURE & PUBLIC UTILITIES**

### **Energy Sector**

276. In 2010, 90% of the population had access to electricity. Government recognizes the need to invest in renewable energy that is crucial for economic growth and has guaranteed a loan to the Fiji Electricity Authority (FEA) of US150million for the construction of the Nadarivatu Hydro Power Station. FEA has also completed and commissioned around 180 Rural Electrification projects funded by Government. The Dept of Energy (DOE) has installed 10 biogas plants around Fiji, constructed a Mini Hydro station at Buca Bay in the Northern Division and installed two Bio-fuel plants on Koro and Rotuma, 551 solar scheme and 63 diesel schemes have also been completed with more bio-diesel plants being installed in 2012.

### **Water & Sewerage**

277. Approx 75% of population has access to piped water and about 25% access to sewerage facilities. Since 2007, has invested a significant amount of capital for the development and upgrading of water and sewerage infrastructure in the country. Some of the major schemes implemented includes: the Suva/Nausori Regional Water Supply and Sewerage Scheme, Nadi/Lautoka Regional Water Supply Scheme, Natadola Water Infrastructure Project and other water and sewerage schemes around the country.

278. Some of the rural water supply schemes that have been completed over the last 5 years are as follows: Vunidawa Reservoir, Construction of two 40,000 gallon tanks in Rotuma, main relocations at Dradrimea in Seaqqa, mains replacement at

Malaka and Daliconi villages on Vanuabalavu, Nasauvakarua Village, Matokana Village, Nawi Village, Sawani Village, Udu Village among others.

279. The Water Authority of Fiji was established in Jan 2010 with the aim of providing efficient and effective water and wastewater services in an environmentally sound and sustainable manner. The corporatization process is expected to be completed later this year with the transfer of assets and liabilities. It is envisaged that 2014, 100% of the rural population will have access to safe water and 60% have environmentally safe sanitation facilities in place. All rural water schemes will have Water Supply Safety Plans in place and communities will have taken ownership of their respective water supply schemes.

## **TRANSPORT**

280. Transport plays a critical role in our economy, contributing around 9% of GDP in the last 5 years. It also employs a considerable number of people in both formal and informal sectors with the latter most vibrant in the land transport industry. It also links key social and economic sectors of the economy, including resource-based industries, education and health. The sector has received assistance from Export-Import (EXIM) Bank of China and EXIM Bank of Malaysia which will increase the sector's contribution to GDP to around 20% by 2014.

281. **Land Transport** - The road network amounts to about 7,000km of which approx 5,000km are managed by the Dept of National Roads and some 200km is the responsibility of municipal councils while approx 1,800km are forestry, cane access or agriculture roads. In addition, Government has the task of maintaining the existing 1,617km of sealed roads. Since 2007, government has invested significantly in the construction, rehabilitation and upgrading of roads around the country (upgrading of



rural roads - \$9.7million; road rehabilitation project - \$7.8 million; capacity building; Suva/Nausori Corridor \$10.5 million; New Naqali Bridge \_ \$6million; and periodic maintenance - \$64.8million. The Third Fiji Road Upgrading Project(FRUP III) funded through a \$US40 million loan from the Asian Development Bank supported by govt's own resources of \$50million has enabled the upgrading of major trunk routes in the country. The initial 6 roads completed under FRUP 3 include:

- a. Taveuni Coastal Road ( Naselesele to Naqara)
- b. Buca Bay Road ( Airport to Nagigi)
- c. Wailoaloa Road
- d. Sawani Road ( Wailase to Naqali)
- e. Kings Road ( Dama/Bucalevu)
- f. Kings & Lodon Roads.

282. In 2010, a supplementary loan of US\$26.8 million was secured to complete the remaining components of the projects which included:

- a. Kings & Lodon Roads
- b. New Naqia & Wainiboa Bridges,
- c. Upgrading of Kings Rd from Waito to Wailotua.

283. The project will be completed by 2012. In addition number of externally financed projects have commenced in 2011 and will continue in 2012. These include EXIM Bank of China financed projects; namely, the 30 km Buca Bay/Moto Rd and 20km Sigatoka/Serea Rd. The EXIM Bank of Malaysia will provide \$80 million for the Queens Highway upgrade which will cover the rehabilitation of the Denarau Rd and Nadi Back Rd (4.7km) and portions along Rakiraki – Tavua Rd. The upgrading of these roads is expected to provide critical market links for farmers.

