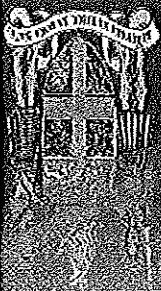


SFCO
NPCAC Secretariat
Parliament Complex

**PRESENTATION SCRIPT TO
THE CONSTITUTION
COMMISSION**

**National Peoples
Charter
Advisory Council
(NPCAC)**



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The NPCAC recommends that the Preamble for the new Constitution should be an introduction for the fundamental purpose and guiding principles of the nation and as such should be short and precise as follows:

"WE, THE PEOPLE OF FIJI,

RECOGNISING the supremacy of the Divine;

RECOGNISING the Constitution as the supreme law of our country that provides the framework for the conduct of government and the people;

COMMITTING ourselves to the recognition and protection of human rights, our respect for human dignity;

DECLARING a common purpose and citizenship for fundamental freedoms, justice, harmony, national sovereignty, national security, social and economic wellbeing, sustainable economic growth, and safeguarding our environment;

AFFIRMING our commitment to guide Fiji towards equality and respect and dignity for all Fijians;

BELIEVING in a strong and free civil society, and international cooperation for relief and peace, while developing and improving human security; and

URGING our leaders to uphold our Constitutional values, thereby creating a secure foundation for our Nation, as One Country, One People

WE HEREBY ESTABLISH THIS CONSTITUTION FOR THE REPUBLIC OF FIJI."

Likewise in the India and South Africa's Constitution.

2.0 APPOINTMENT OF PRESIDENT

[2.1] The NPCAC recommend that the President be appointed by Parliament. The Parliament represents the people of Fiji through its elected members:

[2.3] The term of the President should be for five years. There should only be one term of reappointment.

[2.4] The Prime Minister and Leader of Opposition should nominate two names each to be put to the floor of the House of Representatives and the members of the House of Representatives should vote as individuals through secret ballot.

[2.5] Persons who are to be nominated must hold only Fijian citizenship, have a distinguished career in public service (as

opposed to civil service), medically fit, not declared an undischarged bankrupt and have no serious criminal record.

[2.6]

VICE PRESIDENT

The office of the Vice President for a country like Fiji, will surely incur extra costs, considering that the Vice President will only represent the country in the absence of the President. It is recommended that in the absence of the President of Fiji, the Chief Justice shall be Acting President until such time the President resumes Office. This is the current practice and it has worked well.

3.0

ABOLITION OF THE SENATE

NPCAC recommends that the Senate be abolished, but that the oversight role proposed for it be ensured by a robust Committee system of government, by a healthy Opposition and by a representative Cabinet.

[3.1]

We further recommend that by making Fiji a unicameral system and by having the Senate removed, this will not hinder good governance and the scrutiny of the Executive arm of Government.

[3.2]

a. The systematic scrutiny of all areas of government activity; and

The NPCAC further recommends the use of robust parliamentary committees. The robust committees have two main roles as outlined in the Reeves Report, namely:

[4.2]

The NPCAC recommends that the House of Representatives be reduced by 25% from 71 to 54 seats because Fiji is a small country and the financial cost has to be considered.

[4.1]

4.0 HOUSE OF REPRESENTATIVES

Countries with unicameral parliament are New Zealand, Costa Rica and Sweden.

[3.4]

The benefits of having a unicameral parliament are as follows:
i. This will allow more resources to be concentrated on the House of Representatives, thereby significantly decreasing the overall expenditure of the legislature;
ii. The parliamentary system will become more efficient; and
iii. Eliminates over-representation in the House of Representatives and we submit that this will be elaborated further in Part Four of our submission.

[3.3]

The NPCAC submits that the term of office for the members of the House of Representatives be four years as this is adequate time for an elected member to have performed to his/her maximum potential.

[4.5]

Additionally, NPCAC recommends that the criteria for the appointment of a member of the House of Representative include the requirement that any candidate elected to the House of Representatives is to hold only Fijian Citizenship. Candidates with dual citizenship prior to being sworn in as the member of all other citizenships prior to being sworn in as the member of the House of Representative.

[4.4]

In relation to Fiji, such committees would be beneficial. However, we note that such committees must operate in a way that suits Fiji's local conditions and circumstances.

[4.3]

b. Legislative function of considering Bills referred to them by Parliament, hearing submissions from members of the Parliament and reporting back to Parliament with the amendments recommended by the committees.

[4.6] We note that the Speaker of the House of Representatives has numerous important functions which include but are not limited to:

- i. examining the admissibility of bills;
- ii. ensuring respect for provisions of the Constitution and Standing Orders;
- iii. making announcements concerning the House;
- iv. taking disciplinary measures in the event of disturbance;
- v. Establishing the list of speakers, giving and withdrawing permission to speak.

[4.7] The proposed Speaker is someone who is not a member of the House but who is qualified to be a candidate. A formal vote by secret ballot takes place after the proposal and the person with the majority is elected. The elected person must make the Oath of Allegiance before the Secretary-General to the Parliament.

[4.8] The NPCAC submits that the process of electing the Speaker and the Deputy Speaker previously utilized is sufficient. We do however recommend that the proposal of the candidate for the position of the Speaker and the Deputy Speaker be done by the Prime Minister in consultation with the Leader of the Opposition.

[5.1]

Multi-Member and Open List System of Proportional Representation

For the 2014 elections, the NPCAC recommend that the open list system of proportional representation be used in a multi-member electoral district.

The advantages of the multi-member and open list system of proportional representation are as follows –

- i. it solves the many problems caused by plurality – majority voting systems that tend to produce disproportionate outcomes and bias in favour of larger political groups;
- ii. more accurate representation of political parties;
- iii. it increases democracy by –

- a) empowering voters to choose individual candidates of the party of their choice by voting directly for them rather than for the party list of candidates as a whole;
- b) ensuring that the electoral district is represented by two or more candidates in parliament;

- The complete abolishment of communal representation system as provided for under the previous Constitution and the Electoral Act 1998 and the use of a common roll for elections.

State of the Nation Economy Report –

The NPCAC recommends the following in light of 1.8 in the

[5.3]

- c) reducing the power of the party leader to impose their preselected candidates on the electorate;
- d) it contributes to the reduction of corruption and provides for a better quality of governance because candidates will now be more accountable to the voter and less so to the party;
- e) it encourages political parties to offer stronger candidates because voters are given the opportunity to directly choose candidates;
- f) it encourages independent candidates and smaller political parties, and offers better chances for their success in elections; and
- g) it enhances the chances of minorities, such as women, people with disabilities, youths etc., being elected into parliament.

This will empower voters to vote for whoever they feel will represent them best, irrespective of ethnicity, religion or inherited status.

- That the electoral and voting system as provided for under the Constitution and the Electoral Act 1998 be reformed to enable the adoption of a Proportional Representation System.

The European Union Election Observation Mission Report on Fiji's 2006 elections recommended that Fiji's electoral system be reformed to facilitate more cross-ethnic political representation. The combination of 46 communal constituencies and the use of the previous Alternative Vote System did not have the desired effect of diminishing the stratification of Fiji's electorate and political parties, which reflected ethnic divisions.

The Proportional Representation System is a system by which political parties are given representation in proportion to their popular vote. It provides more accurate representation of parties, better representation for political and racial minorities, better representation of women, little opportunity for gerrymandering and a production of a proliferation of political parties.

Therefore, it is submitted that the Proportional Representation System be adopted for Fiji.

- That specific anti-discrimination measures be incorporated into Fiji's electoral laws to ensure no person is discriminated against by political parties on the grounds of race, religion, gender or circumstances.

Our electoral laws need to be reviewed to reflect our intolerance of discrimination at the highest level - the political level.

Where our electoral laws fail to directly address discrimination at a political level, our society will remain characterised by attitudes, customs and behaviour which disempower the disadvantaged minorities such as women, people with disabilities, youths etc. in areas of employment, education and public life.

These attitudes hold the minorities' hostage to stereotypes according to which these disadvantaged groups are deemed "not suited" to decision-making and politics.

In the 2006 elections, there was an uneven numerical distribution of voters in all 71 constituencies which led to some constituencies being more influential than others. Given the fact that the communal constituents were race based, the consequential result was that the vote of one ethnic group was earmarked to be more influential than the other in all elections.

Under the previous system the country was divided into 71 electoral constituencies, 46 of which were communal constituencies where people voted according to ethnicity.

- That a relatively small number of large constituencies, but no more than five, be adopted to maximise the proportional benefits of a PR electoral system.

Therefore, it is submitted that the electoral laws contain a provision that the constitution of all political parties not discriminate based on ethnicity, religion, gender and other circumstances giving rise to discrimination.

However a change in electoral laws addressing anti-discrimination can also impact on society and change society's attitudes.

The above determination of constituent boundaries on ethnic lines goes against the principal of equal suffrage which dictates that no vote should carry proportionally more weight than another.

Therefore, it is submitted that there should be no more than five large constituencies and that no one constituency should be regarded as a communal constituency to discourage ethnic based voting and campaigning. Furthermore, having a relatively small number of constituencies would improve the administration of elections and not exhaust limited resources.

Without going through the hassle of reinventing the wheel, in order to adopt the multi-member and open list system of proportional representation, the best alternative would be to use the existing divisional boundaries which demarcate the country into the Central, Eastern, Northern and Western Divisions.

These divisional boundaries are not a new concept; in fact they are familiar to Fijians as boundaries that run along their provincial boundaries from which they derive a sense of identity as belonging to the Central, Western, Northern or Central division.

Our youths are the future leaders of our country, if our society has seen fit that at the age of 18 they be given the same

and ability to reason. places a certain level of trust and awareness in their maturity to make informed decisions for themselves and that society years. This shows that youths at the age of 18 are old enough legal age of marriage and the legal drinking age from 21 to 18 licence and recent amendments to the law have reduced the tax, can be recruited in security agencies, can obtain a driving Our laws have reflected these as individuals of 18 years pay

participate in matters of national interest such as elections. are able to make informed decisions and are eager to In Fiji, 18 is the new rational age, as our youths as young as 18

of age.

• **The reduction of the voting age from 21 to 18 years**

time. for administration and organisation purposes come elections independence and post-independence, thus it will be easier to government Ministries in Fiji for operational purposes pre- Conclusively divisional boundaries have long been used by

The leading argument against compulsory voting is that it is not consistent with the freedom associated with democracy - it is undemocratic to force people to vote. Voting is not an intrinsic obligation and the enforcement of the law would be an infringement of a citizen's freedom associated with democratic elections.

Compulsory voting is a system in which electors are obliged to vote during elections or attend a polling place on voting day, or face punitive measures such as fines, community service or imprisonment.

• **The abolition of compulsory voting.**

Conclusively, given that the voting ages or age of political maturity in many other countries such as India, Zambia, South Africa, Britain, USA, Canada, and regionally in Vanuatu Solomon Islands, New Caledonia, New Zealand and Australia have been reduced to 18 years, we also must afford our youths that same recognition and allow those aged 18 the right to vote in elections.

freedoms as other responsible matured citizens: then surely they are old enough to have a say in electing their government.

Additionally, compulsory voting may discourage the political education of the electorate because people forced to participate in voting will react against the perceived source of oppression. This begs the question "is a government really more legitimate if the high voter turnout is against the will of the voters?" Moreover, it has been proved that forcing the population to vote results in an increased number of invalid and blank votes compared to countries that have no compulsory voting laws. Many countries with limited financial capacity may not be able to justify the expenditures of maintaining and enforcing compulsory voting laws. One of the risks associated with compulsory voting is the possible high number of "random votes". Voters who are voting against their free will may, with apathy, select a candidate at random for the sake of fulfilling their civic duty. Voting, whether random or otherwise, determines the election of a country's House of Representatives. A culmination of random votes may have an adverse effect on the results of elections.

Therefore, it is submitted that voting should not be compulsory in Fiji.

[6.1] The NPCAC endorses the opinion of the NCBBF that Cabinet should comprise no more than 25% of the total Parliament.

[6.2] The reduction of Cabinet would mean that a Minister would have more than one Ministerial portfolio. NPCAC recommends that the Prime Minister be given the discretion to appoint assistant ministers to sit outside of Cabinet. These Assistant Ministers must be responsible for a specific policy area and must report directly to the Cabinet Minister.