284. **Sea Transport** - The Shipping Franchise Scheme was established by Government in 1996 to encourage a higher standard of shipping services to the outer islands in the Maritime Provinces. The Government subsidy can be justified through the need to assist both the commercial operators who would not normally serve the uneconomical routes and therefore provide these communities with equal opportunities, accessibility and participation in economic growth activities. The scheme had been provided approximately \$7.5 million over the past 5 years. Also. To improve the shipping services to the outer islands, MLC Vatulawa and MV RogovokaII have been purchased by the Government. To support these shipping services, new jetties which have been constructed since 2007 include Kadavu Jetty, Rabi Jetty, and Yasawa-i-Rara Jetty.

285. **Air Transport** - In 2009, a new air services agreement (ASA) was signed with China and Air Pacific commencing flights to Hong Kong in 2010. A similar ASA has been signed with Continental Micronesia for its national airline to service routes between Guam/Nadi/Honolulu. Upgrading works over the past 5 years have been undertaken by Airports Fiji Ltd (AFL) on airports on Savusavu, Rotuma, Kadavu and Lakeba.

## **INFORMATION AND TELECOMMUNICATIONS**

286. In 2007, Government identified Audio-Visual Industries (AVI) and Information Communication Technology (ICT) as priority sectors to drive export growth with Kalabu declared and ICT Tax Free Zone with operators granted a ten year holiday from 1 Jan 07. In 2008, the tax holiday was extended to all ICT operators in Fiji provided they employ a minimum of 50 workers. The liberalization of the sector to facilitate the entry of Digicel to the mobile telephone market is another

major achievement for Government. Also, grants were provided to Telecom Fiji Ltd to extend phone coverage to more rural communities. To improve the regulatory framework, the Regulation of National Spectrum Decree 2009 has been adopted to regulate the use of frequencies by radio and television companies and the Telephone Registration Decree to provide for safe usage of telecommunications and protect users from hoax calls and messages.

## **HOUSING**

287. According to the 2007 Census, 7% of Fiji's rural population and 15% of the urban population reside in over 200 squatter settlements around the country. From 2007-2011, Government provided a total grant of \$11 million to fund squatter resettlement in Lakena Hill (Nausori), Vatoa (Narere), Lakena Hill No. 2 (Nausori), Badrau (Ba), Omkar (Narere), Caubati Central (Nasinu), Dilio St (Nakasi). In 2010, Govt secured a US\$70 million loan from EXIM Bank of China (US\$50m for Housing Authority and US\$20m for the Public Rental Board) to develop housing estates in Tacirua East and Nepani. Stage 2 subdivisions in Nasinu and public rental estates in Raiwaqa and Raiwai.

## **LAND**

288. Government has adopted the institutional framework for one of the main reforms under the People's Charter under the Land Use Decree 2010. The Decree provided legal framework that encourages the leasing of land for all purposes, sets incentives to ensure productive utilization of land, and ensures equitable returns for both tenants and landowners. Since the adoption of the Decree, 29 landowning units in 9 provinces have registered their parcels of land, which comprises a total of 9,881.45 hectares, in the Land Register (Land Bank). A total of 6 leases have been issued by the Land User Unit to 3 investors.

## CONCLUSION

289. We recognise that the current adopted process of soliciting submissions towards our new Constitution from the general public is commendable and a step towards the right direction. The current collating of submissions has brought about a sense of belonging culminating in a national pride of want and togetherness which we must continue to foster. Despite all differences, there is a realisation that we can live together as one in a harmonious Fijian society.

290. For the RFMF we have taken a “road not taken” in the past. Our adaptation has resulted in a lot of difficulties and sacrifice, from us and the people of Fiji. Such commitments and sacrifice has not been in vain. It has been recognised and now shows signs of prosperity. We have been collectively marginalised, sanctioned and “kicked in the gut” one too many times. We have been quite resilient the manner in which we have coped with adversities thrown at us. We will survive and so will Fiji – as we dawn a new era.