[6.3] The NPCAC recommends that the members of Cabinet be provided with a more attractive remuneration as this would attract a wider pool of candidates vying for seats and a better qualified selection of Cabinet members capable of fulfilling their respective roles as members of Cabinet.

[6.4] The NPCAC recommends that the appointment of members outside of Parliament be limited to the Attorney-General, appointed by the President upon the advice of the Prime Minister, in consultation with the Leader of the Opposition. Further that the Assistant Ministers be appointed by the Prime Minister.

[7.1] The NPCAC endorses the recommendations by NCBBF which

are as follows -

The Role of the RFMF

[7.2]

• The benefit in maintaining armed forces is to provide protection from foreign threats and from internal conflict therefore we recommend that Section 23 of the *State Services Decree 2009* be used to establish the RFMF in the new Constitution.

The functions of the RFMF as per this provision is limited to making appointments to the forces, taking disciplinary action against members of the forces and removing members from the Forces. We recommend the extension of the definition to include human security, involvement in areas such as bio-diversity conservation and basic infrastructure rehabilitation and development.

• We recommend that the role of the RFMF as a security institution be provided for in the new Constitution.

[7.3]

Accountability of the RFMF

We recommend that the body responsible for undertaking the education and awareness programmes be socially and politically neutral so that the true essence of the Constitution is independently relayed to the people. In turn, this would ensure the legitimacy, popularity and the acceptability of the Constitution.

Extensive education and awareness programmes on the content of the Constitution be undertaken;

It is hereby submitted that once the Constitution is assented to - Taking the assented constitution back to the people [8:1]

RATIFICATION/AMENDMENT OF THE CONSTITUTION

8.0

Furthermore, we recommend that the enlistment criteria into the RFMF provide equal opportunities to all Fijians. [7.4]

We recommend that a parliamentary security oversight committee be established by law to oversee the operations of the RFMF to ensure accountability. The alternative is for the RFMF to fall under the umbrella of the Ministry of Defence.

Documents such as the Constitution should not be susceptible to frequent changes as it the supreme law of the country and the basis for a democratic state/nation. Frequent changes to the Constitution disturb the stability of

iii. A high threshold for consensus to the proposed amendments be enshrined, for example, the majority votes must be necessary and not just the simple majority.

ii. The provisions stipulate that the amendments to the Constitution can be done by way of referendum; and

i. Provisions be clearly outlined in the new Constitution that would provide for the procedure for amendments to the Constitution;

It is hereby submitted that –

[8.2] Procedure for proposed amendments to the Constitution

This would ensure clearer and better understanding of the content of the Constitution and be readily accessible to the public.

It should be immediately translated into the main vernacular languages in Fiji and be published in pocket-sized booklets for the convenience of the people.

this supreme law and hence could create instability and chaos for the nation.

Countries that illustrate provisions in respect to how the Constitution can be amended are United States, Australia, Costa Rica, India and Sweden.

[8.3]

It is recommended that the procedures for amendments to the Constitution mirror that of the Australian Model.

<p>1. The Australian Constitution can be changed by referendum according to the rules set out in section 128 of the <i>Commonwealth of Australia Constitution Act</i>.</p> <p>2. A proposed change must first be approved by an absolute majority of each House of Parliament.</p> <p>3. It is then sent to the Governor-General in order for a writ to be issued so a referendum can occur.</p> <p>4. In a referendum the Parliament asks each Australian on the electoral roll to vote. If a majority of people in a majority of states and a majority of people across the nation as a whole vote 'yes' (called a double majority), then the proposal to amend the Constitution is agreed to. Otherwise, the Constitution remains unchanged.</p>	<p>Australia</p>
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[9.1] NPCAC recommend that a leadership model be developed through which the legitimate roles of elected and non-elected leaders in a democratic Fiji are clarified. Both sources of leadership are required although the basis of their legitimacy differs, as does the scope of their responsibilities.

[9.2] We recommend the following provision –

(1) This section applies to the President, Vice-President, Ministers, members of Parliament, holders of offices established by or continued in existence under this Constitution, members of commissions, Secretaries of departments, the Secretary to the Cabinet and persons who hold statutory appointments or governing or executive positions in statutory authorities.

(2) Persons to whom this section applies must so conduct themselves in relation to the performance of their public duties as not:

- (a) to place themselves in positions in which they have, or could be seen as having, a conflict between their private interests and their public duties;
- (b) to compromise the fair exercise of their public duties;
- (c) to use their offices for private gain;

[9.3]

We also recommend the enactment of a Leadership Code of Conduct which covers the official capacity of the President, Ministers, local government office holders and all other officials holding public office. Such a Code of Conduct requires sufficient enforcement mechanisms to ensure that transgressions are dealt with, in a fair and just manner, in the public interest.

- (a) to implement more fully the conduct rules set out in subsection (2);
- (b) to provide for the monitoring of standards of conduct in relation to the performance of public duties; and
- (c) if the Parliament considers it appropriate, to make provision in relation to the investigation of alleged breaches of those standards and the enforcement of those standards.

(3) The Parliament must, as soon as practicable after the commencement of this Constitution, make a law:

- (d) to allow their integrity to be called into question; or
- (e) to cause respect for, or confidence in, the integrity of the Government to be diminished.

Services Decree 2009 be included in the new Constitution.

The NPCAC recommends that **Section 9 (a) of the State**

[10.2]

nation.

efficiently, effectively and ensure long-term gains for the

reduced, as this in turn would allow Government to operate

The NPCAC recommends that the size of Government be

[10.1]

SIZE AND COST OF GOVERNMENT

10.0

demand of leaders once in office.

candidates at elections, and they will know what to expect and

leadership qualities they will know where to look for in

citizens in a democracy develop their preferred notions of

for civil society, must focus on leadership qualities. When

We further submit civic education, whether at school level, or

[9.5]

in collaboration with various training partners.

provided for public servants through existing training channels,

development activities. Leadership training must be sought and

induction programme followed by further professional

Parliamentarians this can commence with a suitably crafted

We also submit that training be provided for public leaders. For

[9.4]

- The purpose of this recommendation is to ensure that the recruitment of persons into Government be based on merit, as this would provide a pool of highly qualified individuals with the requisite calibre.

[10.3] The NPCAC recommends that the Public Service Commission (PSC) be accountable for the implementation of the staffing system in the public service, and to ensure that it is merit-based and politically impartial.

[10.4] The NPCAC recommends that **Section 11 of the State Services Decree 2009** which establishes the PSC be included in the new Constitution.

[10.5] The NPCAC recommends that **Section 12 of the State Services Decree 2009** which deals with the functions of the PSC be included in the new Constitution.

- This Section ensures that when the appointment process is conducted, it is conducted in an ethical, accountable and transparent manner, and it removes favouritism and corrupt practices on whom to appoint.

[10.6] The NPCAC recommends that section 14 of the State Service Decree 2009 which deals with delegation powers of the PSC be included in the new Constitution.

- Section 14 of the Decree gives the PSC the authority to delegate certain powers subject to conditions. This allows for the efficient and effective functioning of Government.

[10.7] The NPCAC recommends that section 16 of the State Service Decree 2009 which deals with contractual appointments of new employees in the PSC be included in the new Constitution.

- The reason for this recommendation is that contractual appointments allow for persons or individuals to be retained or to continue their service in the PSC on a contractual basis.

[10.8] The NPCAC recommends that section 18 of the State Services Decree 2009 which deals with Secretaries of Departments within the different government departments be included in the new Constitution.

- Furthermore, the NPCAC recommends that the purpose of having this provision incorporated into the new Constitution would allow for productivity in the public service, efficiency, and economical management of the departments and these entities could be effectively managed for continued sustainability.

[11.3] Further, the NPCAC recommends that Parliament utilise constitutionally created independent statutory authorities such as the Ombudsman, the Anti-Discrimination Board, Fiji Human Rights Commission, Auditor-General, and Fiji Independent for elections to ensure a robust and effective Opposition.

[11.2] The NPCAC recommends that a criteria which entails a high calibre of qualifications be mandatory for candidates standing into the Constitution.

[11.1] The NPCAC recommends the adoption of Pillar 1 "*Ensuring Sustainable Democracy and Good and Just Governance*" of the Peoples Charter for Change, Peace and Progress be entrenched

11.0. GOOD GOVERNANCE & DEMOCRACY

[10.10] The work of public servants is varied and increasingly complex and challenging. The key leadership competencies help to ensure that public servants, regardless of profession, function or level, have the right competencies to carry out their day-to-day work and to learn and enrich their careers in the Public Service.

[10.9] In addition, the NPCAC recommends that key leadership competencies should also be part of the PSC and it should also be incorporated into the new Constitution.

Commission Against Corruption, to scrutinize the functioning of Government.

[11.4] Furthermore, NPCAC submits that the following offices be established to oversee that the principles of good governance and democracy prevail -

- i. Ombudsman's Office ;
- ii. Anti-discrimination Board;
- iii. The Auditor General ;
- iv. The Electoral Commission;
- v. The Supervisor of Elections ;
- vi. The Solicitor-General ;
- vii. Commission on the Prerogative of Mercy;
- viii. Judicial Services Commission;
- ix. The Director of Public Prosecution;
- x. The Commissioner of Police ;
- xi. The Commissioner of Prisons ;
- xii. The RFMF and its Commander ; and
- xiii. The Governor of the Reserve Bank;

12.0. CITIZENSHIP

[12.1] The NPCAC recommends that the Constitution Commission allow for multiple citizenships.

[12.2] It is submitted that Fiji adopts multiple citizenship as it will have social, economic and political benefits such as:

- (i) There will be a sense of belonging through personal ties to more than one country and people will not be restricted to one citizenship ;
- (ii) Generate interest in former nationals to again become Fiji citizen and invest in Fiji;
- (iii) Prevent brain drain from Fiji. For example: Post 1987 Coup has experienced migration of professionals and other skilled workers;
- (iv) Draw investor confidence and boost the economy ; and
- (v) Generate more income from foreigners.

[12.3] Many countries such as the United States of America, United Kingdom, France, Canada and New Zealand respect and recognise multiple nationality.

[12.4] Fiji is a developing country and multiple citizenship would recognize the former citizens of Fiji, who now hold passports of another country. States and Nations have long seen a connection between citizens wanting to maintain some ties to their countries of origin, as well as develop new and strong emotional ties to their new country of residence.

BILL OF RIGHTS

13.0

[13.1] The NPCAC endorses that a Bill of Rights be enshrined in the

new Constitution.

[13.2] The following recommended rights may be divided in two

distinct categories, *absolute* and *non-absolute* rights.

Absolute rights are those rights which can never be interfered with by the Government in any circumstance, and are not subject to any limitations. These absolute rights are as follows:

- (a) Freedom from servitude and forced labour; and
- (b) Freedom from cruel or degrading treatment.

[13.3] Non-absolute rights are those rights which are limited in

specified circumstances, as it is recognised that they may conflict with other values or rights.

These non-absolute rights are as follows –

- (a) Right to Life
- (b) Right to personal liberty
- (c) Freedom from unreasonable searches and seizure
- (d) Rights for arrested or detained persons
- (e) Rights of charged persons
- (f) Right to access to courts or tribunals
- (g) Freedom of Expression

- Right to water;
- Right to basic housing; and
- Right to basic health care.

following:

[13.5] The NPCAC further recommends that there should be entrenched provisions in the new Constitution relating to the

[13.4] The NPCAC recommends that a comparative analysis of various jurisdictions and due consideration be made to international conventions such as: International Convention on Civil, and Political Rights (ICCPR), International Convention on Economic, Social and Cultural Rights (ICESC) and Group Rights, when contemplating the construction of rights that should be enshrined in the new Constitution.

- (h) Freedom of Assembly
- (i) Freedom of Association
- (j) Freedom of Movement
- (k) Right to Privacy
- (l) Protection against compulsory acquisition of property
- (m) Enforcement
- (n) Freedom of labour relations
- (o) Right of Religion and Belief
- (p) Right of Equality
- (q) Right to Education

(i) the punishment imposed; or

(d) remit the whole or a part of:

punishment imposed; or

(c) substitute a less severe form of punishment for the

imposed for the offence;

(b) grant to such a person a respite, either indefinitely or for a specified period, of the execution of the punishment

law of the State a pardon or a conditional pardon;

(a) grant to a person convicted of an offence under the

30.—(1) The President may:

Prerogative of Mercy

Prerogative of Mercy ("CPOM").

adopt the following provision relating to the Commission on the

The NPCAC recommends that the Constitution Commission

[14.1]

PREROGATIVE OF MERCY

14.0

new Constitution.

Anti-Discrimination Board/Commission established under the

The NPCAC also recommends that there should be a strong

[13.7]

new Constitution.

rights in the Bill of Rights should be effectively addressed in the

The NPCAC believes that the inclusion of the socio-economic

[13.6]

(ii) a penalty or forfeiture otherwise due to the State in respect of the offence.

(2) This subsection establishes a Commission on the Prerogative of Mercy consisting of:

- (a) the Attorney-General who is to be its chairperson; and
- (b) 2 other members appointed by the President, acting in his or her own judgment.

(3) In exercise of his or her powers under subsection (1), the President acts on the advice of the Commission.

JUDICIARY

The NPCAC endorses the independence of the Judiciary and recommends the following provisions for Judiciary in the new Constitution.

The NPCAC's recommendations are as follows:

Section 1 Judicial power

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Judicial Power

1. There shall be for the Republic of Fiji, the following Courts upon which the judicial power of the State shall vest:

- (a) the Supreme Court, which shall be the final appellate court
- (b) the Court of Appeal;

[15.1]

15.0

3. (1) Each of the High Court, the Court of Appeal and the Supreme Court has the jurisdiction, including the inherent jurisdiction, conferred on it immediately before the commencement of this Constitution or by any written law.

Jurisdiction of the courts of state

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 3 Jurisdiction of courts of State

[15.3]

2. "Every Court and the judges of the State are independent of the executive branch of Government or any other authority, in the exercise of its judicial functions."

Independence of Judicial Branch

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 2 Independence of Judicial Branch

[15.2]

- (c) the High Court; and
- (d) such other Courts as may be established by law.

(2) No Court shall be vested with jurisdiction save as is or may be conferred on it by this Constitution or any written law.

(3) No Court shall have the jurisdiction to accept, hear and determine any challenges whatsoever (including any application for judicial review) by any person to the Fiji Constitution Amendment Act 1997, Revocation Decree 2009 (Decree No. 1) and such other Decrees made or as may be made by the President.

(4) No Court shall have the jurisdiction to accept, hear and determine, or in any other way entertain, any challenges whatsoever (including any application for judicial review) by any person to the validity or legality of any Promulgation or Legal Notices from 2006 and Decrees made by the President from 10 April 2009 and any Decrees as may be made by the President.

(5) No Court shall have the jurisdiction to accept, hear and determine, or in any other way entertain, any challenges whatsoever of any action, proceeding, claim, dispute or grievance of any form whatsoever (except for any claims under the Workman's Compensation Act (Cap. 94) and the Health and Safety at Work Act 1996) which purports to or purported to challenge or involves the Government of the Republic of Fiji, any Minister or the

Public Service Commission which had been terminated by virtue of the Employment Regulations (Amendment) Decree 2011.

(6) No Court shall have the jurisdiction to accept, hear and determine, or in any other way entertain, any challenges whatsoever of any orders of the Employment Relations Tribunal or the Employment Relations Court (except for any claims under the Workman's Compensation Act (Cap. 94) and the Health and Safety at Work Act 1996) which purports to or purported to challenge or involves the Government of the Republic of Fiji, any Minister or the Public Service Commission which had been terminated by virtue of the Employment Regulations (Amendment) Decree 2011.

• The purpose of including these provisions is to ensure that all measures, decisions and processes that have already being put in place and the subsequent effect of those measures are not hindered in any way, by allowing claims or any challenges whatsoever to the Decrees, the terminated cases or Orders made under the *Employment Regulations (Amendment) Decree 2011*.

• These provisions must be in place to ensure administrative workability and facilitate the proper functioning of the Government. If these provisions are

(4) The High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate

subordinate courts.

(3) The High Court has jurisdiction, subject to the conferral by written law of rights of appeal and to such requirements as may be prescribed by law, to hear and determine appeals from all judgments of

interpretation.

(2) The high Court also has original jurisdiction in any matter arising under this Constitution or involving its

or any other written law.

4. (1) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as it conferred on it under this Constitution

Jurisdiction of the High Court

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 4 Jurisdiction of High Court

[15.4]

not in place, then the financial and administrative strain this would have on the affected parties and the courts would be detrimental in Fiji's efforts to restore stability.

[15.5]

Section 5 Jurisdiction of Court of Appeal

court and may, on an application duty made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is dully administered by the subordinate court.

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Jurisdiction of the Court of Appeal

5. (1) The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgments of the High Court, and such other jurisdiction as is conferred by law.

(2) Appeals lie to the Court of Appeal as of right from a final judgment of the High Court in any matter arising under this Constitution of involving its interpretation.

(3) The Parliament may provide that appeals lie to the Court of Appeal, as of right or with leave, from other judgments of the High Court in accordance with such requirements as the Parliament prescribes.

[15.6]

Section 6 Jurisdiction of Supreme Court

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Jurisdiction of Supreme Court

6. (1) The Supreme Court has exclusive jurisdiction, subject to such requirements as the Parliaments prescribed, to hear and determine appeals from all final judgments of the Court of Appeal.

(2) An appeal may not be brought from a final judgment of the Court of Appeal unless:

- (a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or
- (b) the Supreme Court gives special leave to appeal.

(3) In the exercise of its appellate jurisdiction, the Supreme Court has power to review, vary, set aside or affirm decisions or orders of the Court of Appeal and may make such orders (including an order for a new trial and an order for award of costs) as are necessary for the administration of justice.

(4) Decisions of the Supreme Court are, subject to subsection (5), binding on the courts of the State.

8. The President of the Supreme Court may make rules of court, not inconsistent with this Constitution or a law made by the Parliament, for regulating and prescribing the practice and procedure to be followed in the Supreme Court.

Rules of the Court

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 8 Rules of court

[15.8]

7. The Supreme Court, the Court of Appeal and the High Court have the power to punish persons for a contempt of court in accordance with the law.

Contempt of Court

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 7 Contempt of court

[15.7]

(5) The Supreme Court may review any judgment, pronouncement or order made by it.

[15.9]

Section 9 Composition of High Court

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Composition of the High Court

9 (1) The High Court consists of:

(a) the Chief Justice;

(b) and a number of puisne judges that is not less than

10 or such greater number as may be prescribed by

law; and

(c) Masters of the High Court.

(2) The appointment of Masters of the High Court and

their jurisdictional powers, shall be prescribed under the

High Court Act or any other law.

- The reason for this recommendation is to make Masters of the High Court a compulsory composition of the court, rather than having this position at the Parliament's discretion.

Section 10 Composition of Court of Appeal

[15.10]

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Composition of Court of Appeal

10. The Court of Appeal consists of:

[15.11]

Section 11 Composition of Supreme Court

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

11. The Supreme Court consists of:

- (a) the Chief Justice, who is to be the president of the Supreme Court;
- (b) such other judges as are appointed as judges of the Supreme Court;
- (c) the Justices of Appeal; and
- (d) the puisne judges of the High Court.

The purpose of this recommendation is to allow the puisne judges of the High Court to gain exposure to the caliber of the appellate jurisdiction of the Supreme Court, and help develop through this exposure and experience.

- (a) holds, or has held high judicial office in Fiji or in another country prescribed by law; or
- (b) has had not less than 15 years of practice as a barrister or solicitor or not less than 15 years post-admission legal or academic experience in Fiji or in another country prescribed by law.

he or she:

13. A person is not qualified for appointment as a judge unless

Qualifications of Appointment

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution:

Section 13 Qualifications for appointment

[15.13]

- 12. A judge who has sat in a trial of a matter that is the subject of appeal to a higher court must not sit in the appeal.

Disqualification of a Judge

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 12 Disqualification of a Judge

[15.12]

The recommended increase in the qualifications would therefore not only distinguish the respective level of judicial appointments, but also ensure a composition of well experienced and well versed judges overseeing matters within the respective courts in Fiji.

[15.14] **Section 14 Judicial Service Commission**

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Judicial Service Commission

14(1) This section establishes a Judicial Service Commission consisting of:

(a) the Chief Justice, who is to be its chairperson;

(b) the President of the Court of Appeal;

(c) A legal practitioner with not less than 15 years post-admission practice, to be appointed by the President

on the advice of the Attorney-General;

(d) A person, not being a legal practitioner, appointed by the President on the advice of the Attorney-General.

(2) The quorum of the Judicial Service Commission shall consist of the Chairperson and one member.

Appointments of Judges

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 15 Appointments of Judges

[15.15]

- The Fiji Law Society is a voluntary organisation (*not established by statute*) and therefore should not be included in the composition of the Judicial Service Commission.

(5) The Secretary of the Judicial Service Commission shall be the Chief Registrar, or any other person performing the functions of that Office.

(4) The members of the Judicial Service Commission are entitled to such allowances as may be fixed by law.

(3) In addition to the functions conferred on it elsewhere in this Constitution, the Judicial Service Commission may investigate complaints about judges and judicial officers of courts subordinate to the High Court and may take disciplinary action against them.

15(1) The Chief Justice and the President of the Court of Appeal are appointed by the President following consultation with the Prime Minister and the Attorney General.

(2) The judges of the Supreme Court, the Justices of Appeal and the puisne judges of the High Court are appointed by the President on the recommendation of the Judicial Service Commission following consultation by it with the Attorney-General.

(3) The President may, following consultations with the Prime Minister and the Attorney-General, appoint a judge or a person who is qualified for appointment as a judge to act as Chief Justice during any period, or during all periods, when the office of Chief Justice is vacant or when the Chief Justice is absent from duty or from Fiji or is, for any reason unable to perform the functions of office.

(4) The president may, on the recommendation of the Judicial Service Commission following consultation with the Attorney-General, appoint a person to act as a puisne judge of the High Court during any period, or during all periods, when an office of a puisne judge of the High Court is vacant or when a puisne judge is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

(5) A person is not eligible to be appointed under paragraph 4 unless he or she is qualified for appointment as a judge.

16(1) Appointments to the following offices are made by the Judicial Service Commission:

Other appointments

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 16 Other appointments

[15.16]

The reasons for the recommendations are as follows:

- Previously, the Leader of Opposition and the House of Representatives respectively, was responsible for being consulted prior to the appointment of judges. However, in the above recommended changes, the Leader of Opposition is replaced with the Attorney General, regarding consultations prior to the appointment of the Chief Justice, the President of the Court of Appeal, judges of the Supreme Court, the Justices of Appeal and the puisne judges of the High Court.
- This recommendation is due to the fact that the Attorney General, who is the first law officer of the state, is the most appropriate person upon whom recommendations should be sought by the President for the appointment of Judges, as this is also found in various jurisdictions.

• It is important to have an express provision concerning the qualifications for the appointment of Magistrates. Under the current practice, there is no express requirement for appointment, and as a result of such, Magistrates may be appointed without any years of practice.

The reasons for these recommendations are as follows:

- (a) an office of Magistrate to have at least 7 years practice as a barrister or solicitor in Fiji or in another country prescribed by the Parliament; and
- (b) all judicial office for which provision is made by law.
- (2) In making appointments under paragraph (1) (a) or (b), the Judicial Service Commission must consult with the Prime Minister and the Attorney-General.
- (3) If a written law so provides, the Judicial Service Commission may also make appointments of persons to offices that are not judicial offices.
- (4) The Judicial Service Commission must get the consent of the Prime Minister before recommending a non-citizen for appointment to a judicial office (other than an office of judge).

Judges remuneration

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

[15.19]

Section 19 Judges remuneration

18: Before taking office, a judge must make before the President, the oath of office set out in the Schedule.

Oath of Office

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

[15.18]

Section 18 Oath of office

The NPCAC recommends that this section be removed as we should never compromise merits for the sake of achieving ethnic and gender balance.

[15.17]

Section 17 Criteria for appointment to judicial office

• The NPCAC recommends that there be express provisions which stipulate the qualifications of appointment of Magistrates to be 7 years of experience as a legal practitioner, as this would ensure a better calibre of persons.

(3) Nothing in subsections (1) and (2) above, prevents the appointment of the Chief Justice, President of the Court of Appeal, a judge of the Supreme Court, a Justice of Appeal or a puisne judge of the High Court, who has reached the reached that age;

(2) The term of appointment of a puisne judge of the High Court expires upon his or her reaching the age of 65, and a person must not be appointed if he or she has the age of 70.

20(1) The term of appointment of the Chief Justice, President of the Court of Appeal, a Justice of Appeal or a judge of the Supreme Court expires upon his or her reaching

Retirement ages for Judges

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Section 20 Retirement ages for Judges

[15.20]

and calibre of Judicial Officers and avoid corruption. should be adequately remunerated to attract a better quality

- Further the NPCAC submits that Judges and Magistrates

during their terms of office.

19. The remuneration of judges must not be reduced

(2) The term of appointment of a Justice of the High Court expires upon his or her reaching the age of 65, and a

70.

Supreme Court expires upon his or her reaching the age of 70. 21(1) The term of appointment of the Chief Justice, President of the Court of Appeal, a Justice of Appeal or a Judge of the

Retirement ages for Judges

to its effect be included in the new Constitution.

The NPCAC recommends that the following section or a section

Section 21 Removal of Judges for cause

[15.21]

under a fixed term contract instead.

• We are of the opinion that the duration of the terms of appointment should not be specified in a Constitution, but

The reasons for the recommendations are as follows:

(4) The applicable retiring age under this section does not apply to a person appointed as an acting Judge under subsection 16 (3).

applicable retiring age, from being appointed on a fixed-term contract, for which the applicable retiring age shall not apply.

person must not be appointed if he or she has reached that age.

(3) Nothing in subsections (1) and (2) above, prevents the appointment of the Chief Justice, President of the Court of Appeal, a judge of the Supreme Court, a Justice of Appeal or a puisne judge of the High Court, who has reached the applicable retiring age, from being appointed on a fixed-term contract, for which the applicable retiring age shall not apply.

(4) The applicable retiring age under this section does not apply to a person appointed as an acting judge under subsection 132 (3)

Section 22 Existing appointments

The NPCAC recommends that the following section or a section to its effect be included in the new Constitution.

Existing Appointments

22: Nothing in the Chapter affects the continuance of a person in office as a judge under an appointment made before the commencement of this Constitution.

CONSTITUTION OFFICES

16.0

The NPCAC recommends the following offices to be established under the new Constitution -

National Peoples Charter Council (NPCC)

[16.1]

The National Peoples Charter Council (NPCC), which shall be responsible for the implementation of the Peoples Charter. The term of the NPCC shall be for a period of 5 years.

The membership shall comprise of a Chairperson and one member of Opposition from each Sector Standing Committee of the House of Representatives and a Secretariat in the Prime Minister's Office to support the implementation of the Peoples Charter.

[16.2]

FICAC

The NPCAC recommends the establishment of an independent and well-resourced Fiji Independent Commission Against Corruption ("FICAC") to eradicate corruption in the society:

Hong Kong, Singapore and New South Wales have anti-corruption agencies that have been successful in eradicating corruption.

Fiji Human Rights Commission

[16.3]

The NPCAC recommends the establishment of a Fiji Human Rights Commission. A fully functional and independent Human Rights Commission is necessary for safeguarding human rights.

Other Constitutional Offices

[16.4]

NPCAC recommends that the following offices be established -

- i. Ombudsman's Office;
- ii. The Anti-Discrimination Board;
- iii. The Auditor General;
- iv. The Electoral Commission;
- v. The Supervisor of Elections;
- vi. The Solicitor-General;
- vii. Commission on the Prerogative of Mercy;
- viii. Judicial Services Commission;
- ix. The Director of Public Prosecution;
- x. The Commissioner of Police;
- xi. The Commissioner of Prisons;
- xii. The RFMF and its Commander; and
- xiii. The Governor of the Reserve Bank.

[16.5] The NPCAC further recommends that the following key measures and actions be taken with due priority and urgency:

a) National Dialogue Initiative

The NPCC engage in advancing national dialogue on national development issues such as identity, land reform, and a vision for community institutions which advance the wellbeing of all people.

b) Leadership Initiative

The NPCC to create programmes at local and national level to enhance the leadership capacity at all levels of the public and private sector to support the Peoples Charter implementation.

c) Governance Initiative

Parliament must have the capacity to adequately scrutinize Government through established bodies such as FICAC, Ombudsman's office, Fiji Human Rights Commission, and Auditor General.

NATIONAL SECURITY COORDINATION

17.0

[17.1] The NPCAC recommends the improvement of national security

coordination through -

- (a) implementing policies to take account of contemporary national security threats and the new paradigm of human security whereby national security forces will play a more engaged part in national development of Fiji;

- (b) the development of a comprehensive national framework for the systematic and participatory engagement between the State and citizens should be put in place to breach the gap between the state and the community, which should be an ongoing process;

- (c) the expansion of the membership of the National Security Council (NSC) to incorporate wide representation including the Military and Police. Measures should also be taken to facilitate appropriate inputs from civil society and women's organisations and academic institutions, community groups as well as the private sector.

[18.2] The legislation should also have adequate safeguards to protect confidential information, such as Cabinet Papers.

[18.1] The NPCAC recommends that Freedom of Information legislation be enacted. The public must be informed about the operations of Government, as this will facilitate a transparent environment and allow for the scrutiny of government leaders, as this would ensure a higher standard of performance.

18.0 FREEDOM OF INFORMATION

- i. take necessary measures to preserve the existence and independence of the State, public order, peace, protection of public health and security of the country;
- ii. should allow for participation of citizens and civil societies to ensure collaborative ideas for improved security measures; and
- iii. Should not make any specific references to culture or ethnicity in terms of national security coordination as security is essential for all citizens.

[17.2] The NPCAC also recommends that the National Security Council (NSC):

TRANSITIONAL PROVISIONS

19.0

[19.1] The NPCAC recommends that there must be transitional

provisions included in the new Constitution to allow for existing Promulgations and Decrees that were gazetted after the dissolution of Parliament and the abrogation of the 1997 Constitution to continue in force until such time the elected Parliament decides otherwise. All laws made between December 2006 and the first sitting of Parliament under the new Constitution must remain valid, unless the Parliament decides otherwise. Furthermore, as earlier mentioned in these submissions, the Constitution must make provision to ensure that no court or tribunal has jurisdiction to entertain any challenges to these laws.

[19.2]

The transitional provisions must be included in the new Constitution in order to safeguard every adjudication, determination, decision, order or direction made by any Court, Tribunal, Commission or by any adjudicating body, whether under or arising from any Promulgation or Decree.

[19.3]

The new Constitution must include transitional provisions to ensure that all those claims and proceedings which were terminated or not entertained under any Promulgation or

Decree, are not reinstated or instituted at the commencement of the new Constitution.

[19.4]

If the Promulgations and Decrees are revoked under the new Constitution, every adjudication, determination, decision, order or direction made by any Court, Tribunal, Commission or by any adjudicating body, whether under or arising from any Promulgation or Decree, would automatically be overturned or set aside.

[19.5]

This would not only undermine our judicial system but would open "flood gates" as every affected person would seek some form of redress. This in turn would cause the people to lose confidence in the course of justice and result in chaos and instability. Furthermore, the financial and administrative strain that this would have on the affected parties and the courts would be detrimental to the country's development.

[19.6]

For example -

(a)

If the Crimes Decree 2009 were to be revoked under the new Constitution, every person who was prosecuted, convicted and currently serving a sentence would no longer need to complete that sentence. Without transitional provisions, murderers, rapists, robbers, thieves, paedophiles and other dangerous

(b) Under the State Services Decree 2009 –

(a) Under the Executive Authority of Fiji Decree 2009 – the appointment of the President

All appointments under any written law prior to the commencement of the new Constitution continue to be valid and shall not by the virtue of the new Constitution be deemed void or terminated. Out of the many, the following are only some of the crucial positions that need to be retained after the commencement of the new Constitution.

It is essential that all appointments remain valid and all revocations remain in force and not be subject to any challenge which could lead to an overturning of a revocation.

[19.7]

(b) If the Fiji Independent Commission Against Corruption Promulgation 2007 were to be revoked under the new Constitution, any prosecution by FICAC and conviction by a court of law would be overturned or set aside. This Promulgation was bought into effect to combat corruption, bribery and abuse of office.

people who are currently serving their sentence would be set free.

The above mentioned appointments and establishments form the pillars of our nation. If their existence and validity are questioned, then all decisions, actions and omissions by these

[19:8]

- i. The establishment of the Courts
- ii. Appointments to the Courts
- iii. Establishment of the Judicial Services Commission
- iv. Appointment of all judicial officers and other tribunals

(c) Under the Administration of Justice Decree 2009

- i. Director of Public Prosecutions
- ii. Office of the Solicitor General
- iii. Permanent Secretaries
- iv. Magistrates
- v. Commissioner of Police
- vi. Commissioner of Prisons
- vii. Supervisor of elections
- viii. Auditor General
- ix. Establishment of the Public Service Commission, and all actions taken by the Public Service Commission, including appointments made and disciplinary action taken against public servants, as well as other ancillary actions such as transfers, promotions, and acting appointments.
- x. Ambassadors

appointed persons and establishments will also be questioned. It is absolutely necessary that the above appointments, amongst others, continue in force after the commencement of the new Constitution so that there is law, order, stability and security for the people of Fiji during the period between the commencement of the new constitution and the election of Parliament.

[19.9]

All appointments revoked prior to the commencement of the new Constitution continue to be valid after the commencement of the new Constitution and these appointments must not be challenged or revived on any grounds.

[19.10]

If the written laws under which such revocations have been made are not continued in effect after the commencement of the new Constitution, or if the new Constitution in any way provides that these revocations are invalid then 'flood gates' are likely to be opened, whereby the revocations can be challenged and overturned. For example the Public Service Appeal Board that had been abolished under the State Services Decree 2009 can be revived.

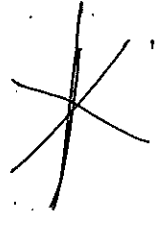
• All major professions may not have a regulating and renewing body which can empower them to carry on their functions –

There are certain laws that need to be made or amended every so often in order for a country to properly run. These laws include, but are not limited to, taxation, commercial, health laws and price control mechanism to protect the socio-economically weak.

[19.13]

Although an elected Parliament under the new Constitution would be the legislature of Fiji, there is still a need to ensure that a law-making body exists from the commencement of the new Constitution and the election of Parliament in order for new laws or amendments to existing laws to be made.

[19.12]



The transitional provisions must be included in the new Constitution to enable laws to be made or amended, and statutory authority under any written law from the date of the commencement of the new Constitution to the date of first sitting of Parliament.

[19.11]

- (a) Legal practitioners will not be able to renew their practicing certificates under the Legal Practitioners Decree 2009.
- (b) Medical and Dental practitioners will not be able to renew their practicing certificates under the Medical and Dental Practitioners Decree 2010.

On a similar note, the retirement age will be affected. Currently, the State Services Decree 2009 provides the retirement age for civil servants as 55 years. If the State Services Decree 2009 and any act or omission done under that Decree is not recognised by the new Constitution, then all the

[19.16]

The transitional provisions must be included in the new Constitution because certain decisions, actions or omissions made under or arising from a Promulgation or Decree may be irreversible in nature. The Promulgations and Decrees have certain provisions whereby decision, actions or omissions have been made that are irreversible in nature.

[19.15]

We submit that the law-making body in existence immediately before the commencement of the new Constitution remains as the law-making body from the commencement of the new Constitution until the election of Parliament for the purposes of making those necessary amendments to existing laws and making necessary laws as and when required for Fiji.

[19.14]

Any budgetary allocation of the state's resources to government ministries towards the end of government's financial year may require amending certain tax laws. Furthermore, it is recommended that there also be an allocation in Budget for elections in 2014.

[19.17] The Fiji Constitutional Process (Constitution Commission) Decree 2012 and the Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012 are important in that they regulate the process by which the new Constitution will be drafted and adopted for Fiji. Essentially the new Constitution is based on these two Decrees. If these Decrees are revoked, the new Constitution can be challenged itself.

people who had to retire at 55 years would want some form of re-dress. Consequently, society as whole may suffer. The new Constitution must ensure that the move from the old order to the new is "smooth".